

110TH CONGRESS
1ST SESSION

S. 2045

To reform the Consumer Product Safety Commission to provide greater protection for children’s products, to improve the screening of noncompliant consumer products, to improve the effectiveness of consumer product recall programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2007

Mr. PRYOR (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To reform the Consumer Product Safety Commission to provide greater protection for children’s products, to improve the screening of noncompliant consumer products, to improve the effectiveness of consumer product recall programs, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “CPSC Reform Act of 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment of Consumer Product Safety Act.
- Sec. 3. Reauthorization.
- Sec. 4. Personnel.
- Sec. 5. Full Commission requirement; interim quorum.
- Sec. 6. Submission of copy of certain documents to Congress.
- Sec. 7. Public disclosure of information.
- Sec. 8. Rulemaking.
- Sec. 9. Prohibition on stockpiling under other Commission-enforced statutes.
- Sec. 10. Third party certification of children's products.
- Sec. 11. Tracking labels for products for children.
- Sec. 12. Substantial product hazard reporting requirement.
- Sec. 13. Corrective action plans.
- Sec. 14. Identification of manufacturer by importers, retailers, and distributors.
- Sec. 15. Repeated importation offenses.
- Sec. 16. Prohibited acts.
- Sec. 17. Penalties.
- Sec. 18. Preemption.
- Sec. 19. Sharing of information with Federal, State, local, and foreign agencies.
- Sec. 20. Bonding.
- Sec. 21. Enforcement by State attorneys general.
- Sec. 22. Whistleblower protection for manufacturers' employees.
- Sec. 23. Ban on children's products containing lead; lead paint rule.
- Sec. 24. Cost-benefit analysis under the Poison Prevention Packaging Act of 1970.
- Sec. 25. Completion of upholstered furniture rulemaking.

1 **SEC. 2. AMENDMENT OF CONSUMER PRODUCT SAFETY**
 2 **ACT.**

3 Except as otherwise expressly provided, whenever in
 4 this Act an amendment or repeal is expressed in terms
 5 of an amendment to, or repeal of, a section or other provi-
 6 sion, the reference shall be considered to be made to a
 7 section or other provision of the Consumer Product Safety
 8 Act (15 U.S.C. 2051 et seq.).

9 **SEC. 3. REAUTHORIZATION.**

10 (a) IN GENERAL.—Section 32 (15 U.S.C. 2081) is
 11 amended—

12 (1) by redesignating subsection (c) as sub-
 13 section (d); and

1 (2) by striking subsections (a) and (b) and in-
2 serting the following:

3 “(a) There are authorized to be appropriated to the
4 Commission for the purpose of carrying out the provisions
5 of this Act and any other provision of law the Commission
6 is authorized or directed to carry out—

7 “(1) \$80,000,000 for fiscal year 2009;

8 “(2) \$88,500,000 for fiscal year 2010;

9 “(3) \$96,800,000 for fiscal year 2011;

10 “(4) \$106,480,000 for fiscal year 2012;

11 “(5) \$117,128,000 for fiscal year 2013;

12 “(6) \$128,841,000 for fiscal year 2014; and

13 “(7) \$141,725,000 for fiscal year 2015.

14 “(b) There are authorized to be appropriated to the
15 Commission for the purpose of renovation, repair, recon-
16 struction, re-equipping, and making other necessary cap-
17 ital improvements to the Commission’s research, develop-
18 ment, and testing facility (including bringing the facility
19 into compliance with applicable environmental, safety, and
20 accessibility standards), \$20,000,000 for fiscal years 2009
21 and 2010.

22 “(c) There are authorized to be appropriated to the
23 Commission for research, in cooperation with the National
24 Institute of Science and Technology, the Food and Drug
25 Administration, and other relevant Federal agencies into

1 safety issues related to the use of nanotechnology in con-
2 sumer products, \$1,000,000 for fiscal years 2009 and
3 2010.”.

4 **SEC. 4. PERSONNEL.**

5 (a) **PROFESSIONAL STAFF.**—The Consumer Product
6 Safety Commission shall increase the number of fulltime
7 personnel employed by the Commission to at least 500 by
8 October 1, 2013.

9 (b) **PROFESSIONAL CAREER PATH.**—The Commis-
10 sion shall develop and implement a professional career de-
11 velopment program for professional staff to encourage re-
12 tention of career personnel and provide professional devel-
13 opment opportunities for Commission employees.

14 (c) **CHANGE OF EMPLOYMENT STATUS BY POLITICAL**
15 **APPOINTEES.**—An individual who is employed by the
16 Commission as a political appointee (as defined in section
17 9803 of title 5, United States Code) may not be appointed
18 to a position in the competitive service under chapter 51
19 of title 5, United States Code, or the Senior Executive
20 Service under subchapter II of chapter 31 of such title,
21 by the Commission less than 1 year after termination of
22 the individual’s employment by the Commission as a polit-
23 ical appointee unless the appointment is authorized by
24 unanimous vote of the Commission.

1 (d) PERSONNEL IN IMMEDIATE OFFICE OF COMMIS-
2 SIONERS.—The Commission may not reduce the number
3 of fulltime employees in the immediate office of a commis-
4 sioner unless the reduction is authorized by unanimous
5 vote of the Commission.

6 **SEC. 5. FULL COMMISSION REQUIREMENT; INTERIM**
7 **QUORUM.**

8 (a) NUMBER OF COMMISSIONERS.—

9 (1) IN GENERAL.—The Congress finds that it is
10 necessary, in order for the Consumer Product Safety
11 Commission to function effectively and carry out the
12 purposes for which the Consumer Product Safety
13 Act was enacted, for the full complement of 5 mem-
14 bers of the Commission to serve and participate in
15 the business of the Commission and urges the Presi-
16 dent to nominate members to fill any vacancy in the
17 membership of the Commission as expeditiously as
18 practicable.

19 (2) REPEAL OF LIMITATION.—Title III of Pub-
20 lic Law 102–389 is amended by striking the first
21 proviso in the item captioned “CONSUMER PRODUCT
22 SAFETY COMMISSION, SALARIES AND EXPENSES”
23 (15 U.S.C. 2053 note).

24 (b) TEMPORARY QUORUM.—Notwithstanding section
25 4(d) of the Consumer Product Safety Act (15 U.S.C.

1 2053(d)), 2 members of the Consumer Product Safety
2 Commission, if they are not affiliated with the same polit-
3 ical party, shall constitute a quorum for the transaction
4 of business for the 9-month period beginning on the date
5 of enactment of this Act.

6 **SEC. 6. SUBMISSION OF COPY OF CERTAIN DOCUMENTS TO**
7 **CONGRESS.**

8 (a) IN GENERAL.—Notwithstanding any rule, regula-
9 tion, or order to the contrary, the Commission shall com-
10 ply with the requirements of section 27(k) of the Con-
11 sumer Product Safety Act (15 U.S.C. 2076) with respect
12 to budget recommendations, legislative recommendations,
13 testimony, and comments on legislation submitted by the
14 Commission to the President or the Office of Management
15 and Budget after the date of enactment of this Act.

