

111TH CONGRESS
1ST SESSION

S. 374

To amend the Consumer Product Safety Act to provide regulatory relief to small and family-owned businesses.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2009

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

A BILL

To amend the Consumer Product Safety Act to provide regulatory relief to small and family-owned businesses.

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. CERTAIN REQUIREMENTS INAPPLICABLE TO**
4 **SECOND-HAND SELLERS.**

5 Section 19 of the Consumer Product Safety Act (15
6 U.S.C. 2068) is amended by adding at the end thereof
7 the following:

8 “(c) EXCEPTIONS FOR SECOND-HAND SELLERS.—

9 “(1) IN GENERAL.—It is not a violation of sub-
10 section (a)(1) or (a)(2) of this section for a second-

1 hand seller to sell, offer for sale, or distribute in
2 commerce—

3 “(A) a consumer product for resale that is
4 treated as a banned hazardous substance under
5 the Federal Hazardous Substances Act (15
6 U.S.C. 1261 et seq.) because of the application
7 of section 101(a) of the Consumer Product
8 Safety Improvement Act of 2008 (15 U.S.C.
9 1278a); or

10 “(B) a children’s product without the label
11 required by section 14(c) of this Act.

12 “(2) SECOND-HAND SELLER DEFINED.—In this
13 subsection, the term ‘second-hand seller’ means—

14 “(A) a consignment shop, thrift shop, or
15 similar enterprise that sells, offers for sale, or
16 distributes in commerce a product after the
17 first retail sale of that product;

18 “(B) an individual who utilizes the Inter-
19 net, a yard sale, or other casual means of sell-
20 ing, or offering for sale, such a product; or

21 “(C) a person who sells, or offers for sale,
22 such a product at an auction for the benefit of
23 a nonprofit organization.”.

1 **SEC. 2. PROSPECTIVE APPLICATION OF LEAD CONTENT**
2 **AND THIRD PARTY TESTING RULES.**

3 (a) **LEAD CONTENT.**—Section 101(a) of the Con-
4 sumer Product Safety Improvement Act of 2008 (15
5 U.S.C. 1278a(a)) is amended—

6 (1) by striking “(b) beginning on the dates pro-
7 vided in paragraph (2),” in paragraph (1) and in-
8 serting “(b),”;

9 (2) by striking “(15 U.S.C. 1261 et seq.)” in
10 paragraph (1) and inserting “(15 U.S.C. 1261 et
11 seq.) if it is manufactured after the date on which
12 such limit takes effect.”;

13 (3) by striking “180 days” in paragraph (2)(A)
14 and inserting “360 days”;

15 (4) by striking “1 year” in paragraph (2)(B)
16 and inserting “18 months”;

17 (5) by striking “3 years” in paragraph (2)(C)
18 and inserting “3½ years”; and

19 (6) by striking “3 years” in paragraph (2)(D)
20 and inserting “3½ years”.

21 (b) **THIRD PARTY TESTING.**—Section 14(a)(3)(A) of
22 the Consumer Product Safety Act (15 U.S.C.
23 2063(a)(3)(A)) is amended by inserting “after August 9,
24 2009, and” after “manufactured”.

1 (c) APPLICATION.—The amendments made by sub-
2 sections (a) and (b) shall be treated as having taken effect
3 on August 15, 2008.

4 **SEC. 3. LEAD CONTENT CERTIFICATION; WAIVER OF THIRD**
5 **PARTY TESTING REQUIREMENT.**

6 Section 14(g) of the Consumer Product Safety Act
7 (15 U.S.C. 2063(g)) is amended by adding at the end
8 thereof the following:

9 “(5) SPECIAL RULE FOR LEAD CONTENT TEST-
10 ING AND CERTIFICATION.—Subsection (a) shall not
11 require the manufacturer or private labeler of a
12 product to test a product for, or certify it with re-
13 spect to, lead content if—

14 “(A) each component of the product has
15 been tested for lead content by the manufac-
16 turer or private labeler of the component; and

17 “(B) the manufacturer or private labeler of
18 each such component certifies that the compo-
19 nent (including paint, electroplating, and other
20 coatings) does not contain more lead than the
21 limit established by section 101(a)(2) of the
22 Consumer Product Safety Improvement Act of
23 2008 (15 U.S.C. 1278a(a)(2)).”

