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AN ACT

To establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission.

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 “Consumer Product Safety Modernization Act”.

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. References.

Sec. 3. Authority to issue implementing regulations.

TITLE I—CHILDREN’S PRODUCT SAFETY

- Sec. 101. Ban on children’s products containing lead; lead paint rule.
- Sec. 102. Mandatory third-party testing for certain children’s products.
- Sec. 103. Tracking labels for children’s products.
- Sec. 104. Standards and consumer registration of durable nursery products.
- Sec. 105. Labeling requirement for certain internet and catalogue advertising of toys and games.
- Sec. 106. Study of preventable injuries and deaths in minority children related to consumer products.
- Sec. 107. Review of generally-applicable standards for toys.

TITLE II—CONSUMER PRODUCT SAFETY COMMISSION REFORM

- Sec. 201. Reauthorization of the Commission.
- Sec. 202. Structure and quorum.
- Sec. 203. Submission of copy of certain documents to Congress.
- Sec. 204. Expedited rulemaking.
- Sec. 205. Public disclosure of information.
- Sec. 206. Publicly available information on incidents involving injury or death.
- Sec. 207. Prohibition on stockpiling under other Commission-enforced statutes.
- Sec. 208. Notification of noncompliance with any Commission-enforced statute.
- Sec. 209. Enhanced recall authority and corrective action plans.
- Sec. 210. Website notice, notice to third party internet sellers, and radio and television notice.
- Sec. 211. Inspection of certified proprietary laboratories.
- Sec. 212. Identification of manufacturer, importers, retailers, and distributors.
- Sec. 213. Export of recalled and non-conforming products.
- Sec. 214. Prohibition on sale of recalled products.
- Sec. 215. Increased civil penalty.
- Sec. 216. Criminal penalties to include asset forfeiture.
- Sec. 217. Enforcement by State attorneys general.
- Sec. 218. Effect of rules on preemption.
- Sec. 219. Sharing of information with Federal, State, local, and foreign government agencies.
- Sec. 220. Inspector General authority and accessibility.
- Sec. 221. Repeal.
- Sec. 222. Industry-sponsored travel ban.
- Sec. 223. Annual reporting requirement.
- Sec. 224. Study on the effectiveness of authority relating to imported products.

1 **SEC. 2. REFERENCES.**

2 (a) COMMISSION.—As used in this Act, the term
 3 “Commission” means the Consumer Product Safety Com-
 4 mission.

5 (b) CONSUMER PRODUCT SAFETY ACT.—Except as
 6 otherwise expressly provided, whenever in this Act an

1 amendment is expressed as an amendment to a section
2 or other provision, the reference shall be considered to be
3 made to a section or other provision of the Consumer
4 Product Safety Act (15 U.S.C. 2051 et seq.).

5 (c) RULE.—In this Act and the amendments made
6 by this Act, a reference to any rule under any Act enforced
7 by the Commission shall be considered a reference to any
8 rule, standard, ban, or order under any such Act.

9 **SEC. 3. AUTHORITY TO ISSUE IMPLEMENTING REGULA-**
10 **TIONS.**

11 The Commission may issue regulations, as necessary,
12 to implement this Act and the amendments made by this
13 Act.

14 **TITLE I—CHILDREN’S PRODUCT**
15 **SAFETY**

16 **SEC. 101. BAN ON CHILDREN’S PRODUCTS CONTAINING**
17 **LEAD; LEAD PAINT RULE.**

18 (a) CHILDREN’S PRODUCTS CONTAINING LEAD.—

19 (1) BANNED HAZARDOUS SUBSTANCE.—Effec-
20 tive 180 days after the date of enactment of this
21 Act, any children’s product containing more than the
22 amounts of lead set forth in paragraph (2) shall be
23 a banned hazardous substance within the meaning of
24 section 2(q)(1) of the Federal Hazardous Substances
25 Act (15 U.S.C. 1261(q)(1)).

1 (2) STANDARD FOR AMOUNT OF LEAD.—The
2 amounts of lead referred to in paragraph (1) shall
3 be—

4 (A) 600 parts per million total lead con-
5 tent by weight for any part of the product;

6 (B) 300 parts per million total lead con-
7 tent by weight for any part of the product, ef-
8 fective 2 years after the date of enactment of
9 this Act; and

10 (C) 100 parts per million total lead content
11 by weight for any part of the product, effective
12 4 years after the date of enactment of this Act,
13 unless the Commission determines, after notice
14 and a hearing, that a standard of 100 parts per
15 million is not feasible, in which case the Com-
16 mission shall require the lowest amount of lead
17 that the Commission determines is feasible to
18 achieve.

19 (3) COMMISSION REVISION TO MORE PROTEC-
20 TIVE STANDARD.—

21 (A) MORE PROTECTIVE STANDARD.—The
22 Commission may, by rule, revise the standard
23 set forth in paragraph (2)(C) for any class of
24 children's products to any level and form that
25 the Commission determines is—

- 1 (i) more protective of human health;
2 and
3 (ii) feasible to achieve.

4 (B) PERIODIC REVIEW.—The Commission
5 shall, based on the best available scientific and
6 technical information, periodically review and
7 revise the standard set forth in this section to
8 require the lowest amount of lead that the
9 Commission determines is feasible to achieve.

10 (4) COMMISSION AUTHORITY TO EXCLUDE CER-
11 TAIN MATERIALS.—The Commission may, by rule,
12 exclude certain products and materials from the pro-
13 hibition in paragraph (1) if the Commission deter-
14 mines that the lead content in such products and
15 materials will not result in the absorption of lead in
16 the human body or does not have any adverse im-
17 pact on public health or safety.

18 (5) DEFINITION OF CHILDREN’S PRODUCT.—

19 (A) IN GENERAL.—As used in this sub-
20 section, the term “children’s product” means a
21 consumer product as defined in section 3(1) of
22 the Consumer Product Safety Act (15 U.S.C.
23 2052(1)) designed or intended primarily for
24 children 12 years of age or younger.

1 (B) FACTORS TO BE CONSIDERED.—In de-
2 termining whether a product is primarily in-
3 tended for a child 12 years of age or younger,
4 the following factors shall be considered:

5 (i) A statement by a manufacturer
6 about the intended use of such product, in-
7 cluding a label on such product if such
8 statement is reasonable.

9 (ii) Whether the product is rep-
10 resented in its packaging, display or adver-
11 tising as appropriate for use by children 12
12 years of age or younger.

13 (iii) Whether the product is commonly
14 recognized by consumers as being intended
15 for use by child 12 years of age or young-
16 er.

17 (iv) The Age Determination Guide-
18 lines issued by the Commission staff in
19 September 2002, and any successor there-
20 to.

21 (6) EXCEPTION FOR INACCESSIBLE COMPO-
22 NENT PARTS.—The standards established under
23 paragraph (2) shall not apply to any component part
24 of a children’s product that is not accessible to a
25 child through normal and reasonably foreseeable use

1 and abuse of such product, as determined by the
2 Commission. A component part is not accessible
3 under this paragraph if such component part is not
4 physically exposed by reason of a sealed covering or
5 casing and does not become physically exposed
6 through reasonably foreseeable use and abuse of the
7 product. The Commission may require that certain
8 electronic devices be equipped with a child-resistant
9 cover or casing that prevents exposure of and acces-
10 sibility to the parts of the product containing lead
11 if the Commission determines that it is not feasible
12 for such products to otherwise meet such standards.

13 (b) PAINT STANDARD.—

14 (1) IN GENERAL.—Not later than 180 days
15 after the date of enactment of this Act, the Commis-
16 sion shall modify section 1303.1 of title 16, Code of
17 Federal Regulations, to—

18 (A) reduce the standard applicable to lead
19 paint by substituting “0.009 percent” for “0.06
20 percent” in subsection (a) of that section;

21 (B) apply the standard to all children’s
22 products as defined in subsection (a)(5); and

23 (C) reduce the standard for paint and
24 other surface coating on children’s products and

1 furniture to 0.009 milligrams per centimeter
2 squared.