16 (b) REINSTATEMENT OF REQUIREMENT.—Section
17 3003(d) of Public Law 104–66 (31 U.S.C. 1113 note) is
18 amended—

19 (1) by striking “or” after the semicolon in
20 paragraph (31);

21 (2) by redesignating paragraph (32) as (33);
22 and

23 (3) by inserting after paragraph (31) the fol-
24 lowing:

1 “(32) section 27(k) of the Consumer Product
2 Safety Act (15 U.S.C. 2076(k)); or”.

3 **SEC. 7. PUBLIC DISCLOSURE OF INFORMATION.**

4 Section 6 (15 U.S.C. 2055) is amended—

5 (1) by inserting “A manufacturer or private la-
6 beler shall submit any such mark within 15 calendar
7 days after the date on which it receives the Commis-
8 sion’s offer.” after “paragraph (2).” in subsection
9 (a)(3); and

10 (2) by striking subsection (b) and inserting the
11 following:

12 “(b)(1) Except as provided by paragraph (3) of this
13 subsection, prior to its public disclosure of any information
14 obtained under this Act, or to be disclosed to the public
15 in connection therewith (unless the Commission finds that
16 the public health and safety requires otherwise), the Com-
17 mission shall, to the extent practicable, notify and provide
18 a summary of the information to, each manufacturer or
19 private labeler of any consumer product to which such in-
20 formation pertains, if the manner in which such consumer
21 product is to be designated or described in such informa-
22 tion will permit the public to ascertain readily the identity
23 of such manufacturer or private labeler, and shall provide
24 such manufacturer or private labeler not less than 15 days

1 to submit comments to the Commission as to the veracity
2 of such information.

3 “(2) In disclosing any information under this sub-
4 section, the Commission may, and upon the request of the
5 manufacturer or private labeler shall, include with the dis-
6 closure any comments or other information or a summary
7 thereof submitted under paragraph (1) by such manufac-
8 turer or private labeler as an addendum.

9 “(3) Paragraphs (1) and (2) of this subsection do not
10 apply to the public disclosure of information about any
11 consumer product—

12 “(i) with respect to which the Commission
13 has filed an action under section 12;

14 “(ii) with respect to which the Commission
15 has issued a complaint under section 15(c) or
16 (d) alleging that such product presents a sub-
17 stantial product hazard; or

18 “(iii) which the Commission has reasonable
19 cause to believe is in violation of section 19 (re-
20 lating to prohibited acts).

21 “(4) The Commission may not disclose the names or
22 addresses of consumers pursuant to its authority under
23 this section.”.

24 **SEC. 8. RULEMAKING.**

25 (a) ANPR REQUIREMENT.—

1 (1) IN GENERAL.—Section 9 (15 U.S.C. 2058)
2 is amended—

3 (A) by striking “shall be commenced” in
4 subsection (a) and inserting “may be com-
5 menced”;

6 (B) by striking “in the notice” in sub-
7 section (b) and inserting “in a notice”;

8 (C) by striking “unless, not less than 60
9 days after publication of the notice required in
10 subsection (a), the” in subsection (c) and in-
11 sserting “unless the”;

12 (D) by inserting “ or notice of proposed
13 rulemaking” after “advance notice of proposed
14 rulemaking” in subsection (c); and

15 (E) by striking “an advance notice of pro-
16 posed rulemaking under subsection (a) relating
17 to the product involved,” in the third sentence
18 of subsection (c) and inserting “the notice”.

19 (2) CONFORMING AMENDMENT.—Section
20 5(a)(3) (15 U.S.C. 2054(a)(3)) is amended by strik-
21 ing “an advance notice of proposed rulemaking or”.

22 (b) RULEMAKING UNDER FEDERAL HAZARDOUS
23 SUBSTANCES ACT.—

1 (1) IN GENERAL.—Section 3(a) of the Federal
2 Hazardous Substances Act (15 U.S.C. 1262(a)) is
3 amended to read as follows:

4 “(a) IN GENERAL.—Whenever in the judgment of the
5 Commission such action will promote the objectives of this
6 Act by avoiding or resolving uncertainty as to its applica-
7 tion, the Commission may by regulation declare to be a
8 hazardous substance, for the purposes of this Act, any
9 substance or mixture of substances, which it finds meets
10 the requirements section 2(f)(1)(A).”.

11 (2) PROCEDURE.—

12 (A) Section 2(q)(2) of the Federal Haz-
13 ardous Substances Act (15 U.S.C. 1261(q)(2))
14 is amended by striking “Proceedings for the
15 issuance, amendment, or repeal of regulations
16 pursuant to clause (B) of subparagraph (1) of
17 this paragraph shall be governed by the provi-
18 sions of sections 701(e), (f), and (g) of the Fed-
19 eral Food, Drug, and Cosmetic Act: Provided,
20 That if” and inserting “Proceedings for the
21 issuance, amendment, or repeal of regulations
22 pursuant to clause (B) of subparagraph (1) of
23 this paragraph shall be governed by the provi-
24 sions of subsections (f) through (i) of section 3
25 of this Act, except that if”.

1 (B) Section 3(a)2 of the Federal Haz-
2 ardous Substances Act (15 U.S.C. 1262(a)2) is
3 amended to read as follows:

4 “(2) Proceedings for the issuance, amendment, or re-
5 peal of regulations under this subsection and the admissi-
6 bility of the record of such proceedings in other pro-
7 ceedings, shall be governed by the provisions of sub-
8 sections (f) through (i) of this section.”.

9 (3) ANPR REQUIREMENT.—Section 3 of the
10 Federal Hazardous Substances Act (15 U.S.C.
11 1262) is amended—

12 (A) by striking “shall be commenced” in
13 subsection (f) and inserting “may be com-
14 menced”;

15 (B) by striking “in the notice” in sub-
16 section (g)(1) and inserting “in a notice”; and

17 (C) by striking “unless, not less than 60
18 days after publication of the notice required in
19 subsection (f), the” in subsection (h) and in-
20 serting “unless the”.

21 (4) OTHER CONFORMING AMENDMENTS.—The
22 Federal Hazardous Substances Act (15 U.S.C. 1261
23 et seq.) is amended—

24 (A) by striking paragraph (d) of section 2
25 and inserting the following:

1 “(d) The term ‘Commission’ means the Con-
2 sumer Product Safety Commission.”;

3 (B) by striking “Secretary” each place it
4 appears and inserting “Commission” except—

5 (i) in section 10(b) (15 U.S.C. 1269);

6 (ii) in section 14 (15 U.S.C. 1273);

7 and

8 (iii) in section 21(a) (15 U.S.C.
9 1276(a));

10 (C) by striking “Department” each place it
11 appears, except in section 14(b), and inserting
12 “Commission”;

13 (D) by striking “he” and “his” each place
14 they appear in reference to the Secretary and
15 inserting “it” and “its”, respectively;

16 (E) by striking “Secretary of Health, Edu-
17 cation, and Welfare” each place it appears in
18 section 10(b) (15 U.S.C. 1269(b) and inserting
19 “Commission”;

20 (F) by striking “Secretary of Health, Edu-
21 cation, and Welfare” each place it appears in
22 section 14 (15 U.S.C. 1273) and inserting
23 “Commission”;

1 (G) by striking “Department of Health,
2 Education, and Welfare” in section 14(b) (15
3 U.S.C. 1273(b)) and inserting “Commission”;

4 (H) by striking “Consumer Product Safety
5 Commission” each place it appears and insert-
6 ing “Commission”; and

7 (I) by striking “(hereinafter in this section
8 referred to as the ‘Commission’)” in section
9 20(a)(1) (15 U.S.C. 1275(a)(1)).

