

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2993

To amend the Consumer Product Safety Act and the Federal Hazardous Substances Act regarding repair, replacement, or refund actions, civil penalties, and criminal penalties under those Acts.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2001

Mr. MARKEY (for himself, Mrs. CAPPS, and Mr. LUTHER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Consumer Product Safety Act and the Federal Hazardous Substances Act regarding repair, replacement, or refund actions, civil penalties, and criminal penalties under those Acts.

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 Risk Reporting Act of 2001”.

1 **SEC. 2. REPAIR, REPLACEMENT, OR REFUND.**

2 (a) Section 15(d) of the Consumer Product Safety  
3 Act (15 U.S.C. 2064(d)) is amended—

4 (1) by striking “If” in the first sentence and in-  
5 serting “Subject to the last 2 sentences of this sub-  
6 section, if”; and

7 (2) by adding at the end the following: “If the  
8 Commission determines (after affording opportunity  
9 for an informal hearing) that the action that the  
10 manufacturer, distributor, or retailer has elected to  
11 take under paragraph (1), (2), or (3) is not in the  
12 public interest, the Commission shall order the man-  
13 ufacturer, distributor, or retailer to take whichever  
14 other action specified in paragraph (1), (2), or (3)  
15 that the Commission determines to be in the public  
16 interest. If the Commission determines that both of  
17 the remaining actions specified in paragraph (1),  
18 (2), or (3) are in the public interest, the Commission  
19 shall order the manufacturer, distributor, or retailer  
20 to take whichever of those actions the manufacturer,  
21 distributor, or retailer elects.”.

22 (b) Section 15(b) of the Federal Hazardous Sub-  
23 stances Act (15 U.S.C. 1274(b)) is amended—

24 (1) by striking “If” in the first sentence and in-  
25 serting “Subject to the last 2 sentences of this sub-  
26 section, if”; and

1           (2) by adding at the end the following: “If the  
2           Commission determines (after affording opportunity  
3           for an informal hearing) that the action that the  
4           manufacturer, distributor, or dealer has elected to  
5           take under paragraph (1), (2), or (3) is not in the  
6           public interest, the Commission shall order the man-  
7           ufacturer, distributor, or dealer to take whichever  
8           other action specified in paragraph (1), (2), or (3)  
9           that the Commission determines to be in the public  
10          interest. If the Commission determines that both of  
11          the remaining actions specified in paragraph (1),  
12          (2), or (3) are in the public interest, the Commission  
13          shall order the manufacturer, distributor, or dealer  
14          to take whichever of those actions the manufacturer,  
15          distributor, or dealer elects.”

16          (c) Section 15(c)(2) of the Federal Hazardous Sub-  
17          stances Act (15 U.S.C. 1274(c)(2)) is amended—

18                 (1) by striking “If” in the first sentence and in-  
19                 serting “Subject to the last 2 sentences of this sub-  
20                 section, if”; and

21                 (2) by adding at the end the following: “If the  
22                 Commission determines (after affording opportunity  
23                 for an informal hearing) that the action that the  
24                 manufacturer, distributor, or dealer has elected to  
25                 take under subparagraph (A), (B), or (C) is not in

1 the public interest, the Commission shall order the  
2 manufacturer, distributor, or dealer to take which-  
3 ever other action specified in subparagraph (A), (B),  
4 or (C) that the Commission determines to be in the  
5 public interest. If the Commission determines that  
6 both of the remaining actions specified in subpara-  
7 graph (A), (B), or (C) are in the public interest, the  
8 Commission shall order the manufacturer, dis-  
9 tributor, or dealer to take whichever of those actions  
10 the manufacturer, distributor, or dealer elects.”.

11 **SEC. 3. CIVIL PENALTIES.**

12 (a) Section 20(a) of the Consumer Product Safety  
13 Act (15 U.S.C. 2069(a)) is amended to read as follows:

14 “(a) AMOUNT OF PENALTY.—

15 “(1) Any person who knowingly violates section  
16 19 shall be subject to a civil penalty not to exceed  
17 \$7,000 for each such violation. Subject to paragraph  
18 (2), a violation of paragraph (1), (2), (4), (5), (6),  
19 (7), (8), (9), (10), or (11) of section 19(a) shall con-  
20 stitute a separate offense with respect to each con-  
21 sumer product involved. A violation of section  
22 19(a)(3) shall constitute a separate violation with re-  
23 spect to each failure or refusal to allow or perform  
24 an act required thereby, and, if such violation is a

1 continuing one, each day of such violation shall con-  
2 stitute a separate offense.