3 (2) MORE PROTECTIVE STANDARD.—Not later
4 than 3 years after the date of enactment of this Act,
5 the Commission shall, by rule, revise the standard
6 established under paragraph (1)(C) to a more pro-
7 tective standard if the Commission determines such
8 a standard to be feasible.

9 (c) AUTHORITY TO EXTEND IMPLEMENTATION PERI-
10 ODS.—The Commission may extend, by rule, the effective
11 dates in subsections (a) and (b) by an additional period
12 not to exceed 180 days if the Commission determines
13 that—

14 (1) there is no impact on public health or safety
15 from extending the implementation period; and

16 (2)(A) the complete implementation of the new
17 standards by manufacturers subject to such stand-
18 ards is not feasible within 180 days;

19 (B) the cost of such implementation, particu-
20 larly on small and medium sized enterprises, is ex-
21 cessive; or

22 (C) the Commission requires additional time to
23 implement such standards and determine the re-
24 quired testing methodologies and appropriate excep-
25 tions in order to enforce such standards.

1 **SEC. 102. MANDATORY THIRD-PARTY TESTING FOR CER-**
2 **TAIN CHILDREN'S PRODUCTS.**

3 (a) MANDATORY AND THIRD-PARTY TESTING.—Sec-
4 tion 14(a) (15 U.S.C. 2063(a)) is amended—

5 (1) in paragraph (1)—

6 (A) by striking “Every manufacturer” and
7 inserting “Except as provided in paragraph (2),
8 every manufacturer”; and

9 (B) by striking “standard under this Act”
10 and inserting “rule under this Act or similar
11 rule under any other Act enforced by the Com-
12 mission”;

13 (2) by redesignating paragraph (2) as para-
14 graph (3) and inserting after paragraph (1) the fol-
15 lowing:

16 “(2) Effective 1 year after the date of enact-
17 ment of the Consumer Product Safety Modernization
18 Act, every manufacturer of a children’s product (and
19 the private labeler of such children’s product if such
20 product bears a private label) which is subject to a
21 consumer product safety rule under this Act or a
22 similar rule or standard under any other Act en-
23 forced by the Commission, shall—

24 “(A) have the product tested by a inde-
25 pendent third party qualified to perform such

1 tests or a proprietary laboratory certified by the
2 Commission under subsection (e) ; and

3 “(B) issue a certificate which shall—

4 “(i) certify that such product con-
5 forms to such standards or rules; and

6 “(ii) specify the applicable consumer
7 product safety standards or other similar
8 rules.”; and

9 (3) in paragraph (3) (as so redesignated)—

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

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

17 (b) DEFINITION OF CHILDREN’S PRODUCTS AND
18 INDEPENDENT THIRD PARTY.—Section 14 (15 U.S.C.
19 2063) is amended by adding at the end the following:

20 “(d) DEFINITIONS.—In this section, the following
21 definitions apply:

22 “(1) The term ‘children’s product’ means a con-
23 sumer product designed or intended primarily for
24 children 12 years of age or younger. In determining
25 whether a product is primarily intended for a child

1 12 years of age or younger, the following factors
2 shall be considered:

3 “(A) A statement by a manufacturer about
4 the intended use of such product, including a
5 label on such product if such statement is rea-
6 sonable.

7 “(B) Whether the product is represented
8 in its packaging, display or advertising as ap-
9 propriate for use by children 12 years of age or
10 younger.

11 “(C) Whether the product is commonly
12 recognized by consumers as being intended for
13 use by child 12 years of age or younger.

14 “(D) The Age Determination Guidelines
15 issued by the Commission staff in September
16 2002, and any successor thereto.

17 “(2) The term ‘independent third party’, means
18 an independent testing entity that is not owned,
19 managed, controlled, or directed by such manufac-
20 turer or private labeler, and that is accredited in ac-
21 cordance with an accreditation process established or
22 recognized by the Commission. In the case of certifi-
23 cation of art material or art material products re-
24 quired under this section or under regulations issued
25 under the Federal Hazardous Substances Act, such

1 term includes a certifying organization, as such term
2 is defined in appendix A to section 1500.14(b)(8) of
3 title 16, Code of Federal Regulations.”.

4 (c) CERTIFICATION OF PROPRIETARY LABORA-
5 TORIES.—Section 14 (15 U.S.C. 2063) is further amended
6 by adding at the end the following:

7 “(e) CERTIFICATION OF PROPRIETARY LABORA-
8 TORIES FOR MANDATORY TESTING.—

9 “(1) CERTIFICATION.—Upon request, the Com-
10 mission, or an independent standard-setting organi-
11 zation to which the Commission has delegated such
12 authority, may certify a laboratory that is owned,
13 managed, controlled, or directed by the manufac-
14 turer or private labeler for purposes of testing re-
15 quired under this section if the Commission deter-
16 mines that—

17 “(A) certification of the laboratory would
18 provide equal or greater consumer safety pro-
19 tection than the manufacturer’s use of an inde-
20 pendent third party laboratory;

21 “(B) the laboratory has established proce-
22 dures to ensure that the laboratory is protected
23 from undue influence, including pressure to
24 modify or hide test results, by the manufacturer
25 or private labeler; and

1 “(C) the laboratory has established proce-
2 dures for confidential reporting of allegations of
3 undue influence to the Commission.

4 “(2) DECERTIFICATION.—The Commission, or
5 an independent standard-setting organization to
6 which the Commission has delegated such authority,
7 may decertify any laboratory certified under para-
8 graph (1) if the Commission finds, after notice and
9 investigation, that a manufacturer or private labeler
10 has exerted undue influence on the laboratory.”.

11 (d) CONFORMING AMENDMENTS.—Section 14(b) (15
12 U.S.C. 2063(b)) is amended—

13 (1) by striking “standards under this Act” and
14 inserting “rules under this Act or similar rules
15 under any other Act enforced by the Commission”;
16 and

17 (2) by striking “, at the option of the person re-
18 quired to certify the product,” and inserting “be re-
19 quired by the Commission to”.

20 **SEC. 103. TRACKING LABELS FOR CHILDREN’S PRODUCTS.**

21 Section 14(a) (15 U.S.C. 2063(a)) is further amend-
22 ed by adding at the end the following:

23 “(4) Effective 1 year after the date of enact-
24 ment of the Consumer Product Safety Modernization
25 Act, the manufacturer of a children’s product shall,

1 to the extent feasible, place distinguishing marks on
2 the product and its packaging that will enable the
3 manufacturer and the ultimate purchaser to ascer-
4 tain the location and date of production of the prod-
5 uct, and any other information determined by the
6 manufacturer to facilitate ascertaining the specific
7 source of the product by reference to those marks.”.

8 **SEC. 104. STANDARDS AND CONSUMER REGISTRATION OF**
9 **DURABLE NURSERY PRODUCTS.**

10 (a) **SHORT TITLE.**—This section may be cited as the
11 “Danny Keysar Child Product Safety Notification Act”.

12 (b) **SAFETY STANDARDS.**—

13 (1) **IN GENERAL.**—The Commission shall—

14 (A) in consultation with representatives of
15 consumer groups, juvenile product manufactur-
16 ers, and independent child product engineers
17 and experts, examine and assess the effective-
18 ness of any voluntary consumer product safety
19 standards for durable infant or toddler product;
20 and

21 (B) in accordance with section 553 of title
22 5, United States Code, promulgate consumer
23 product safety rules that—

24 (i) are substantially the same as such
25 voluntary standards; or

1 (ii) are more stringent than such vol-
2 untary standards, if the Commission deter-
3 mines that more stringent standards would
4 further reduce the risk of injury associated
5 with such products.

6 (2) TIMETABLE FOR RULEMAKING.—Not later
7 than 1 year after the date of enactment of this Act,
8 the Commission shall commence the rulemaking re-
9 quired under paragraph (1) and shall promulgate
10 rules for no fewer than 2 categories of durable nurs-
11 ery products every 6 months thereafter, beginning
12 with the product categories that the Commission de-
13 termines to be of highest priority, until the Commis-
14 sion has promulgated standards for all such product
15 categories. Thereafter, the Commission shall periodi-
16 cally review and revise the rules set forth under this
17 subsection to ensure that such rules provide the
18 highest level of safety for such products that is fea-
19 sible.

