

Sweeping Changes to Product Safety Law Signed by President Bush

On Thursday, Aug. 14, President Bush signed into law major reforms to the Consumer Product Safety Act (CPSA). Driven in part by public pressure stemming from last summer's highly publicized lead paint importation problems, Congress dramatically overhauled nearly 30 provisions of the CPSA. Almost all of these changes have the potential to impact the bottom line of any company that manufactures or distributes consumer products.

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Significant Increase in Civil Penalties

Under the new law, the civil penalties cap for violations of the CPSA will increase to \$15 million from \$1.825 million under the previous law. In addition, individual violations for each product that wrongfully enters the stream of commerce are now subject to as much as a \$100,000 fine (another drastic increase from the current level of \$5,000). When assessing penalties, "repeat violations" and "the precedential value of prior adjudicated penalties," will be considered.

Criminal Penalties

The criminal penalties for individuals and corporate officers who knowingly permit unsafe products to enter the stream of commerce will increase under the new law to fines of \$250,000 and up to five years imprisonment (increased from \$50,000 fine cap and up to one year imprisonment). These new penalties can include a forfeiture of any asset associated with the violation. In addition, the new law eliminates the requirement that the individual or corporate officer being prosecuted acted knowingly. This raises the specter of criminal prosecution of individuals and corporate officers with respect to minor violations even when there is no evidence that the individual acted intentionally.

Public Product Database

The new law mandates that the Consumer Product Safety Commission (CPSC) establish and maintain a searchable Internet database on products injuring consumers (or at a risk of injuring consumers) and that manufacturers and distributors provide information to the CPSC on these products. The database must include all reports of injury, death or risk of injury or death submitted by



consumers or third-party groups (including local, state or national government agencies, child care providers, physicians, hospitals, coroners, first responders and the media). After the CPSC receives such a report from any of these sources, it will have five days to submit the complaint to the manufacturer or distributor, which will then have ten days to respond to the CPSC before the report is posted to the public database. Although the CPSC will have the authority to remove complaints that are found to be inaccurate, it is unclear what mechanism the CPSC will use in making such a determination of accuracy or what the burden will be on a manufacturer or distributor who objected to a report. This provision is expected to dramatically increase the reporting obligations of manufacturers and distributors of consumer products.

State Attorney General Empowered to Enforce CPSA

The original CPSA created a single set of product safety regulations for manufacturers and distributors to follow and empowered only the CPSC to enforce those regulations. The new law establishes a radically different framework. A state attorney general who believes the interests of the residents of their state have been threatened may bring a civil action in district court to obtain injunctive relief against a manufacturer or distributor of a consumer product on the basis of a violation of the CPSA. This provision will likely lead to additional civil litigation by consumers who will attempt to use state attorney general findings to claim that a manufacturer or distributor has been found negligent per se.

New Requirements for Identification of Supply and Distributor Chain

The new law requires companies, including every importer, retailer or distributor of a consumer product, to identify the manufacturer of that product by name, address or other information. It also requires each manufacturer to identify every subcontractor in the supply chain for that product.

Whistleblower Protections

Under the new law, an employer cannot fire or discipline an employee if he or she is about to provide information to the government, attorney general or to the employer regarding a violation of the new CPSA. This includes testifying about



violations, assisting in providing information to the government or attorney general or choosing not to participate in a task that the employee believes to violate CPSC standards.

Conclusion

The above changes are by no means the only significant alterations to the Consumer Product Safety Act. For example, the new law also:

- Imposes third-party product safety certification requirements on children's products;
- Reduces the amount of lead that may be present in paint for any consumer products. In addition, the new law will ban, either permanently or until further study, six types of phthalates suspected of damaging the human reproductive systems;
- Requires manufacturers to label children's products with tracking information to help consumers and retailers identify recalled products;
- Imposes significant changes to required recall notice information;
- Adopts as an agency rule the consumer safety specifications for toy safety promulgated by ASTM International, an independent standard setting organization; and
- Aggressively increases funding the CPSC and requires the CPSC to increase its staffing levels.

These are just some of the significant provisions of the new law, which will come into effect under various rolling dates. If you have questions regarding the impact of this new law on your business, please contact a member of Reinhart's [Product Liability Team](#).

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