

110TH CONGRESS
1ST SESSION

H. R. 4040

AN ACT

To establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Consumer Product Safety Modernization Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. References.
- Sec. 3. Authority to issue implementing regulations.

TITLE I—CHILDREN’S PRODUCT SAFETY

- Sec. 101. Ban on children’s products containing lead; lead paint rule.
- Sec. 102. Mandatory third-party testing for certain children’s products.
- Sec. 103. Tracking labels for children’s products.
- Sec. 104. Standards and consumer registration of durable nursery products.
- Sec. 105. Labeling requirement for certain internet and catalogue advertising of toys and games.
- Sec. 106. Study of preventable injuries and deaths in minority children related to consumer products.
- Sec. 107. Review of generally-applicable standards for toys.

TITLE II—CONSUMER PRODUCT SAFETY COMMISSION REFORM

- Sec. 201. Reauthorization of the Commission.
- Sec. 202. Structure and quorum.
- Sec. 203. Submission of copy of certain documents to Congress.
- Sec. 204. Expedited rulemaking.
- Sec. 205. Public disclosure of information.
- Sec. 206. Publicly available information on incidents involving injury or death.
- Sec. 207. Prohibition on stockpiling under other Commission-enforced statutes.
- Sec. 208. Notification of noncompliance with any Commission-enforced statute.
- Sec. 209. Enhanced recall authority and corrective action plans.
- Sec. 210. Website notice, notice to third party internet sellers, and radio and television notice.
- Sec. 211. Inspection of certified proprietary laboratories.
- Sec. 212. Identification of manufacturer, importers, retailers, and distributors.
- Sec. 213. Export of recalled and non-conforming products.
- Sec. 214. Prohibition on sale of recalled products.
- Sec. 215. Increased civil penalty.
- Sec. 216. Criminal penalties to include asset forfeiture.
- Sec. 217. Enforcement by State attorneys general.
- Sec. 218. Effect of rules on preemption.
- Sec. 219. Sharing of information with Federal, State, local, and foreign government agencies.
- Sec. 220. Inspector General authority and accessibility.
- Sec. 221. Repeal.
- Sec. 222. Industry-sponsored travel ban.
- Sec. 223. Annual reporting requirement.
- Sec. 224. Study on the effectiveness of authority relating to imported products.

1 **SEC. 2. REFERENCES.**

2 (a) COMMISSION.—As used in this Act, the term
3 “Commission” means the Consumer Product Safety Com-
4 mission.

5 (b) CONSUMER PRODUCT SAFETY ACT.—Except as
6 otherwise expressly provided, whenever in this Act an
7 amendment is expressed as an amendment to a section
8 or other provision, the reference shall be considered to be
9 made to a section or other provision of the Consumer
10 Product Safety Act (15 U.S.C. 2051 et seq.).

11 (c) RULE.—In this Act and the amendments made
12 by this Act, a reference to any rule under any Act enforced
13 by the Commission shall be considered a reference to any
14 rule, standard, ban, or order under any such Act.

15 **SEC. 3. AUTHORITY TO ISSUE IMPLEMENTING REGULA-**
16 **TIONS.**

17 The Commission may issue regulations, as necessary,
18 to implement this Act and the amendments made by this
19 Act.

20 **TITLE I—CHILDREN’S PRODUCT**
21 **SAFETY**

22 **SEC. 101. BAN ON CHILDREN’S PRODUCTS CONTAINING**
23 **LEAD; LEAD PAINT RULE.**

24 (a) CHILDREN’S PRODUCTS CONTAINING LEAD.—

25 (1) BANNED HAZARDOUS SUBSTANCE.—Effec-
26 tive 180 days after the date of enactment of this

1 Act, any children's product containing more than the
2 amounts of lead set forth in paragraph (2) shall be
3 a banned hazardous substance within the meaning of
4 section 2(q)(1) of the Federal Hazardous Substances
5 Act (15 U.S.C. 1261(q)(1)).

6 (2) STANDARD FOR AMOUNT OF LEAD.—The
7 amounts of lead referred to in paragraph (1) shall
8 be—

9 (A) 600 parts per million total lead con-
10 tent by weight for any part of the product;

11 (B) 300 parts per million total lead con-
12 tent by weight for any part of the product, ef-
13 fective 2 years after the date of enactment of
14 this Act; and

15 (C) 100 parts per million total lead content
16 by weight for any part of the product, effective
17 4 years after the date of enactment of this Act,
18 unless the Commission determines, after notice
19 and a hearing, that a standard of 100 parts per
20 million is not feasible, in which case the Com-
21 mission shall require the lowest amount of lead
22 that the Commission determines is feasible to
23 achieve.

24 (3) COMMISSION REVISION TO MORE PROTEC-
25 TIVE STANDARD.—

1 (A) MORE PROTECTIVE STANDARD.—The
2 Commission may, by rule, revise the standard
3 set forth in paragraph (2)(C) for any class of
4 children’s products to any level and form that
5 the Commission determines is—

- 6 (i) more protective of human health;
7 and
8 (ii) feasible to achieve.

9 (B) PERIODIC REVIEW.—The Commission
10 shall, based on the best available scientific and
11 technical information, periodically review and
12 revise the standard set forth in this section to
13 require the lowest amount of lead that the
14 Commission determines is feasible to achieve.

15 (4) COMMISSION AUTHORITY TO EXCLUDE CER-
16 TAIN MATERIALS.—The Commission may, by rule,
17 exclude certain products and materials from the pro-
18 hibition in paragraph (1) if the Commission deter-
19 mines that the lead content in such products and
20 materials will not result in the absorption of lead in
21 the human body or does not have any adverse im-
22 pact on public health or safety.

23 (5) DEFINITION OF CHILDREN’S PRODUCT.—

24 (A) IN GENERAL.—As used in this sub-
25 section, the term “children’s product” means a

1 consumer product as defined in section 3(1) of
2 the Consumer Product Safety Act (15 U.S.C.
3 2052(1)) designed or intended primarily for
4 children 12 years of age or younger.

5 (B) FACTORS TO BE CONSIDERED.—In de-
6 termining whether a product is primarily in-
7 tended for a child 12 years of age or younger,
8 the following factors shall be considered:

9 (i) A statement by a manufacturer
10 about the intended use of such product, in-
11 cluding a label on such product if such
12 statement is reasonable.

13 (ii) Whether the product is rep-
14 resented in its packaging, display or adver-
15 tising as appropriate for use by children 12
16 years of age or younger.

17 (iii) Whether the product is commonly
18 recognized by consumers as being intended
19 for use by child 12 years of age or young-
20 er.

21 (iv) The Age Determination Guide-
22 lines issued by the Commission staff in
23 September 2002, and any successor there-
24 to.

1 (6) EXCEPTION FOR INACCESSIBLE COMPO-
2 NENT PARTS.—The standards established under
3 paragraph (2) shall not apply to any component part
4 of a children’s product that is not accessible to a
5 child through normal and reasonably foreseeable use
6 and abuse of such product, as determined by the
7 Commission. A component part is not accessible
8 under this paragraph if such component part is not
9 physically exposed by reason of a sealed covering or
10 casing and does not become physically exposed
11 through reasonably foreseeable use and abuse of the
12 product. The Commission may require that certain
13 electronic devices be equipped with a child-resistant
14 cover or casing that prevents exposure of and acces-
15 sibility to the parts of the product containing lead
16 if the Commission determines that it is not feasible
17 for such products to otherwise meet such standards.

18 (b) PAINT STANDARD.—

19 (1) IN GENERAL.—Not later than 180 days
20 after the date of enactment of this Act, the Commis-
21 sion shall modify section 1303.1 of title 16, Code of
22 Federal Regulations, to—

23 (A) reduce the standard applicable to lead
24 paint by substituting “0.009 percent” for “0.06
25 percent” in subsection (a) of that section;

1 (B) apply the standard to all children's
2 products as defined in subsection (a)(5); and

3 (C) reduce the standard for paint and
4 other surface coating on children's products and
5 furniture to 0.009 milligrams per centimeter
6 squared.

7 (2) MORE PROTECTIVE STANDARD.—Not later
8 than 3 years after the date of enactment of this Act,
9 the Commission shall, by rule, revise the standard
10 established under paragraph (1)(C) to a more pro-
11 tective standard if the Commission determines such
12 a standard to be feasible.

13 (c) AUTHORITY TO EXTEND IMPLEMENTATION PERI-
14 ODS.—The Commission may extend, by rule, the effective
15 dates in subsections (a) and (b) by an additional period
16 not to exceed 180 days if the Commission determines
17 that—

18 (1) there is no impact on public health or safety
19 from extending the implementation period; and

20 (2)(A) the complete implementation of the new
21 standards by manufacturers subject to such stand-
22 ards is not feasible within 180 days;

23 (B) the cost of such implementation, particu-
24 larly on small and medium sized enterprises, is ex-
25 cessive; or

1 (C) the Commission requires additional time to
2 implement such standards and determine the re-
3 quired testing methodologies and appropriate excep-
4 tions in order to enforce such standards.