20 (c) CONSUMER REGISTRATION REQUIREMENT.—

21 (1) RULEMAKING.—Not later than 1 year after
22 the date of enactment of this Act, the Commission
23 shall, pursuant to its authority under section 16(b)
24 of the Consumer Product Safety Act (15 U.S.C.
25 2065(b)), promulgate a final consumer product safe-

1 ty rule to require manufacturers of durable infant or
2 toddler products—

3 (A) to provide consumers with a postage-
4 paid consumer registration form with each such
5 product;

6 (B) to maintain a record of the names, ad-
7 dresses, email addresses, and other contact in-
8 formation of consumers who register their own-
9 ership of such products with the manufacturer
10 in order to improve the effectiveness of manu-
11 facturer campaigns to recall such products; and

12 (C) to permanently place the manufacturer
13 name and contact information, model name and
14 number, and the date of manufacture on each
15 durable infant or toddler product.

16 (2) REQUIREMENTS FOR REGISTRATION
17 FORM.—The registration form required to be pro-
18 vided to consumers under subsection (a) shall—

19 (A) include spaces for a consumer to pro-
20 vide their name, address, telephone number,
21 and email address;

22 (B) include space sufficiently large to per-
23 mit easy, legible recording of all desired infor-
24 mation;

1 (C) be attached to the surface of each du-
2 rable infant or toddler product so that, as a
3 practical matter, the consumer must notice and
4 handle the form after purchasing the product;

5 (D) include the manufacturer's name,
6 model name and number for the product, and
7 the date of manufacture;

8 (E) include a message explaining the pur-
9 pose of the registration and designed to encour-
10 age consumers to complete the registration;

11 (F) include an option for consumers to
12 register through the Internet; and

13 (G) include a statement that information
14 provided by the consumer shall not be used for
15 any purpose other than to facilitate a recall of
16 or safety alert regarding that product.

17 In issuing regulations under this section, the Com-
18 mission may prescribe the exact text and format of
19 the required registration form.

20 (3) RECORD KEEPING AND NOTIFICATION RE-
21 QUIREMENTS.—The standard required under this
22 section shall require each manufacturer of a durable
23 infant or toddler product to maintain a record of
24 registrants for each product manufactured that in-
25 cludes all of the information provided by each con-

1 consumer registered, and to use such information to no-
2 tify such consumers in the event of a voluntary or
3 involuntary recall of or safety alert regarding such
4 product. Each manufacturer shall maintain such a
5 record for a period of not less than 6 years after the
6 date of manufacture of the product. Consumer infor-
7 mation collected by a manufacturer under this Act
8 may not be used by the manufacturer, nor dissemi-
9 nated by such manufacturer to any other party, for
10 any purpose other than notification to such con-
11 sumer in the event of a product recall or safety
12 alert.

13 (4) STUDY.—The Commission shall conduct a
14 study at such time as it considers appropriate on the
15 effectiveness of the consumer registration forms in
16 facilitating product recalls and whether such reg-
17 istration forms should be required for other chil-
18 dren’s products. Not later than 4 years after the
19 date of enactment of this Act, the Commission shall
20 report its findings to Congress.

21 (d) DEFINITION OF DURABLE INFANT OR TODDLER
22 PRODUCT.—As used in this section, the term “durable in-
23 fant or toddler product”—

1 (1) means a durable product intended for use,
2 or that may be reasonably expected to be used, by
3 children under the age of 5 years; and

4 (2) shall include—

5 (A) full-size cribs and nonfull-size cribs;

6 (B) toddler beds;

7 (C) high chairs, booster chairs, and hook-
8 on chairs;

9 (D) bath seats;

10 (E) gates and other enclosures for con-
11 fining a child;

12 (F) play yards;

13 (G) stationary activity centers;

14 (H) infant carriers;

15 (I) strollers;

16 (J) walkers;

17 (K) swings; and

18 (L) bassinets and cradles.

19 **SEC. 105. LABELING REQUIREMENT FOR CERTAIN INTER-**
20 **NET AND CATALOGUE ADVERTISING OF TOYS**
21 **AND GAMES.**

22 Section 24 of the Federal Hazardous Substances Act
23 (15 U.S.C. 1278) is amended—

24 (1) by redesignating subsections (c) and (d) as
25 subsections (d) and (e), respectively;

1 (2) by inserting after subsection (b) the fol-
2 lowing:

3 “(c) INTERNET, CATALOGUE, AND OTHER ADVER-
4 TISING.—

5 “(1) REQUIREMENT.—Effective 180 days after
6 the Consumer Product Safety Modernization Act,
7 any advertisement of a retailer, manufacturer, im-
8 porter, distributor, private labeler, or licensor that
9 provides a direct means for the purchase or ordering
10 of any toy, game, balloon, small ball, or marble that
11 requires a cautionary statement under subsections
12 (a) and (b), including advertisement on Internet
13 websites or in catalogues or other distributed mate-
14 rials, shall include the appropriate cautionary state-
15 ment required under such subsections in its entirety
16 displayed on or immediately adjacent to such adver-
17 tisement. Such cautionary statement shall be dis-
18 played in the language that is primarily used in the
19 advertisement, catalogue, or Internet website, and in
20 a clear and conspicuous manner consistent with part
21 1500 of title 16, Code of Federal Regulations (or a
22 successor regulation thereto).

23 “(2) ENFORCEMENT.—The requirement in
24 paragraph (1) shall be treated as a consumer prod-
25 uct safety rule promulgated under section 7 of the

1 Consumer Product Safety Act (15 U.S.C. 2056) and
2 the publication or distribution of any advertisement
3 that is not in compliance with the requirements of
4 paragraph (1) shall be treated as a prohibited act
5 under section 19 of such Act (15 U.S.C. 2068).

6 “(3) RULEMAKING.—Not later than 180 days
7 after the date of enactment of Consumer Product
8 Safety Modernization Act, the Commission shall, by
9 rule, modify the requirement under paragraph (1)
10 with regard to catalogues or other printed materials
11 concerning the size and placement of the cautionary
12 statement required under such paragraph as appro-
13 priate relative to the size and placement of the ad-
14 vertisements in such printed materials. The Commis-
15 sion may, under such rule, provide a grace period for
16 catalogues and printed materials printed prior to the
17 effective date in paragraph (1) during which time
18 distribution of such printed materials shall not be
19 considered a violation of such paragraph.”.

20 **SEC. 106. STUDY OF PREVENTABLE INJURIES AND DEATHS**
21 **IN MINORITY CHILDREN RELATED TO CON-**
22 **SUMER PRODUCTS.**

23 (a) IN GENERAL.—Not later than 90 days after the
24 date of the enactment of this Act, the Comptroller General
25 shall initiate a study to assess disparities in the risks and

1 incidence of preventable injuries and deaths among chil-
2 dren of minority populations, including Black, Hispanic,
3 American Indian, Alaskan native, and Asian/Pacific Is-
4 lander children in the United States. The Comptroller
5 General shall consult with the Commission as necessary.

6 (b) REQUIREMENTS.—The study shall examine the
7 racial disparities of the rates of preventable injuries and
8 deaths related to suffocation, poisonings, and drownings
9 associated with the use of cribs, mattresses and bedding
10 materials, swimming pools and spas, and toys and other
11 products intended for use by children.

12 (c) REPORT.—Not later than 1 year after the date
13 of the enactment of this Act, the Comptroller General shall
14 report the findings to the Committee on Energy and Com-
15 merce of the House of Representatives and the Committee
16 on Commerce, Science, and Transportation of the Senate.
17 The report shall include—

18 (1) the Comptroller General’s findings on the
19 incidence of preventable risks of injuries and deaths
20 among children of minority populations and rec-
21 ommendations for minimizing such risks;

22 (2) recommendations for public outreach,
23 awareness, and prevention campaigns specifically
24 aimed at racial minority populations; and

1 unitary safety standards contained within the ASTM
2 F963-07, or its successor standard, that relate to intes-
3 tinal blockage and perforation hazards caused by ingestion
4 of magnets.

