

CONSUMER PRODUCT SAFETY COMMISSION  
ENHANCED ENFORCEMENT ACT OF 2000

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

A LEGISLATIVE PROPOSAL THAT WOULD INCREASE THE PENALTIES THAT THE CONSUMER PRODUCT SAFETY COMMISSION (CPSC) COULD IMPOSE UPON MANUFACTURERS, DISTRIBUTORS, AND RETAILERS OF CONSUMER PRODUCTS WHO DO NOT INFORM THE CPSC WHEN THE COMPANY HAS REASON TO BELIEVE IT HAS SOLD A PRODUCT THAT DOES NOT MEET FEDERAL SAFETY STANDARDS OR COULD OTHERWISE CREATE A SUBSTANTIAL PRODUCT HAZARD



MAY 15, 2000.—Message and accompanying papers referred to the Committee on Commerce and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE



*To the Congress of the United States:*

I am pleased to transmit today for immediate consideration and prompt enactment the “Consumer Product Safety Commission Enhanced Enforcement Act of 2000.” This legislative proposal would increase the penalties that the Consumer Product Safety Commission (CPSC) could impose upon manufacturers, distributors, and retailers of consumer products who do not inform the CPSC when the company has reason to believe it has sold a product that does not meet Federal safety standards or could otherwise create a substantial product hazard. The proposal would also improve product recalls by enabling the CPSC to choose an alternative remedy in a recall if the CPSC finds that the remedy selected by the manufacturer is not in the public interest.

Under current consumer product safety laws, manufacturers, distributors, and retailers of consumer products are required to inform the CPSC whenever they have information that one of their products: (1) Fails to comply with a CPSC product safety standard; (2) contains a defect that could create a substantial product hazard; or (3) creates an unreasonable risk of serious injury or death. After a company reports this information to the CPSC, the CPSC staff initiates an investigation in cooperation with the company. If the CPSC concludes that the product presents a substantial product hazard and that a recall is in the public interest, the CPSC staff will work with the company to conduct a product safety recall. The sooner the CPSC hears about a dangerous product, the sooner the CPSC can act to remove the product from store shelves and inform consumers about how to eliminate the hazard. That is why it is critical that companies inform the CPSC as soon as they are aware that one of their products may present a serious hazard to the public.

Unfortunately, in about half the cases involving the most significant hazards—where the product can cause death or serious injury—companies do not report to the CPSC. In those cases, the CPSC must get safety information from other sources, including its own investigators, consumers, or tragically, from hospital emergency room reports or death certificates. Sometimes years can pass before the CPSC learns of the product hazard, although the company may have been aware of it all along. During that time, deaths and injuries continue. Once the CPSC becomes aware of the hazard, many companies continue to be recalcitrant, and the CPSC staff must conduct its own independent investigation. This often includes finding and investigating product incidents and conducting extensive laboratory testing. This process can take a long time, which means that the most dangerous products remain on store shelves and in consumers’ homes longer, placing children and families at continuing risk.

The Consumer Product Safety Commission can currently assess civil penalties against companies who fail to report a dangerous product. Criminal penalties are also available in particularly serious cases. In fact, in 1999, the CPSC assessed 10 times the amount of civil penalties assessed 10 years ago. But, even with this more vigorous enforcement, too many companies still do not report, especially in cases involving serious harm.

This legislative proposal would enhance the CPSC's civil and criminal enforcement authority. It would provide an added incentive for companies to comply with the law so that we can get dangerous products out of stores and consumers' homes more quickly.

My legislative proposal would also help to make some product recalls more effective by allowing the CPSC to choose an alternative remedy if the CPSC finds that the manufacturer's chosen remedy is not in the public interest. Under current law, a company with a defective product that is being recalled has the right to select the remedy to be offered to the public. My proposal would continue to permit the company to select the remedy in a product recall. My proposal would also, however, allow the CPSC to determine—after an opportunity for a hearing—that the remedy selected by the company is not in the public interest. The CPSC may then order the company to carry out an alternative program that is in the public interest.

The Consumer Product Safety Commission helps to keep America's children and families safe. This legislative proposal would help the CPSC be even more effective in protecting the public from dangerous products. I urge the Congress to give this legislation prompt and favorable consideration.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 12, 2000.*

# A BILL

To amend title 15, United States Code, regarding repair, replacement, or refund actions, civil penalties, and criminal penalties under the Consumer Product Safety Act and the Federal Hazardous Substances Act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SEC. 1. SHORT TITLE

This Act may be cited as the "Consumer Product Safety Commission Enhanced Enforcement Act of 2000."