3 “(2) The second sentence of paragraph (1) shall  
4 not apply to violations of paragraph (1) or (2) of  
5 section 19(a)—

6 “(A) if the person who violated such para-  
7 graph is not the manufacturer or private labeler  
8 or a distributor of the product involved, and

9 “(B) if such person did not have either—

10 “(i) actual knowledge that such per-  
11 son’s distribution or sale of the product  
12 violated such paragraph; or

13 “(ii) notice from the Commission that  
14 such distribution or sale would be a viola-  
15 tion of such paragraph.

16 “(3)(A) The penalty amount authorized in  
17 paragraph (1) shall be adjusted for inflation by in-  
18 creasing the amount referred to in paragraph (1) by  
19 the cost-of-living adjustment for the preceding 5  
20 years. Any increase determined under the preceding  
21 sentence shall be rounded up to—

22 “(i) in the case of a penalty amount less  
23 than or equal to \$10,000, the nearest multiple  
24 of \$1,000;

1           “(ii) in the case of a penalty amount great-  
2           er than \$10,000, the nearest multiple of  
3           \$5,000.

4           “(B) Not later than December 1, 2005, and  
5           December 1 of each 5th calendar year thereafter,  
6           the Commission shall prescribe and publish in the  
7           Federal Register the authorized penalty amount that  
8           shall apply for violations that occur after January 1  
9           of the year immediately following such publication.

10          “(C) For purposes of subparagraph (A):

11           “(i) The term ‘Consumer Price Index’  
12           means the Consumer Price Index for all urban  
13           consumers published by the Department of  
14           Labor.

15           “(ii) The term ‘cost-of-living adjustment  
16           for the preceding 5 years’ means the percentage  
17           by which—

18                   “(I) the Consumer Price Index for the  
19                   month of June of the calendar year pre-  
20                   ceding the adjustment exceeds

21                   “(II) the Consumer Price Index for  
22                   the month of June preceding the date on  
23                   which the maximum authorized penalty  
24                   was last adjusted.”.

1 (b) Section 5(c) of the Federal Hazardous Substances  
2 Act (15 U.S.C. 1264(c)) is amended to read as follows:

3 “(c) CIVIL PENALTIES.—

4 “(1) Any person who knowingly violates section  
5 4 shall be subject to a civil penalty not to exceed  
6 \$7,000 for each such violation. Subject to paragraph  
7 (2), a violation of subsection (a), (b), (c), (d), (f),  
8 (g), (i), (j), or (k) of section 4 shall constitute a sep-  
9 arate offense with respect to each substance in-  
10 volved. A violation of section 4(e) shall constitute a  
11 separate violation with respect to each failure or re-  
12 fusal to allow or perform an act required by section  
13 4(e), and if such violation is a continuing one, each  
14 day of such violation shall constitute a separate of-  
15 fense.

16 “(2) The second sentence of paragraph (1) of  
17 this subsection shall not apply to violations of sub-  
18 section (a) or (c) of section 4—

19 “(A) if the person who violated such sub-  
20 section is not the manufacturer, importer, or  
21 private labeler or a distributor of the substance  
22 involved; and

23 “(B) if such person did not have either—

1                   “(i) actual knowledge that such per-  
2                   son’s distribution or sale of the substance  
3                   violated such subsection, or

4                   “(ii) notice from the Commission that  
5                   such distribution or sale would be a viola-  
6                   tion of such subsection.

7                   “(3) In determining the amount of any penalty  
8                   to be sought upon commencing an action seeking to  
9                   assess a penalty for a violation of section 4, the  
10                  Commission shall consider the nature of the sub-  
11                  stance, the severity of the risk of injury, the occur-  
12                  rence or absence of injury, the amount of the sub-  
13                  stance distributed, and the appropriateness of such  
14                  penalty in relation to the size of the business of the  
15                  person charged.