5 (c) REPORT.—Not later than 2 years after the date
6 of enactment of this Act, the Commission shall report to
7 Congress the findings of the study conducted pursuant to
8 subsection (a). Such report shall include the Commission’s
9 opinion regarding—

10 (1) the feasibility of requiring manufacturer
11 testing of all toys to such standards; and

12 (2) whether promulgating consumer product
13 safety rules that are substantially similar or more
14 stringent than the standards described in such sub-
15 section would be beneficial to public health and safe-
16 ty.

17 **TITLE II—CONSUMER PRODUCT**
18 **SAFETY COMMISSION REFORM**

19 **SEC. 201. REAUTHORIZATION OF THE COMMISSION.**

20 (a) AUTHORIZATION OF APPROPRIATIONS.—Sub-
21 sections (a) and (b) of section 32 (15 U.S.C. 2081) are
22 amended to read as follows:

23 “(a) There are authorized to be appropriated to the
24 Commission for the purpose of carrying out the provisions

1 of this Act and any other provision of law the Commission
2 is authorized or directed to carry out—

3 “(1) \$80,000,000 for fiscal year 2009;

4 “(2) \$90,000,000 for fiscal year 2010; and

5 “(3) \$100,000,000 for fiscal year 2011.

6 “(b) In addition to the amounts specified in sub-
7 section (a), there are authorized to be appropriated
8 \$20,000,000 to the Commission for fiscal years 2009
9 through 2011, for the purpose of renovation, repair, recon-
10 struction, re-equipping, and making other necessary cap-
11 ital improvements to the Commission’s research, develop-
12 ment, and testing facility (including bringing the facility
13 into compliance with applicable environmental, safety, and
14 accessibility standards).”.

15 (b) REPORT TO CONGRESS.—Not later than 180 days
16 after the date of enactment of this Act, the Commission
17 shall transmit to Congress a report of its plans to allocate
18 the funding authorized by subsection (a). Such report
19 shall include—

20 (1) the number of full-time inspectors and other
21 full-time equivalents the Commission intends to em-
22 ploy;

23 (2) the plan of the Commission for risk assess-
24 ment and inspection of imported consumer products;

1 (3) an assessment of the feasibility of man-
2 dating bonds for serious hazards and repeat offend-
3 ers and Commission inspection and certification of
4 foreign third-party and proprietary testing facilities;
5 and

6 (4) the efforts of the Commission to reach and
7 educate retailers of second-hand products and infor-
8 mal sellers, such as thrift shops and yard sales, con-
9 cerning consumer product safety standards and
10 product recalls, especially those relating to durable
11 nursery products, in order to prevent the resale of
12 any products that have been recalled, including the
13 development of educational materials for distribution
14 not later than 1 year after the date of enactment of
15 this Act.

16 **SEC. 202. STRUCTURE AND QUORUM.**

17 (a) **EXTENSION OF TEMPORARY QUORUM.**—Notwith-
18 standing section 4(d) of the Consumer Product Safety Act
19 (15 U.S.C. 2053(d)), 2 members of the Commission, if
20 they are not affiliated with the same political party, shall
21 constitute a quorum for the transaction of business for
22 the period beginning on the date of enactment of this Act
23 through—

1 (b) REINSTATEMENT OF REQUIREMENT.—Section
2 3003(d) of Public Law 104–66 (31 U.S.C. 1113 note) is
3 amended—

4 (1) by striking “or” after the semicolon in
5 paragraph (31);

6 (2) by redesignating paragraph (32) as (33);
7 and

8 (3) by inserting after paragraph (31) the fol-
9 lowing:

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

12 **SEC. 204. EXPEDITED RULEMAKING.**

13 (a) RULEMAKING UNDER THE CONSUMER PRODUCT
14 SAFETY ACT.—

15 (1) ADVANCE NOTICE OF PROPOSED RULE-
16 MAKING REQUIREMENT.—Section 9 (15 U.S.C.
17 2058) is amended—

18 (A) by striking “shall be commenced” in
19 subsection (a) and inserting “may be com-
20 menced”;

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

23 (C) by striking “unless, not less than 60
24 days after publication of the notice required in

1 subsection (a), the” in subsection (c) and in-
2 serting “unless the”;

3 (D) by inserting “or notice of proposed
4 rulemaking” after “advance notice of proposed
5 rulemaking” in subsection (c); and

6 (E) by striking “an advance notice of pro-
7 posed rulemaking under subsection (a) relating
8 to the product involved,” in the third sentence
9 of subsection (c) and inserting “the notice”.

10 (2) CONFORMING AMENDMENT.—Section
11 5(a)(3) (15 U.S.C. 2054(a)(3)) is amended by strik-
12 ing “an advance notice of proposed rulemaking or”.

13 (b) RULEMAKING UNDER FEDERAL HAZARDOUS
14 SUBSTANCES ACT.—

15 (1) IN GENERAL.—Section 3(a)(1) of the Fed-
16 eral Hazardous Substances Act (15 U.S.C.
17 1262(a)(1)) is amended to read as follows:

18 “(1) Whenever in the judgment of the Commission
19 such action will promote the objectives of this Act by
20 avoiding or resolving uncertainty as to its application, the
21 Commission may by regulation declare to be a hazardous
22 substance, for the purposes of this Act, any substance or
23 mixture of substances, which the Commission finds meets
24 the requirements section 2(f)(1)(A).”.

25 (2) PROCEDURE.—

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

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

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

23 (3) ADVANCE NOTICE OF PROPOSED RULE-
24 MAKING REQUIREMENT.—Section 3 of the Federal

1 Hazardous Substances Act (15 U.S.C. 1262) is
2 amended—

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

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

8 (C) by striking “unless, not less than 60
9 days after publication of the notice required in
10 subsection (f), the” in subsection (h) and in-
11 serting “unless the”.

12 (4) CONFORMING AMENDMENTS.—The Federal
13 Hazardous Substances Act (15 U.S.C. 1261 et seq.)
14 is amended—

15 (A) by striking subsection (d) of section 2
16 and inserting the following:

17 “(d) The term ‘Commission’ means the Consumer
18 Product Safety Commission.”;

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

21 (i) in section 10(b) (15 U.S.C.
22 1269(b));

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

24 and

1 (iii) in section 21(a) (15 U.S.C.
2 1276(a));

3 (C) by striking “Department” each place it
4 appears, except in section 14(b), and inserting
5 “Commission”;

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

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

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

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

20 (H) by striking “Consumer Product Safety
21 Commission” each place it appears and insert-
22 ing “Commission”; and

23 (I) by striking “(hereinafter in this section
24 referred to as the ‘Commission’)” in section
25 20(a)(1) (15 U.S.C. 1275(a)(1)).

1 (c) RULEMAKING UNDER THE FLAMMABLE FABRICS
2 ACT.—

3 (1) IN GENERAL.—Section 4 of the Flammable
4 Fabrics Act (15 U.S.C. 1193) is amended—

5 (A) by striking “shall be commenced” and
6 inserting “may be commenced by a notice of
7 proposed rulemaking or”;

8 (B) in subsection (i), by striking “unless,
9 not less than 60 days after publication of the
10 notice required in subsection (g), the” and in-
11 serting “unless the”.