10 **SEC. 9. PROHIBITION ON STOCKPILING UNDER OTHER**
11 **COMMISSION-ENFORCED STATUTES.**

12 Section 9(g)(2) (15 U.S.C. 2058(g)(2)) is amended—

13 (1) by inserting “or to which a rule under any
14 other law enforced by the Commission applies,” after
15 “applies,”; and

16 (2) by striking “consumer product safety” the
17 second, third, and fourth places it appears.

18 **SEC. 10. THIRD PARTY CERTIFICATION OF CHILDREN’S**
19 **PRODUCTS.**

20 (a) IN GENERAL.—Section 14(a) (15 U.S.C.
21 2063(a)) is amended—

22 (1) by redesignating paragraph (2) as para-
23 graph (5) and indenting the margin of such para-
24 graph, as so redesignated, 2 ems from the left mar-
25 gin;

1 (2) by resetting paragraph (1) as a new para-
2 graph indented 2 ems from the left margin;

3 (3) by striking “Every manufacturer” in para-
4 graph (1) and inserting “Except as provided in
5 paragraph (2), every manufacturer”;

6 (4) by designating the second and third sen-
7 tences of subsection (a) as paragraphs (3) and (4),
8 respectively, and indenting the margin of such para-
9 graphs, as so designated, 2 ems from the left mar-
10 gin;

11 (5) by inserting after paragraph (1) the fol-
12 lowing:

13 “(2) Every manufacturer of a children’s prod-
14 uct (and the private labeler of such product if it
15 bears a private label) which is subject to a consumer
16 product safety standard under this Act, or a rule
17 under this or any other Act enforced by the Commis-
18 sion declaring a consumer product a banned haz-
19 ardous product, shall—

20 “(A) have the product tested by a non-
21 governmental independent third party qualified
22 to perform such tests or testing programs; and

23 “(B) issue a certification which shall—

24 “(i) certify that such product con-
25 forms to such consumer product safety

1 standard or is not a banned hazardous
2 product under such rule; and

3 “(ii) specify the consumer product
4 safety standard or such rule.”;

5 (6) by striking “Such certificate shall” in para-
6 graph (3) as redesignated by paragraph (1) and in-
7 serting “A certificate required under this subsection
8 shall”; and

9 (7) in paragraph (5), as redesignated by para-
10 graph (1)—

11 (A) by striking “required by paragraph (1)
12 of this subsection” and inserting “required by
13 paragraph (1) or (2) (as the case may be)”;
14 and

15 (B) by striking “requirement under para-
16 graph (1)” and inserting “requirement under
17 paragraph (1) or (2) (as the case may be)”.

18 (b) Section 14(b) (15 U.S.C. 2063(b)) is amended—

19 (1) by resetting paragraph (1) an indented
20 paragraph 2 ems from the left margin;

21 (2) by designating the second sentence as para-
22 graph (2) and indenting the margin of such para-
23 graph, as so designated, 2 ems from the left margin;
24 and

1 (3) in paragraph (2), as so designated, by strik-
2 ing “Any test or” and inserting “Except as provided
3 in paragraph (3), any test or”.

4 (c) DEFINITION OF CHILDREN’S PRODUCTS AND
5 INDEPENDENT THIRD PARTY.—Section 14 (15 U.S.C.
6 2063) is amended by adding at the end the following:

7 “(d) APPLICATION TO OTHER CONSUMER PROD-
8 UCTS; CERTIFIER STANDARDS; AUDIT.—

9 “(1) In general.—The Commission—

10 “(A) as soon as practicable after the date
11 of enactment of the CPSC Reform Act of 2007
12 shall by rule—

13 “(i) establish protocols and stand-
14 ards—

15 “(I) for credentialing inde-
16 pendent third parties qualified to per-
17 form tests or testing programs under
18 this section; and

19 “(II) for verifying that products
20 tested by such independent third par-
21 ties comply with consumer product
22 safety standards and with applicable
23 product standards under other Acts
24 enforced by the Commission;

1 “(ii) prescribe eligibility, inspection,
2 and certification standards for independent
3 third party entities engaged in certifying
4 compliance under subsection (a)(2) for
5 children’s products or products to which
6 the Commission extends the certification
7 requirements of that subsection;

8 “(iii) establish requirements for test-
9 ing, no less frequently than biennially, of
10 random samples of products certified
11 under this section to determine whether
12 they meet the requirements for certifi-
13 cation;

14 “(iv) establish requirements for peri-
15 odic audits of such entities by the Govern-
16 mental Accountability Office or a non-
17 governmental auditing organization; and

18 “(v) establish a program by which
19 manufacturers may label products as com-
20 pliant with the certification requirements
21 of subsection (a)(2); and

22 “(B) may by rule extend the certification
23 requirements of subsection (a)(2) to other con-
24 sumer products or to classes or categories of
25 consumer products;

1 “(2) EFFECTIVE DATE OF REQUIREMENTS.—
2 The certification and testing requirements of sub-
3 section (a)(2) of this section, as amended by the
4 CPSC Reform Act of 2007, shall take effect 30 days
5 after the date of enactment of that Act and shall
6 apply without regard to whether the Commission has
7 issued guidance or a rule under paragraph (1)(A) of
8 this subsection.”.

9 “(e) DEFINITIONS.—In this section:

10 “(1) CHILDREN’S PRODUCT.—The term ‘chil-
11 dren’s product’ means a product (other than a medi-
12 cation, drug, or food) designed or intended for use
13 by, or care of, a child under 7 years of age that is
14 introduced into the interstate stream of commerce.
15 In determining whether a product is intended for
16 use by a child under 7 years of age, the following
17 factors shall be considered:

18 “(A) A statement by a manufacturer about
19 the intended use of such product, including a
20 label on such product, if such statement is rea-
21 sonable.

22 “(B) The context and manner of the ad-
23 vertising, promotion, and marketing associated
24 with the product.

1 “(C) Whether the product is commonly
2 recognized by consumers as being intended for
3 use by a child under 7 years of age.

4 “(D) The Age Determination Guideline
5 issued by the Consumer Product Safety Com-
6 mission in September 2002 and any subsequent
7 version of such Guideline.

8 “(2) INDEPENDENT THIRD PARTY.—The term
9 ‘independent third party’, with respect to a testing
10 entity, means an independent testing entity that is
11 physically separate from any manufacturer or pri-
12 vate labeler whose product will be tested by such en-
13 tity, and is not owned, managed, controlled, or di-
14 rected by such manufacturer or private labeler.”.

15 (d) LABEL AND CERTIFICATION.—Not later than 1
16 year after the date of the enactment of this Act, the Con-
17 sumer Product Safety Commission shall prescribe a rule
18 in accordance with section 14(a)(5) and (d) of the Con-
19 sumer Product Safety Act (15 U.S.C. 2063(a)(5) and (d))
20 for children’s products (as defined in subsection (e) of
21 such section).