## SEC. 2. REPAIR, REPLACEMENT, OR REFUND

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

(1) by striking "If" in the first sentence and inserting "Subject to the last paragraph of this subsection, if"; and

(2) by adding at the end the following:

"If the Commission determines (after affording opportunity for an informal hearing) that the action that the manufacturer, distributor or retailer has elected to take under subsection (d)(1), (2), or (3) is not in the public interest, the Commission shall order the manufacturer, distributor or retailer to take whichever other action or actions specified in subsection (d)(1), (2), or (3) that the Commission determines to be in the public interest. If the Commission determines that both of the remaining actions specified in subsection (d)(1), (2), or (3) are in the public interest, the Commission shall order the manufacturer, distributor or

retailer to take whichever of those actions the manufacturer, distributor or retailer elects.”

(b) Section 15(b) of the Federal Hazardous Substances Act (15 U.S.C. 1274(b)) is amended –

(1) by striking “If” in the first sentence and inserting “Subject to the last paragraph of this subsection, if”; and

(2) by adding at the end the following:

“If the Commission determines (after affording opportunity for an informal hearing) that the action that the manufacturer, distributor or dealer has elected to take under subsection (b)(1), (2), or (3) is not in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever other action or actions specified in subsection (b)(1), (2), or (3) that the Commission determines to be in the public interest. If the Commission determines that both of the remaining actions specified in subsection (b)(1), (2), or (3) are in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever of those actions the manufacturer, distributor or dealer elects.”

(c) Section 15(c)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1274(c)(2)) is amended --

(1) by striking “If” in the first sentence and inserting “Subject to the last paragraph of this subsection, if”; and

(2) by adding at the end the following:

“If the Commission determines (after affording opportunity for an informal hearing) that the action that the manufacturer, distributor or dealer has elected to take under subsection (c)(2)(A), (B) or (C) is not in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever other action or actions specified in subsection (c)(2)(A), (B) or (C) that the Commission determines to be in the public interest. If the Commission determines that both of the remaining actions specified in subsection (c)(2)(A), (B) or (C) are in the public interest, the Commission shall order the manufacturer, distributor or dealer to take whichever of those actions the manufacturer, distributor or dealer elects.”

### **SEC. 3. CIVIL PENALTIES**

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

#### **“(a) Amount of penalty**

“(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed \$7,000 for each such violation. Subject to paragraph (2), a violation of section 19(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) shall constitute a separate offense with respect to each consumer product involved. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and,

if such violation is a continuing one, each day of such violations shall constitute a separate offense.

“(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 19(a) –

“(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

“(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

“(3) (A) The penalty amount authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

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

“(C) The authorized penalty amount shall be prescribed by increasing the amount referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded up to –

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

“(ii) in the case of a penalty amount greater than \$10,000, the nearest multiple of \$5,000.

“(D) For purposes of this subsection:

“(i) The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

“(ii) The term “cost-of-living adjustment for the preceding five years” means the percentage by which –

“(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

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

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

**“(c) Civil penalties**

“(1) Any person who knowingly violates section 4 shall be subject to a civil penalty not to exceed \$7,000 for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 4 shall constitute a separate offense with respect to each substance involved. A violation of section 4(e) shall constitute a separate violation with respect to each

failure or refusal to allow or perform an act required by section 4(e); and, if such violation is a continuing one, each day of such violation shall constitute a separate offense.

“(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of subsection (a) or (c) of section 4 –

“(A) if the person who violated such subsection is not the manufacturer, importer, or private labeler or a distributor of the substance involved; and

“(B) if such person did not have either (i) actual knowledge that such person’s distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

“(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 4, the Commission shall consider the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, and the appropriateness of such penalty in relation to the size of the business of the person charged.

“(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the persons charged,

the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

“(5) As used in the first sentence of paragraph (1), the term “knowingly” means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

“(6) (A) The penalty amount authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

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

“(C) The authorized penalty amount shall be prescribed by increasing the amount referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded up to –

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

“(ii) in the case of a penalty amount greater than \$10,000, the nearest multiple of \$5,000.

“(D) For purposes of this subsection:

“(i) The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

“(ii) The term “cost-of-living adjustment for the preceding five years” means the percentage by which –

“(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

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

#### **SEC. 4. CRIMINAL PENALTIES**

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

“(a) Any person who knowingly violates section 19 of this Act shall be fined under title 18, United States Code, or be imprisoned not more than one year, or both, if such person is an individual, or fined under title 18, United States Code, if such person is an organization (as the term “organization” is defined in 18 U.S.C. 18). Any person who knowingly and willfully violates section 19 of this Act shall

be fined under title 18, United States Code, or be imprisoned not more than three years, or both, if such person is an individual, or fined under title 18, United States Code, if such person is an organization.

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

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

**“(a) Criminal penalties**

“Any person who violates any of the provisions of section 4 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine under title 18, United States Code, or to imprisonment for not more than one year, or both, if such person is an individual, or to a fine under title 18, United States Code, if such person is an organization (as the term “organization” is defined in 18 U.S.C. 18); but for offenses committed willfully, or for second and subsequent offenses, the penalty shall be imprisonment for not more than three years, or a fine under title 18, United States Code, or both, if such person is an individual, or a fine under title 18, United States Code, if such person is an organization.”