12 (2) OTHER CONFORMING AMENDMENTS.—The
13 Flammable Fabrics Act (15 U.S.C. 1193 et seq.) is
14 further amended—

15 (A) by striking subsection (i) of section 2
16 and inserting the following:

17 “(i) The term ‘Commission’ means the Consumer
18 Product Safety Commission.”;

19 (B) by striking “Secretary of Commerce”
20 each place it appears and inserting “the Com-
21 mission”;

22 (C) by striking “Secretary” each place it
23 appears, except in sections 9 and 14, and in-
24 serting “Commission”;

1 (D) by striking “he” and “his” each place
2 either term appears in reference to the sec-
3 retary and insert “it” and “its”, respectively;

4 (E) in section 4(e), by striking paragraph
5 (5) and redesignating paragraph (6) as para-
6 graph (5);

7 (F) in section 15, by striking “Consumer
8 Product Safety Commission (hereinafter re-
9 ferred to as the ‘Commission’)” and inserting
10 “Commission”;

11 (G) by striking section 16(d) and inserting
12 the following:

13 “(d) In this section, a reference to a flammability
14 standard or other regulation for a fabric, related mate-
15 rials, or product in effect under this Act includes a stand-
16 ard of flammability continued in effect by section 11 of
17 the Act of December 14, 1967 (Public Law 90–189).”;
18 and

19 (H) in section 17, by striking “Consumer
20 Product Safety Commission” and inserting
21 “Commission”.

22 **SEC. 205. PUBLIC DISCLOSURE OF INFORMATION.**

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

24 (1) in paragraph (1)—

1 (A) by striking “30 days” and inserting
2 “15 days”;

3 (B) by striking “finds that the public” and
4 inserting “publishes a finding that the public”;
5 and

6 (C) by striking “and publishes such a find-
7 ing in the Federal Register”;

8 (2) in paragraph (2)—

9 (A) by striking “10 days” and inserting “5
10 days”;

11 (B) by striking “finds that the public” and
12 inserting “publishes a finding that the public”;
13 and

14 (C) by striking “and publishes such a find-
15 ing in the Federal Register”;

16 (3) in paragraph (4), by striking “section 19
17 (related to prohibited acts)” and inserting “any con-
18 sumer product safety rule under or provision of this
19 Act or similar rule under or provision of any other
20 Act administered by the Commission”; and

21 (4) in paragraph (5)—

22 (A) in subparagraph (B), by striking “;
23 or” and inserting a semicolon;

24 (B) in subparagraph (C), by striking the
25 period and inserting “; or”;

1 (C) by adding at the end the following:

2 “(D) the Commission publishes a finding that
3 the public health and safety require public disclosure
4 with a lesser period of notice than is required under
5 paragraph (1).”; and

6 (D) in the matter following such subpara-
7 graph (as added by subparagraph (C)), by
8 striking “section 19(a)” and inserting “any
9 consumer product safety rule under this Act or
10 similar rule under or provision of any other Act
11 administered by the Commission”.

12 **SEC. 206. PUBLICLY AVAILABLE INFORMATION ON INCI-**
13 **DENTS INVOLVING INJURY OR DEATH.**

14 (a) **EVALUATION.**—The Commission shall examine
15 and assess the efficacy of the Injury Information Clearing-
16 house maintained by the Commission pursuant to section
17 5(a) of the Consumer Product Safety Act (15 U.S.C.
18 2054(a)). The Commission shall determine the volume and
19 types of publicly available information on incidents involv-
20 ing consumer products that result in injury, illness, or
21 death and the ease and manner in which consumers can
22 access such information.

23 (b) **IMPROVEMENT PLAN.**—As a result of the study
24 conducted under subsection (a), the Commission shall
25 transmit to Congress, not later than 180 days after the

1 date of enactment of this Act, a detailed plan for main-
2 taining and categorizing such information on a searchable
3 Internet database to make the information more easily
4 available and beneficial to consumers, with due regard for
5 the protection of personal information. Such plan shall in-
6 clude the views of the Commission regarding whether ad-
7 ditional information, such as consumer complaints, hos-
8 pital or other medical reports, and warranty claims, should
9 be included in the database. The plan submitted under
10 this subsection shall include a detailed implementation
11 schedule for the database, recommendations for any nec-
12 essary legislation, and plans for a public awareness cam-
13 paign to be conducted by the Commission to increase con-
14 sumer awareness of the database.

15 **SEC. 207. PROHIBITION ON STOCKPILING UNDER OTHER**
16 **COMMISSION-ENFORCED STATUTES.**

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

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

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

23 **SEC. 208. NOTIFICATION OF NONCOMPLIANCE WITH ANY**
24 **COMMISSION-ENFORCED STATUTE.**

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

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

3 (2) by inserting after paragraph (1) the fol-
4 lowing:

5 “(2) fails to comply with any other rule affect-
6 ing health and safety promulgated by the Commis-
7 sion under the Federal Hazardous Substances Act,
8 the Flammable Fabrics Act, or the Poison Preven-
9 tion Packaging Act;”; and

10 (3) by adding at the end the following sentence:

11 “A report provided under this paragraph (2) may
12 not be used as the basis for criminal prosecution
13 under section 5 of the Federal Hazardous Sub-
14 stances Act (15 U.S.C. 1264), except for offenses
15 which require a showing of intent to defraud or mis-
16 lead.”.

17 **SEC. 209. ENHANCED RECALL AUTHORITY AND CORREC-**
18 **TIVE ACTION PLANS.**

19 (a) ENHANCED RECALL AUTHORITY.—Section 15
20 (15 U.S.C. 2064) is amended—

21 (1) in subsection (c)—

22 (A) by striking “if the Commission” and
23 inserting “(1) If the Commission”;

24 (B) by inserting “or if the Commission,
25 after notifying the manufacturer, determines a

1 product to be an imminently hazardous con-
2 sumer product and has filed an action under
3 section 12,” after “from such substantial prod-
4 uct hazard,”;

5 (C) by redesignating paragraphs (1)
6 through (3) as subparagraphs (D) through (F),
7 respectively;

8 (D) by inserting after “the following ac-
9 tions:” the following:

10 “(A) To cease distribution of the product.

11 “(B) To notify all persons that transport, store,
12 distribute, or otherwise handle the product, or to
13 which the product has been transported, sold, dis-
14 tributed, or otherwise handled, to cease immediately
15 distribution of the product.

16 “(C) To notify appropriate State and local pub-
17 lic health officials.”; and

18 (E) by adding at the end the following:

19 “(2) If a district court determines, in an action filed
20 under section 12, that the product that is the subject of
21 such action is not an imminently hazardous consumer
22 product, the Commission shall rescind any order issued
23 under this subsection with respect to such product.”.

24 (2) in subsection (f)—

1 (A) by striking “An order” and inserting
2 “(1) Except as provided in paragraph (2), an
3 order”; and

4 (B) by inserting at the end the following:

5 “(2) The requirement for a hearing in para-
6 graph (1) shall not apply to an order issued under
7 subsection (c) relating to an imminently hazardous
8 consumer product with regard to which the Commis-
9 sion has filed an action under section 12.”.

10 (b) CORRECTIVE ACTION PLANS.—Section 15(d) (15
11 U.S.C. 2064(d)) is amended—

12 (1) by inserting “(1)” after the subsection des-
13 ignation;

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

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

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

20 (5) by striking “An order under this subsection
21 may” and inserting:

22 “(2) An order under this subsection shall”;

23 (6) by striking “, satisfactory to the Commis-
24 sion,” and inserting “, as promptly as practicable

1 under the circumstances, as determined by the Com-
2 mission, for approval by the Commission,”; and

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

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

6 “(B) If the Commission finds that an approved action
7 plan is not effective or appropriate under the cir-
8 cumstances, or that the manufacturer, retailer, or dis-
9 tributor is not executing an approved action plan effec-
10 tively, the Commission may, by order, amend, or require
11 amendment of, the action plan. In determining whether
12 an approved plan is effective or appropriate under the cir-
13 cumstances, the Commission shall consider whether a re-
14 pair or replacement changes the intended functionality of
15 the product.

16 “(C) If the Commission determines, after notice and
17 opportunity for comment, that a manufacturer, retailer,
18 or distributor has failed to comply substantially with its
19 obligations under its action plan, the Commission may re-
20 voke its approval of the action plan.”.

