

[DISCUSSION DRAFT]

MARCH 11, 2010

111TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To ensure effective implementation of consumer product safety laws by providing exceptions to lead and phthalate prohibitions and regulatory relief for thrift stores, small manufacturers, and other businesses.

IN THE HOUSE OF REPRESENTATIVES

M. \_\_\_\_\_ introduced the following bill; which was referred to the Committee on \_\_\_\_\_

**A BILL**

To ensure effective implementation of consumer product safety laws by providing exceptions to lead and phthalate prohibitions and regulatory relief for thrift stores, small manufacturers, and other 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. SHORT TITLE.**

4 This Act may be cited as the “Consumer Product  
5 Safety Enhancement Act of 2010”.

1 **SEC. 2. REGULATORY FLEXIBILITY ON LEAD CONTENT.**

2 Section 101(b) of the Consumer Product Safety Im-  
3 provement Act of 2008 (15 U.S.C. 1278a(b)) is amend-  
4 ed—

5 (1) by striking “EXCLUSION OF CERTAIN MA-  
6 TERIALS OR PRODUCTS AND INACCESSIBLE COMPO-  
7 NENT PARTS” and inserting “EXCEPTIONS AND EX-  
8 CLUSIONS”;

9 (2) in paragraph (1)—

10 (A) by striking “CERTAIN PRODUCTS OR  
11 MATERIALS” and inserting “EXCEPTION IF NO  
12 ABSORPTION OR OTHER ADVERSE IMPACT”; and

13 (B) by striking “exclude a specific product  
14 or material from the prohibition in subsection  
15 (a)” and inserting “grant an exception to the  
16 prohibition in subsection (a) for a specific prod-  
17 uct or material”;

18 (3) by redesignating paragraphs (2) through  
19 (5) as paragraphs (5) through (8), respectively;

20 (4) by inserting after paragraph (1) the fol-  
21 lowing:

22 “(2) FUNCTIONAL PURPOSE EXCEPTION.—

23 “(A) IN GENERAL.—The Commission, on  
24 its own initiative or upon petition by an inter-  
25 ested party, may grant an exception to the pro-  
26 hibition in subsection (a) for a specific product,

1 material, or component part if the Commission,  
2 after notice and comment in accordance with  
3 subparagraph (C), determines that—

4 “(i) the product, material, or compo-  
5 nent part requires the inclusion of lead be-  
6 cause it is not practicable or not techno-  
7 logically feasible to manufacture such  
8 product, component part, or material in  
9 accordance with subsection (a) by remov-  
10 ing the excessive lead or by making the  
11 lead inaccessible;

12 “(ii) the product, material, or compo-  
13 nent part is not likely to be placed in the  
14 mouth or ingested, taking into account  
15 normal and foreseeable use and abuse of  
16 such product, material, or component part  
17 by a child; and

18 “(iii) an exception for the product,  
19 component part, or material will have no  
20 measurable adverse effect on public health  
21 or safety.

22 “(B) WARNINGS.—In the case of a prod-  
23 uct, component part, or material for which the  
24 Commission grants an exception under subpara-  
25 graph (A), the Commission may require that

1 such product, component part, or material, or  
2 its packaging, as practicable, bear a label  
3 that—

4 “(i) indicates that such product, com-  
5 ponent part, or material contains lead;

6 “(ii) indicates that such lead content  
7 is subject to an exception under subpara-  
8 graph (A); and

9 “(iii) gives adequate directions and  
10 warnings for safe use of such product,  
11 component part, or material, as necessary  
12 to protect the public health.

13 “(C) PROCEDURES FOR GRANTING EXCEP-  
14 TION.—

15 “(i) NOTICE AND COMMENT PE-  
16 RIOD.—Before granting an exception under  
17 subparagraph (A), the Commission shall  
18 allow not fewer than 60 days for public  
19 comment after publishing the notice of the  
20 proposed exception.

21 “(ii) BURDEN OF PROOF.—A party  
22 seeking an exception under subparagraph  
23 (A) has the burden of demonstrating that  
24 it meets the requirements of such subpara-  
25 graph.

1           “(iii) GROUND FOR DECISION.—In  
2           the case where a party has petitioned for  
3           an exception, in determining whether to  
4           grant the exception, the Commission may  
5           confine the evidence it considers to only  
6           that evidence presented by the party seek-  
7           ing such exception.