1 **SEC. 4. SUSPENSION OF ENFORCEMENT PENDING FINAL**
2 **REGULATIONS.**

3 Notwithstanding any provision of law to the contrary,
4 neither the Consumer Product Safety Commission nor the
5 Attorney General of any State may initiate an enforce-
6 ment proceeding under the Consumer Product Safety Act
7 or the Federal Hazardous Substances Act for failure to
8 comply with the requirements of, or for violation of, the
9 following provisions of law until 30 days after the date
10 on which the Commission issues the referenced rule, regu-
11 lation, or guidance:

12 (1) Section 101(a) of the Consumer Product
13 Safety Improvement Act of 2008 (15 U.S.C. 1278a)
14 with respect to materials, products, or parts de-
15 scribed in subsection (b)(1), until the date on which
16 the Commission promulgates a final rule providing
17 the guidance required by section 101(b)(2)(B) of
18 that Act.

19 (2) Section 101(a) of that Act with respect to
20 certain electronic devices described in section
21 101(b)(4) of that Act, until the date on which the
22 Commission, by final regulation, issues the require-
23 ments described in subparagraph (A) of section
24 101(b)(4) and establishes the schedule described in
25 subparagraph (A) of section 101(b)(4).

1 (3) Section 14(a)(1) or (2) of the Consumer
2 Product Safety Act (15 U.S.C. 2063(a)(1) or (2)),
3 until the date on which—

4 (A) the Commission has established and
5 published final notice of the requirements for
6 accreditation of third party conformity assess-
7 ment bodies under section 14(a)(3)(B)(vi) of
8 that Act for products to which children’s prod-
9 uct safety rules established or revised before
10 August 14, 2008, apply,

11 (B) the Commission has established by
12 final regulation requirements for the periodic
13 audit of third party conformity assessment bod-
14 ies under section 14(d)(1) of that Act (15
15 U.S.C. 2063(d)(1)), or

16 (C) the Commission has by final regulation
17 initiated the program required by section
18 14(d)(2)(A) of that Act (15 U.S.C.
19 2063(d)(2)(A)) and established protocols and
20 standards under section 14(d)(2)(B) of that Act
21 (15 U.S.C. 2063(d)(2)(B)),

22 whichever is last.

1 **SEC. 5. WAIVER OF CIVIL PENALTY FOR INITIAL GOOD**
 2 **FAITH VIOLATION.**

3 Section 20(c) of the Consumer Product Safety Act
 4 (15 U.S.C. 2069(c)) is amended by adding at the end
 5 thereof the following: “The Commission shall waive any
 6 civil penalty under this section if the Commission deter-
 7 mines that—

8 “(1) the violation is the first violation of section
 9 19(a) by that person; and

10 “(2) the person was acting in good faith with
 11 respect to the act or omission that constitutes the
 12 violation.”.

13 **SEC. 6. SMALL ENTERPRISE COMPLIANCE ASSISTANCE.**

14 (a) **IN GENERAL.**—Within 180 days after the date
 15 of enactment of this Act, or as soon thereafter as is prac-
 16 ticable, the Consumer Product Safety Commission, in con-
 17 sultation with the Small Business Administration and
 18 State small business agencies, shall develop a compliance
 19 guide for small enterprises to assist them in complying
 20 with the requirements of the Consumer Product Safety
 21 Act (15 U.S.C. 2051 et seq.) and other Acts enforced by
 22 the Commission.

23 (b) **CONTENTS.**—The guide—

24 (1) shall be designed to assist small enterprises
 25 to determine—

1 (A) whether the Consumer Product Safety
2 Act (or any other Act enforced by the Commis-
3 sion) applies to their business activities;

4 (B) whether they are considered distribu-
5 tors, manufacturers, private labelers, or retail-
6 ers under the Act; and

7 (C) which rules, standards, regulations, or
8 statutory requirements apply to their business
9 activities;

10 (2) shall provide guidance on how to comply
11 with any such applicable rule, standard, regulation,
12 or requirement, including—

13 (A) what actions they should take to en-
14 sure that they meet the requirements; and

15 (B) how to determine whether they have
16 met the requirements; and

17 (3) may contain such additional information as
18 the Commission deems appropriate, including tele-
19 phone, e-mail, and Internet contacts for compliance
20 support and information.

21 (c) PUBLICATION AND DISTRIBUTION.—The Com-
22 mission shall—

23 (1) publish a sufficient number of copies of the
24 guide to satisfy both individual requests for copies
25 and mass requests to accommodate distribution by

1 chambers of commerce, trade associations and other
2 organizations the membership of which includes
3 small enterprises whose business activities are af-
4 fected by the requirements of the Consumer Product
5 Safety Act and other Acts enforced by the Commis-
6 sion;

7 (2) make the guide available, without charge,
8 by mail; and

9 (3) provide easy access to the guide on the
10 Commission's public website.

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