

# NAM CPSC Coalition



March 5, 2008

The Honorable Harry Reid, Majority Leader  
The Honorable Mitch McConnell, Republican Leader  
United States Senate  
U.S. Capitol  
Washington, DC 20510

Dear Leaders Reid and McConnell,

The undersigned members of the National Association of Manufacturers (NAM) Coalition on the Consumer Product Safety Commission (CPSC) have serious concerns with S. 2663, the Consumer Product Safety Commission Reform Act. We appreciate your leadership on product safety issues, and we support CPSC reauthorization. At the same time, we urge you to support improving amendments to the legislation. The bill should be refocused to emphasize safety and safe imports and to remove provisions that would impose unnecessary burdens on U.S. companies.

The NAM CPSC Coalition represents manufacturers, distributors, importers and retailers of consumer products. All of the members of our Coalition are committed to producing and selling safe consumer products. The Coalition supports the important mission of the CPSC and has advocated for increasing its budget and resources. The marketplace needs to be free of unsafe consumer products that could pose a risk of injury to consumers, particularly to our most vulnerable population – our children.

However, after reviewing S. 2663, the Coalition identified several provisions that we believe will have unintended, negative consequences.

1. Consistent national product safety standards are crucial, especially for small companies that cannot effectively monitor varying state interpretations of federal product safety laws and regulations. Under S. 2663, 50 different state Attorneys General (AGs) will be able to sue manufacturers and distributors for actions that each AG individually interprets to be consumer product safety violations. The end effect is widely varying enforcement actions against companies in different states. This uncertain regulatory environment would be especially harmful for small companies, requiring them to shift major resources toward litigation and away from product safety. In addition, products might be recalled in one state and not another, leading to massive consumer confusion.

2. A so-called “whistleblower” provision goes far beyond limited protections for good-faith disclosures. The bill would create a new “right” that would allow millions of employees of consumer product manufacturers, distributors and retailers – as well as related federal employees – to block a pending disciplinary action or termination by claiming knowledge of a “product safety violation” with the maximum sanction of \$1,000 for making a false allegation. The bill also creates an incentive for disgruntled employees to raise erroneous or unsubstantiated claims as an alleged “product safety violation,” in the process avoiding totally unrelated employment consequences and collecting unlimited “consequential” and punitive damages.
3. The bill ends reasonable protections from the disclosure of company-specific data – even if a firm can show the information is false or should not in fairness be disseminated. Not every report of a potential problem results, or should result, in a recall. Situations often arise where companies, in conjunction with CPSC staff, report problems, examine causes and issues, and conclude that a recall is not needed to protect consumers. Creating a new, online public database of every complaint received by the CPSC – no matter how trivial or ill-motivated – and eliminating protections from disclosure would unduly alarm consumers, harm companies, and serve as a deterrent to the sharing of information now provided voluntarily. In no way would it serve the public safety.
4. Industry is committed to product safety, including limiting the exposure of children to potentially toxic materials. Toxicity is a function of both the inherent toxicity of a material and the potential that consumers will be exposed at levels of concern. This is why the concept of accessibility is inherent in toxicological evaluations of lead and other substances. Limits on contaminant lead in children's products at levels deemed protective of children's health already exist in the form of both regulations and guidance applied by the CPSC. We are deeply troubled by the arbitrary change in limits on lead in the proposed legislation without the input of the toxicological community. Congress specifically enacted Section 28 of the Consumer Product Safety Act (CPSA) to provide for the creation of Chronic Hazard Advisory Panels (CHAPs) to consider such issues. If Congress desires to establish lower levels for contaminant lead in children's products, a direction to convene a CHAP and initiate a rulemaking on the basis of its recommendation would be the appropriate way to address this issue. Restrictions on any material must be grounded in sound science. The proposed legislation fails that test. The result is the worst kind of policy change: an adverse impact on industry without offsetting benefits to safety.

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5. The provisions regarding preemption could create confusion and impediments to interstate commerce. Existing federal law contains a well thought-out process for states with stronger safety standards to request an exemption from federal preemption. The fact that states are not using this well-defined process is evidence that no changes in this regard are necessary. CPSC rules must remain the law of the land for all 50 states to encourage uniformity and safety.
  
- 6 Hazard warning disclosures typically are given at the point of purchase, such as on labeling or in material accompanying the product. Advertising provisions in Section 11 of S. 2663 would require manufacturers, distributors or retailers of children's toys containing small parts to include warnings on or immediately adjacent to Internet and catalogue advertisements, stating that the products pose specific hazards. It is unclear how additional requirements mandating disclosures in advertisements, which are typically not viewed at the point of purchase, would enhance consumer safety.

To its credit, the CPSC's domestic programs and international initiatives have made it a global leader in the area of product safety. Indeed, other nations are setting up programs based on the CPSC model. The Commission's continued leadership requires many of the improvements that are contained in the proposed legislation. Some of the bill's proposals, however, would lessen the CPSC's focus on safety and put that global leadership in jeopardy.

In conclusion, we are very concerned that S. 2663 does not effectively address product safety. The NAM CPSC Coalition urges you to encourage amendments that strengthen the core mission of the Consumer Product Safety Commission, elevating product safety to the legislation's primary focus.

Sincerely,



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President and CEO  
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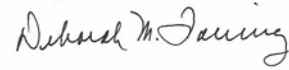
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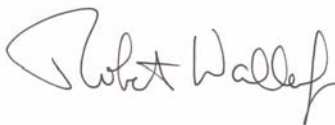


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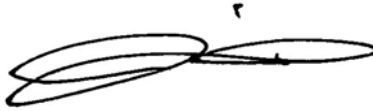


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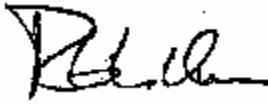
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cc: Members of the United States Senate