8           “(iv) ADMISSIBLE EVIDENCE.—In  
9           demonstrating that it meets the require-  
10          ments of subparagraph (A), a party seek-  
11          ing an exception under such subparagraph  
12          may rely on any nonproprietary informa-  
13          tion submitted by any other party seeking  
14          such an exception.

15          “(v) NARROWEST POSSIBLE SCOPE OF  
16          EXCEPTION.—If an exception is sought for  
17          an entire product, the burden is on the pe-  
18          titioning party to demonstrate that the cri-  
19          teria in subparagraph (A) are met with re-  
20          spect to every component of the product.

21          “(D) LIMITATION ON EXCEPTION.—If the  
22          Commission grants an exception for a product,  
23          component part, or material under subpara-  
24          graph (A), the Commission may, as necessary  
25          to protect the public health and safety—

1 “(i) require each manufacturer of  
2 such product, component part, or material  
3 to reduce the lead in such product, compo-  
4 nent part, or material to a level above that  
5 required by subsection (a); or

6 “(ii) place an expiration date on such  
7 exception or establish a schedule by which  
8 such product, component part, or material  
9 shall be in full compliance with the limits  
10 in subsection (a).

11 “(E) APPLICATION OF EXCEPTION.—An  
12 exception under subparagraph (A) for a prod-  
13 uct, component part, or material shall apply re-  
14 gardless of the date of manufacture unless the  
15 Commission expressly provides otherwise.”; and  
16 (5) in the heading of paragraph (5) (as so re-  
17 designated), by striking “EXCEPTION” and inserting  
18 “EXCLUSION”.

19 **SEC. 3. RELIEF FOR THRIFT STORES AND OTHER RETAIL-**  
20 **ERS.**

21 (a) EXCLUSION OF CERTAIN USED CHILDREN’S  
22 PRODUCTS.—101(b) of the Consumer Product Safety Im-  
23 provement Act of 2008 (15 U.S.C. 1278a(b)) (as amended  
24 by section 2) is further amended by inserting after para-  
25 graph (2) (as added by section 2) the following:

1           “(3) EXCLUSION OF CERTAIN USED CHIL-  
2 DREN’S PRODUCTS.—

3           “(A) GENERAL EXCLUSION.—The lead  
4 limits established under subsection (a) shall not  
5 apply to a used children’s product.

6           “(B) DEFINITION.—The term ‘used chil-  
7 dren’s product’ means a children’s product that  
8 was obtained by the seller for use and not for  
9 the purpose of resale or was obtained by the  
10 seller from a person who obtained such chil-  
11 dren’s product for use and not for the purpose  
12 of resale. Such term shall not include—

13           “(i) children’s metal jewelry;

14           “(ii) painted children’s toys (as the  
15 term ‘children’s toy’ is defined in section  
16 108(e)(1)(B));

17           “(iii) items composed primarily of ac-  
18 cessible vinyl; or

19           “(iv) any other children’s product des-  
20 ignated by the Commission.

21           For purposes of this definition, the term ‘seller’  
22 includes a person who lends or donates a chil-  
23 dren’s product.

24           “(4) PROHIBITION ON SALE OF RECALLED  
25 PRODUCTS NOT AFFECTED.—Nothing in this sub-

1 section shall be construed as affecting the prohibi-  
2 tion under section 19(a)(2) of the Consumer Prod-  
3 uct Safety Act (15 U.S.C. 2068(a)(2)).”.

4 (b) PROSPECTIVE APPLICATION OF 100 PPM LEAD  
5 LIMIT.—Section 101(a)(2)(C) of the Consumer Product  
6 Safety Improvement Act of 2008 (15 U.S.C.  
7 1278a(a)(2)(C)) is amended by inserting “in the case of  
8 a product manufactured on or after such date,” after “this  
9 Act,”.