22 (e) PROHIBITION ON IMPORTS OF CHILDREN’S
23 PRODUCTS WITHOUT THIRD PARTY TESTING CERTIFI-
24 CATION.—Section 17(a) (15 U.S.C. 2066(a)) is amend-
25 ed—

1 (1) by striking “or” at the end of paragraph
2 (4);

3 (2) by striking “(g).” in paragraph (5) and in-
4 serting a “(g); or”; and

5 (3) by adding at the end the following:

6 “(6) is a children’s product, as that term is de-
7 fined in section 14(e), (or a product for which the
8 Commission, under section 14(d)(1), has required
9 certification under section 14(a)(2)) that is not ac-
10 companied by a certificate from an independent
11 third party as required by section 14(a)(2).”.

12 **SEC. 11. TRACKING LABELS FOR PRODUCTS FOR CHIL-**
13 **DREN.**

14 Section 14(a) of the Consumer Product Safety Act
15 (15 U.S.C. 2063(a)), as amended by section 10(a), is fur-
16 ther amended by adding at the end thereof the following:

17 “(6) The manufacturer of a children’s product
18 or other consumer product (as may be required by
19 the Commission in its discretion after a rulemaking
20 proceeding) shall place distinguishing marks on the
21 product or its packaging that will enable the ulti-
22 mate purchaser to ascertain the source, date, and
23 cohort (including the batch, run number, or other
24 identifying characteristic) of production of the prod-
25 uct by reference to those marks.”.

1 **SEC. 12. SUBSTANTIAL PRODUCT HAZARD REPORTING RE-**
2 **QUIREMENT.**

3 Section 15(b) (15 U.S.C. 2064(b)) is amended—

4 (1) by striking “consumer product distributed
5 in commerce,” and inserting “consumer product (or
6 other product or substance over which the Commis-
7 sion has jurisdiction under this or any other Act)
8 distributed in commerce,”;

9 (2) by redesignating paragraphs (2) and (3) as
10 paragraphs (3) and (4), respectively; and

11 (3) by inserting after paragraph (1) the fol-
12 lowing:

13 “(2) fails to comply with any rule or standard
14 promulgated by the Commission under this or any
15 other Act;”.

16 **SEC. 13. CORRECTIVE ACTION PLANS.**

17 Section 15(d) (15 U.S.C. 2064(d)) is amended—

18 (1) by inserting “(1)” after “ACTION
19 PLAN.—”;

20 (2) by redesignating paragraphs (1), (2), and
21 (3) as subparagraphs (A), (B), and (C);

22 (3) by striking “more (A)” in subparagraph
23 (C), as redesignated, and inserting “more (i)”;

24 (4) by striking “or (B)” in subparagraph (C),
25 as redesignated, and inserting “or (ii)”;

1 (5) by striking “whichever of the following ac-
2 tions the person to whom the order is directed
3 elects:” and inserting “any one or more of the fol-
4 lowing actions it determines to be in the public in-
5 terest:”;

6 (6) by inserting “(2)” before “An order”;

7 (7) by striking “satisfactory to the Commis-
8 sion,” and inserting “for approval by the Commis-
9 sion,”; and

10 (8) by adding at the end the following:

11 “(3)(A) If the Commission approves an action plan,
12 it shall indicate its approval in writing.

13 “(B) If the Commission finds that an approved action
14 plan is not effective, or that the manufacturer, retailer,
15 or distributor is not executing an approved action plan ef-
16 fectively, the Commission may by order amend, or require
17 amendment of, the action plan.

18 “(C) If the Commission determines, after notice and
19 opportunity for comment, that a manufacturer, retailer,
20 or distributor has failed to comply substantially with its
21 obligations under its action plan, the Commission may re-
22 voke its approval of the action plan. Upon receipt of notice
23 of a revocation of the action plan, the manufacturer, re-
24 tailer, or distributor shall cease further distribution in

1 commerce of the product to which the action plan ap-
2 plies.”.

3 **SEC. 14. IDENTIFICATION OF MANUFACTURER BY IMPORT-**
4 **ERS, RETAILERS, AND DISTRIBUTORS.**

5 Section 16 (15 U.S.C. 2065) is amended by adding
6 at the end thereof the following:

7 “(c) Upon request by an officer or employee duly des-
8 igned by the Commission—

9 “(1) every importer, retailer, or distributor of a
10 consumer product (or other product or substance
11 over which the Commission has jurisdiction under
12 this or any other Act) shall identify the manufac-
13 turer of that product by name, address, or such
14 other identifying information as the officer or em-
15 ployee may request; and

16 “(2) every manufacturer shall identify by name,
17 address, or such other identifying information as the
18 officer or employee may request—

19 “(A) each retailer or distributor to which
20 it supplied a given consumer product (or other
21 product or substance over which the Commis-
22 sion has jurisdiction under this or any other
23 Act);

1 “(B) each subcontractor involved in the
2 production or fabrication or such product or
3 substance; and

4 “(C) each subcontractor from which it ob-
5 tained a component thereof.”.

6 **SEC. 15. REPEATED IMPORTATION OFFENSES.**

7 Section 17 (15 U.S.C. 2066) is amended by adding
8 at the end thereof the following:

9 “(i) The Commission may—

10 “(1) designate as a repeat offender, after notice
11 and an opportunity for a hearing, any person found
12 by the Commission to have committed multiple viola-
13 tions of subsection (a); and

14 “(2) refer any such person to United States
15 Customs and Border Protection with a recommenda-
16 tion that the person’s import license be terminated
17 in accordance with that agency’s procedures.”.

18 **SEC. 16. PROHIBITED ACTS.**

19 (a) SALE OF RECALLED PRODUCTS.—Section 19(a)
20 (15 U.S.C. 2068(a)) is amended—

21 (1) by striking paragraph (1) and inserting the
22 following:

23 “(1) sell, offer for sale, manufacture for sale,
24 distribute in commerce, or import into the United
25 States any consumer product, or other product or

1 substance that is regulated under any other Act en-
2 forced by the Commission, that is—

3 “(A) not in conformity with an applicable
4 consumer product safety standard under this
5 Act, or any similar rule under any such other
6 Act;

7 “(B) subject to voluntary corrective action
8 taken by the manufacturer, in consultation with
9 the Commission, of which action the Commis-
10 sion has notified the public; or

11 “(C) subject to an order issued under sec-
12 tion 12 or 15 of this Act, designated a banned
13 hazardous substance under the Federal Haz-
14 arduous Substances Act (15 U.S.C. 1261 et
15 seq.);”;

16 (2) by striking “or” after the semicolon in
17 paragraph (7);

18 (3) by striking “and” after the semicolon in
19 paragraph (8);

20 (4) by striking “insulation).” in paragraph (9)
21 and inserting “insulation);”; and

22 (5) by striking “18(b).” in paragraph (10) and
23 inserting “18(b); or”.

24 (b) EXPORT OF RECALLED PRODUCTS.—

1 (1) IN GENERAL.—Section 18 (15 U.S.C. 2067)
2 is amended by adding at the end thereof the fol-
3 lowing:

4 “(c) Notwithstanding any other provision of law, the
5 Commission may prohibit a person from exporting from
6 the United States for purpose of sale any consumer prod-
7 uct, or other product or substance that is regulated under
8 any other Act enforced by the Commission, that the Com-
9 mission determines, after notice to the manufacturer—

10 “(1) is not in conformity with an applicable
11 consumer product safety standard under this Act or
12 with a similar rule under any such other Act;

13 “(2) is subject to an order issued under section
14 12 or 15 of this Act or designated as a banned haz-
15 ardous substance under the Federal Hazardous Sub-
16 stances Act (15 U.S.C. 1261 et seq.); or

17 “(3) is subject to voluntary corrective action
18 taken by the manufacturer, in consultation with the
19 Commission, of which action the Commission has
20 notified the public and would have been subject to
21 mandatory corrective action under this or another
22 Act enforced by the Commission if voluntary correc-
23 tive action had not been taken by the manufac-
24 turer.”.