21 (c) CONTENT OF NOTICE.—Section 15 is further
22 amended by adding at the end the following:

23 “(i) Not later than 180 days after the date of enact-
24 ment of this Act, the Commission shall, by rule, establish
25 guidelines setting forth a uniform class of information to

1 be included in any notice required under an order under
2 subsection (c) or (d) of this section or under section 12.
3 Such guidelines shall include any information that the
4 Commission determines would be helpful to consumers
5 in—

6 “(1) identifying the specific product that is sub-
7 ject to such an order;

8 “(2) understanding the hazard that has been
9 identified with such product (including information
10 regarding incidents or injuries known to have oc-
11 curred involving such product); and

12 “(3) understanding what remedy, if any, is
13 available to a consumer who has purchased the prod-
14 uct.”.

15 **SEC. 210. WEBSITE NOTICE, NOTICE TO THIRD PARTY**
16 **INTERNET SELLERS, AND RADIO AND TELE-**
17 **VISION NOTICE.**

18 Section 15(c)(1) (15 U.S.C. 2064(c)(1)) is amended
19 by inserting “, including posting clear and conspicuous no-
20 tice on its Internet website, providing notice to any third
21 party Internet website on which such manufacturer, re-
22 tailer, or distributor has placed the product for sale, and
23 announcements in languages other than English and on
24 radio and television where the Commission determines
25 that a substantial number of consumers to whom the recall

1 is directed may not be reached by other notice” after
2 “comply”.

3 **SEC. 211. INSPECTION OF CERTIFIED PROPRIETARY LAB-**
4 **ORATORIES.**

5 Section 16(a)(1) is amended by striking “or (B)” and
6 inserting “(B) any proprietary laboratories certified under
7 section 14(e), or (C)”.

8 **SEC. 212. IDENTIFICATION OF MANUFACTURER, IMPORT-**
9 **ERS, RETAILERS, AND DISTRIBUTORS.**

10 (a) IN GENERAL.—Section 16 (15 U.S.C. 2065) is
11 further amended by adding at the end thereof the fol-
12 lowing:

13 “(c) Upon request by an officer or employee duly des-
14 ignated by the Commission—

15 “(1) every importer, retailer, or distributor of a
16 consumer product (or other product or substance
17 over which the Commission has jurisdiction under
18 this or any other Act) shall identify the manufac-
19 turer of that product by name, address, or such
20 other identifying information as the officer or em-
21 ployee may request, to the extent that such informa-
22 tion is in the possession of the importer, retailer, or
23 distributor; and

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

4 “(A) each retailer or distributor to which
5 the manufacturer directly supplied a given con-
6 sumer product (or other product or substance
7 over which the Commission has jurisdiction
8 under this or any other Act);

9 “(B) each subcontractor involved in the
10 production or fabrication or such product or
11 substance; and

12 “(C) each subcontractor from which the
13 manufacturer obtained a component thereof.”.

14 (b) COMPLIANCE REQUIRED FOR IMPORTATION.—
15 Section 17 (15 U.S.C. 2066) is amended—

16 (1) in subsection (g), by striking “may” and in-
17 serting “shall”; and

18 (2) in subsection (h)(2), by striking “may” and
19 inserting “shall, consistent with section 6,”.

20 **SEC. 213. EXPORT OF RECALLED AND NON-CONFORMING**
21 **PRODUCTS.**

22 (a) IN GENERAL.—Section 18 (15 U.S.C. 2067) is
23 amended by adding at the end the following:

24 “(c) Notwithstanding any other provision of this sec-
25 tion, the Commission may prohibit, by order, a person

1 from exporting from the United States for purpose of sale
2 any consumer product, or other product or substance that
3 is regulated under any Act enforced by the Commission,
4 that the Commission determines, after notice to the manu-
5 facturer—

6 “(1) is not in conformity with an applicable
7 consumer product safety rule under this Act or a
8 similar rule under any such other Act;

9 “(2) is subject to an order issued under section
10 12 or 15 of this Act or designated as a banned haz-
11 ardous substance under the Federal Hazardous Sub-
12 stances Act (15 U.S.C. 1261 et seq.); or

13 “(3) is subject to a voluntary corrective action
14 taken by the manufacturer, in consultation with the
15 Commission, of which action the Commission has
16 notified the public and that would have been subject
17 to a mandatory corrective action under this or an-
18 other Act enforced by the Commission if voluntary
19 action had not been taken by the manufacturer,
20 unless the importing country has notified the Commission
21 that such country accepts the importation of such product,
22 provided that if the importing country has not so notified
23 the Commission within 30 days after the Commission has
24 provided notice to the importing country of the impending
25 shipment, the Commission may take such action as is ap-

1 appropriate with respect to the disposition of the product
2 under the circumstances.”.

3 (b) PROHIBITED ACT.—Section 19(a)(10) (15 U.S.C.
4 2068(a)(10)) is amended by striking the period at the end
5 and inserting “ or violate an order of the Commission
6 issued under section 18(c); or”.

7 (c) CONFORMING AMENDMENTS TO OTHER ACTS.—

8 (1) FEDERAL HAZARDOUS SUBSTANCES ACT.—

9 Section 5(b)(3) of the Federal Hazardous Sub-
10 stances Act (15 U.S.C. 1264(b)(3)) is amended by
11 striking “substance presents an unreasonable risk of
12 injury to persons residing in the United States” and
13 inserting “substance is prohibited under section
14 18(c) of the Consumer Product Safety Act,”.

15 (2) FLAMMABLE FABRICS ACT.—Section 15 of
16 the Flammable Fabrics Act (15 U.S.C. 1202) is
17 amended by adding at the end the following:

18 “(d) Notwithstanding any other provision of this sec-
19 tion, the Consumer Product Safety Commission may pro-
20 hibit, by order, a person from exporting from the United
21 States for purpose of sale any fabric, related material, or
22 product that the Commission determines, after notice to
23 the manufacturer—

1 “(1) is not in conformity with an applicable
2 consumer product safety rule under the Consumer
3 Product Safety Act or with a rule under this Act;

4 “(2) is subject to an order issued under section
5 12 or 15 of the Consumer Product Safety Act or
6 designated as a banned hazardous substance under
7 the Federal Hazardous Substances Act (15 U.S.C.
8 1261 et seq.); or

9 “(3) is subject to a voluntary corrective action
10 taken by the manufacturer, in consultation with the
11 Commission, of which action the Commission has
12 notified the public and that would have been subject
13 to a mandatory corrective action under this or an-
14 other Act enforced by the Commission if voluntary
15 action had not been taken by the manufacturer,
16 unless the importing country has notified the Commission
17 that such country accepts the importation of such product,
18 provided that if the importing country has not so notified
19 the Commission within 30 days after the Commission has
20 provided notice to the importing country of the impending
21 shipment, the Commission may take such action as is ap-
22 propriate with respect to the disposition of the product
23 under the circumstances.”.

1 **SEC. 214. PROHIBITION ON SALE OF RECALLED PRODUCTS.**

2 Section 19(a) (as amended by section 210) (15
3 U.S.C. 2068(a)) is further amended—

4 (1) by striking paragraph (1) and inserting the
5 following:

6 “(1) sell, offer for sale, manufacture for sale,
7 distribute in commerce, or import into the United
8 States any consumer product, or other product or
9 substance that is regulated under any other Act en-
10 forced by the Commission, that is—

11 “(A) not in conformity with an applicable
12 consumer product safety standard under this
13 Act, or any similar rule under any such other
14 Act;

15 “(B) subject to voluntary corrective action
16 taken by the manufacturer, in consultation with
17 the Commission, of which action the Commis-
18 sion has notified the public;

19 “(C) subject to an order issued under sec-
20 tion 12 or 15 of this Act; or

21 “(D) designated a banned hazardous sub-
22 stance under the Federal Hazardous Sub-
23 stances Act (15 U.S.C. 1261 et seq.);”;

24 (2) by striking “or” after the semicolon in
25 paragraph (7);

1 (3) by striking “and” after the semicolon in
2 paragraph (8); and

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

5 **SEC. 215. INCREASED CIVIL PENALTY.**

6 (a) **MAXIMUM CIVIL PENALTIES OF THE CONSUMER**
7 **PRODUCT SAFETY COMMISSION.—**

8 (1) **INITIAL INCREASE IN MAXIMUM CIVIL PEN-**
9 **ALTIES.—**

10 (A) **TEMPORARY INCREASE.—**Notwith-
11 standing the dollar amounts specified for max-
12 imum civil penalties specified in section
13 20(a)(1) of the Consumer Product Safety Act
14 (15 U.S.C. 2069(a)(1)), section 5(c)(1) of the
15 Federal Hazardous Substances Act, and section
16 5(e)(1) of the Flammable Fabrics Act (15
17 U.S.C. 1194(e)(1)), the maximum civil pen-
18 alties for any violation specified in such sections
19 shall be \$5,000,000, beginning on the date that
20 is the earlier of the date on which final regula-
21 tions are issued under section 3(b) or 360 days
22 after the date of enactment of this Act.