5 **SEC. 102. MANDATORY THIRD-PARTY TESTING FOR CER-**
6 **TAIN CHILDREN'S PRODUCTS.**

7 (a) MANDATORY AND THIRD-PARTY TESTING.—Sec-
8 tion 14(a) (15 U.S.C. 2063(a)) is amended—

9 (1) in paragraph (1)—

10 (A) by striking “Every manufacturer” and
11 inserting “Except as provided in paragraph (2),
12 every manufacturer”; and

13 (B) by striking “standard under this Act”
14 and inserting “rule under this Act or similar
15 rule under any other Act enforced by the Com-
16 mission”;

17 (2) by redesignating paragraph (2) as para-
18 graph (3) and inserting after paragraph (1) the fol-
19 lowing:

20 “(2) Effective 1 year after the date of enact-
21 ment of the Consumer Product Safety Modernization
22 Act, every manufacturer of a children’s product (and
23 the private labeler of such children’s product if such
24 product bears a private label) which is subject to a
25 consumer product safety rule under this Act or a

1 similar rule or standard under any other Act en-
2 forced by the Commission, shall—

3 “(A) have the product tested by a inde-
4 pendent third party qualified to perform such
5 tests or a proprietary laboratory certified by the
6 Commission under subsection (e) ; and

7 “(B) issue a certificate which shall—

8 “(i) certify that such product con-
9 forms to such standards or rules; and

10 “(ii) specify the applicable consumer
11 product safety standards or other similar
12 rules.”; and

13 (3) in paragraph (3) (as so redesignated)—

14 (A) by striking “required by paragraph (1)
15 of this subsection” and inserting “required by
16 paragraph (1) or (2) (as the case may be)”;
17 and

18 (B) by striking “requirement under para-
19 graph (1)” and inserting “requirement under
20 paragraph (1) or (2) (as the case may be)”.

21 (b) DEFINITION OF CHILDREN’S PRODUCTS AND
22 INDEPENDENT THIRD PARTY.—Section 14 (15 U.S.C.
23 2063) is amended by adding at the end the following:

24 “(d) DEFINITIONS.—In this section, the following
25 definitions apply:

1 “(1) The term ‘children’s product’ means a con-
2 sumer product designed or intended primarily for
3 children 12 years of age or younger. In determining
4 whether a product is primarily intended for a child
5 12 years of age or younger, the following factors
6 shall be considered:

7 “(A) A statement by a manufacturer about
8 the intended use of such product, including a
9 label on such product if such statement is rea-
10 sonable.

11 “(B) Whether the product is represented
12 in its packaging, display or advertising as ap-
13 propriate for use by children 12 years of age or
14 younger.

15 “(C) Whether the product is commonly
16 recognized by consumers as being intended for
17 use by child 12 years of age or younger.

18 “(D) The Age Determination Guidelines
19 issued by the Commission staff in September
20 2002, and any successor thereto.

21 “(2) The term ‘independent third party’, means
22 an independent testing entity that is not owned,
23 managed, controlled, or directed by such manufac-
24 turer or private labeler, and that is accredited in ac-
25 cordance with an accreditation process established or

1 recognized by the Commission. In the case of certifi-
2 cation of art material or art material products re-
3 quired under this section or under regulations issued
4 under the Federal Hazardous Substances Act, such
5 term includes a certifying organization, as such term
6 is defined in appendix A to section 1500.14(b)(8) of
7 title 16, Code of Federal Regulations.”.

8 (e) CERTIFICATION OF PROPRIETARY LABORA-
9 TORIES.—Section 14 (15 U.S.C. 2063) is further amended
10 by adding at the end the following:

11 “(e) CERTIFICATION OF PROPRIETARY LABORA-
12 TORIES FOR MANDATORY TESTING.—

13 “(1) CERTIFICATION.—Upon request, the Com-
14 mission, or an independent standard-setting organi-
15 zation to which the Commission has delegated such
16 authority, may certify a laboratory that is owned,
17 managed, controlled, or directed by the manufac-
18 turer or private labeler for purposes of testing re-
19 quired under this section if the Commission deter-
20 mines that—

21 “(A) certification of the laboratory would
22 provide equal or greater consumer safety pro-
23 tection than the manufacturer’s use of an inde-
24 pendent third party laboratory;

1 “(B) the laboratory has established proce-
2 dures to ensure that the laboratory is protected
3 from undue influence, including pressure to
4 modify or hide test results, by the manufacturer
5 or private labeler; and

6 “(C) the laboratory has established proce-
7 dures for confidential reporting of allegations of
8 undue influence to the Commission.

9 “(2) DECERTIFICATION.—The Commission, or
10 an independent standard-setting organization to
11 which the Commission has delegated such authority,
12 may decertify any laboratory certified under para-
13 graph (1) if the Commission finds, after notice and
14 investigation, that a manufacturer or private labeler
15 has exerted undue influence on the laboratory.”.

16 (d) CONFORMING AMENDMENTS.—Section 14(b) (15
17 U.S.C. 2063(b)) is amended—

18 (1) by striking “standards under this Act” and
19 inserting “rules under this Act or similar rules
20 under any other Act enforced by the Commission”;
21 and

22 (2) by striking “, at the option of the person re-
23 quired to certify the product,” and inserting “be re-
24 quired by the Commission to”.

1 **SEC. 103. TRACKING LABELS FOR CHILDREN'S PRODUCTS.**

2 Section 14(a) (15 U.S.C. 2063(a)) is further amend-
3 ed by adding at the end the following:

4 “(4) Effective 1 year after the date of enact-
5 ment of the Consumer Product Safety Modernization
6 Act, the manufacturer of a children’s product shall,
7 to the extent feasible, place distinguishing marks on
8 the product and its packaging that will enable the
9 manufacturer and the ultimate purchaser to ascer-
10 tain the location and date of production of the prod-
11 uct, and any other information determined by the
12 manufacturer to facilitate ascertaining the specific
13 source of the product by reference to those marks.”.

14 **SEC. 104. STANDARDS AND CONSUMER REGISTRATION OF**
15 **DURABLE NURSERY PRODUCTS.**

16 (a) **SHORT TITLE.**—This section may be cited as the
17 “Danny Keysar Child Product Safety Notification Act”.

18 (b) **SAFETY STANDARDS.**—

19 (1) **IN GENERAL.**—The Commission shall—

20 (A) in consultation with representatives of
21 consumer groups, juvenile product manufactur-
22 ers, and independent child product engineers
23 and experts, examine and assess the effective-
24 ness of any voluntary consumer product safety
25 standards for durable infant or toddler product;
26 and

1 (B) in accordance with section 553 of title
2 5, United States Code, promulgate consumer
3 product safety rules that—

4 (i) are substantially the same as such
5 voluntary standards; or

6 (ii) are more stringent than such vol-
7 untary standards, if the Commission deter-
8 mines that more stringent standards would
9 further reduce the risk of injury associated
10 with such products.

11 (2) TIMETABLE FOR RULEMAKING.—Not later
12 than 1 year after the date of enactment of this Act,
13 the Commission shall commence the rulemaking re-
14 quired under paragraph (1) and shall promulgate
15 rules for no fewer than 2 categories of durable nurs-
16 ery products every 6 months thereafter, beginning
17 with the product categories that the Commission de-
18 termines to be of highest priority, until the Commis-
19 sion has promulgated standards for all such product
20 categories. Thereafter, the Commission shall periodi-
21 cally review and revise the rules set forth under this
22 subsection to ensure that such rules provide the
23 highest level of safety for such products that is fea-
24 sible.

25 (c) CONSUMER REGISTRATION REQUIREMENT.—

1 (1) RULEMAKING.—Not later than 1 year after
2 the date of enactment of this Act, the Commission
3 shall, pursuant to its authority under section 16(b)
4 of the Consumer Product Safety Act (15 U.S.C.
5 2065(b)), promulgate a final consumer product safe-
6 ty rule to require manufacturers of durable infant or
7 toddler products—

8 (A) to provide consumers with a postage-
9 paid consumer registration form with each such
10 product;

11 (B) to maintain a record of the names, ad-
12 dresses, email addresses, and other contact in-
13 formation of consumers who register their own-
14 ership of such products with the manufacturer
15 in order to improve the effectiveness of manu-
16 facturer campaigns to recall such products; and

17 (C) to permanently place the manufacturer
18 name and contact information, model name and
19 number, and the date of manufacture on each
20 durable infant or toddler product.