1 (2) PENALTY.—Section 19(a) (15 U.S.C.
2 2068(a)), as amended by subsection (a), is further
3 amended—

4 (A) by striking “or” after the semicolon in
5 paragraph (10);

6 (B) by striking “37.” in paragraph (11)
7 and inserting “37; or”; and

8 (C) by adding at the end thereof the fol-
9 lowing:

10 “(12) violate an order of the Commission under
11 section 18(c).”.

12 (3) CONFORMING AMENDMENTS TO OTHER
13 ACTS.—

14 (A) FEDERAL HAZARDOUS SUBSTANCES
15 ACT.—Section 5(b)(3) of the Federal Haz-
16 ardoous Substances Act (15 U.S.C. 1264(b)(3))
17 is amended by striking “substance presents an
18 unreasonable risk of injury to persons residing
19 in the United States,” and inserting “substance
20 is prohibited under section 18(c) of the Con-
21 sumer Product Safety Act,”.

22 (B) FLAMMABLE FABRICS ACT.—Section
23 15 of the Flammable Fabrics Act (15 U.S.C.
24 1202) is amended by adding at the end thereof
25 the following:

1 “(d) Notwithstanding any other provision of law, the
2 Consumer Product Safety Commission may prohibit a per-
3 son from exporting from the United States for purpose
4 of sale any fabric, related material, or product that the
5 Commission determines, after notice to the manufac-
6 turer—

7 “(1) is not in conformity with an applicable
8 consumer product safety standard under the Con-
9 sumer Product Safety Act or with a rule under this
10 Act;

11 “(2) is subject to an order issued under section
12 12 or 15 of that Act or designated as a banned haz-
13 ardous substance under the Federal Hazardous Sub-
14 stances Act (15 U.S.C. 1261 et seq.); or

15 “(3) is subject to voluntary corrective action
16 taken by the manufacturer, in consultation with the
17 Commission, of which action the Commission has
18 notified the public and would have been subject to
19 mandatory corrective action under this or another
20 Act enforced by the Commission if voluntary correc-
21 tive action had not been taken by the manufac-
22 turer.”.

23 (c) FALSE CERTIFICATION OF COMPLIANCE WITH
24 TESTING LABORATORY STANDARD.—Section 19(a) (15

1 U.S.C. 2068(a)), as amended by subsection (b)(2), is fur-
2 ther amended—

3 (1) by striking “or” after the semicolon in
4 paragraph (11);

5 (2) by striking “18(c).” in paragraph (12) and
6 inserting “18(c); or”; and

7 (3) by adding at the end thereof the following:

8 “(13) sell, offer for sale, distribute in com-
9 merce, or import into the United States any con-
10 sumer product bearing a false certification mark of
11 compliance with a standard established by a nation-
12 ally recognized testing laboratory.”.

13 (d) MISREPRESENTATION OF INFORMATION IN IN-
14 VESTIGATION.—Section 19(a) (15 U.S.C. 2068(a)), as
15 amended by subsection (c), is further amended—

16 (1) by striking “or” after the semicolon in
17 paragraph (12);

18 (2) by striking “laboratory.” in paragraph (13)
19 and inserting “laboratory; or”; and

20 (3) by adding at the end thereof the following:

21 “(14) to misrepresent to any officer or em-
22 ployee of the Commission the scope of consumer
23 products subject to an action required under section
24 12 or subsection (c) or (d) of section 15, or to make
25 a material misrepresentation to such an officer or

1 employee in the course of an investigation under this
2 Act.”.

3 (e) CERTIFICATES OF COMPLIANCE WITH MANDA-
4 TORY STANDARDS.—Section 19(a)(6) (15 U.S.C.
5 2068(a)(6)) is amended to read as follows:

6 “(6) fail to furnish a certificate required by this
7 Act or any other Act enforced by the Commission,
8 or to issue a false certificate if such person in the
9 exercise of due care has reason to know that the cer-
10 tificate is false or misleading in any material re-
11 spect; or to fail to comply with any rule under sec-
12 tion 14(c);”.

13 **SEC. 17. PENALTIES.**

14 (a) CIVIL PENALTIES.—

15 (1) IN GENERAL.—Section 20(a) (15 U.S.C.
16 2069(a)) is amended—

17 (A) by striking “\$5,000” and inserting
18 “\$250,000”;

19 (B) by striking “\$1,250,000” each place it
20 appears and inserting “\$100,000,000”; and

21 (3) by striking “December 31, 1994,” in para-
22 graph (3)(B) and inserting “December 31, 2011,”.

23 (2) FEDERAL HAZARDOUS SUBSTANCES ACT.—

24 Section 15(c) of the Federal Hazardous Substances
25 Act (15 U.S.C. 1264(c)) is amended—

1 (A) by striking “\$5,000” in paragraph (1)
2 and inserting “\$250,000”;

3 (B) by striking “\$1,250,000” each place it
4 appears in paragraph (1) and inserting
5 “\$100,000,000”; and

6 (3) by striking “December 31, 1994,” in para-
7 graph (6)(B) and inserting “December 31, 2011,”.

8 (3) FLAMMABLE FABRICS ACT.—Section 5(e) of
9 the Flammable Fabrics Act (15 U.S.C. 1194(e)) is
10 amended—

11 (A) by striking “\$5,000” in paragraph (1)
12 and inserting “\$250,000”;

13 (B) by striking “\$1,250,000” in paragraph
14 (1) and inserting “\$100,000,000”; and

15 (3) by striking “December 31, 1994,” in para-
16 graph (5)(B) and inserting “December 31, 2011,”.

17 (b) CRIMINAL PENALTIES.—

18 (1) IN GENERAL.—Section 21(a) (15 U.S.C.
19 2070(a)) is amended to read as follows:

20 “(a) Violation of section 19 of this Act is punishable
21 by—

22 “(1) imprisonment for not more than 1 year for
23 a knowing violation of that section, or

1 “(2) imprisonment for not more than 5 years
2 for a knowing and willful violation of that section,
3 and

4 “(3) a fine determined under section 3571 of
5 title 18, United States Code.”.

6 (2) DIRECTORS, OFFICERS, AND AGENTS.—Sec-
7 tion 21(b) (15 U.S.C. 2070(b)) is amended—

8 (A) by striking “and willfully”; and

9 (B) by striking “19, and who has knowl-
10 edge of notice of noncompliance received by the
11 corporation from the Commission,” and insert-
12 ing “19”.

13 (3) UNDER THE FEDERAL HAZARDOUS SUB-
14 STANCES ACT.—Section 5(a) of the Federal Haz-
15 ardous Substances Act (15 U.S.C. 1264(a)) is
16 amended to read as follows:

17 “(a) IN GENERAL.—Violation of section 4 of this Act
18 is punishable by—

19 “(1) imprisonment for not more than 1 year for
20 a knowing violation of that section;

21 “(2) imprisonment for not more than 5 years
22 for a knowing and willful violation of that section;
23 and

24 “(3) a fine determined under section 3571 of
25 title 18, United States Code.”.