23 (B) **EFFECTIVE DATE.—**Paragraph (1)
24 shall cease to be in effect on the date on which

1 the amendments made by subsection (b)(1)
2 shall take effect.

3 (2) PERMANENT INCREASE IN MAXIMUM CIVIL
4 PENALTIES.—

5 (A) AMENDMENTS.—

6 (i) CONSUMER PRODUCT SAFETY
7 ACT.—Section 20(a)(1) (15 U.S.C.
8 2069(a)(1)) is amended by striking
9 “\$1,250,000” both places it appears and
10 inserting “\$10,000,000”.

11 (ii) FEDERAL HAZARDOUS SUB-
12 STANCES ACT.—Section 5(c)(1) of the Fed-
13 eral Hazardous Substances Act (15 U.S.C.
14 1264(c)(1)) is amended by striking
15 “\$1,250,000” both places it appears and
16 inserting “\$10,000,000”.

17 (iii) FLAMMABLE FABRICS ACT.—Sec-
18 tion 5(e)(1) of the Flammable Fabrics Act
19 (15 U.S.C. 1194(e)(1)) is amended by
20 striking “\$1,250,000” and inserting
21 “\$10,000,000”.

22 (B) EFFECTIVE DATE.—The amendments
23 made by paragraph (1) shall take effect on the
24 date that is 1 year after the earlier of—

1 (i) the date on which final regulations
2 are issued pursuant to section 3(b); or

3 (ii) 360 days after the date of enact-
4 ment of this Act.

5 (b) DETERMINATION OF PENALTIES BY THE CON-
6 SUMER PRODUCT SAFETY COMMISSION.—

7 (1) FACTORS TO BE CONSIDERED.—

8 (A) CONSUMER PRODUCT SAFETY ACT.—

9 Section 20(b) (15 U.S.C. 2069(b)) is amend-
10 ed—

11 (i) by inserting “the nature, cir-
12 cumstances, extent, and gravity of the vio-
13 lation, including” after “shall consider”;

14 (ii) by striking “products distributed,
15 and” and inserting “products distrib-
16 uted,”; and

17 (iii) by inserting “, and such other
18 factors as appropriate” before the period.

19 (B) FEDERAL HAZARDOUS SUBSTANCES

20 ACT.—Section 5(c)(3) of the Federal Haz-
21 ardous Substances Act (15 U.S.C. 1264(c)(3))

22 is amended—

23 (i) by inserting “the nature, cir-
24 cumstances, extent ,and gravity of the vio-
25 lation, including” after “shall consider”;

1 (ii) by striking “substance distributed,
2 and” and inserting “substance distrib-
3 uted,”; and

4 (iii) by inserting “, and such other
5 factors as appropriate” before the period.

6 (C) FLAMMABLE FABRICS ACT.—Section
7 5(e)(2) of the Flammable Fabrics Act (15
8 U.S.C. 1194(e)(2)) is amended—

9 (i) by striking “nature and number”
10 and inserting “nature, circumstances, ex-
11 tent, and gravity”;

12 (ii) by striking “absence of injury,
13 and” and inserting “absence of injury,”;
14 and

15 (iii) by inserting “, and such other
16 factors as appropriate” before the period.

17 (2) REGULATIONS.—Not later than 1 year after
18 the date of enactment of this Act, and in accordance
19 with the procedures of section 553 of title 5, United
20 States Code, the Commission shall issue a final reg-
21 ulation providing its interpretation of the penalty
22 factors described in section 20(b) of the Consumer
23 Product Safety Act (15 U.S.C. 2069(b)), section
24 5(c)(3) of the Federal Hazardous Substances Act
25 (15 U.S.C. 1264(e)(3)), and section 5(e)(2) of the

1 Flammable Fabrics Act (15 U.S.C. 1194(e)(2)), as
2 amended by subsection (a).

3 **SEC. 216. CRIMINAL PENALTIES TO INCLUDE ASSET FOR-**
4 **FEITURE.**

5 Section 21 (15 U.S.C. 2070) is amended by adding
6 at the end thereof the following:

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

11 “(2) In this subsection, the term ‘criminal violation’
12 means a violation of this Act of any other Act enforced
13 by the Commission for which the violator is sentenced
14 under this section, section 5(a) of the Federal hazardous
15 Substances Act (15 U.S.C. 2064(a)), or section 7 of the
16 Flammable Fabrics Act (15 U.S.C. 1196).”.

17 **SEC. 217. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

18 Section 24 (15 U.S.C. 2073) is amended—

19 (1) in the section heading, by striking “PRI-
20 VATE” and inserting “ADDITIONAL”;

21 (2) by striking “Any interested person” and in-
22 serting “(a) Any interested person”; and

23 (3) by striking “No separate suit” and all that
24 follows and inserting the following:

1 “(b)(1) The attorney general of a State, alleging a
2 violation of section 19(a) that affects or may affect such
3 State or its residents may bring an action on behalf of
4 the residents of the State in any United States district
5 court for the district in which the defendant is found or
6 transacts business to enforce a consumer product safety
7 rule or an order under section 15, and to obtain appro-
8 priate injunctive relief.

9 “(2) Not less than thirty days prior to the commence-
10 ment of such action, the attorney general shall give notice
11 by registered mail to the Commission, to the Attorney
12 General, and to the person against whom such action is
13 directed. Such notice shall state the nature of the alleged
14 violation of any such standard or order, the relief to be
15 requested, and the court in which the action will be
16 brought. The Commission shall have the right—

17 “(A) to intervene in the action;

18 “(B) upon so intervening, to be heard on all
19 matters arising therein;

20 “(C) and to file petitions for appeal.

21 “(c) No separate suit shall be brought under this sec-
22 tion if at the time the suit is brought the same alleged
23 violation is the subject of a pending civil or criminal action
24 by the United States under this Act. In any action under
25 this section the court may in the interest of justice award

1 the costs of suit, including reasonable attorneys' fees (de-
2 termined in accordance with section 11(f)) and reasonable
3 expert witnesses' fees.”.

4 **SEC. 218. EFFECT OF RULES ON PREEMPTION.**

5 In issuing any rule or regulation in accordance with
6 its statutory authority, the Commission shall not seek to
7 expand or contract the scope, or limit, modify, interpret,
8 or extend the application of sections 25 and 26 of the Con-
9 sumer Products Safety Act (15 U.S.C. 2074 and 2075,
10 respectively), section 18 of the Federal Hazardous Sub-
11 stances Act (15 U.S.C. 1261), section 7 of the Poison Pre-
12 vention Packaging Act (15 U.S.C. 1476), or section 16
13 of the Flammable Fabrics Act (15 U.S.C. 1203) with re-
14 gard to the extent to which each such Act preempts, limits,
15 or otherwise affects any other Federal, State, or local law,
16 or limits or otherwise affects any cause of action under
17 State or local law.