21 (2) REQUIREMENTS FOR REGISTRATION
22 FORM.—The registration form required to be pro-
23 vided to consumers under subsection (a) shall—

1 (A) include spaces for a consumer to pro-
2 vide their name, address, telephone number,
3 and email address;

4 (B) include space sufficiently large to per-
5 mit easy, legible recording of all desired infor-
6 mation;

7 (C) be attached to the surface of each du-
8 rable infant or toddler product so that, as a
9 practical matter, the consumer must notice and
10 handle the form after purchasing the product;

11 (D) include the manufacturer's name,
12 model name and number for the product, and
13 the date of manufacture;

14 (E) include a message explaining the pur-
15 pose of the registration and designed to encour-
16 age consumers to complete the registration;

17 (F) include an option for consumers to
18 register through the Internet; and

19 (G) include a statement that information
20 provided by the consumer shall not be used for
21 any purpose other than to facilitate a recall of
22 or safety alert regarding that product.

23 In issuing regulations under this section, the Com-
24 mission may prescribe the exact text and format of
25 the required registration form.

1 (3) RECORD KEEPING AND NOTIFICATION RE-
2 QUIREMENTS.—The standard required under this
3 section shall require each manufacturer of a durable
4 infant or toddler product to maintain a record of
5 registrants for each product manufactured that in-
6 cludes all of the information provided by each con-
7 sumer registered, and to use such information to no-
8 tify such consumers in the event of a voluntary or
9 involuntary recall of or safety alert regarding such
10 product. Each manufacturer shall maintain such a
11 record for a period of not less than 6 years after the
12 date of manufacture of the product. Consumer infor-
13 mation collected by a manufacturer under this Act
14 may not be used by the manufacturer, nor dissemi-
15 nated by such manufacturer to any other party, for
16 any purpose other than notification to such con-
17 sumer in the event of a product recall or safety
18 alert.

19 (4) STUDY.—The Commission shall conduct a
20 study at such time as it considers appropriate on the
21 effectiveness of the consumer registration forms in
22 facilitating product recalls and whether such reg-
23 istration forms should be required for other chil-
24 dren’s products. Not later than 4 years after the

1 date of enactment of this Act, the Commission shall
2 report its findings to Congress.

3 (d) DEFINITION OF DURABLE INFANT OR TODDLER
4 PRODUCT.—As used in this section, the term “durable in-
5 fant or toddler product”—

6 (1) means a durable product intended for use,
7 or that may be reasonably expected to be used, by
8 children under the age of 5 years; and

9 (2) shall include—

10 (A) full-size cribs and nonfull-size cribs;

11 (B) toddler beds;

12 (C) high chairs, booster chairs, and hook-
13 on chairs;

14 (D) bath seats;

15 (E) gates and other enclosures for con-
16 fining a child;

17 (F) play yards;

18 (G) stationary activity centers;

19 (H) infant carriers;

20 (I) strollers;

21 (J) walkers;

22 (K) swings; and

23 (L) bassinets and cradles.

1 **SEC. 105. LABELING REQUIREMENT FOR CERTAIN INTER-**
2 **NET AND CATALOGUE ADVERTISING OF TOYS**
3 **AND GAMES.**

4 Section 24 of the Federal Hazardous Substances Act
5 (15 U.S.C. 1278) is amended—

6 (1) by redesignating subsections (c) and (d) as
7 subsections (d) and (e), respectively;

8 (2) by inserting after subsection (b) the fol-
9 lowing:

10 “(c) INTERNET, CATALOGUE, AND OTHER ADVER-
11 TISING.—

12 “(1) REQUIREMENT.—Effective 180 days after
13 the Consumer Product Safety Modernization Act,
14 any advertisement of a retailer, manufacturer, im-
15 porter, distributor, private labeler, or licensor that
16 provides a direct means for the purchase or ordering
17 of any toy, game, balloon, small ball, or marble that
18 requires a cautionary statement under subsections
19 (a) and (b), including advertisement on Internet
20 websites or in catalogues or other distributed mate-
21 rials, shall include the appropriate cautionary state-
22 ment required under such subsections in its entirety
23 displayed on or immediately adjacent to such adver-
24 tisement. Such cautionary statement shall be dis-
25 played in the language that is primarily used in the
26 advertisement, catalogue, or Internet website, and in

1 a clear and conspicuous manner consistent with part
2 1500 of title 16, Code of Federal Regulations (or a
3 successor regulation thereto).

4 “(2) ENFORCEMENT.—The requirement in
5 paragraph (1) shall be treated as a consumer prod-
6 uct safety rule promulgated under section 7 of the
7 Consumer Product Safety Act (15 U.S.C. 2056) and
8 the publication or distribution of any advertisement
9 that is not in compliance with the requirements of
10 paragraph (1) shall be treated as a prohibited act
11 under section 19 of such Act (15 U.S.C. 2068).

12 “(3) RULEMAKING.—Not later than 180 days
13 after the date of enactment of Consumer Product
14 Safety Modernization Act, the Commission shall, by
15 rule, modify the requirement under paragraph (1)
16 with regard to catalogues or other printed materials
17 concerning the size and placement of the cautionary
18 statement required under such paragraph as appro-
19 priate relative to the size and placement of the ad-
20 vertisements in such printed materials. The Commis-
21 sion may, under such rule, provide a grace period for
22 catalogues and printed materials printed prior to the
23 effective date in paragraph (1) during which time
24 distribution of such printed materials shall not be
25 considered a violation of such paragraph.”.

1 **SEC. 106. STUDY OF PREVENTABLE INJURIES AND DEATHS**
2 **IN MINORITY CHILDREN RELATED TO CON-**
3 **SUMER PRODUCTS.**

4 (a) **IN GENERAL.**—Not later than 90 days after the
5 date of the enactment of this Act, the Comptroller General
6 shall initiate a study to assess disparities in the risks and
7 incidence of preventable injuries and deaths among chil-
8 dren of minority populations, including Black, Hispanic,
9 American Indian, Alaskan native, and Asian/Pacific Is-
10 lander children in the United States. The Comptroller
11 General shall consult with the Commission as necessary.

12 (b) **REQUIREMENTS.**—The study shall examine the
13 racial disparities of the rates of preventable injuries and
14 deaths related to suffocation, poisonings, and drownings
15 associated with the use of cribs, mattresses and bedding
16 materials, swimming pools and spas, and toys and other
17 products intended for use by children.

18 (c) **REPORT.**—Not later than 1 year after the date
19 of the enactment of this Act, the Comptroller General shall
20 report the findings to the Committee on Energy and Com-
21 merce of the House of Representatives and the Committee
22 on Commerce, Science, and Transportation of the Senate.
23 The report shall include—

24 (1) the Comptroller General’s findings on the
25 incidence of preventable risks of injuries and deaths

1 among children of minority populations and rec-
2 ommendations for minimizing such risks;

3 (2) recommendations for public outreach,
4 awareness, and prevention campaigns specifically
5 aimed at racial minority populations; and

6 (3) recommendations for education initiatives
7 that may reduce statistical disparities.

8 **SEC. 107. REVIEW OF GENERALLY-APPLICABLE STANDARDS**
9 **FOR TOYS.**

10 (a) **ASSESSMENT.**—The Commission shall examine
11 and assess the effectiveness of the safety standard for
12 toys, ASTM-International standard F963–07, or its suc-
13 cessor standard, to determine—

14 (1) the scope of such standards, including the
15 number and type of toys to which such standards
16 apply;

17 (2) the degree of adherence to such standards
18 on the part of manufacturers; and

19 (3) the adequacy of such standards in pro-
20 tecting children from safety hazards.

21 (b) **SPECIAL FOCUS ON MAGNETS.**—In conducting
22 the assessment required under subsection (a), the Com-
23 mission shall first examine the effectiveness of the F963–
24 07 standard as it relates to intestinal blockage and per-
25 foration hazards caused by ingestion of magnets. If the

1 Commission determines based on the review that there is
2 substantial noncompliance with such standard that creates
3 an unreasonable risk of injury or hazard to children, the
4 Commission shall expedite a rulemaking to consider the
5 adoption, as a consumer product safety rule, of the vol-
6 untary safety standards contained within the ASTM
7 F963-07, or its successor standard, that relate to intes-
8 tinal blockage and perforation hazards caused by ingestion
9 of magnets.

10 (c) REPORT.—Not later than 2 years after the date
11 of enactment of this Act, the Commission shall report to
12 Congress the findings of the study conducted pursuant to
13 subsection (a). Such report shall include the Commission’s
14 opinion regarding—

15 (1) the feasibility of requiring manufacturer
16 testing of all toys to such standards; and

17 (2) whether promulgating consumer product
18 safety rules that are substantially similar or more
19 stringent than the standards described in such sub-
20 section would be beneficial to public health and safe-
21 ty.

1 **TITLE II—CONSUMER PRODUCT**
2 **SAFETY COMMISSION REFORM**

3 **SEC. 201. REAUTHORIZATION OF THE COMMISSION.**

4 (a) AUTHORIZATION OF APPROPRIATIONS.—Sub-
5 sections (a) and (b) of section 32 (15 U.S.C. 2081) are
6 amended to read as follows:

7 “(a) There are authorized to be appropriated to the
8 Commission for the purpose of carrying out the provisions
9 of this Act and any other provision of law the Commission
10 is authorized or directed to carry out—

11 “(1) \$80,000,000 for fiscal year 2009;

12 “(2) \$90,000,000 for fiscal year 2010; and

13 “(3) \$100,000,000 for fiscal year 2011.

