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S. 2045

To reform the Consumer Product Safety Commission to provide greater protection for children's products, to improve the screening of noncompliant consumer products, to improve the effectiveness of consumer product recall programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2007

Mr. PRYOR (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To reform the Consumer Product Safety Commission to provide greater protection for children's products, to improve the screening of noncompliant consumer products, to improve the effectiveness of consumer product recall programs, and for other purposes.

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 “CPSC Reform Act of 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

1 compensation, terms, conditions, or privileges of employ-
2 ment because the employee (or any person acting pursuant
3 to a request of the employee)—

4 “(1) provided, caused to be provided, or is
5 about to provide or cause to be provided to the em-
6 ployer, the Federal Government, or the attorney
7 general of a State information relating to any viola-
8 tion or alleged violation of any order, regulation, or
9 consumer product safety standard under this Act or
10 any other law enforceable by the Commission (or by
11 the attorney general of a State under section 21);

12 “(2) testified or is about to testify in such a
13 proceeding; or

14 “(3) assisted or participated or is about to as-
15 sist or participate in such a proceeding.

16 “(b)(1) If the Commission, or the attorney general
17 of a State, proceeds with an action against a manufac-
18 turer, private labeler, distributor, or retailer for a violation
19 of this Act or any other Act enforced by the Commission,
20 on the basis of information provided by such an employee,
21 the employee shall receive at least 15 percent but not more
22 than 25 percent of any civil penalty assessed and collected
23 by the Commission, or attorney general, for the violation,
24 depending upon the extent to which the information pro-

1 vided by the employee substantially contributed to the en-
2 forcement action, as determined by the Commission.

3 “(2) If the Commission’s action is based primarily
4 on disclosures of specific information (other than informa-
5 tion provided by the employee) relating to allegations or
6 transactions in a criminal, civil, or administrative hearing,
7 in a congressional, administrative, or Government Ac-
8 countability Office report, hearing, audit, or investigation,
9 or from the news media, the Commission may award such
10 sums as it considers appropriate to the employee, but in
11 no case more than 10 percent of the civil penalty assessed
12 and collected, taking into account the significance of the
13 information and the role of the employee.

14 “(3) In the case of an action brought by the attorney
15 general of a State under section 21, the amount of any
16 civil penalty to which such an employee may be entitled
17 shall be determined by the Commission, subject to the lim-
18 itations in paragraph (1) and (2), in consultation with the
19 attorney general that brought the action.

20 “(c)(1) A person who believes that he or she has been
21 discharged or otherwise discriminated against by any per-
22 son in violation of subsection (a) may, not later than 90
23 days after the date on which such violation occurs, file
24 (or have any person file on his or her behalf) a complaint
25 with the Commission alleging such discharge or discrimi-

1 nation and identifying the person responsible for such act.
2 Upon receipt of such a complaint, the Commission shall
3 notify, in writing, the person named in the complaint of
4 the filing of the complaint, of the allegations contained
5 in the complaint, of the substance of evidence supporting
6 the complaint, and of the opportunities that will be af-
7 forded to such person under paragraph (2).

8 “(2)(A) Not later than 60 days after the date of re-
9 ceipt of a complaint filed under paragraph (1) and after
10 affording the person named in the complaint an oppor-
11 tunity to submit to the Commission a written response to
12 the complaint and an opportunity to meet with a rep-
13 resentative of the Commission to present statements from
14 witnesses, the Commission shall conduct an investigation
15 and determine whether there is reasonable cause to believe
16 that the complaint has merit and notify, in writing, the
17 complainant and the person alleged to have committed a
18 violation of subsection (a) of the Commission’s findings.
19 If the Commission concludes that there is a reasonable
20 cause to believe that a violation of subsection (a) has oc-
21 curred, the Commission shall accompany the Commis-
22 sion’s findings with a preliminary order providing the re-
23 lief prescribed by paragraph (3)(B). Not later than 30
24 days after the date of notification of findings under this
25 paragraph, either the person alleged to have committed

1 the violation or the complainant may file objections to the
2 findings or preliminary order, or both, and request a hear-
3 ing on the record. The filing of such objections shall not
4 operate to stay any reinstatement remedy contained in the
5 preliminary order. Any such hearing shall be conducted
6 expeditiously. If a hearing is not requested in such 30-
7 day period, the preliminary order shall be deemed a final
8 order that is not subject to judicial review.

9 “(B)(i) The Commission shall dismiss a complaint
10 filed under this subsection and shall not conduct an inves-
11 tigation otherwise required under subparagraph (A) unless
12 the complainant makes a prima facie showing that any
13 behavior described in paragraphs (1) through (4) of sub-
14 section (a) was a contributing factor in the unfavorable
15 personnel action alleged in the complaint.

16 “(ii) Notwithstanding a finding by the Commission
17 that the complainant has made the showing required
18 under clause (i), no investigation otherwise required under
19 subparagraph (A) shall be conducted if the employer dem-
20 onstrates, by clear and convincing evidence, that the em-
21 ployer would have taken the same unfavorable personnel
22 action in the absence of that behavior.