1 (c) CIVIL PENALTY CRITERIA.—Within a year after
2 the date of enactment of this Act, the Consumer Product
3 Safety Commission shall initiate a rulemaking to establish
4 criteria for the imposition of civil penalties under section
5 20 of the Consumer Product Safety Act (15 U.S.C. 2069)
6 authorized by that section, including factors to be consid-
7 ered in establishing the amount of such penalties, such
8 as repeat violations, degree of risk to the public, nature
9 of the hazard, the precedential value of prior adjudicated
10 penalties, and other circumstances.

11 (d) CRIMINAL PENALTIES TO INCLUDE ASSET FOR-
12 FEITURE.—Section 21 (15 U.S.C. 2070) is amended by
13 adding at the end thereof the following:

14 “(c)(1) In addition to the penalty provided by sub-
15 section (a), the penalty for a criminal violation of this Act
16 or any other Act enforced by the Commission may include
17 the forfeiture of assets associated with the violation.

18 “(2) In this subsection, the term ‘criminal violation’
19 means a violation of this Act of any other Act enforced
20 by the Commission for which the violator is sentenced to
21 pay a fine, be imprisoned, or both.”.

22 **SEC. 18. PREEMPTION.**

23 (a) IN GENERAL.—Section 26 (15 U.S.C. 2075) is
24 amended—

1 (1) by striking “Whenever” in subsection (a)
2 and inserting “Except as provided in subsections (c)
3 and (d), whenever”; and

4 (2) by adding at the end thereof the following:

5 “(d) RULE FOR POST-2007 CONSUMER PRODUCT
6 SAFETY STANDARDS.—No consumer product safety
7 standard promulgated by the Commission after the date
8 of enactment of the CPSC Reform Act of 2007, or any
9 other action taken by the Commission after that date,
10 shall preempt any State or local law to an extent greater
11 than permitted under subsection (a), as limited by sub-
12 section (c)”.

13 (b) MATTRESS FLAMMABILITY STANDARD PRE-
14 AMBLE NOT PREEMPTIVE.—Notwithstanding section N of
15 the preamble to the Final Rule: Standard for the Flamma-
16 bility (Open Flame) of Mattress Sets promulgated by the
17 Consumer Product Safety Commission (71 Fed. Reg.
18 13496), part 1633 of title 16, Code of Federal Regula-
19 tions, does not limit the rights of a State or political sub-
20 division thereof under section 26 (b) or (c) of the Con-
21 sumer Product Safety Act (15 U.S.C. 2075 (b) or (c), re-
22 spectively).

1 **SEC. 19. SHARING OF INFORMATION WITH FEDERAL,**
2 **STATE, LOCAL, AND FOREIGN GOVERNMENT**
3 **AGENCIES.**

4 Section 29 (15 U.S.C. 2078) is amended by adding
5 at the end thereof the following:

6 “(f)(1) The Commission may make information ob-
7 tained by the Commission under section 6 available to any
8 Federal, State, local, or foreign government agency upon
9 the prior certification of an appropriate official of any
10 such agency, either by a prior agreement or memorandum
11 of understanding with the Commission or by other written
12 certification, that such material will be maintained in con-
13 fidence and will be used only for official law enforcement
14 or consumer protection purposes, if—

15 “(A) the agency has set forth a bona fide legal
16 basis for its authority to maintain the material in
17 confidence;

18 “(B) the materials are to be used for purposes
19 of investigating, or engaging in enforcement pro-
20 ceedings related to, possible violations of—

21 “(i) laws regulating the manufacture, im-
22 portation, distribution, or sale of defective or
23 unsafe consumer products, or other practices
24 substantially similar to practices prohibited by
25 any law administered by the Commission;

1 “(ii) a law administered by the Commis-
2 sion, if disclosure of the material would further
3 a Commission investigation or enforcement pro-
4 ceeding; or

5 “(iii) with respect to a foreign law enforce-
6 ment agency, with the approval of the Attorney
7 General, other foreign criminal laws, if such
8 foreign criminal laws are offenses defined in or
9 covered by a criminal mutual legal assistance
10 treaty in force between the government of the
11 United States and the foreign law enforcement
12 agency’s government; and

13 “(C) the foreign government agency is not from
14 a foreign state that the Secretary of State has deter-
15 mined, in accordance with section 6(j) of the Export
16 Administration Act of 1979 (50 U.S.C. App.
17 2405(j)), has repeatedly provided support for acts of
18 international terrorism, unless and until such deter-
19 mination is rescinded pursuant to section 6(j)(4) of
20 that Act (50 U.S.C. App. 2405(j)(4)).

21 “(2)(A) Except as provided in subparagraph
22 (B) of this paragraph, the Commission shall not be
23 required to disclose under section 552 of title 5,
24 United States Code, or any other provision of law—

1 “(i) any material obtained from a foreign
2 government agency, if the foreign government
3 agency has requested confidential treatment, or
4 has precluded such disclosure under other use
5 limitations, as a condition of providing the ma-
6 terial;

7 “(ii) any material reflecting a consumer
8 complaint obtained from any other foreign
9 source, if that foreign source supplying the ma-
10 terial has requested confidential treatment as a
11 condition of providing the material; or

12 “(iii) any material reflecting a consumer
13 complaint submitted to a Commission reporting
14 mechanism sponsored in part by foreign govern-
15 ment agencies.

16 “(B) Nothing in this subsection shall authorize
17 the Commission to withhold information from the
18 Congress or prevent the Commission from complying
19 with an order of a court of the United States in an
20 action commenced by the United States or the Com-
21 mission.

22 “(3) In this subsection, the term ‘foreign government
23 agency’ means—

24 “(A) any agency or judicial authority of a for-
25 eign government, including a foreign state, a polit-

1 ical subdivision of a foreign state, or a multinational
2 organization constituted by and comprised of foreign
3 states, that is vested with law enforcement or inves-
4 tigative authority in civil, criminal, or administrative
5 matters; and

6 “(B) any multinational organization, to the ex-
7 tent that it is acting on behalf of an entity described
8 in subparagraph (A).”.

9 **SEC. 20. BONDING.**

10 The Act (15 U.S.C. 2051 et seq.) is amended by add-
11 ing at the end thereof the following:

12 “BOND AUTHORITY

13 “SEC. 39. The Commission, in a rulemaking pro-
14 ceeding, may require manufacturers or distributors of a
15 consumer product, a category or class of consumer prod-
16 ucts, or any product or substance regulated under any
17 other law enforced by the Commission, to post a bond (or
18 other security acceptable to the Commission) in an
19 amount sufficient to cover the costs of an effective recall
20 of the product or substance, or, in the case of an imported
21 product or substance, to cover the costs of holding the
22 product or substance at the port and destruction of the
23 product should such action be required by the Commission
24 under this Act.”.