10 **SEC. 4. RELIEF FOR SMALL MANUFACTURERS AND OTHER**  
11 **BUSINESSES.**

12 (a) ALTERNATIVE THIRD-PARTY TESTING REQUIRE-  
13 MENTS FOR LOW-VOLUME MANUFACTURERS.—Section  
14 14(d) of the Consumer Product Safety Act (15 U.S.C.  
15 2063(d)) is amended by adding at the end the following  
16 new paragraph:

17 “(3) SPECIAL RULES FOR LOW-VOLUME MANU-  
18 FACTURERS.—

19 “(A) IN GENERAL.—Subject to subpara-  
20 graph (B), in implementing the third party  
21 testing requirements under this section, the  
22 Commission shall take into consideration any  
23 economic, administrative, or other limits on the  
24 ability of low-volume manufacturers to comply  
25 with such requirements and may, by regulation,

1 provide alternative testing requirements for low-  
2 volume manufacturers in lieu of those required  
3 under subsection (a) or (b). Any such alter-  
4 native requirements shall provide for reasonable  
5 testing methodologies to assure certification  
6 based on compliance with the relevant consumer  
7 product safety standards. The Commission may  
8 allow such alternative testing methodologies  
9 with respect to a specific product or product  
10 class or with respect to a specific safety stand-  
11 ard or component of a safety standard.

12 “(B) LIMITATION.—The Commission shall  
13 not provide or permit to continue in effect any  
14 alternative testing requirements under this  
15 paragraph where third party testing of the  
16 product is necessary to protect the public health  
17 and safety. The Commission shall not provide  
18 any alternative testing requirements for—

19 “(i) any of the testing requirements  
20 described in clauses (i) through (v) of sub-  
21 section (a)(3)(B); or

22 “(ii) durable infant or toddler prod-  
23 ucts, as defined in section 104(f) of the  
24 Consumer Product Safety Improvement  
25 Act (15 U.S.C. 2056a(f)).”.

1 (b) OFFICE FOR BUSINESS EDUCATION, OUTREACH,  
2 AND ADVOCACY WITH FOCUS ON SMALL BUSINESSES.—  
3 Section 27 of the Consumer Product Safety Act (15  
4 U.S.C. 2076) is amended by adding at the end the fol-  
5 lowing:

6 “(l) OFFICE FOR BUSINESS EDUCATION, OUTREACH,  
7 AND ADVOCACY.—The Commission shall establish an Of-  
8 fice for Business Education, Outreach, and Advocacy to  
9 assist the Commission in informing and educating manu-  
10 facturers and retailers about requirements under this Act  
11 or any other Act enforced by the Commission. Such office  
12 shall provide special assistance and guidance to low-vol-  
13 ume manufacturers in understanding and complying with  
14 such standards and requirements.”.

15 (c) COOPERATION WITH SMALL BUSINESSES.—

16 (1) IN GENERAL.—The Consumer Product  
17 Safety Improvement Act of 2008 (Public Law 110–  
18 314) is amended by adding after section 3 the fol-  
19 lowing new section:

20 **“SEC. 4. COOPERATION WITH LOW-VOLUME MANUFACTUR-**  
21 **ERS.**

22 “The Commission shall work cooperatively with low-  
23 volume manufacturers—

24 “(1) in enforcing the lead limits and third-party  
25 testing requirements;

1           “(2) in setting continuing compliance testing  
2 requirements pursuant to section 104(d) and in  
3 using its discretion under that section to impose the  
4 least burdensome testing requirements for low-vol-  
5 ume manufacturers consistent with goals of statute;  
6 and

7           “(3) in using its discretion under section 103(a)  
8 to ensure practicability of any tracking label require-  
9 ments for low-volume manufacturers, taking into ac-  
10 count any economic, administrative, or other con-  
11 straints on low-volume manufacturers.”.

12           (2) DEFINITION.—Section 3(a) of such Act (15  
13 U.S.C. 2052(a)) is amended, by redesignating para-  
14 graphs (9) through (17) as paragraphs (10) through  
15 (18), respectively, and inserting after paragraph (8)  
16 the following:

17           “(9) LOW-VOLUME MANUFACTURER.—The term  
18 ‘low-volume manufacturer’ means a manufacturer  
19 that—

20           “(A) manufactured or imported no more  
21 than 2,000 units of all products manufactured  
22 by the manufacturer during the most recent  
23 calendar year; and

24           “(B) had gross receipts totaling not more  
25 than \$200,000 during such year.

1 For purposes of determining the number of units of  
2 products and the amount of gross receipts of a man-  
3 ufacturer under this subparagraph, the products and  
4 gross receipts of a manufacturer shall be considered  
5 to include all products and gross receipts of each en-  
6 tity that controls, is controlled by, or is under com-  
7 mon control with such manufacturer.”.