16                  “(4) Any civil penalty under this subsection  
17                  may be compromised by the Commission. In deter-  
18                  mining the amount of such compromised penalty or  
19                  whether it should be remitted or mitigated and in  
20                  what amount, the Commission shall consider the ap-  
21                  propriateness of such penalty to the size of the busi-  
22                  ness of the persons charged, the nature of the sub-  
23                  stance involved, the severity of the risk of injury, the  
24                  occurrence or absence of injury, and the amount of  
25                  the substance distributed. The amount of such pen-

1 alty when finally determined, or the amount agreed  
2 on compromise, may be deducted from any sums  
3 owing by the United States to the person charged.

4 “(5) As used in the first sentence of paragraph  
5 (1), the term ‘knowingly’ means—

6 “(A) having actual knowledge, or

7 “(B) the presumed having of knowledge  
8 deemed to be possessed by a reasonable person  
9 who acts in the circumstances, including knowl-  
10 edge obtainable upon the exercise of due care to  
11 ascertain the truth of representations.

12 “(6)(A) The penalty amount authorized in  
13 paragraph (1) shall be adjusted for inflation by in-  
14 creasing the amount referred to in paragraph (1) by  
15 the cost-of-living adjustment for the preceding 5  
16 years. Any increase determined under the preceding  
17 sentence shall be rounded up to—

18 “(i) in the case of a penalty amount less  
19 than or equal to \$10,000, the nearest multiple  
20 of \$1,000;

21 “(ii) in the case of a penalty amount great-  
22 er than \$10,000, the nearest multiple of  
23 \$5,000.

24 “(B) Not later than December 1, 2005, and  
25 December 1 of each 5th calendar year thereafter,

1 the Commission shall prescribe and publish in the  
2 Federal Register the authorized penalty amount that  
3 shall apply for violations that occur after January  
4 1 of the year immediately following such publication.

5 “(C) For purposes of subparagraph (A):

6 “(i) The term ‘Consumer Price Index’  
7 means the Consumer Price Index for all urban  
8 consumers published by the Department of  
9 Labor.

10 “(ii) The term ‘cost-of-living adjustment  
11 for the preceding 5 years’ means the percentage  
12 by which—

13 “(I) the Consumer Price Index for the  
14 month of June of the calendar year pre-  
15 ceding the adjustment exceeds

16 “(II) the Consumer Price Index for  
17 the month of June preceding the date on  
18 which the maximum authorized penalty  
19 was last adjusted.”.

20 **SEC. 4. CRIMINAL PENALTIES.**

21 (a) Section 21 of the Consumer Product Safety Act  
22 (15 U.S.C. 2070) is amended to read as follows:

23 “(a) Any person who knowingly violates section 19  
24 shall be fined under title 18, United States Code, or be  
25 imprisoned not more than 1 year, or both, if such person

1 is an individual, or fined under title 18, United States  
2 Code, if such person is an organization (as the term ‘orga-  
3 nization’ is defined in section 18 of title 18, United States  
4 Code). Any person who knowingly and willfully violates  
5 section 19 of this Act shall be fined under title 18, United  
6 States Code, or be imprisoned not more than 3 years, or  
7 both, if such person is an individual, or fined under title  
8 18, United States Code, if such person is an organization.

9 “(b) Any individual director, officer, or agent of a  
10 corporation who authorizes, orders, or performs any of the  
11 acts or practices constituting in whole or in part a viola-  
12 tion of subsection (a) shall be subject to penalties under  
13 this section without regard to any penalties to which that  
14 corporation may be subject under subsection (a).”.

15 (b) Section 5(a) of the Federal Hazardous Sub-  
16 stances Act (15 U.S.C. 1264(a)) is amended to read as  
17 follows:

18 “(a) CRIMINAL PENALTIES.—Any person who vio-  
19 lates any of the provisions of section 4 shall be guilty of  
20 a misdemeanor and shall on conviction thereof be subject  
21 to a fine under title 18, United States Code, or to impris-  
22 onment for not more than one year, or both, if such person  
23 is an individual, or to a fine under title 18, United States  
24 Code, if such person is an organization (as the term ‘orga-  
25 nization’ is defined in section 18 of title 18, United States

1 Code); but for offenses committed willfully, or for second  
2 and subsequent offenses, the penalty shall be imprison-  
3 ment for not more than 3 years, or a fine under title 18,  
4 United States Code, or both, if such person is an indi-  
5 vidual, or a fine under title 18, United States Code, if  
6 such person is an organization.”.

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