1 **SEC. 21. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

2 The Act (15 U.S.C. 2051 et seq.) is amended by in-
3 serting after section 26 the following:

4 “ENFORCEMENT BY STATE ATTORNEYS GENERAL

5 “SEC. 26A. (a) Except as provided in subsection (f),
6 a State, as *parens patriae*, may bring a civil action on
7 behalf of its residents in an appropriate State or district
8 court of the United States to enforce the provisions of this
9 Act or any other Act enforced by the Commission, to ob-
10 tain damages, restitution, or other compensation on behalf
11 of such residents, or to obtain such further and other relief
12 as the court may deem appropriate, whenever the attorney
13 general of the State has reason to believe that the interests
14 of the residents of the State have been or are being threat-
15 ened or adversely affected by a manufacturer, distributor,
16 or retailer entity that violates this Act or a regulation
17 under this Act.

18 “(b) The State shall serve written notice to the Com-
19 mission of any civil action under subsection (a) at least
20 60 days prior to initiating such civil action. The notice
21 shall include a copy of the complaint to be filed to initiate
22 such civil action, except that if it is not feasible for the
23 State to provide such prior notice, the State shall provide
24 such notice immediately upon instituting such civil action.

1 “(c) Upon receiving the notice required by subsection
2 (b), the Commission may intervene in such civil action and
3 upon intervening—

4 “(1) be heard on all matters arising in such
5 civil action; and

6 “(2) file petitions for appeal of a decision in
7 such civil action.

8 “(d) For purposes of bringing any civil action under
9 subsection (a), nothing in this section shall prevent the
10 attorney general of a State from exercising the powers
11 conferred on the attorney general by the laws of such
12 State to conduct investigations or to administer oaths or
13 affirmations or to compel the attendance of witnesses or
14 the production of documentary and other evidence.

15 “(e) In a civil action brought under subsection (a)—

16 “(1) the venue shall be a judicial district in
17 which—

18 “(A) the manufacturer, distributor, or re-
19 tailer operates; or

20 “(B) the manufacturer, distributor, or re-
21 tailer was authorized to do business;

22 “(2) process may be served without regard to
23 the territorial limits of the district or of the State
24 in which the civil action is instituted; and

1 compensation, terms, conditions, or privileges of employ-
2 ment because the employee (or any person acting pursuant
3 to a request of the employee)—

4 “(1) provided, caused to be provided, or is
5 about to provide or cause to be provided to the em-
6 ployer, the Federal Government, or the attorney
7 general of a State information relating to any viola-
8 tion or alleged violation of any order, regulation, or
9 consumer product safety standard under this Act or
10 any other law enforceable by the Commission (or by
11 the attorney general of a State under section 21);

12 “(2) testified or is about to testify in such a
13 proceeding; or

14 “(3) assisted or participated or is about to as-
15 sist or participate in such a proceeding.

16 “(b)(1) If the Commission, or the attorney general
17 of a State, proceeds with an action against a manufac-
18 turer, private labeler, distributor, or retailer for a violation
19 of this Act or any other Act enforced by the Commission,
20 on the basis of information provided by such an employee,
21 the employee shall receive at least 15 percent but not more
22 than 25 percent of any civil penalty assessed and collected
23 by the Commission, or attorney general, for the violation,
24 depending upon the extent to which the information pro-

1 vided by the employee substantially contributed to the en-
2 forcement action, as determined by the Commission.

3 “(2) If the Commission’s action is based primarily
4 on disclosures of specific information (other than informa-
5 tion provided by the employee) relating to allegations or
6 transactions in a criminal, civil, or administrative hearing,
7 in a congressional, administrative, or Government Ac-
8 countability Office report, hearing, audit, or investigation,
9 or from the news media, the Commission may award such
10 sums as it considers appropriate to the employee, but in
11 no case more than 10 percent of the civil penalty assessed
12 and collected, taking into account the significance of the
13 information and the role of the employee.

14 “(3) In the case of an action brought by the attorney
15 general of a State under section 21, the amount of any
16 civil penalty to which such an employee may be entitled
17 shall be determined by the Commission, subject to the lim-
18 itations in paragraph (1) and (2), in consultation with the
19 attorney general that brought the action.

20 “(c)(1) A person who believes that he or she has been
21 discharged or otherwise discriminated against by any per-
22 son in violation of subsection (a) may, not later than 90
23 days after the date on which such violation occurs, file
24 (or have any person file on his or her behalf) a complaint
25 with the Commission alleging such discharge or discrimi-

1 nation and identifying the person responsible for such act.
2 Upon receipt of such a complaint, the Commission shall
3 notify, in writing, the person named in the complaint of
4 the filing of the complaint, of the allegations contained
5 in the complaint, of the substance of evidence supporting
6 the complaint, and of the opportunities that will be af-
7 forded to such person under paragraph (2).

8 “(2)(A) Not later than 60 days after the date of re-
9 ceipt of a complaint filed under paragraph (1) and after
10 affording the person named in the complaint an oppor-
11 tunity to submit to the Commission a written response to
12 the complaint and an opportunity to meet with a rep-
13 resentative of the Commission to present statements from
14 witnesses, the Commission shall conduct an investigation
15 and determine whether there is reasonable cause to believe
16 that the complaint has merit and notify, in writing, the
17 complainant and the person alleged to have committed a
18 violation of subsection (a) of the Commission’s findings.
19 If the Commission concludes that there is a reasonable
20 cause to believe that a violation of subsection (a) has oc-
21 curred, the Commission shall accompany the Commis-
22 sion’s findings with a preliminary order providing the re-
23 lief prescribed by paragraph (3)(B). Not later than 30
24 days after the date of notification of findings under this
25 paragraph, either the person alleged to have committed

1 the violation or the complainant may file objections to the
2 findings or preliminary order, or both, and request a hear-
3 ing on the record. The filing of such objections shall not
4 operate to stay any reinstatement remedy contained in the
5 preliminary order. Any such hearing shall be conducted
6 expeditiously. If a hearing is not requested in such 30-
7 day period, the preliminary order shall be deemed a final
8 order that is not subject to judicial review.

9 “(B)(i) The Commission shall dismiss a complaint
10 filed under this subsection and shall not conduct an inves-
11 tigation otherwise required under subparagraph (A) unless
12 the complainant makes a prima facie showing that any
13 behavior described in paragraphs (1) through (4) of sub-
14 section (a) was a contributing factor in the unfavorable
15 personnel action alleged in the complaint.

16 “(ii) Notwithstanding a finding by the Commission
17 that the complainant has made the showing required
18 under clause (i), no investigation otherwise required under
19 subparagraph (A) shall be conducted if the employer dem-
20 onstrates, by clear and convincing evidence, that the em-
21 ployer would have taken the same unfavorable personnel
22 action in the absence of that behavior.

23 “(iii) The Commission may determine that a violation
24 of subsection (a) has occurred only if the complainant
25 demonstrates that any behavior described in paragraphs

1 (1) through (4) of subsection (a) was a contributing factor
2 in the unfavorable personnel action alleged in the com-
3 plaint.

4 “(iv) Relief may not be ordered under subparagraph
5 (A) if the employer demonstrates by clear and convincing
6 evidence that the employer would have taken the same un-
7 favorable personnel action in the absence of that behavior.

8 “(3)(A) Not later than 120 days after the date of
9 conclusion of any hearing under paragraph (2), the Com-
10 mission shall issue a final order providing the relief pre-
11 scribed by this paragraph or denying the complaint. At
12 any time before issuance of a final order, a proceeding
13 under this subsection may be terminated on the basis of
14 a settlement agreement entered into by the Commission,
15 the complainant, and the person alleged to have committed
16 the violation.

