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Consumer Product Safety Bill May Need a Recall

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Since early last year, a crisis atmosphere has surrounded the subject of consumer product safety and the Consumer Product Safety Commission (CPSC), the nation's product regulator. Public concern reached an all-time high after a record number of product recalls in 2007.

Under pressure to “do something,” Congress is now pushing through proposals to expand regulation of consumer products. The House unanimously approved a comprehensive regulation bill (H.R. 4040) in December, and the Senate is expected to vote this week on its bill, S. 2663, sponsored by Senators David Pryor (D-AR) and Ted Stevens (R-AK).

Some policy changes certainly would be helpful. However, much in the pending legislation—especially in the Senate bill—would make matters worse, resulting in a windfall for bureaucrats and lawyers without making products any safer. Senators should resist the rush to regulate and instead move forward with carefully considered reforms that would actually help consumers.

Background. The current debate began in June 2007 following the recall of “Thomas the Tank Engine” toy trains after the manufacturer found they contained lead paint. Subsequent recalls ranged from Barbie play accessories to Batman action figures. By the end of what CPSC Chair Nancy Nord called “the summer of recalls,”¹ some 61 toys had been found defective, up from 40 the year before. Overall, there were a record 472 recalls in fiscal year 2007.²

The actual extent of the problem, however, is unclear. In a sense, the recalls are themselves a pos-

itive sign, as dangers were identified by manufacturers and products were removed from the market. Moreover, there has been little evidence of any deterioration in overall product safety. There were few if any reports of consumer injuries from the recalled products. Although the number of injuries from toys increased somewhat in 2006 (the most recent year reported by the CPSC), injury rates generally have decreased since 2001.³ Also, lead poisoning cases are at historic lows in many areas.⁴

Defects in the Bills. The House and Senate bills have many flaws, including the following:

- **State attorneys general (AGs) would be authorized to bring cases for violations of consumer product safety.** While billed as providing additional assistance to the CPSC for enforcement of rules, the real effect of this provision could be the balkanization of consumer product laws. With 50 different enforcement authorities pursuing varying interpretations of the law, manufacturers would find it difficult to market products nationwide and would divert resources from safety to litigation. (Unlike an earlier Senate proposal, both bills would allow state AGs to request court orders stopping or restricting distribution of the products, but not

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monetary penalties. This decreases but does not eliminate the problem.⁵⁾

- **The Senate bill would restrict termination of employees who report safety violations to the CPSC.** An earlier version of the Senate bill would have offered up to 25 percent of any corporate fine to “whistleblowers” who report offenses. Such a bounty would have courted massive fraud. The current Senate bill includes no such bounty but still bans, and provides a penalty for, retaliatory termination. There is no evidence, however, that an employee has ever been terminated for reporting a safety violation to the CPSC. The protection would likely be used as a legal defense by some employees who are terminated for legitimate reasons, making such terminations more costly and difficult. The House bill contains no such provision.
- **Both bills provide for massive increases in the CPSC’s budget.** The CPSC’s budget would increase from the current \$69 million to \$100 million under the House bill and \$155 million under the Senate bill. Simply throwing money at the agency would not make products any safer. The CPSC’s budget was much larger in the mid-1970s, with little additional effectiveness to show for it. The budget was cut under Jimmy Carter and other Presidents, including Bill Clinton.
- **Both bills tighten lead standards and virtually ban the substance in children’s toys, except for trace amounts.** No one supports the inclusion of harmful materials in children’s toys or any other products, but regulatory agencies need flexibility. Standards should be based on agencies’ scientific findings rather than on Congress’s political determinations.

Empowering the Consumer. The bills also contain some positive reforms. Both bills, for instance, would streamline the procedural authority of the

CPSC. The Senate bill also provides for the CPSC to create a database in which it would make available reports from other governmental agencies, health care providers, and child service providers, as well as consumers themselves, regarding injuries caused by or risks from consumer products.

Such a Web site would help the agency provide information to consumers without regulation or litigation, but it should be established with three precautions:

- Manufacturers should have an opportunity to respond to negative information before it is posted,
- Standard libel laws should apply, and
- The Web site should make clear that it is a forum for dissemination of information to and from the public but that the CPSC does not vouch for the accuracy of the information.

The database proposal, with the above precautions, would help the CPSC to fulfill its most important role: providing consumers with access to information about products. Far more than bureaucratic rules or litigation, it is consumers themselves who can most effectively punish those who sell defective products. There is a role for regulation, of course, but consumers acting in the marketplace provide the strongest, most effective protection possible against unsafe goods.

Conclusion. Despite having some good elements, the bills pending in Congress have serious flaws that could end up increasing bureaucracy and litigation rather than consumer safety. Like any good consumer, policymakers should examine these proposals carefully before making their decision.

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1. Kevin Drawbaugh, “Toy Recalls Fuel Momentum Toward U.S. Safety Reforms,” Reuters, October 4, 2007.
2. Elizabeth Williamson, “Safety Chief Defends Record on Toys,” *The Washington Post*, January 10, 2008.
3. Consumer Product Safety Commission, “Toy-Related Deaths and Injuries Calendar Year 2006,” December 2007. Reported toy-related injuries peaked in 2001 at 255,100. The total declined to just over 202,000 in 2005 before increasing again to 220,500 in 2006.
4. Regarding decreases in cases in New York City, see “Childhood Lead Poisonings Continue Downward Trend,” Medicineworld.com, at <http://medicineworld.org/news/news-archives/pediatric-news/Aug-10-2007.html>.
5. Andrew Grossman, “Senate CPSC Bill: A Boon for Trial Lawyers at the Expense of Product Safety,” Heritage Foundation WebMemo No. 1831, March 8, 2008, at www.heritage.org/Research/Regulation/wm1831.cfm.