18 **SEC. 219. SHARING OF INFORMATION WITH FEDERAL,**
19 **STATE, LOCAL, AND FOREIGN GOVERNMENT**
20 **AGENCIES.**

21 Section 29 (15 U.S.C. 2078) is amended by adding
22 at the end the following:

23 “(f)(1) The Commission may make information ob-
24 tained by the Commission under this Act available (con-
25 sistent with the requirements of section 6) to any Federal,

1 State, local, or foreign government agency upon the prior
2 certification of an appropriate official of any such agency,
3 either by a prior agreement or memorandum of under-
4 standing with the Commission or by other written certifi-
5 cation, that such material will be maintained in confidence
6 and will be used only for official law enforcement or con-
7 sumer protection purposes, if—

8 “(A) the agency has set forth a bona fide legal
9 basis for its authority to maintain the material in
10 confidence;

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

14 “(i) laws regulating the manufacture, im-
15 portation, distribution, or sale of defective or
16 unsafe consumer products, or other practices
17 substantially similar to practices prohibited by
18 any law administered by the Commission;

19 “(ii) a law administered by the Commis-
20 sion, if disclosure of the material would further
21 a Commission investigation or enforcement pro-
22 ceeding; or

23 “(iii) with respect to a foreign law enforce-
24 ment agency, with the approval of the Attorney
25 General, other foreign criminal laws, if such

1 foreign criminal laws are offenses defined in or
2 covered by a criminal mutual legal assistance
3 treaty in force between the government of the
4 United States and the foreign law enforcement
5 agency's government; and

6 “(C) in the case of a foreign government agen-
7 cy, such agency is not from a foreign state that the
8 Secretary of State has determined, in accordance
9 with section 6(j) of the Export Administration Act
10 of 1979 (50 U.S.C. App. 2405(j)), has repeatedly
11 provided support for acts of international terrorism,
12 unless and until such determination is rescinded
13 pursuant to section 6(j)(4) of that Act (50 U.S.C.
14 App. 2405(j)(4)).

15 “(2) The Commission may abrogate any agree-
16 ment or memorandum of understanding entered into
17 under paragraph (1) if the Commission determines
18 that the agency with which such agreement or
19 memorandum of understanding was entered into has
20 failed to maintain in confidence any information pro-
21 vided under such agreement or memorandum of un-
22 derstanding, or has used any such information for
23 purposes other than those set forth in such agree-
24 ment or memorandum of understanding.

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

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

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

16 “(iii) any material reflecting a consumer
17 complaint submitted to a Commission reporting
18 mechanism sponsored in part by foreign govern-
19 ment agencies.

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

1 “(4) In this subsection, the term ‘foreign government
2 agency’ means—

3 “(A) any agency or judicial authority of a for-
4 eign government, including a foreign state, a polit-
5 ical subdivision of a foreign state, or a multinational
6 organization constituted by and comprised of foreign
7 states, that is vested with law enforcement or inves-
8 tigative authority in civil, criminal, or administrative
9 matters; and

10 “(B) any multinational organization, to the ex-
11 tent that it is acting on behalf of an entity described
12 in subparagraph (A).

13 “(g) Whenever the Commission is notified of any vol-
14 untary recall of any consumer product self-initiated by a
15 manufacturer (or a retailer in the case of a retailer selling
16 a product under its own label), or issues an order under
17 section 15(c) or (d) with respect to any product, the Com-
18 mission shall notify each State’s health department or
19 other agency designated by the State of the recall or
20 order.”.

21 **SEC. 220. INSPECTOR GENERAL AUTHORITY AND ACCESSI-**
22 **BILITY.**

23 (a) REPORT.—Not later than 60 days after the date
24 of the enactment of this Act, the Inspector General of the
25 Commission shall transmit a report to Congress on the

1 activities of the Inspector General, any structural barriers
2 which prevent the Inspector General from providing robust
3 oversight of the activities of the Commission, and any ad-
4 ditional authority or resources that would facilitate more
5 effective oversight.

6 (b) EMPLOYEE COMPLAINTS.—

7 (1) IN GENERAL.—The Inspector General of
8 the Commission shall conduct a review of—

9 (A) complaints received by the Inspector
10 General from employees of the Commission
11 about violations of rules, regulations, or the
12 provisions of any Act enforced by the Commis-
13 sion; and

14 (B) the process by which corrective action
15 plans are negotiated with such employees by the
16 Commission, including an assessment of the
17 length of time for these negotiations and the ef-
18 fectiveness of the plans.

19 (2) REPORT.—Not later than 1 year after the
20 date of enactment of this Act, the Inspector General
21 shall transmit a report to the Commission and to
22 Congress setting forth the Inspector General’s find-
23 ings, conclusions, actions taken in response to em-
24 ployee complaints, and recommendations.

1 (c) COMPLAINT PROCEDURE.—Not later than 30
2 days after the date of enactment of this Act the Commis-
3 sion shall establish and maintain on the homepage of the
4 Commission’s Internet website a mechanism by which in-
5 dividuals may anonymously report incidents of waste,
6 fraud, or abuse with respect to the Commission.

7 **SEC. 221. REPEAL.**

8 Section 30 (15 U.S.C. 2079) is amended by striking
9 subsection (d) and redesignating subsections (e) and (f)
10 as subsections (d) and (e), respectively.

11 **SEC. 222. INDUSTRY-SPONSORED TRAVEL BAN.**

12 The Consumer Product Safety Act (15 U.S.C. 1251
13 et seq.) is amended by adding at the end the following
14 new section:

15 **“SEC. 38. PROHIBITION ON INDUSTRY-SPONSORED TRAVEL.**

16 “(a) PROHIBITION.—Notwithstanding section 1353
17 of title 31, United States Code, no Commissioner or em-
18 ployee of the Commission shall accept travel, subsistence,
19 and related expenses with respect to attendance by a Com-
20 missioner or employee at any meeting or similar function
21 relating to official duties of a Commissioner or an em-
22 ployee, from a person—

23 “(1) seeking official action from, doing business
24 with, or conducting activities regulated by, the Com-
25 mission; or

1 “(2) whose interests may be substantially af-
2 fected by the performance or nonperformance of the
3 Commissioner’s or employee’s official duties.

4 “(b) AUTHORIZATION OF APPROPRIATIONS FOR OF-
5 FICIAL TRAVEL.—There are authorized to be appro-
6 priated, for each of fiscal years 2009 through 2011,
7 \$1,200,000 to the Commission for certain travel and lodg-
8 ing expenses necessary in furtherance of the official duties
9 of Commissioners and employees.”.

10 **SEC. 223. ANNUAL REPORTING REQUIREMENT.**

11 Section 27(j) (15 U.S.C. 2076(j)) is amended—

12 (1) in the matter preceding paragraph (1), by
13 striking “The Commission” and inserting “Notwith-
14 standing section 3003 of the Federal Reports Elimini-
15 nation and Sunset Act of 1995 (31 U.S.C. 1113
16 note), the Commission”; and

17 (2) by redesignating paragraphs (5) through
18 (11) as paragraphs (6) through (12), respectively
19 and inserting after paragraph (4) the following:

20 “(5) the number and summary of recall orders
21 issued under section 12 or 15 during such year and
22 a summary of voluntary actions taken by manufac-
23 turers of which the Commission has notified the
24 public, and an assessment of such orders and ac-
25 tions;”.

1 **SEC. 224. STUDY ON THE EFFECTIVENESS OF AUTHORITY**
2 **RELATING TO IMPORTED PRODUCTS.**

3 The Commission shall study the effectiveness of sec-
4 tion 17(a) of the Consumer Product Safety Act (15 U.S.C.
5 2066(a)), specifically paragraphs (3) and (4) of such sec-
6 tion, to determine a specific strategy to increase the effec-
7 tiveness of the Commission's ability to stop unsafe prod-
8 ucts from entering the United States. The Commission
9 shall submit a report to Congress not later than 9 months
10 after enactment of this Act, which shall include rec-
11 ommendations regarding additional authority the Commis-
12 sion needs to implement such strategy, including any nec-
13 essary legislation.

Passed the House of Representatives December 19,
2007.

Attest:

LORRAINE C. MILLER,

Clerk.

Calendar No. 562

110TH CONGRESS
2^D SESSION

H. R. 4040

AN ACT

To establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission.

JANUARY 23, 2008

Read the second time and placed on the calendar