8 (d) EXCLUSION FROM PHTHALATE BAN FOR INAC-  
9 CESSIBLE COMPONENT PARTS.—Section 108 of the Con-  
10 sumer Product Safety Improvement Act (15 U.S.C.  
11 2057c) is amended by redesignating subsections (c)  
12 through (e) as subsections (d) through (f), respectively,  
13 and inserting after subsection (b) the following:

14 “(c) EXCLUSION FOR INACCESSIBLE COMPONENT  
15 PARTS.—

16 “(1) IN GENERAL.—The prohibitions estab-  
17 lished under subsections (a) and (b) shall not apply  
18 to any component part of a children’s product that  
19 is not accessible to a child through normal and rea-  
20 sonably foreseeable use and abuse of such product,  
21 as determined by the Commission. A component part  
22 is not accessible under this paragraph if such com-  
23 ponent part is not physically exposed by reason of a  
24 sealed covering or casing and does not become phys-  
25 ically exposed through reasonably foreseeable use

1 and abuse of the product. Reasonably foreseeable  
2 use and abuse shall include, swallowing, mouthing,  
3 breaking, or other children's activities, and the aging  
4 of the product.

5 “(2) LIMITATION.—The Commission may re-  
6 voke an exclusion or all exclusions granted under  
7 paragraph (1) at any time and require that any or  
8 all component part subject to such an exclusion com-  
9 ply with the prohibitions established under sub-  
10 sections (a) and (b) if the Commission finds, based  
11 on scientific evidence, that such compliance is nec-  
12 essary to protect the public health and safety.

13 “(3) INACCESSIBILITY PROCEEDING.—Within 1  
14 year after the date of enactment of this subsection,  
15 the Commission shall—

16 “(A) promulgate a rule providing guidance  
17 with respect to what product components, or  
18 classes of components, will be considered to be  
19 inaccessible for purposes of paragraph (1); or

20 “(B) adopt the same guidance with respect  
21 to inaccessibility that was adopted by the Com-  
22 mission with regards to accessibility of lead  
23 under section 101(b)(5)(B).

24 “(4) APPLICATION PENDING COMMISSION GUID-  
25 ANCE.—Until the Commission promulgates a rule

1       pursuant to paragraph (3), the determination of  
2       whether a product component is inaccessible to a  
3       child shall be made in accordance with the require-  
4       ments laid out in paragraph (1) for considering a  
5       component to be inaccessible to a child.”.

6       **SEC. 5. ADDITIONAL PROVISIONS.**

7       (a) COORDINATION WITH VOLUNTARY STANDARD-  
8       SETTING ORGANIZATIONS.—Section 104(b) of the Con-  
9       sumer Product Safety Improvement Act (15 U.S.C.  
10      2056a(b)) is amended by adding at the end the following:

11               “(4) PROCESS FOR CONSIDERING SUBSEQUENT  
12      REVISIONS TO VOLUNTARY STANDARD.—

13                       “(A) NOTICE OF ADOPTION OF VOL-  
14      UNTARY STANDARD.—When the Commission  
15      promulgates a consumer product safety stand-  
16      ard under this subsection that is based on a  
17      voluntary standard, the Commission shall notify  
18      the organization that issued the voluntary  
19      standard of the Commission’s action and shall  
20      provide a copy of the consumer product safety  
21      standard to the organization.

22                       “(B) COMMISSION ACTION ON REVISED  
23      VOLUNTARY STANDARD.—Not later than 120  
24      days after any subsequent revision by the orga-  
25      nization to its voluntary standard on which a

1 consumer product safety standard is based, the  
2 Commission shall initiate a rulemaking in ac-  
3 cordance with section 553 of title 5, United  
4 States Code, to amend the consumer product  
5 safety standard to incorporate the revision if  
6 the Commission determines that such revision  
7 would provide a significantly higher degree of  
8 protection from the risk of injury addressed in  
9 the consumer product safety standard. The  
10 Commission may include additional require-  
11 ments not contained in the revised voluntary  
12 standard.”.