14 “(b) In addition to the amounts specified in sub-
15 section (a), there are authorized to be appropriated
16 \$20,000,000 to the Commission for fiscal years 2009
17 through 2011, for the purpose of renovation, repair, recon-
18 struction, re-equipping, and making other necessary cap-
19 ital improvements to the Commission’s research, develop-
20 ment, and testing facility (including bringing the facility
21 into compliance with applicable environmental, safety, and
22 accessibility standards).”.

23 (b) REPORT TO CONGRESS.—Not later than 180 days
24 after the date of enactment of this Act, the Commission
25 shall transmit to Congress a report of its plans to allocate

1 the funding authorized by subsection (a). Such report
2 shall include—

3 (1) the number of full-time inspectors and other
4 full-time equivalents the Commission intends to em-
5 ploy;

6 (2) the plan of the Commission for risk assess-
7 ment and inspection of imported consumer products;

8 (3) an assessment of the feasibility of man-
9 dating bonds for serious hazards and repeat offend-
10 ers and Commission inspection and certification of
11 foreign third-party and proprietary testing facilities;
12 and

13 (4) the efforts of the Commission to reach and
14 educate retailers of second-hand products and infor-
15 mal sellers, such as thrift shops and yard sales, con-
16 cerning consumer product safety standards and
17 product recalls, especially those relating to durable
18 nursery products, in order to prevent the resale of
19 any products that have been recalled, including the
20 development of educational materials for distribution
21 not later than 1 year after the date of enactment of
22 this Act.

23 **SEC. 202. STRUCTURE AND QUORUM.**

24 (a) **EXTENSION OF TEMPORARY QUORUM.**—Notwith-
25 standing section 4(d) of the Consumer Product Safety Act

1 (15 U.S.C. 2053(d)), 2 members of the Commission, if
2 they are not affiliated with the same political party, shall
3 constitute a quorum for the transaction of business for
4 the period beginning on the date of enactment of this Act
5 through—

6 (1) August 3, 2008, if the President nominates
7 a person to fill a vacancy on the Commission prior
8 to such date; or

9 (2) the earlier of—

10 (A) 3 months after the date on which the
11 President nominates a person to fill a vacancy
12 on the Commission after such date; or

13 (B) February 3, 2009.

14 (b) REPEAL OF LIMITATION.—The first proviso in
15 the account under the heading “CONSUMER PRODUCT
16 SAFETY COMMISSION, SALARIES AND EXPENSES” in title
17 III of Public Law 102–389 (15 U.S.C. 2053 note) shall
18 cease to be in effect after fiscal year 2010.

19 **SEC. 203. SUBMISSION OF COPY OF CERTAIN DOCUMENTS**
20 **TO CONGRESS.**

21 (a) IN GENERAL.—Notwithstanding any rule, regula-
22 tion, or order to the contrary, the Commission shall com-
23 ply with the requirements of section 27(k) of the Con-
24 sumer Product Safety Act (15 U.S.C. 2076) with respect
25 to budget recommendations, legislative recommendations,

1 testimony, and comments on legislation submitted by the
2 Commission to the President or the Office of Management
3 and Budget after the date of enactment of this Act.

4 (b) REINSTATEMENT OF REQUIREMENT.—Section
5 3003(d) of Public Law 104–66 (31 U.S.C. 1113 note) is
6 amended—

7 (1) by striking “or” after the semicolon in
8 paragraph (31);

9 (2) by redesignating paragraph (32) as (33);
10 and

11 (3) by inserting after paragraph (31) the fol-
12 lowing:

13 “(32) section 27(k) of the Consumer Product
14 Safety Act (15 U.S.C. 2076(k)); or”.

15 **SEC. 204. EXPEDITED RULEMAKING.**

16 (a) RULEMAKING UNDER THE CONSUMER PRODUCT
17 SAFETY ACT.—

18 (1) ADVANCE NOTICE OF PROPOSED RULE-
19 MAKING REQUIREMENT.—Section 9 (15 U.S.C.
20 2058) is amended—

21 (A) by striking “shall be commenced” in
22 subsection (a) and inserting “may be com-
23 menced”;

24 (B) by striking “in the notice” in sub-
25 section (b) and inserting “in a notice”;

1 (C) by striking “unless, not less than 60
2 days after publication of the notice required in
3 subsection (a), the” in subsection (c) and in-
4 serting “unless the”;

5 (D) by inserting “or notice of proposed
6 rulemaking” after “advance notice of proposed
7 rulemaking” in subsection (c); and

8 (E) by striking “an advance notice of pro-
9 posed rulemaking under subsection (a) relating
10 to the product involved,” in the third sentence
11 of subsection (c) and inserting “the notice”.

12 (2) CONFORMING AMENDMENT.—Section
13 5(a)(3) (15 U.S.C. 2054(a)(3)) is amended by strik-
14 ing “an advance notice of proposed rulemaking or”.

15 (b) RULEMAKING UNDER FEDERAL HAZARDOUS
16 SUBSTANCES ACT.—

17 (1) IN GENERAL.—Section 3(a)(1) of the Fed-
18 eral Hazardous Substances Act (15 U.S.C.
19 1262(a)(1)) is amended to read as follows:

20 “(1) Whenever in the judgment of the Commission
21 such action will promote the objectives of this Act by
22 avoiding or resolving uncertainty as to its application, the
23 Commission may by regulation declare to be a hazardous
24 substance, for the purposes of this Act, any substance or

1 mixture of substances, which the Commission finds meets
2 the requirements section 2(f)(1)(A).”.

3 (2) PROCEDURE.—

4 (A) Section 2(q)(2) of the Federal Haz-
5 arduous Substances Act (15 U.S.C. 1261(q)(2))
6 is amended by striking “Proceedings for the
7 issuance, amendment, or repeal of regulations
8 pursuant to clause (B) of subparagraph (1) of
9 this paragraph shall be governed by the provi-
10 sions of sections 701(e), (f), and (g) of the Fed-
11 eral Food, Drug, and Cosmetic Act: Provided,
12 That if” and inserting “Proceedings for the
13 issuance, amendment, or repeal of regulations
14 pursuant to clause (B) of subparagraph (1) of
15 this paragraph shall be governed by the provi-
16 sions of subsections (f) through (i) of section 3
17 of this Act, except that if”.

18 (B) Section 3(a)(2) of the Federal Haz-
19 arduous Substances Act (15 U.S.C. 1262(a)(2))
20 is amended to read as follows:

21 “(2) Proceedings for the issuance, amendment, or re-
22 peal of regulations under this subsection and the admissi-
23 bility of the record of such proceedings in other pro-
24 ceedings, shall be governed by the provisions of sub-
25 sections (f) through (i) of this section.”.

1 (3) ADVANCE NOTICE OF PROPOSED RULE-
2 MAKING REQUIREMENT.—Section 3 of the Federal
3 Hazardous Substances Act (15 U.S.C. 1262) is
4 amended—

5 (A) by striking “shall be commenced” in
6 subsection (f) and inserting “may be com-
7 menced”;

8 (B) by striking “in the notice” in sub-
9 section (g)(1) and inserting “in a notice”; and

10 (C) by striking “unless, not less than 60
11 days after publication of the notice required in
12 subsection (f), the” in subsection (h) and in-
13 serting “unless the”.

14 (4) CONFORMING AMENDMENTS.—The Federal
15 Hazardous Substances Act (15 U.S.C. 1261 et seq.)
16 is amended—

17 (A) by striking subsection (d) of section 2
18 and inserting the following:

19 “(d) The term ‘Commission’ means the Consumer
20 Product Safety Commission.”;

21 (B) by striking “Secretary” each place it
22 appears and inserting “Commission” except—

23 (i) in section 10(b) (15 U.S.C.
24 1269(b));

1 (ii) in section 14 (15 U.S.C. 1273);

2 and

3 (iii) in section 21(a) (15 U.S.C.
4 1276(a));

5 (C) by striking “Department” each place it
6 appears, except in section 14(b), and inserting
7 “Commission”;

8 (D) by striking “he” and “his” each place
9 they appear in reference to the Secretary and
10 inserting “it” and “its”, respectively;

11 (E) by striking “Secretary of Health, Edu-
12 cation, and Welfare” each place it appears in
13 section 10(b) (15 U.S.C. 1269(b)) and inserting
14 “Commission”;

15 (F) by striking “Secretary of Health, Edu-
16 cation, and Welfare” each place it appears in
17 section 14 (15 U.S.C. 1273) and inserting
18 “Commission”;

19 (G) by striking “Department of Health,
20 Education, and Welfare” in section 14(b) (15
21 U.S.C. 1273(b)) and inserting “Commission”;

22 (H) by striking “Consumer Product Safety
23 Commission” each place it appears and insert-
24 ing “Commission”; and

1 (I) by striking “(hereinafter in this section
2 referred to as the ‘Commission’)” in section
3 20(a)(1) (15 U.S.C. 1275(a)(1)).

