

H.R. 4040, the Consumer Product Safety Improvement Act (CPSIA) of 2008

Summary of Major Provisions

- ***Reauthorization Years and Authorization of Appropriations*** – The CPSIA increases the Consumer Product Safety Commission’s (CPSC) current funding level of \$80 million to \$136 million by fiscal year 2014, restores the CPSC to a 5 member Commission, and increases staff to at least 500 employees including additional personnel to be assigned to duty stations at U.S. ports of entry by 2013.
- ***Ban on Children’s Products Containing Lead; Lower Lead Paint Limit*** – The CPSIA bans lead in children’s products and establishes a more stringent lead paint limit. Beginning 180 days after the date of enactment of the CPSIA, any children’s product that contains more than 600 parts per million total lead content by weight for any part of the product will be treated as a banned hazardous substance under the Federal Hazardous Substances Act (FHSA). One year after the date of enactment, the permissible lead level is revised downward to 300 parts per million, and after three years, is revised down to 100 parts per million or the lowest amount possible, if the CPSC determines that 100 parts per million is not technologically feasible. The Commission is instructed to periodically review and lower the lead limits based on the best scientific and technical information, and the Commission has the authority to exclude certain materials from the lead prohibition.
- ***Mandatory Toy Standards and Third Party Testing; Inspection of Firewalled Conformity Assessment Bodies*** – The CPSIA makes the ASTM International standard F963-07, as it exists on the date of enactment of the CPSIA (except for section 4.2 and Annex 4 or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the CPSC or by statute), an interim consumer product safety standard pending evaluation by the CPSC. The CPSC would be required to establish the mandatory standards by rule after the relevant components of the standard are evaluated. Upon enactment, the CPSIA would require the CPSC to promulgate rules to ensure the highest level of safety for toys. In addition, it includes language requiring third party testing of certain children’s products and providing authority to the CPSC to inspect firewalled conformity assessment bodies.

- ***Durable Nursery Products*** – The CPSIA directs the CPSC to issue safety standards and consumer registration requirements for durable nursery products such as cribs, and includes language that requires the CPSC to study the use of alternative recall notification technology. If the CPSC determines by rule that a recall notification technology is as effective as a registration form, the CPSC would be required to permit a manufacturer to use such technology.
- ***Enhanced Recall Authority and Notice*** – The CPSIA strengthens the CPSC’s authority to order manufacturers to take broader measures to protect the public from substantial product hazards by: ceasing distribution of the product, notifying all persons who handle the product to cease its distribution, and notifying appropriate state and local public health officials of substantial product hazards. In addition, the CPSC could require a notice to be distributed in a language other than English.
- ***Penalties*** – The CPSIA increases civil penalty caps from \$5,000 to \$100,000 per individual violation, and from \$1,250,000 to \$15,000,000 for aggregate violations. The increase would come into effect after rules regarding the adjudication of the penalties are promulgated or one year from the date of enactment, whichever is sooner. The CPSIA authorizes the CPSC to seek asset forfeiture as a penalty for a criminal violation of acts enforced by the CPSC. It also includes language that would increase maximum criminal penalties and remove the knowledge of notice of noncompliance requirements from the Consumer Product Safety Act (CPSA).
- ***State Attorneys General Authority*** – The CPSIA provides state attorneys general (AGs) the authorization to seek injunctive relief for specifically enumerated violations of the CPSA and the Poison Prevention Packaging Act. An AG would be required to provide at least 30 days prior notice to the CPSC. If the CPSC filed suit first, the AG would be precluded from filing with respect to certain violations. The CPSC also would have the right to participate in an AG suit. The CPSIA includes a savings clause that protects the AG’s right to pursue an action under state law and limits the use of privileged information by a private attorney hired to assist an AG.
- ***Whistleblower Protections*** – The CPSIA includes whistleblower protections for employees of manufacturers, private labelers, retailers, and distributors. This important provision will encourage the free flow of safety information to the CPSC and the public, as well as provide protection to employees who risk their livelihood to enhance the public’s safety.

- ***Preemption*** – Under the CPSIA, states may not prescribe additional safety standards that go further than CPSC regulations when it has been determined that state regulations are preempted, except as provided in sections 18(b)(2)-(4) of the FHSA, sections 26(b) and (c) of the CPSA, sections 16(b) and (c) of the Flammable Fabrics Act, and sections 7(b) and (c) of the Poison Packaging Prevention Act of 1970. It includes language intended to clarify that the requirements under the CPSIA, the CPSA, and the FHSA shall not be construed to preempt or affect state warning requirements under state laws, such as California’s Proposition 65, that were enacted prior to August 31, 2003. The limits for lead in children’s products and in lead paint as established by the CPSIA will be preemptive. The CPSIA does not include preemption for federal third party testing protocols.
- ***All-Terrain Vehicle (ATV) Safety Standards*** – The CPSIA establishes safety standards for ATVs. Given the numerous reports of injuries and deaths associated with the use of unsafe ATVs, this is an important provision that will ultimately stop the importation of dangerous ATVs.
- ***Phthalates Ban*** – The CPSIA permanently prohibits the sale of children’s toys or child care articles that contain more than 0.1 percent di-(2 ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP). The sale of children’s toys or child care articles containing concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP) would be prohibited on an interim basis until a review by a Chronic Hazard Advisory Panel (CHAP). After the CPSC receives the report from the CHAP, the CPSC, by rule, would determine whether to continue the interim prohibition.