17 “(B) If, in response to a complaint filed under para-
18 graph (1), the Commission determines that a violation of
19 subsection (a) has occurred, the Commission shall order
20 the person who committed such violation—

21 “(i) to take affirmative action to abate the vio-
22 lation;

23 “(ii) to reinstate the complainant to his or her
24 former position together with the compensation (in-
25 cluding back pay) and restore the terms, conditions,

1 and privileges associated with his or her employ-
2 ment; and

3 “(iii) to provide compensatory damages to the
4 complainant.

5 If such an order is issued under this paragraph, the Com-
6 mission, at the request of the complainant, shall assess
7 against the person against whom the order is issued a sum
8 equal to the aggregate amount of all costs and expenses
9 (including attorneys’ and expert witness fees) reasonably
10 incurred, as determined by the Commission, by the com-
11 plainant for, or in connection with, the bringing of the
12 complaint upon which the order was issued.

13 “(C) If the Commission finds that a complaint under
14 paragraph (1) is frivolous or has been brought in bad
15 faith, the Commission may award to the prevailing em-
16 ployer a reasonable attorney’s fee, not exceeding \$1,000,
17 to be paid by the complainant.

18 “(4)(A) Any person adversely affected or aggrieved
19 by a final order issued under paragraph (3) may obtain
20 review of the order in the United States Court of Appeals
21 for the circuit in which the violation, with respect to which
22 the order was issued, allegedly occurred or the circuit in
23 which the complainant resided on the date of such viola-
24 tion. The petition for review must be filed not later than
25 60 days after the date of the issuance of the final order

1 of the Commission. Review shall conform to chapter 7 of
2 title 5, United States Code. The commencement of pro-
3 ceedings under this subparagraph shall not, unless ordered
4 by the court, operate as a stay of the order.

5 “(B) An order of the Commission with respect to
6 which review could have been obtained under subpara-
7 graph (A) shall not be subject to judicial review in any
8 criminal or other civil proceeding.

9 “(5) Whenever any person has failed to comply with
10 an order issued under paragraph (3), the Commission may
11 file a civil action in the United States district court for
12 the district in which the violation was found to occur, or
13 in the United States district court for the District of Co-
14 lumbia, to enforce such order. In actions brought under
15 this paragraph, the district courts shall have jurisdiction
16 to grant all appropriate relief including, but not limited
17 to, injunctive relief and compensatory damages.

18 “(6)(A) A person on whose behalf an order was
19 issued under paragraph (3) may commence a civil action
20 against the person to whom such order was issued to re-
21 quire compliance with such order. The appropriate United
22 States district court shall have jurisdiction, without regard
23 to the amount in controversy or the citizenship of the par-
24 ties, to enforce such order.

1 “(B) The court, in issuing any final order under this
2 paragraph, may award costs of litigation (including rea-
3 sonable attorney and expert witness fees) to any party
4 whenever the court determines such award is appropriate.

5 “(d) Any nondiscretionary duty imposed by this sec-
6 tion shall be enforceable in a mandamus proceeding
7 brought under section 1361 of title 28, United States
8 Code.

9 “(e) Subsection (a) shall not apply with respect to
10 an employee of a manufacturer, private labeler, dis-
11 tributor, or retailer who, acting without direction from
12 such manufacturer, private labeler, distributor, or retailer
13 (or such person’s agent), deliberately causes a violation
14 of any requirement relating to any violation or alleged vio-
15 lation of any order, regulation, or consumer product safety
16 standard under this Act or any other law enforceable by
17 the Commission.”.

18 **SEC. 23. BAN ON CHILDREN’S PRODUCTS CONTAINING**

19 **LEAD; LEAD PAINT RULE.**

20 (a) IN GENERAL.—Beginning on the date that is 180
21 days after the date of the enactment of this Act—

22 (1) any children’s product (as defined in section
23 14(e) of the Consumer Product Safety Act (15
24 U.S.C. 2063(e))) that contains lead shall be treated
25 as a banned hazardous substance under the Federal

1 Hazardous Substances Act (15 U.S.C. 1261 et seq.);
2 and

3 (2) the prohibitions contained in section 4 of
4 such Act shall apply without regard to whether the
5 lead contained in such children's product is acces-
6 sible to children.

7 (b) TRACE AMOUNTS OF LEAD.—For purposes of
8 subsection (a), a children's product shall be considered to
9 contain lead if—

10 (1) in the case of a children's product that is
11 jewelry, any part of the product contains lead or
12 lead compounds and the lead content of such part
13 (calculated as lead metal) is greater than 0.02 per-
14 cent by weight of the total weight of such part (or
15 such lesser amount as may be established by the
16 Commission by regulation); or

17 (2) in the case of a children's product that is
18 not jewelry, any part of the product contains lead or
19 lead compounds and the lead content of such part
20 (calculated as lead metal) is greater than 0.04 per-
21 cent by weight of the total weight of such part (or
22 such lesser amount as may be established by the
23 Commission by regulation).

24 (c) ELECTRONICS.—If the Commission determines
25 that it is not feasible for certain electronic devices, includ-

1 ing batteries, to comply with subsection (a) at the time
2 the regulations shall take effect, the Commission shall, by
3 regulation—

4 (A) issue standards to reduce the exposure
5 of and accessibility to lead in such electronic de-
6 vices; and

7 (B) establish a schedule by which such
8 electronic devices shall be in full compliance
9 with the regulations prescribed under sub-
10 section (a).

11 (d) REGULATIONS.—On the day after the date of en-
12 actment of this Act, the Commission shall initiate a rule-
13 making proceeding to determine whether thresholds lower
14 than those described in subsection (b) should be prescribed
15 for children’s products. If the Commission makes such a
16 determination, the Commission shall promulgate regula-
17 tions establishing lower thresholds in lieu of the thresholds
18 established in subsection (b).

19 (e) PAINT STANDARD FOR ALL PRODUCTS.—Within
20 30 days after the date of enactment of this Act, the Con-
21 sumer Product Safety Commission shall modify section
22 1303.1 of its regulations (16 C.F.R. 1303.1) by sub-
23 stituting “0.009 percent” for “0.06 percent” in subsection
24 (a) of that section.

1 **SEC. 24. COST-BENEFIT ANALYSIS UNDER THE POISON**
2 **PREVENTION PACKAGING ACT OF 1970.**

3 Section 3 of the Poison Prevention Packaging Act of
4 1970 (15 U.S.C. 1472) is amended by adding at the end
5 thereof the following:

6 “(e) Nothing in this Act shall be construed to require
7 the Secretary, in establishing a standard under this sec-
8 tion, to prepare a comparison of the costs that would be
9 incurred in complying with such standard with the bene-
10 fits of such standard.”.

11 **SEC. 25. COMPLETION OF UPHOLSTERED FURNITURE**
12 **RULEMAKING.**

13 The Consumer Product Safety Commission shall
14 issue a final rule in its proceeding entitled “Ignition of
15 Upholstered Furniture by Small Open Flames and/or
16 Smoldering Cigarettes” for which the Commission issued
17 an advance notice of proposed rulemaking on October 23,
18 2003 (68 Fed. Reg. 60630), no later than June 1, 2008.

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