4 (c) RULEMAKING UNDER THE FLAMMABLE FABRICS
5 ACT.—

6 (1) IN GENERAL.—Section 4 of the Flammable
7 Fabrics Act (15 U.S.C. 1193) is amended—

8 (A) by striking “shall be commenced” and
9 inserting “may be commenced by a notice of
10 proposed rulemaking or”;

11 (B) in subsection (i), by striking “unless,
12 not less than 60 days after publication of the
13 notice required in subsection (g), the” and in-
14 serting “unless the”.

15 (2) OTHER CONFORMING AMENDMENTS.—The
16 Flammable Fabrics Act (15 U.S.C. 1193 et seq.) is
17 further amended—

18 (A) by striking subsection (i) of section 2
19 and inserting the following:

20 “(i) The term ‘Commission’ means the Consumer
21 Product Safety Commission.”;

22 (B) by striking “Secretary of Commerce”
23 each place it appears and inserting “the Com-
24 mission”;

1 (C) by striking “Secretary” each place it
2 appears, except in sections 9 and 14, and in-
3 sserting “Commission”;

4 (D) by striking “he” and “his” each place
5 either term appears in reference to the sec-
6 retary and insert “it” and “its”, respectively;

7 (E) in section 4(e), by striking paragraph
8 (5) and redesignating paragraph (6) as para-
9 graph (5);

10 (F) in section 15, by striking “Consumer
11 Product Safety Commission (hereinafter re-
12 ferred to as the ‘Commission’)” and inserting
13 “Commission”;

14 (G) by striking section 16(d) and inserting
15 the following:

16 “(d) In this section, a reference to a flammability
17 standard or other regulation for a fabric, related mate-
18 rials, or product in effect under this Act includes a stand-
19 ard of flammability continued in effect by section 11 of
20 the Act of December 14, 1967 (Public Law 90–189).”;
21 and

22 (H) in section 17, by striking “Consumer
23 Product Safety Commission” and inserting
24 “Commission”.

1 **SEC. 205. PUBLIC DISCLOSURE OF INFORMATION.**

2 Section 6(b) (15 U.S.C. 2055(b)) is amended—

3 (1) in paragraph (1)—

4 (A) by striking “30 days” and inserting
5 “15 days”;

6 (B) by striking “finds that the public” and
7 inserting “publishes a finding that the public”;
8 and

9 (C) by striking “and publishes such a find-
10 ing in the Federal Register”;

11 (2) in paragraph (2)—

12 (A) by striking “10 days” and inserting “5
13 days”;

14 (B) by striking “finds that the public” and
15 inserting “publishes a finding that the public”;
16 and

17 (C) by striking “and publishes such a find-
18 ing in the Federal Register”;

19 (3) in paragraph (4), by striking “section 19
20 (related to prohibited acts)” and inserting “any con-
21 sumer product safety rule under or provision of this
22 Act or similar rule under or provision of any other
23 Act administered by the Commission”; and

24 (4) in paragraph (5)—

25 (A) in subparagraph (B), by striking “;
26 or” and inserting a semicolon;

1 (B) in subparagraph (C), by striking the
2 period and inserting “; or”;

3 (C) by adding at the end the following:

4 “(D) the Commission publishes a finding that
5 the public health and safety require public disclosure
6 with a lesser period of notice than is required under
7 paragraph (1).”; and

8 (D) in the matter following such subpara-
9 graph (as added by subparagraph (C)), by
10 striking “section 19(a)” and inserting “any
11 consumer product safety rule under this Act or
12 similar rule under or provision of any other Act
13 administered by the Commission”.

14 **SEC. 206. PUBLICLY AVAILABLE INFORMATION ON INCI-**
15 **DENTS INVOLVING INJURY OR DEATH.**

16 (a) EVALUATION.—The Commission shall examine
17 and assess the efficacy of the Injury Information Clearing-
18 house maintained by the Commission pursuant to section
19 5(a) of the Consumer Product Safety Act (15 U.S.C.
20 2054(a)). The Commission shall determine the volume and
21 types of publicly available information on incidents involv-
22 ing consumer products that result in injury, illness, or
23 death and the ease and manner in which consumers can
24 access such information.

1 (b) IMPROVEMENT PLAN.—As a result of the study
2 conducted under subsection (a), the Commission shall
3 transmit to Congress, not later than 180 days after the
4 date of enactment of this Act, a detailed plan for main-
5 taining and categorizing such information on a searchable
6 Internet database to make the information more easily
7 available and beneficial to consumers, with due regard for
8 the protection of personal information. Such plan shall in-
9 clude the views of the Commission regarding whether ad-
10 ditional information, such as consumer complaints, hos-
11 pital or other medical reports, and warranty claims, should
12 be included in the database. The plan submitted under
13 this subsection shall include a detailed implementation
14 schedule for the database, recommendations for any nec-
15 essary legislation, and plans for a public awareness cam-
16 paign to be conducted by the Commission to increase con-
17 sumer awareness of the database.

18 **SEC. 207. PROHIBITION ON STOCKPILING UNDER OTHER**

19 **COMMISSION-ENFORCED STATUTES.**

20 Section 9(g)(2) (15 U.S.C. 2058(g)(2)) is amended—

21 (1) by inserting “or to which a rule under any
22 other law enforced by the Commission applies,” after
23 “applies,”; and

24 (2) by striking “consumer product safety” the
25 second, third, and fourth places it appears.

1 **SEC. 208. NOTIFICATION OF NONCOMPLIANCE WITH ANY**
2 **COMMISSION-ENFORCED STATUTE.**

3 Section 15(b) (15 U.S.C. 2064(b)) is amended—

4 (1) by redesignating paragraphs (2) and (3) as
5 paragraphs (3) and (4), respectively;

6 (2) by inserting after paragraph (1) the fol-
7 lowing:

8 “(2) fails to comply with any other rule affect-
9 ing health and safety promulgated by the Commis-
10 sion under the Federal Hazardous Substances Act,
11 the Flammable Fabrics Act, or the Poison Preven-
12 tion Packaging Act;”; and

13 (3) by adding at the end the following sentence:

14 “A report provided under this paragraph (2) may
15 not be used as the basis for criminal prosecution
16 under section 5 of the Federal Hazardous Sub-
17 stances Act (15 U.S.C. 1264), except for offenses
18 which require a showing of intent to defraud or mis-
19 lead.”.

20 **SEC. 209. ENHANCED RECALL AUTHORITY AND CORREC-**
21 **TIVE ACTION PLANS.**

22 (a) **ENHANCED RECALL AUTHORITY.**—Section 15
23 (15 U.S.C. 2064) is amended—

24 (1) in subsection (c)—

25 (A) by striking “if the Commission” and
26 inserting “(1) If the Commission”;

1 (B) by inserting “or if the Commission,
2 after notifying the manufacturer, determines a
3 product to be an imminently hazardous con-
4 sumer product and has filed an action under
5 section 12,” after “from such substantial prod-
6 uct hazard,”;

7 (C) by redesignating paragraphs (1)
8 through (3) as subparagraphs (D) through (F),
9 respectively;

10 (D) by inserting after “the following ac-
11 tions:” the following:

12 “(A) To cease distribution of the product.

13 “(B) To notify all persons that transport, store,
14 distribute, or otherwise handle the product, or to
15 which the product has been transported, sold, dis-
16 tributed, or otherwise handled, to cease immediately
17 distribution of the product.

18 “(C) To notify appropriate State and local pub-
19 lic health officials.”; and

20 (E) by adding at the end the following:

21 “(2) If a district court determines, in an action filed
22 under section 12, that the product that is the subject of
23 such action is not an imminently hazardous consumer
24 product, the Commission shall rescind any order issued
25 under this subsection with respect to such product.”.

1 (2) in subsection (f)—

2 (A) by striking “An order” and inserting
3 “(1) Except as provided in paragraph (2), an
4 order”; and

5 (B) by inserting at the end the following:

6 “(2) The requirement for a hearing in para-
7 graph (1) shall not apply to an order issued under
8 subsection (e) relating to an imminently hazardous
9 consumer product with regard to which the Commis-
10 sion has filed an action under section 12.”.

