



Auto Safety Group • Congress Watch • Energy Program • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Jan. 25, 2008

Senate Bill Offers Best Remedies to Protect Consumers, Keep Dangerous Toys Out of Stores

Industry Lobbyists Working Hard to Weaken Protections

From toys made with lead and harmful chemicals to cribs that kill kids, to toasters that could burst into flames, 2007 was the “Year of the Recall.”

Never before has there been a greater focus on the safety and quality of products flowing into our stores. And with good reason – last year saw a record number of recalls, nearly 500, with 61 of those involving dangerous children’s products. The Consumer Product Safety Commission (CPSC) recalled some 25 million toys, many laden with lead, which is known to seriously harm the brain and impair nervous system development of young children.

Two versions of the Consumer Product Safety Reform/Modernization Act are pending in Congress. One (H.R. 4040), passed hurriedly in December by the House, takes a relatively weak stab at improving existing protections. The other (S. 2045), which the Senate will take up shortly, offers the best remedies to give the CPSC the resources and authority to keep hazardous products off store shelves.

However, thanks to the furious efforts of industry lobbyists, there’s a good chance the Senate bill may be watered down or replaced with weaker House provisions unless the public spotlight is put on the Senate. A few industry-backed lawmakers are working behind the scenes trying to undermine the much stronger and more effective S. 2045.

Now is the time to expose these shenanigans and call on the Senate to do what’s best for American consumers – pass all the protections parents and children deserve *and* expect from their lawmakers.

A close comparison of the two bills leaves little doubt which measure offers the best course of action. [Public Citizen has provided the Senate leadership and its staff with a comprehensive comparison of the Senate and House provisions. You can find the document at http://www.citizen.org/documents/CPSC_Memo.pdf.]

The House bill will do little to prevent a repeat of the 2007 product recalls. In most areas, the Senate bill is much stronger in informing the public about safety hazards, giving state attorneys general the means of enforcing federal safety standards by injunctions and civil penalties against blatant safety violators, improving the scope of pre-market toy testing and providing a maximum civil penalty that will actually serve as a deterrent to marketing unsafe consumer products with an effective criminal penalty.

Here are highlights of our analysis:

Public Information on Safety Hazards

The House bill allows the manufacturer of a hazardous product to sue in federal court to keep the public from learning important safety information about its product. Allowing a manufacturer to use the courts to delay notifying the public about dangerous products can delay recalls for months, if not years. During that time, the public will remain ignorant of the problems and at risk of serious injury and death.

The Senate bill removes this delaying mechanism and replaces it with an administrative appeal.

Pre-market Testing of Toys

The House bill does not cover hazards such as magnets, loud noises and many toys. It does, however, define children's products as those intended for children 12 years of age or younger, which is one of the few areas where the House bill is superior.

The Senate bill covers a much broader range of children's products. It also adopts the safety standard of the American Society of Testing and Materials. However, the Senate bill limits the pre-market testing requirement to products only for children 7 or younger.

State Attorneys General Enforcement

The House bill limits what actions the state attorneys general can take against people and companies that violate the act. Under the House bill, the states are limited to seeking a court injunction against a violator.

The Senate bill gives state attorneys general much broader enforcement powers. Under the Senate bill, the states can seek monetary damages from violators, seize property and pursue injunctive relief. More than 35 state attorneys general have signed a letter supporting the full enforcement powers found in the Senate bill. A major criticism of the CPSC is its failure to broadly enforce the law.

Civil and Criminal Penalties

The House bill increases the maximum civil fine for a series of violations to \$5 million after the first year of enactment and \$10 million thereafter. The House's \$10 million cap is grossly inadequate. Consider that some *recalls* cost far more than \$10 million. The House cap is barely an inconvenience to a toy manufacturer like Mattel, which has annual revenue of \$5.7 billion. The House bill also creates a grant of immunity from prosecution for entities that file "substantial hazard reports" pursuant to the Federal Hazardous Substance Act. That would be an unprecedented protection.

The Senate bill increases the maximum civil fine from the existing \$1.8 million to \$100 million. The Senate bill also calls for punishment of up to five years in prison for a "knowing and willful" violation of the act. Most importantly, the Senate version does not contain the the House's pre-notification grant of immunity.

Budget and Staffing

The House bill authorizes only three years of funding increases – an additional \$270 million through fiscal year 2011.

The Senate bill provides seven years of funding increases – an additional \$759.5 million through fiscal year 2015. The Senate bill also requires the CSPC to hire 50 additional personnel assigned to U.S. ports of entry or to inspect overseas facilities by Oct. 1, 2010.

Mandatory Recall Procedures

The House bill allows the CSPC, after notifying a manufacturer, to file an action in federal court and immediately halt the distribution of a hazardous product and start a recall. This is one of the instances where the House bill is stronger than the Senate bill.

The Senate bill keeps the existing requirement for a trial-type hearing before the CSPC can order a recall. Because of this, most recalls are “voluntarily” negotiated by manufacturers. As a result, the recall process takes longer and can be less comprehensive.

Imported Consumer Products

The House bill requires the CSPC to come up with a study that devises a way to stop unsafe imports and report back with recommendations within nine months of the law’s enactment.

The Senate bill would authorize the CSPC to implement a rule requiring repeat offenders and those shipping dangerous categories of consumer products to post a bond that would cover the cost of a recall. This is an important first step in giving the CSPC the tools to combat the importation of dangerous products.

Lead Levels in Children’s Toys

The House bill would set the initial maximum allowable level of lead in any children’s product at 600 parts per million. Two years after the date of enactment, the maximum level would become 300 parts per million. Four years after enactment, the level becomes 100 parts per million if feasible. The initial house limit is too high to protect children from health problems associated with lead absorption.

The Senate bill sets the initial amount of lead allowed in children’s product at .04 percent (400 parts per million) – .02 (200 parts per million) percent in the case of jewelry. The Senate bill’s initial limit is lower and at a safer level. However, the best alternative would be to adopt the Senate’s initial limit with provisions to eventually reach the 100 parts per million as required in the House bill.

Pre-emption

The House bill attempts to clarify how the CSPC’s rules do not pre-empt or otherwise effect any other federal, state or local law.

The Senate bill is clearer in tackling the pre-emption issue.

Whistleblower Protections

The House bill contains no whistleblower protection.

The Senate bill prohibits any manufacturer, labeler, distributor, retailer or government agency from discriminating against an employee for reporting a violation or testifying in a proceeding concerning such violations.

These are only some of the highlights of our comparison. There are other areas where the House bill falls short, such as in the amount allocated for the CSPC budget, whistleblower protections and mandatory recall procedures.

The Senate stands at a crossroads. Senators can turn a blind eye to the flood of dangerous products or rein in manufacturers who put profits above public safety. Our children's safety stands in the balance.

###

Public Citizen is a national, nonprofit consumer advocacy organization based in Washington, D.C.

For more information, please see <http://www.citizen.org>.