

106TH CONGRESS  
2D SESSION

# S. 2820

To provide for a public interest determination by the Consumer Product Safety Commission with respect to repair, replacement, or refund actions, and to revise the civil and criminal penalties, under both the Consumer Product Safety Act and the Federal Hazardous Substances Act.

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IN THE SENATE OF THE UNITED STATES

JUNE 29, 2000

Mr. HOLLINGS (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To provide for a public interest determination by the Consumer Product Safety Commission with respect to repair, replacement, or refund actions, and to revise the civil and criminal penalties, under both the Consumer Product Safety Act and the Federal Hazardous Substances Act.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Product  
5 Safety Commission Enhanced Enforcement Act”.

1 **SEC. 2. COMMISSION PUBLIC INTEREST DETERMINATION**  
2 **WITH REGARD TO REPAIR, REPLACEMENT,**  
3 **OR REFUND ACTIONS.**

4 (a) **PRODUCT SAFETY AMENDMENT.**—Section 15(d)  
5 of the Consumer Product Safety Act (15 U.S.C. 2064(d))  
6 is amended—

7 (1) by striking “(d) If” and inserting “(d)(1)  
8 Except as provided in paragraph (3), if”;

9 (2) by striking “(1)” and inserting “(A) CON-  
10 FORM OR REPAIR.—”;

11 (3) by striking “(2)” and inserting “(B) RE-  
12 PLACEMENT.—”;

13 (4) by striking “(3)” and inserting “(C) RE-  
14 FUND.—”;

15 (5) by striking “(A) at the time” and inserting  
16 “(i) at the time”;

17 (6) by striking “(B) at the time” and inserting  
18 “(ii) at the time”;

19 (7) by striking “An order” the first place it ap-  
20 pears and inserting “(2) An order”;

21 (8) by striking “paragraph (3).” and inserting  
22 “paragraph (1)(C)”; and

23 (9) by adding at the end thereof the following:

24 “(3) If the Commission determines, after af-  
25 fording opportunity for an informal hearing, that the  
26 action elected by a manufacturer, distributor, or re-

1       tailer under paragraph (1)(A), (B), or (C) is not in  
2       the public interest, the Commission shall order the  
3       manufacturer, distributor, or retailer to take any  
4       other action described in paragraph that the Com-  
5       mission determines to be in the public interest. If  
6       the Commission determines that both of the remain-  
7       ing actions for election under paragraph (1) are in  
8       the public interest, then the manufacturer, dis-  
9       tributor, or retailer shall elect to take one of those  
10      actions.”.

11      (b) HAZARDOUS SUBSTANCES AMENDMENT.—Sec-  
12      tion 15(b) of the Federal Hazardous Substances Act (15  
13      U.S.C. 1274(b)) is amended—

14           (1) by striking “REFUND.—If” and inserting  
15           “REFUND.—Except as provided in paragraph (3),  
16           if”;

17           (2) by striking “(1) If” and inserting “(A) RE-  
18           PAIR.—If”;

19           (3) by striking “(2)” and inserting “(B)  
20           REPLACEMENT.—”;

21           (4) by striking “(3)” and inserting “(C) RE-  
22           FUND.—”;

23           (5) by redesignating subparagraphs (A) and  
24           (B) of paragraph (3) as clauses (i) and (ii), respec-  
25           tively;

1           (6) by striking “An order” the first place it ap-  
2           pears and inserting “(2) An order”;

3           (7) by striking “paragraph (3).” and inserting  
4           “paragraph (1)(C)”; and

5           (8) by adding at the end thereof the following:

6           “(3) If the Commission determines, after af-  
7           fording opportunity for an informal hearing, that the  
8           action elected by a manufacturer, distributor, or re-  
9           tailer under paragraph (1)(A), (B), or (C) is not in  
10          the public interest, the Commission shall order the  
11          manufacturer, distributor, or retailer to take any  
12          other action described in paragraph that the Com-  
13          mission determines to be in the public interest. If  
14          the Commission determines that both of the remain-  
15          ing actions for election under paragraph (1) are in  
16          the public interest, then the manufacturer, dis-  
17          tributor, or retailer shall elect to take one of those  
18          actions.”.

19          (c) DISCRETIONARY REMEDIAL ACTION UNDER THE  
20          FHSA.—Section 1274(c) of the Federal Hazardous Sub-  
21          stances Act (15 U.S.C. 1274(c) is amended—

22                 (1) by striking “(2) If” and inserting “(2) Ex-  
23                 cept as provided in paragraph (3), if”; and

24                 (2) adding at the end thereof the following:

1           “(3) If the Commission determines, after af-  
2           fording opportunity for an informal hearing, that the  
3           action elected by a manufacturer, distributor, or re-  
4           tailer under paragraph (2)(A), (B), or (C) is not in  
5           the public interest, the Commission shall order the  
6           manufacturer, distributor, or retailer to take any  
7           other action described in paragraph that the Com-  
8           mission determines to be in the public interest. If  
9           the Commission determines that both of the remain-  
10          ing actions for election under paragraph (2) are in  
11          the public interest, then the manufacturer, dis-  
12          tributor, or retailer shall elect to take one of those  
13          actions.”.

14 **SEC. 3. CIVIL PENALTIES.**

15           (a) **PRODUCT SAFETY CIVIL PENALTY.**—

16           (1) **INCREASE; REMOVAL OF CAP ON PENALTY**  
17           **FOR CONTINUING OFFENSE.**—Section 20(a)(1) of  
18           the Consumer Product Safety Act (15 U.S.C.  
19           2069(a)(1)) is amended—

20                   (A) by striking “\$5,000” and inserting  
21                   “\$7,000”;

22                   (B) by striking “involved, except that the  
23                   maximum civil penalty shall not exceed  
24                   \$1,250,000 for any related series of violations.”