11 (b) CORRECTIVE ACTION PLANS.—Section 15(d) (15
12 U.S.C. 2064(d)) is amended—

13 (1) by inserting “(1)” after the subsection des-
14 ignation;

15 (2) by redesignating paragraphs (1), (2), and
16 (3) as subparagraphs (A), (B), and (C);

17 (3) by striking “more (A)” in subparagraph
18 (C), as redesignated, and inserting “more (i)”;

19 (4) by striking “or (B)” in subparagraph (C),
20 as redesignated, and inserting “or (ii)”;

21 (5) by striking “An order under this subsection
22 may” and inserting:

23 “(2) An order under this subsection shall”;

24 (6) by striking “, satisfactory to the Commis-
25 sion,” and inserting “, as promptly as practicable

1 under the circumstances, as determined by the Com-
2 mission, for approval by the Commission,”; and

3 (7) by adding at the end the following:

4 “(3)(A) If the Commission approves an action plan,
5 it shall indicate its approval in writing.

6 “(B) If the Commission finds that an approved action
7 plan is not effective or appropriate under the cir-
8 cumstances, or that the manufacturer, retailer, or dis-
9 tributor is not executing an approved action plan effec-
10 tively, the Commission may, by order, amend, or require
11 amendment of, the action plan. In determining whether
12 an approved plan is effective or appropriate under the cir-
13 cumstances, the Commission shall consider whether a re-
14 pair or replacement changes the intended functionality of
15 the product.

16 “(C) If the Commission determines, after notice and
17 opportunity for comment, that a manufacturer, retailer,
18 or distributor has failed to comply substantially with its
19 obligations under its action plan, the Commission may re-
20 voke its approval of the action plan.”.

21 (c) CONTENT OF NOTICE.—Section 15 is further
22 amended by adding at the end the following:

23 “(i) Not later than 180 days after the date of enact-
24 ment of this Act, the Commission shall, by rule, establish
25 guidelines setting forth a uniform class of information to

1 be included in any notice required under an order under
2 subsection (c) or (d) of this section or under section 12.
3 Such guidelines shall include any information that the
4 Commission determines would be helpful to consumers
5 in—

6 “(1) identifying the specific product that is sub-
7 ject to such an order;

8 “(2) understanding the hazard that has been
9 identified with such product (including information
10 regarding incidents or injuries known to have oc-
11 curred involving such product); and

12 “(3) understanding what remedy, if any, is
13 available to a consumer who has purchased the prod-
14 uct.”.

15 **SEC. 210. WEBSITE NOTICE, NOTICE TO THIRD PARTY**
16 **INTERNET SELLERS, AND RADIO AND TELE-**
17 **VISION NOTICE.**

18 Section 15(c)(1) (15 U.S.C. 2064(c)(1)) is amended
19 by inserting “, including posting clear and conspicuous no-
20 tice on its Internet website, providing notice to any third
21 party Internet website on which such manufacturer, re-
22 tailer, or distributor has placed the product for sale, and
23 announcements in languages other than English and on
24 radio and television where the Commission determines
25 that a substantial number of consumers to whom the recall

1 is directed may not be reached by other notice” after
2 “comply”.

3 **SEC. 211. INSPECTION OF CERTIFIED PROPRIETARY LAB-**
4 **ORATORIES.**

5 Section 16(a)(1) is amended by striking “or (B)” and
6 inserting “(B) any proprietary laboratories certified under
7 section 14(e), or (C)”.

8 **SEC. 212. IDENTIFICATION OF MANUFACTURER, IMPORT-**
9 **ERS, RETAILERS, AND DISTRIBUTORS.**

10 (a) IN GENERAL.—Section 16 (15 U.S.C. 2065) is
11 further amended by adding at the end thereof the fol-
12 lowing:

13 “(c) Upon request by an officer or employee duly des-
14 ignated by the Commission—

15 “(1) every importer, retailer, or distributor of a
16 consumer product (or other product or substance
17 over which the Commission has jurisdiction under
18 this or any other Act) shall identify the manufac-
19 turer of that product by name, address, or such
20 other identifying information as the officer or em-
21 ployee may request, to the extent that such informa-
22 tion is in the possession of the importer, retailer, or
23 distributor; and

1 “(2) every manufacturer shall identify by name,
2 address, or such other identifying information as the
3 officer or employee may request—

4 “(A) each retailer or distributor to which
5 the manufacturer directly supplied a given con-
6 sumer product (or other product or substance
7 over which the Commission has jurisdiction
8 under this or any other Act);

9 “(B) each subcontractor involved in the
10 production or fabrication or such product or
11 substance; and

12 “(C) each subcontractor from which the
13 manufacturer obtained a component thereof.”.

14 (b) COMPLIANCE REQUIRED FOR IMPORTATION.—
15 Section 17 (15 U.S.C. 2066) is amended—

16 (1) in subsection (g), by striking “may” and in-
17 serting “shall”; and

18 (2) in subsection (h)(2), by striking “may” and
19 inserting “shall, consistent with section 6,”.

20 **SEC. 213. EXPORT OF RECALLED AND NON-CONFORMING**
21 **PRODUCTS.**

22 (a) IN GENERAL.—Section 18 (15 U.S.C. 2067) is
23 amended by adding at the end the following:

24 “(c) Notwithstanding any other provision of this sec-
25 tion, the Commission may prohibit, by order, a person

1 from exporting from the United States for purpose of sale
2 any consumer product, or other product or substance that
3 is regulated under any Act enforced by the Commission,
4 that the Commission determines, after notice to the manu-
5 facturer—

6 “(1) is not in conformity with an applicable
7 consumer product safety rule under this Act or a
8 similar rule under any such other Act;

9 “(2) is subject to an order issued under section
10 12 or 15 of this Act or designated as a banned haz-
11 ardous substance under the Federal Hazardous Sub-
12 stances Act (15 U.S.C. 1261 et seq.); or

13 “(3) is subject to a voluntary corrective action
14 taken by the manufacturer, in consultation with the
15 Commission, of which action the Commission has
16 notified the public and that would have been subject
17 to a mandatory corrective action under this or an-
18 other Act enforced by the Commission if voluntary
19 action had not been taken by the manufacturer,
20 unless the importing country has notified the Commission
21 that such country accepts the importation of such product,
22 provided that if the importing country has not so notified
23 the Commission within 30 days after the Commission has
24 provided notice to the importing country of the impending
25 shipment, the Commission may take such action as is ap-

1 appropriate with respect to the disposition of the product
2 under the circumstances.”.

3 (b) PROHIBITED ACT.—Section 19(a)(10) (15 U.S.C.
4 2068(a)(10)) is amended by striking the period at the end
5 and inserting “ or violate an order of the Commission
6 issued under section 18(c); or”.

7 (c) CONFORMING AMENDMENTS TO OTHER ACTS.—

8 (1) FEDERAL HAZARDOUS SUBSTANCES ACT.—

9 Section 5(b)(3) of the Federal Hazardous Sub-
10 stances Act (15 U.S.C. 1264(b)(3)) is amended by
11 striking “substance presents an unreasonable risk of
12 injury to persons residing in the United States” and
13 inserting “substance is prohibited under section
14 18(c) of the Consumer Product Safety Act,”.

15 (2) FLAMMABLE FABRICS ACT.—Section 15 of
16 the Flammable Fabrics Act (15 U.S.C. 1202) is
17 amended by adding at the end the following:

18 “(d) Notwithstanding any other provision of this sec-
19 tion, the Consumer Product Safety Commission may pro-
20 hibit, by order, a person from exporting from the United
21 States for purpose of sale any fabric, related material, or
22 product that the Commission determines, after notice to
23 the manufacturer—

1 “(1) is not in conformity with an applicable
2 consumer product safety rule under the Consumer
3 Product Safety Act or with a rule under this Act;

4 “(2) is subject to an order issued under section
5 12 or 15 of the Consumer Product Safety Act or
6 designated as a banned hazardous substance under
7 the Federal Hazardous Substances Act (15 U.S.C.
8 1261 et seq.); or

9 “(3) is subject to a voluntary corrective action
10 taken by the manufacturer, in consultation with the
11 Commission, of which action the Commission has
12 notified the public and that would have been subject
13 to a mandatory corrective action under this or an-
14 other Act enforced by the Commission if voluntary
15 action had not been taken by the manufacturer,
16 unless the importing country has notified the Commission
17 that such country accepts the importation of such product,
18 provided that if the importing country has not so notified
19 the Commission within 30 days after the Commission has
20 provided notice to the importing country of the impending
21 shipment, the Commission may take such action as is ap-
22 propriate with respect to the disposition of the product
23 under the circumstances.”.

1 **SEC. 214. PROHIBITION ON SALE OF RECALLED PRODUCTS.**

2 Section 19(a) (as amended by section 210) (15
3 U.S.C. 2068(a)) is further amended—

4 (1) by striking paragraph (1) and inserting the
5 following:

6 “(1) sell, offer for sale, manufacture for sale,
7 distribute in commerce, or import into the United
8 States any consumer product, or other product or
9 substance that is regulated under any other Act en-
10 forced by the Commission, that is—

11 “(A) not in conformity with an applicable
12 consumer product safety standard under this
13 Act, or any similar rule under any such other
14 Act;

15 “(B) subject to voluntary corrective action
16 taken by the manufacturer, in consultation with
17 the Commission, of which action the Commis-
18 sion has notified the public;

19 “(C) subject to an order issued under sec-
20 tion 12 or 15 of this Act; or

21 “(D) designated a banned hazardous sub-
22 stance under the Federal Hazardous Sub-
23 stances Act (15 U.S.C. 1261 et seq.);”;

24 (2) by striking “or” after the semicolon in
25 paragraph (7);

1 (3) by striking “and” after the semicolon in
2 paragraph (8); and

3 (4) by striking “insulation).” in paragraph (9)
4 and inserting “insulation);”.