23 “(iii) The Commission may determine that a violation
24 of subsection (a) has occurred only if the complainant
25 demonstrates that any behavior described in paragraphs

1 (1) through (4) of subsection (a) was a contributing factor
2 in the unfavorable personnel action alleged in the com-
3 plaint.

4 “(iv) Relief may not be ordered under subparagraph
5 (A) if the employer demonstrates by clear and convincing
6 evidence that the employer would have taken the same un-
7 favorable personnel action in the absence of that behavior.

8 “(3)(A) Not later than 120 days after the date of
9 conclusion of any hearing under paragraph (2), the Com-
10 mission shall issue a final order providing the relief pre-
11 scribed by this paragraph or denying the complaint. At
12 any time before issuance of a final order, a proceeding
13 under this subsection may be terminated on the basis of
14 a settlement agreement entered into by the Commission,
15 the complainant, and the person alleged to have committed
16 the violation.

17 “(B) If, in response to a complaint filed under para-
18 graph (1), the Commission determines that a violation of
19 subsection (a) has occurred, the Commission shall order
20 the person who committed such violation—

21 “(i) to take affirmative action to abate the vio-
22 lation;

23 “(ii) to reinstate the complainant to his or her
24 former position together with the compensation (in-
25 cluding back pay) and restore the terms, conditions,

1 and privileges associated with his or her employ-
2 ment; and

3 “(iii) to provide compensatory damages to the
4 complainant.

5 If such an order is issued under this paragraph, the Com-
6 mission, at the request of the complainant, shall assess
7 against the person against whom the order is issued a sum
8 equal to the aggregate amount of all costs and expenses
9 (including attorneys’ and expert witness fees) reasonably
10 incurred, as determined by the Commission, by the com-
11 plainant for, or in connection with, the bringing of the
12 complaint upon which the order was issued.

13 “(C) If the Commission finds that a complaint under
14 paragraph (1) is frivolous or has been brought in bad
15 faith, the Commission may award to the prevailing em-
16 ployer a reasonable attorney’s fee, not exceeding \$1,000,
17 to be paid by the complainant.

18 “(4)(A) Any person adversely affected or aggrieved
19 by a final order issued under paragraph (3) may obtain
20 review of the order in the United States Court of Appeals
21 for the circuit in which the violation, with respect to which
22 the order was issued, allegedly occurred or the circuit in
23 which the complainant resided on the date of such viola-
24 tion. The petition for review must be filed not later than
25 60 days after the date of the issuance of the final order

1 of the Commission. Review shall conform to chapter 7 of
2 title 5, United States Code. The commencement of pro-
3 ceedings under this subparagraph shall not, unless ordered
4 by the court, operate as a stay of the order.

5 “(B) An order of the Commission with respect to
6 which review could have been obtained under subpara-
7 graph (A) shall not be subject to judicial review in any
8 criminal or other civil proceeding.

9 “(5) Whenever any person has failed to comply with
10 an order issued under paragraph (3), the Commission may
11 file a civil action in the United States district court for
12 the district in which the violation was found to occur, or
13 in the United States district court for the District of Co-
14 lumbia, to enforce such order. In actions brought under
15 this paragraph, the district courts shall have jurisdiction
16 to grant all appropriate relief including, but not limited
17 to, injunctive relief and compensatory damages.

18 “(6)(A) A person on whose behalf an order was
19 issued under paragraph (3) may commence a civil action
20 against the person to whom such order was issued to re-
21 quire compliance with such order. The appropriate United
22 States district court shall have jurisdiction, without regard
23 to the amount in controversy or the citizenship of the par-
24 ties, to enforce such order.

1 “(B) The court, in issuing any final order under this
2 paragraph, may award costs of litigation (including rea-
3 sonable attorney and expert witness fees) to any party
4 whenever the court determines such award is appropriate.

5 “(d) Any nondiscretionary duty imposed by this sec-
6 tion shall be enforceable in a mandamus proceeding
7 brought under section 1361 of title 28, United States
8 Code.

9 “(e) Subsection (a) shall not apply with respect to
10 an employee of a manufacturer, private labeler, dis-
11 tributor, or retailer who, acting without direction from
12 such manufacturer, private labeler, distributor, or retailer
13 (or such person’s agent), deliberately causes a violation
14 of any requirement relating to any violation or alleged vio-
15 lation of any order, regulation, or consumer product safety
16 standard under this Act or any other law enforceable by
17 the Commission.”.

18 **SEC. 23. BAN ON CHILDREN’S PRODUCTS CONTAINING**
19 **LEAD; LEAD PAINT RULE.**

20 (a) IN GENERAL.—Beginning on the date that is 180
21 days after the date of the enactment of this Act—

22 (1) any children’s product (as defined in section
23 14(e) of the Consumer Product Safety Act (15
24 U.S.C. 2063(e))) that contains lead shall be treated
25 as a banned hazardous substance under the Federal