13 (b) CLARIFICATION OF AUTHORITY.—Section 106(a)  
14 of the Consumer Product Safety Improvement Act (15  
15 U.S.C. 2056b(a)) is amended by inserting “or any provi-  
16 sion that restates or incorporates a regulation promul-  
17 gated by the Food and Drug Administration or any stat-  
18 ute administered by the Food and Drug Administration”  
19 after “or by statute”.

20 (c) CLARIFICATION OF LAW.—The Consumer Prod-  
21 uct Safety Act (15 U.S.C. 2051 et seq.) is amended—

22 (1) in section 6(b)(1), by striking “its public  
23 disclosure” and inserting “initiating the public dis-  
24 closure”; and

1           (2) in section 27(b)(3), by striking “documen-  
2           tary evidence” and inserting “documentary and  
3           physical evidence”.

4           (d) SUBPOENA AUTHORITY.—Section 27(b)(9) of the  
5           Consumer Product Safety Act (15 U.S.C. 2076(b)(9)) is  
6           amended by striking “, other than the power to issue sub-  
7           poenas under paragraph (3),”.

8           (e) PUBLIC NOTIFICATION OF IMMINENT HAZ-  
9           ARDS.—The Consumer Product Safety Act (15 U.S.C.  
10          2051 et seq.) is further amended—

11           (1) in section 5(a)—

12                   (A) by striking “and” at the end of para-  
13                   graph (3);

14                   (B) by striking the period at the end of  
15                   paragraph (4) and inserting “; and”; and

16                   (C) by adding after paragraph (4) the fol-  
17                   lowing:

18           “(5) promptly inform and educate consumers regard-  
19           ing a class of imminently hazardous consumer products  
20           upon identifying or being made aware of such a class of  
21           products.”; and

22           (2) in section 12, by adding at the end the fol-  
23           lowing:

24           “(h) Notwithstanding any other provision of this Act,  
25           whenever the Commission identifies or is made aware of

1 a class of imminently hazardous consumer products, the  
2 Commission shall take appropriate steps to inform and  
3 educate consumers through the media, State and local  
4 governments, and private organizations regarding such  
5 class of products and the nature of the hazard.”.

6 (f) RECALL NOTICE REQUIREMENTS FOR VOL-  
7 UNTARY RECALLS.—Section 15 of the Consumer Product  
8 Safety Act (15 U.S.C. 2064) is amended by adding at the  
9 end the following:

10 “(k) REQUIREMENTS FOR VOLUNTARY RECALL NO-  
11 TICES.—The rule issued by the Commission pursuant to  
12 subsection (i) on January 21, 2010 (75 Fed. Reg. 3355)  
13 and any subsequent modification to such rule shall apply  
14 to any remedial action that a manufacturer, distributor,  
15 or retailer voluntarily agrees to take under this section.”.

16 (g) ELIGIBILITY OF LOCALITIES TO RECEIVE POOL  
17 AND SPA SAFETY GRANTS.—

18 (1) ELIGIBILITY.—A State or a political sub-  
19 division of a State shall be eligible for a grant under  
20 section 1405 of the Virginia Graeme Baker Pool and  
21 Spa Safety Act (15 U.S.C. 8004). For purposes of  
22 carrying out the grant program under such Act, the  
23 term “State” as it used in sections 1405 and 1406  
24 of such Act is deemed to include a political subdivi-  
25 sion of a State, and references to a law or statute

1 of a State in such sections is deemed to include a  
2 law or ordinance of a municipality or other political  
3 subdivision of a State.

4 (2) EXTENSION OF GRANT PROGRAM.—Section  
5 1405(e) of the Virginia Graeme Baker Pool and Spa  
6 Safety Act (15 U.S.C. 8004(e)) is amended by strik-  
7 ing “2010” and inserting “2011”.

8 **SEC. 6. EFFECT ON OTHER LAW.**

9 (a) OTHER AUTHORITIES NOT AFFECTED.—No  
10 amendment made by this Act shall be construed to modify  
11 or otherwise affect the Commission’s authority to act  
12 under section 15 of the Consumer Product Safety Act (15  
13 U.S.C. 2064) or under any other applicable authority.

14 (b) PREEMPTION RULES NOT AFFECTED.—No  
15 amendment made by this Act shall be construed to modify  
16 or otherwise affect section 231 of the Consumer Product  
17 Safety Improvement Act of 2008 (15 U.S.C. 2051 note).