5 **SEC. 215. INCREASED CIVIL PENALTY.**

6 (a) **MAXIMUM CIVIL PENALTIES OF THE CONSUMER**
7 **PRODUCT SAFETY COMMISSION.—**

8 (1) **INITIAL INCREASE IN MAXIMUM CIVIL PEN-**
9 **ALTIES.—**

10 (A) **TEMPORARY INCREASE.—**Notwith-
11 standing the dollar amounts specified for max-
12 imum civil penalties specified in section
13 20(a)(1) of the Consumer Product Safety Act
14 (15 U.S.C. 2069(a)(1)), section 5(c)(1) of the
15 Federal Hazardous Substances Act, and section
16 5(e)(1) of the Flammable Fabrics Act (15
17 U.S.C. 1194(e)(1)), the maximum civil pen-
18 alties for any violation specified in such sections
19 shall be \$5,000,000, beginning on the date that
20 is the earlier of the date on which final regula-
21 tions are issued under section 3(b) or 360 days
22 after the date of enactment of this Act.

23 (B) **EFFECTIVE DATE.—**Paragraph (1)
24 shall cease to be in effect on the date on which

1 the amendments made by subsection (b)(1)
2 shall take effect.

3 (2) PERMANENT INCREASE IN MAXIMUM CIVIL
4 PENALTIES.—

5 (A) AMENDMENTS.—

6 (i) CONSUMER PRODUCT SAFETY
7 ACT.—Section 20(a)(1) (15 U.S.C.
8 2069(a)(1)) is amended by striking
9 “\$1,250,000” both places it appears and
10 inserting “\$10,000,000”.

11 (ii) FEDERAL HAZARDOUS SUB-
12 STANCES ACT.—Section 5(c)(1) of the Fed-
13 eral Hazardous Substances Act (15 U.S.C.
14 1264(c)(1)) is amended by striking
15 “\$1,250,000” both places it appears and
16 inserting “\$10,000,000”.

17 (iii) FLAMMABLE FABRICS ACT.—Sec-
18 tion 5(e)(1) of the Flammable Fabrics Act
19 (15 U.S.C. 1194(e)(1)) is amended by
20 striking “\$1,250,000” and inserting
21 “\$10,000,000”.

22 (B) EFFECTIVE DATE.—The amendments
23 made by paragraph (1) shall take effect on the
24 date that is 1 year after the earlier of—

1 (i) the date on which final regulations
2 are issued pursuant to section 3(b); or

3 (ii) 360 days after the date of enact-
4 ment of this Act.

5 (b) DETERMINATION OF PENALTIES BY THE CON-
6 SUMER PRODUCT SAFETY COMMISSION.—

7 (1) FACTORS TO BE CONSIDERED.—

8 (A) CONSUMER PRODUCT SAFETY ACT.—

9 Section 20(b) (15 U.S.C. 2069(b)) is amend-
10 ed—

11 (i) by inserting “the nature, cir-
12 cumstances, extent, and gravity of the vio-
13 lation, including” after “shall consider”;

14 (ii) by striking “products distributed,
15 and” and inserting “products distrib-
16 uted,”; and

17 (iii) by inserting “, and such other
18 factors as appropriate” before the period.

19 (B) FEDERAL HAZARDOUS SUBSTANCES

20 ACT.—Section 5(c)(3) of the Federal Haz-
21 ardous Substances Act (15 U.S.C. 1264(c)(3))

22 is amended—

23 (i) by inserting “the nature, cir-
24 cumstances, extent ,and gravity of the vio-
25 lation, including” after “shall consider”;

1 (ii) by striking “substance distributed,
2 and” and inserting “substance distrib-
3 uted,”; and

4 (iii) by inserting “, and such other
5 factors as appropriate” before the period.

6 (C) FLAMMABLE FABRICS ACT.—Section
7 5(e)(2) of the Flammable Fabrics Act (15
8 U.S.C. 1194(e)(2)) is amended—

9 (i) by striking “nature and number”
10 and inserting “nature, circumstances, ex-
11 tent, and gravity”;

12 (ii) by striking “absence of injury,
13 and” and inserting “absence of injury,”;
14 and

15 (iii) by inserting “, and such other
16 factors as appropriate” before the period.

17 (2) REGULATIONS.—Not later than 1 year after
18 the date of enactment of this Act, and in accordance
19 with the procedures of section 553 of title 5, United
20 States Code, the Commission shall issue a final reg-
21 ulation providing its interpretation of the penalty
22 factors described in section 20(b) of the Consumer
23 Product Safety Act (15 U.S.C. 2069(b)), section
24 5(c)(3) of the Federal Hazardous Substances Act
25 (15 U.S.C. 1264(e)(3)), and section 5(e)(2) of the

1 Flammable Fabrics Act (15 U.S.C. 1194(e)(2)), as
2 amended by subsection (a).

3 **SEC. 216. CRIMINAL PENALTIES TO INCLUDE ASSET FOR-**
4 **FEITURE.**

5 Section 21 (15 U.S.C. 2070) is amended by adding
6 at the end thereof the following:

7 “(c)(1) In addition to the penalty provided by sub-
8 section (a), the penalty for a criminal violation of this Act
9 or any other Act enforced by the Commission may include
10 the forfeiture of assets associated with the violation.

11 “(2) In this subsection, the term ‘criminal violation’
12 means a violation of this Act of any other Act enforced
13 by the Commission for which the violator is sentenced
14 under this section, section 5(a) of the Federal hazardous
15 Substances Act (15 U.S.C. 2064(a)), or section 7 of the
16 Flammable Fabrics Act (15 U.S.C. 1196).”.

17 **SEC. 217. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

18 Section 24 (15 U.S.C. 2073) is amended—

19 (1) in the section heading, by striking “PRI-
20 VATE” and inserting “ADDITIONAL”;

21 (2) by striking “Any interested person” and in-
22 serting “(a) Any interested person”; and

23 (3) by striking “No separate suit” and all that
24 follows and inserting the following:

1 “(b)(1) The attorney general of a State, alleging a
2 violation of section 19(a) that affects or may affect such
3 State or its residents may bring an action on behalf of
4 the residents of the State in any United States district
5 court for the district in which the defendant is found or
6 transacts business to enforce a consumer product safety
7 rule or an order under section 15, and to obtain appro-
8 priate injunctive relief.

9 “(2) Not less than thirty days prior to the commence-
10 ment of such action, the attorney general shall give notice
11 by registered mail to the Commission, to the Attorney
12 General, and to the person against whom such action is
13 directed. Such notice shall state the nature of the alleged
14 violation of any such standard or order, the relief to be
15 requested, and the court in which the action will be
16 brought. The Commission shall have the right—

17 “(A) to intervene in the action;

18 “(B) upon so intervening, to be heard on all
19 matters arising therein;

20 “(C) and to file petitions for appeal.

21 “(c) No separate suit shall be brought under this sec-
22 tion if at the time the suit is brought the same alleged
23 violation is the subject of a pending civil or criminal action
24 by the United States under this Act. In any action under
25 this section the court may in the interest of justice award

1 the costs of suit, including reasonable attorneys' fees (de-
2 termined in accordance with section 11(f)) and reasonable
3 expert witnesses' fees.”.

4 **SEC. 218. EFFECT OF RULES ON PREEMPTION.**

5 In issuing any rule or regulation in accordance with
6 its statutory authority, the Commission shall not seek to
7 expand or contract the scope, or limit, modify, interpret,
8 or extend the application of sections 25 and 26 of the Con-
9 sumer Products Safety Act (15 U.S.C. 2074 and 2075,
10 respectively), section 18 of the Federal Hazardous Sub-
11 stances Act (15 U.S.C. 1261), section 7 of the Poison Pre-
12 vention Packaging Act (15 U.S.C. 1476), or section 16
13 of the Flammable Fabrics Act (15 U.S.C. 1203) with re-
14 gard to the extent to which each such Act preempts, limits,
15 or otherwise affects any other Federal, State, or local law,
16 or limits or otherwise affects any cause of action under
17 State or local law.

