



# Products Liability Press

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August, 2008

## Federal Consumer Product Legislation Passed By Congress

On August 14, 2008, President Bush signed the Consumer Product Safety Improvement Act of 2008 (the "Act") into law. The impetus for the Act was the rash of recalls of toys and children's products in 2007, many of which were lead-containing imports from China. While the Act contains many provisions specifically relating to children's products, it also is a comprehensive overhaul of existing consumer product safety laws, which likely will affect the operations of all manufacturers, importers, distributors and retailers of consumer products sold or manufactured in the United States. The Act also restructures and increases resources for the Consumer Product Safety Commission ("CPSC"), which was largely blamed for failing to monitor and inspect the more than 45 million children's products that were recalled last year.



### Highlights of the Act include:

- **Lead In Children's Products**

The Act creates the toughest lead standards for children's products (i.e., products designed or intended for children 12 years of age or younger) in the world. Specifically, the permissible level of lead in children's products will become 600 parts per million ("ppm") within 180 days of passage, 300 ppm after one year, and 100 ppm after three years. The CPSC is also directed to periodically review and lower the lead standard as dictated by future research at least every five years. Also, the Act will lower the current lead-paint ban threshold from its present level of 600 ppm to 90 ppm in 1 year. Inaccessible components of children's products will generally be exempt from these standards.

- **Phthalates**

Phthalates are a group of chemicals used to make plastic products more flexible. For years, consumer advocacy groups have argued that animal studies show that certain phthalates could cause cancer and reproductive problems in children. The Act bans the sale of children's products containing more than .1% of di-(2-ethylhexyl) phthalate ("DEHP"), dibutyl phthalate ("DBP") or benzyl butyl phthalate ("BBP") and this ban will go into effect within 180 days of passage. The Act also temporarily bans children's toys that can be placed in a child's mouth and child care articles containing more than .1% of diisononyl phthalates ("DINP"), diisodecyl phthalate ("DIDP") or di-n-octyl phthalate ("DnOP"). The CPSC is authorized to lift these bans if further study and evaluation warrants such action. In addition, many states have enacted legislation banning or regulating various phthalates in the past year, and the Act provides only limited preemption of these state laws.

- **Three-Wheel ATV Ban**

The Act bans three-wheel all-terrain vehicles ("ATVs") and strengthens regulations of other ATVs.

- **Mandatory Testing for Children's Products**

The Act requires imported children's products to undergo testing from third-party, CPSC-certified labs for acceptable lead

levels and compliance with applicable standards. In addition, the Act authorizes CPSC personnel to enter and inspect any lab certified under the Act and withdraw accreditation if necessary. The Act also mandates that children's products adhere to previously voluntary toy safety standards promulgated by ASTM International, an independent standard-setting organization.



- **Public Hazard Database**

Within two years of the Act's enactment, the CPSC will establish a searchable database to include reports of injuries, illnesses, deaths or risks related to consumer products submitted by consumers, local, state or national government agencies, child care providers, physicians, hospitals, coroners, first responders and the media. Upon receiving a complaint, the CPSC will have five days to submit the complaint to the manufacturer. The manufacturer will then have ten days to respond. The complaint and manufacturer's response will then be posted on the database. The CPSC will possess the authority to remove or correct a complaint if it is found to be inaccurate.

- **Tougher Penalties**

The Act increases the civil fine penalty cap for violations of consumer product safety laws from \$5,000 to \$100,000 per individual violation, and from \$1.25 million to \$15 million for aggregate violations of consumer product safety laws. The Act also increases criminal penalties to five years in jail for those who knowingly and willingly violate product safety laws.

- **State Enforcement**

The Act authorizes state attorneys general to enforce consumer product safety laws by seeking injunctive relief, but requires states to give the CPSC advance notice of any intent to initiate such action.

- **Recall Process**

The Act substantially expands the CPSC's authority to either approve or dictate corrective action plans. Specifically, the Act will eliminate the present right of a party recalling a product to elect whether they will offer a refund, repair or replacement for recalled products. Instead, it permits the CPSC to determine whether to require a refund, repair and/or replacement, according to what the CPSC determines to be in the public's interest. The Act also creates new requirements for the content and dissemination of recall notices and permits the CPSC to require recall notices to be in other languages, in addition to English.



- **Labeling and Source Requirements**

The Act requires manufacturers to label children's products with source, production date and batch information that will better enable recalled products to be tracked and identified by distributors and retailers. This labeling requirement will also assist consumers in identifying recalled products.

The full text of the Act may be found at: <http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.4040>.

As demonstrated by the above, the Act represents a significant expansion of existing product safety legislation. Given the broad scope of this legislation, all manufacturers, importers, distributors and retailers of consumer products in the United States, regardless of industry, should immediately familiarize themselves with the provisions of the Act in order to ensure proper compliance.

For more information regarding the Act, please contact John MacNaughton (404-504-7689; [jpm@mmmlaw.com](mailto:jpm@mmmlaw.com)), Bob Alpert (404-504-7692; [rpa@mmmlaw.com](mailto:rpa@mmmlaw.com)) or any other member of the Morris, Manning & Martin, LLP Product Liability and Toxic Torts Group.