25                   and inserting “involved.”; and

1 (C) by striking “offense, except that the  
2 maximum civil penalty shall not exceed  
3 \$1,250,000 for any related series of violations.”  
4 and inserting “offense.”.

5 (2) CONFORMING CHANGES TO INFLATION AD-  
6 JUSTMENT.—Section 20(a)(3) of that Act (15  
7 U.S.C. 2069(a)(3)) is amended—

8 (A) by striking “maximum penalty  
9 amounts” in subparagraph (A) and inserting  
10 “penalty”;

11 (B) by striking “December 1, 1994,” in  
12 subparagraph (B) and inserting “December 1,  
13 2005,”; and

14 (C) by striking subparagraph (C) and in-  
15 serting the following:

16 “(C) The authorized penalty amount shall  
17 be prescribed by increasing the amount in para-  
18 graph (1) by the cost-of-living adjustment for  
19 the preceding five years, rounded to the nearest  
20 \$1,000.”.

21 (b) HAZARDOUS SUBSTANCES CIVIL PENALTY.—

22 (1) INCREASE; REMOVAL OF CAP ON PENALTY  
23 FOR CONTINUING VIOLATIONS.—Section 5(c)(1) of  
24 the Federal Hazardous Substances Act (15 U.S.C.  
25 1264(e)(1)) is amended—

1 (A) by striking “\$5,000” and inserting  
2 “\$7,000”;

3 (B) by striking “involved, except that the  
4 maximum civil penalty shall not exceed  
5 \$1,250,000 for any related series of violations.”  
6 and inserting “involved.”; and

7 (C) by striking “offense, except that the  
8 maximum civil penalty shall not exceed  
9 \$1,250,000 for any related series of violations.”  
10 and inserting “offense.”.

11 (2) CONFORMING CHANGES TO INFLATION AD-  
12 JUSTMENT.—Section 5(c)(6) of that Act (15 U.S.C.  
13 1264(e)(6)) is amended—

14 (A) by striking “maximum penalty  
15 amounts” in subparagraph (A) and inserting  
16 “penalty”;

17 (B) by striking “December 1, 1994,” in  
18 subparagraph (B) and inserting “December 1,  
19 2005,”; and

20 (C) by striking subparagraph (C) and in-  
21 serting the following:

22 “(C) The authorized penalty amount shall  
23 be prescribed by increasing the amount in para-  
24 graph (1) by the cost-of-living adjustment for

1           the preceding five years, rounded to the nearest  
2           \$1,000.”.

3 **SEC. 4. CRIMINAL PENALTIES.**

4           (a) **PRODUCT SAFETY CRIMINAL PENALTY.**—Section  
5 21 of the Consumer Product Safety Act (15 U.S.C. 2070)  
6 is amended—

7           (1) by striking subsection (a) and inserting the  
8 following:

9           “(a) **IN GENERAL.**—

10           “(1) **KNOWING VIOLATIONS.**—Any individual  
11 who knowingly violates section 19 of this Act shall  
12 be fined under title 18, United States Code, or be  
13 imprisoned not more than 1 year, or both. Any orga-  
14 nization (as defined in section 18 of title 18, United  
15 States Code) that knowingly violates section 19 of  
16 this Act shall be fined under title 18, United States  
17 Code.

18           “(2) **KNOWING AND WILLFUL VIOLATIONS.**—  
19 Any individual who knowingly and willfully violates  
20 section 19 of this Act shall be fined under title 18,  
21 United States Code, or be imprisoned not more than  
22 3 years, or both. Any organization (as defined in  
23 section 18 of title 18, United States Code) that  
24 knowingly and willfully violates section 19 of this

1 Act shall be fined under title 18, United States  
2 Code.”;

3 (2) by inserting “ACTIONS BY DIRECTORS, OF-  
4 FICERS, AND AGENTS.—; and

5 (3) by striking “knowingly and willfully” in  
6 subsection (b).

7 (b) HAZARDOUS SUBSTANCES CRIMINAL PEN-  
8 ALTY.—Section 5(a) of the Federal Hazardous Substances  
9 Act (15 U.S.C. 1264(a)) is amended to read as follows:

10 “(a) IN GENERAL.—

11 “(1) KNOWING VIOLATIONS.—Any individual  
12 who knowingly violates section 4 of this Act shall be  
13 fined under title 18, United States Code, or be im-  
14 prisoned not more than 1 year, or both. Any organi-  
15 zation (as defined in section 18 of title 18, United  
16 States Code) that knowingly violates section 4 of  
17 this Act shall be fined under title 18, United States  
18 Code.

19 “(2) KNOWING AND WILLFUL VIOLATIONS; RE-  
20 PEAT OFFENDERS.—Any individual who knowingly  
21 and willfully violates section 4 of this Act shall be  
22 fined under title 18, United States Code, or be im-  
23 prisoned not more than 3 years, or both. Any orga-  
24 nization (as defined in section 18 of title 18, United  
25 States Code) that knowingly and willfully violates

1 section 4 of this Act shall be fined under title 18,  
2 United States Code. If an individual or organization  
3 commits a second or subsequent violation of section  
4 4 of this Act, then that second or subsequent viola-  
5 tion is deemed to be a knowing and willful viola-  
6 tion.”.

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