18 **SEC. 219. SHARING OF INFORMATION WITH FEDERAL,**
19 **STATE, LOCAL, AND FOREIGN GOVERNMENT**
20 **AGENCIES.**

21 Section 29 (15 U.S.C. 2078) is amended by adding
22 at the end the following:

23 “(f)(1) The Commission may make information ob-
24 tained by the Commission under this Act available (con-
25 sistent with the requirements of section 6) to any Federal,

1 State, local, or foreign government agency upon the prior
2 certification of an appropriate official of any such agency,
3 either by a prior agreement or memorandum of under-
4 standing with the Commission or by other written certifi-
5 cation, that such material will be maintained in confidence
6 and will be used only for official law enforcement or con-
7 sumer protection purposes, if—

8 “(A) the agency has set forth a bona fide legal
9 basis for its authority to maintain the material in
10 confidence;

11 “(B) the materials are to be used for purposes
12 of investigating, or engaging in enforcement pro-
13 ceedings related to, possible violations of—

14 “(i) laws regulating the manufacture, im-
15 portation, distribution, or sale of defective or
16 unsafe consumer products, or other practices
17 substantially similar to practices prohibited by
18 any law administered by the Commission;

19 “(ii) a law administered by the Commis-
20 sion, if disclosure of the material would further
21 a Commission investigation or enforcement pro-
22 ceeding; or

23 “(iii) with respect to a foreign law enforce-
24 ment agency, with the approval of the Attorney
25 General, other foreign criminal laws, if such

1 foreign criminal laws are offenses defined in or
2 covered by a criminal mutual legal assistance
3 treaty in force between the government of the
4 United States and the foreign law enforcement
5 agency's government; and

6 “(C) in the case of a foreign government agen-
7 cy, such agency is not from a foreign state that the
8 Secretary of State has determined, in accordance
9 with section 6(j) of the Export Administration Act
10 of 1979 (50 U.S.C. App. 2405(j)), has repeatedly
11 provided support for acts of international terrorism,
12 unless and until such determination is rescinded
13 pursuant to section 6(j)(4) of that Act (50 U.S.C.
14 App. 2405(j)(4)).

15 “(2) The Commission may abrogate any agree-
16 ment or memorandum of understanding entered into
17 under paragraph (1) if the Commission determines
18 that the agency with which such agreement or
19 memorandum of understanding was entered into has
20 failed to maintain in confidence any information pro-
21 vided under such agreement or memorandum of un-
22 derstanding, or has used any such information for
23 purposes other than those set forth in such agree-
24 ment or memorandum of understanding.

1 “(3)(A) Except as provided in subparagraph
2 (B) of this paragraph, the Commission shall not be
3 required to disclose under section 552 of title 5,
4 United States Code, or any other provision of law—

5 “(i) any material obtained from a foreign
6 government agency, if the foreign government
7 agency has requested confidential treatment, or
8 has precluded such disclosure under other use
9 limitations, as a condition of providing the ma-
10 terial;

11 “(ii) any material reflecting a consumer
12 complaint obtained from any other foreign
13 source, if that foreign source supplying the ma-
14 terial has requested confidential treatment as a
15 condition of providing the material; or

16 “(iii) any material reflecting a consumer
17 complaint submitted to a Commission reporting
18 mechanism sponsored in part by foreign govern-
19 ment agencies.

20 “(B) Nothing in this subsection shall authorize
21 the Commission to withhold information from the
22 Congress or prevent the Commission from complying
23 with an order of a court of the United States in an
24 action commenced by the United States or the Com-
25 mission.

1 “(4) In this subsection, the term ‘foreign government
2 agency’ means—

3 “(A) any agency or judicial authority of a for-
4 eign government, including a foreign state, a polit-
5 ical subdivision of a foreign state, or a multinational
6 organization constituted by and comprised of foreign
7 states, that is vested with law enforcement or inves-
8 tigative authority in civil, criminal, or administrative
9 matters; and

10 “(B) any multinational organization, to the ex-
11 tent that it is acting on behalf of an entity described
12 in subparagraph (A).

13 “(g) Whenever the Commission is notified of any vol-
14 untary recall of any consumer product self-initiated by a
15 manufacturer (or a retailer in the case of a retailer selling
16 a product under its own label), or issues an order under
17 section 15(c) or (d) with respect to any product, the Com-
18 mission shall notify each State’s health department or
19 other agency designated by the State of the recall or
20 order.”.

21 **SEC. 220. INSPECTOR GENERAL AUTHORITY AND ACCESSI-**
22 **BILITY.**

23 (a) REPORT.—Not later than 60 days after the date
24 of the enactment of this Act, the Inspector General of the
25 Commission shall transmit a report to Congress on the

1 activities of the Inspector General, any structural barriers
2 which prevent the Inspector General from providing robust
3 oversight of the activities of the Commission, and any ad-
4 ditional authority or resources that would facilitate more
5 effective oversight.

6 (b) EMPLOYEE COMPLAINTS.—

7 (1) IN GENERAL.—The Inspector General of
8 the Commission shall conduct a review of—

9 (A) complaints received by the Inspector
10 General from employees of the Commission
11 about violations of rules, regulations, or the
12 provisions of any Act enforced by the Commis-
13 sion; and

14 (B) the process by which corrective action
15 plans are negotiated with such employees by the
16 Commission, including an assessment of the
17 length of time for these negotiations and the ef-
18 fectiveness of the plans.

19 (2) REPORT.—Not later than 1 year after the
20 date of enactment of this Act, the Inspector General
21 shall transmit a report to the Commission and to
22 Congress setting forth the Inspector General’s find-
23 ings, conclusions, actions taken in response to em-
24 ployee complaints, and recommendations.

1 (c) COMPLAINT PROCEDURE.—Not later than 30
2 days after the date of enactment of this Act the Commis-
3 sion shall establish and maintain on the homepage of the
4 Commission’s Internet website a mechanism by which in-
5 dividuals may anonymously report incidents of waste,
6 fraud, or abuse with respect to the Commission.

7 **SEC. 221. REPEAL.**

8 Section 30 (15 U.S.C. 2079) is amended by striking
9 subsection (d) and redesignating subsections (e) and (f)
10 as subsections (d) and (e), respectively.

11 **SEC. 222. INDUSTRY-SPONSORED TRAVEL BAN.**

12 The Consumer Product Safety Act (15 U.S.C. 1251
13 et seq.) is amended by adding at the end the following
14 new section:

15 **“SEC. 38. PROHIBITION ON INDUSTRY-SPONSORED TRAVEL.**

16 “(a) PROHIBITION.—Notwithstanding section 1353
17 of title 31, United States Code, no Commissioner or em-
18 ployee of the Commission shall accept travel, subsistence,
19 and related expenses with respect to attendance by a Com-
20 missioner or employee at any meeting or similar function
21 relating to official duties of a Commissioner or an em-
22 ployee, from a person—

23 “(1) seeking official action from, doing business
24 with, or conducting activities regulated by, the Com-
25 mission; or

1 “(2) whose interests may be substantially af-
2 fected by the performance or nonperformance of the
3 Commissioner’s or employee’s official duties.

4 “(b) AUTHORIZATION OF APPROPRIATIONS FOR OF-
5 FICIAL TRAVEL.—There are authorized to be appro-
6 priated, for each of fiscal years 2009 through 2011,
7 \$1,200,000 to the Commission for certain travel and lodg-
8 ing expenses necessary in furtherance of the official duties
9 of Commissioners and employees.”.

10 **SEC. 223. ANNUAL REPORTING REQUIREMENT.**

11 Section 27(j) (15 U.S.C. 2076(j)) is amended—

12 (1) in the matter preceding paragraph (1), by
13 striking “The Commission” and inserting “Notwith-
14 standing section 3003 of the Federal Reports Elimini-
15 nation and Sunset Act of 1995 (31 U.S.C. 1113
16 note), the Commission”; and

17 (2) by redesignating paragraphs (5) through
18 (11) as paragraphs (6) through (12), respectively
19 and inserting after paragraph (4) the following:

20 “(5) the number and summary of recall orders
21 issued under section 12 or 15 during such year and
22 a summary of voluntary actions taken by manufac-
23 turers of which the Commission has notified the
24 public, and an assessment of such orders and ac-
25 tions;”.

1 **SEC. 224. STUDY ON THE EFFECTIVENESS OF AUTHORITY**
2 **RELATING TO IMPORTED PRODUCTS.**

3 The Commission shall study the effectiveness of sec-
4 tion 17(a) of the Consumer Product Safety Act (15 U.S.C.
5 2066(a)), specifically paragraphs (3) and (4) of such sec-
6 tion, to determine a specific strategy to increase the effec-
7 tiveness of the Commission's ability to stop unsafe prod-
8 ucts from entering the United States. The Commission
9 shall submit a report to Congress not later than 9 months
10 after enactment of this Act, which shall include rec-
11 ommendations regarding additional authority the Commis-
12 sion needs to implement such strategy, including any nec-
13 essary legislation.

Passed the House of Representatives December 19,
2007.

Attest:

Clerk.

110TH CONGRESS
1ST SESSION

H. R. 4040

AN ACT

To establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission.