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APRIL 19, 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 (B), 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, taking into account normal and
22 foreseeable use and abuse/

23 “(B) PROCEDURES FOR GRANTING EXCEP-
24 TION.—

1 “(i) NOTICE AND COMMENT PE-
2 RIOD.—Before granting an exception under
3 subparagraph (A), the Commission shall
4 allow not fewer than 60 days for public
5 comment after publishing the notice of the
6 proposed exception.

7 “(ii) BURDEN OF PROOF.—A party
8 seeking an exception under subparagraph
9 (A) has the burden of demonstrating that
10 it meets the requirements of such subpara-
11 graph.

12 “(iii) GROUNDS FOR DECISION.—In
13 the case where a party has petitioned for
14 an exception, in determining whether to
15 grant the exception, the Commission may
16 base its decision solely on the materials
17 presented by the party seeking the excep-
18 tion and any materials received through
19 notice and comment.

20 “(iv) ADMISSIBLE EVIDENCE.—In
21 demonstrating that it meets the require-
22 ments of subparagraph (A), a party seek-
23 ing an exception under such subparagraph
24 may rely on any nonproprietary informa-
25 tion submitted by any other party seeking

1 such an exception and such information
2 shall be considered part of the record pre-
3 sented by the party that relies on that in-
4 formation.

5 “(v) NARROWEST POSSIBLE SCOPE OF
6 EXCEPTION.—If an exception is sought for
7 an entire product, the burden is on the pe-
8 titioning party to demonstrate that the cri-
9 teria in subparagraph (A) are met with re-
10 spect to every accessible component or ac-
11 cessible material of the product.

12 “(C) LIMITATION ON EXCEPTION.—If the
13 Commission grants an exception for a product,
14 component part, or material under subpara-
15 graph (A), the Commission may, as necessary
16 to protect public health or safety

17 “(i) require each manufacturer of
18 such product, component part, or material
19 to reduce the level of lead in such product,
20 component part, or material; or

21 “(ii) place a manufacturing expiration
22 date on such exception or establish a
23 schedule after which the manufacturer of
24 such product, component part, or material

6

1 shall be in full compliance with the limits
2 in subsection (a).

3 “(D) APPLICATION OF EXCEPTION.—An
4 exception under subparagraph (A) for a prod-
5 uct, component part, or material shall apply re-
6 gardless of the date of manufacture unless the
7 Commission expressly provides otherwise.

8 “(E) PREVIOUSLY DENIED PETITIONS.—A
9 party seeking an exception under this para-
10 graph may rely on materials previously sub-
11 mitted in connection with a petition for exclu-
12 sion under section 101(b). In such cases, peti-
13 tioners must notify the Commission of their in-
14 tent to rely on materials previously submitted.
15 Such reliance does not affect petitioners’ obliga-
16 tion to demonstrate that they meet all require-
17 ments of this paragraph as required by sub-
18 paragraph (B)(ii).”; and

19 (5) in the heading of paragraph (5) (as so re-
20 designated), by striking “EXCEPTION” and inserting
21 “EXCLUSION”.

22 **SEC. 3. RELIEF FOR THRIFT STORES AND OTHER RETAIL-**
23 **ERS.**

24 (a) **EXCLUSION OF CERTAIN USED CHILDREN’S**
25 **PRODUCTS.—**101(b) of the Consumer Product Safety Im-

1 provement Act of 2008 (15 U.S.C. 1278a(b)) (as amended
2 by section 2) is further amended by inserting after para-
3 graph (2) (as added by section 2) the following:

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

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

9 “(B) DEFINITION.—The term ‘used chil-
10 dren’s product’ means a children’s product that
11 was obtained by the seller for use and not for
12 the purpose of resale or was obtained by the
13 seller, either directly or indirectly, from a per-
14 son who obtained such children’s product for
15 use and not for the purpose of resale. Such
16 term also includes a children’s product that was
17 donated to the seller for charitable distribution
18 or resale to support charitable purposes. Such
19 term shall not include—

20 “(i) children’s metal jewelry;

21 “(ii) painted children’s toys (as the
22 term ‘children’s toy’ is defined in section
23 108(e)(1)(B));

24 “(iii) children’s products composed
25 primarily of accessible vinyl;

1 “(iv) any children’s product for which
2 the donating party or the seller has actual
3 knowledge that the product is in violation
4 of the lead limits in this section; or

5 “(vi) any other children’s product des-
6 ignated by the Commission.

7 For purposes of this definition, the term ‘seller’
8 includes a person who lends or donates a used
9 children’s product.

10 “(4) PROHIBITION ON SALE OF RECALLED
11 PRODUCTS NOT AFFECTED.—Nothing in this sub-
12 section shall be construed as affecting the prohibi-
13 tion under section 19(a)(2) of the Consumer Prod-
14 uct Safety Act (15 U.S.C. 2068(a)(2)).”.

15 (b) PROSPECTIVE APPLICATION OF 100 PPM LEAD
16 LIMIT.—Section 101(a)(2)(C) of the Consumer Product
17 Safety Improvement Act of 2008 (15 U.S.C.
18 1278a(a)(2)(C)) is amended by inserting “in the case of
19 a product manufactured on or after such date,” after “this
20 Act,”.

21 **SEC. 4. RELIEF FOR SMALL MANUFACTURERS AND OTHER**
22 **BUSINESSES.**

23 (a) ALTERNATIVE TESTING REQUIREMENTS FOR
24 SMALL BATCH MANUFACTURERS.—Section 14(d) of the
25 Consumer Product Safety Act (15 U.S.C. 2063(d)) is

1 amended by adding at the end the following new para-
2 graph:

3 “(3) SPECIAL RULES FOR SMALL BATCH MANU-
4 FACTURERS.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), in implementing third party testing
7 requirements under this section, the Commis-
8 sion shall take into consideration any economic,
9 administrative, or other limits on the ability of
10 small batch manufacturers to comply with such
11 requirements and may, by regulation, provide
12 alternative testing requirements for covered
13 products manufactured by small batch manu-
14 facturers in lieu of those required under sub-
15 section (a) or (b). Any such alternative require-
16 ments shall provide for reasonable testing/meth-
17 ods to assure ~~compliance~~ with the relevant con-
18 sumer product safety standards. The Commis-
19 sion may allow such alternative testing/methods
20 for small batch manufacturers with respect to a
21 specific product or product class or with respect
22 to a specific safety standard or component of a
23 safety standard.

24 “(B) LIMITATION.—The Commission shall
25 not provide or permit to continue in effect any

1 alternative testing requirements under this
2 paragraph where full compliance with sub-
3 section (a) or (b) is necessary to protect public
4 health or safety, taking into account normal
5 and foreseeable use and abuse. The Commission
6 shall not provide any alternative testing require-
7 ments for—

8 “(i) any of the testing requirements
9 described in clauses (i) through (v) of sub-
10 section (a)(3)(B); or

11 “(ii) durable infant or toddler prod-
12 ucts, as defined in section 104(f) of the
13 Consumer Product Safety Improvement
14 Act (15 U.S.C. 2056a(f)).

15 “(C) DEFINITION OF COVERED PROD-
16 UCT.—For purposes of this paragraph, the term
17 ‘covered product’ means one where the manu-
18 facturer—

19 “(i) manufactured no more than
20 7,500 units of the product in the previous
21 calendar year;

22 “(ii) had no more than \$50,000 in
23 gross revenue from the sales of that prod-
24 uct in the previous calendar year; and

1 “(iii) had no more than \$1,000,000 in
2 total gross revenue in the previous cal-
3 endar year.”

4 Each dollar amount contained in clauses (ii)
5 and (iii) shall be adjusted annually by the per-
6 centage increase in the Consumer Price Index
7 for all urban consumers published by the De-
8 partment of Labor.”.

9 (b) OFFICE FOR EDUCATION, OUTREACH, AND
10 SMALL BUSINESS OMBUDSMAN.—

11 (1) ESTABLISHMENT.—Section 27 of the Con-
12 sumer Product Safety Act (15 U.S.C. 2076) is
13 amended by adding at the end the following:

14 “(I) OFFICE FOR EDUCATION, OUTREACH, AND
15 SMALL BUSINESS OMBUDSMAN.—The Commission shall
16 establish an Office for Education, Outreach, and Small
17 Business Ombudsman to assist the Commission with pro-
18 viding education and outreach to all stakeholders and to
19 inform and educate manufacturers and retailers, including
20 resellers, about requirements under this Act or any other
21 Act enforced by the Commission. Such office shall provide
22 special assistance and guidance to small batch manufac-
23 turers in understanding and complying with such require-
24 ments.”.

1 (2) AUTHORIZATION OF APPROPRIATIONS.—
2 There are authorized to be appropriated to the Con-
3 sumer Product Safety Commission \$1,800,000 for
4 each of fiscal years 2011 through 2018 for the office
5 established under paragraph (1).

6 (e) COOPERATION WITH SMALL BUSINESSES.—

7 (1) IN GENERAL.—The Consumer Product
8 Safety Improvement Act of 2008 (Public Law 110-
9 314) is amended by adding after section 3 the fol-
10 lowing new section:

11 **“SEC. 4. COOPERATION WITH SMALL BATCH MANUFACTUR-**
12 **ERS.**

13 “The Commission shall work cooperatively with small
14 batch manufacturers—

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

17 “(2) in setting continuing compliance testing
18 requirements pursuant to section 14(d) of the Con-
19 sumer Product Safety Act and in using its discretion
20 under that section to impose the least burdensome
21 testing requirements for small batch manufacturers
22 consistent with goals of statute; and

23 “(3) in using its discretion under section 103(a)
24 to ensure practicability of any tracking label require-
25 ments for small batch manufacturers, taking into ac-

1 count any economic, administrative, or other con-
2 straints on small batch manufacturers.”.

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

8 “(9) SMALL BATCH MANUFACTURER.—

9 “(A) DEFINITION.—The term ‘small batch
10 manufacturer’ means a manufacturer—

11 “(i) for which at least $\frac{2}{3}$ of the man-
12 ufacturer’s products meet the following
13 conditions:

14 “(I) the manufacturer manufac-
15 tured or imported no more than 7,500
16 units of the product in the previous
17 calendar year;

18 “(II) the manufacturer’s gross
19 revenue from the product was no
20 more than \$50,000 in the previous
21 calendar year; and

22 “(ii) that had no more than
23 \$1,000,000 in total gross revenue in the
24 previous calendar year.

1 “(B) DETERMINATION.—For purposes of
2 determining the number of units of products
3 and the amount of gross revenue of a manufac-
4 turer under this paragraph, the products and
5 gross revenue of a manufacturer shall be con-
6 sidered to include all products and gross rev-
7 enue of each entity that controls, is controlled
8 by, or is under common control with such man-
9 ufacturer. The Commission shall take steps to
10 ensure that all relevant business affiliations are
11 considered in determining whether or not a
12 manufacturer meets this definition.

13 “(C) ADJUSTMENT.—Each dollar amount
14 contained in subparagraph (A) shall be adjusted
15 annually by the percentage increase in the Con-
16 sumer Price Index for all urban consumers pub-
17 lished by the Department of Labor.”.

18 ~~(d) PHTHALATES AND INACCESSIBLE COMPONENT~~
19 PARTS.—Section 108 of the Consumer Product Safety Im-
20 provement Act (15 U.S.C. 2057c) is amended by redesi-
21 gnating subsections (c) through (e) as subsections (d)
22 through (f), respectively, and inserting after subsection (b)
23 the following:

24 “(e) EXCLUSION FOR INACCESSIBLE COMPONENT
25 PARTS.—

1 “(1) IN GENERAL.—The prohibitions estab-
2 lished under subsections (a) and (b) shall not apply
3 to any component part of a children’s toy or child
4 care article that is not accessible to a child through
5 normal and reasonably foreseeable use and abuse of
6 such product, as determined by the Commission. A
7 component part is not accessible under this para-
8 graph if such component part is not physically ex-
9 posed by reason of a sealed covering or casing and
10 does not become physically exposed through reason-
11 ably foreseeable use and abuse of the product. Rea-
12 sonably foreseeable use and abuse shall include,
13 swallowing, mouthing, breaking, or other children’s
14 activities, and the aging of the product.

15 “(2) LIMITATION.—The Commission may re-
16 voke an exclusion or all exclusions granted under
17 paragraph (1) at any time and require that any or
18 all component parts manufactured after such exclu-
19 sion is revoked comply with the prohibitions estab-
20 lished under subsections (a) and (b) if the Commis-
21 sion finds, based on scientific evidence, that such
22 compliance is necessary to protect the public health
23 or safety.

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

4 “(A) promulgate a rule providing guidance
5 with respect to what product components, or
6 classes of components, will be considered to be
7 inaccessible for purposes of paragraph (1); or

8 “(B) adopt the same guidance with respect
9 to inaccessibility that was adopted by the Com-
10 mission with regards to accessibility of lead
11 under section 101(b)(5)(B), with additional
12 consideration, as appropriate, of whether such
13 component can be placed in a child’s mouth.

14 “(4) APPLICATION PENDING COMMISSION GUID-
15 ANCE.—Until the Commission promulgates a rule
16 pursuant to paragraph (3), the determination of
17 whether a product component is inaccessible to a
18 child shall be made in accordance with the require-
19 ments laid out in paragraph (1) for considering a
20 component to be inaccessible to a child.”.

21 **SEC. 5. ADDITIONAL PROVISIONS.**

22 (a) COORDINATION WITH VOLUNTARY STANDARD-
23 SETTING ORGANIZATIONS.—Section 104(b) of the Con-
24 sumer Product Safety Improvement Act (15 U.S.C.
25 2056a(b)) is amended by adding at the end the following:

1 “(4) PROCESS FOR CONSIDERING SUBSEQUENT
2 REVISIONS TO VOLUNTARY STANDARD.—

3 “(A) NOTICE OF ADOPTION OF VOL-
4 UNTARY STANDARD.—When the Commission
5 promulgates a consumer product safety stand-
6 ard under this subsection that is based on a
7 voluntary standard, the Commission shall notify
8 the organization that issued the voluntary
9 standard of the Commission’s action and shall
10 provide a copy of the consumer product safety
11 standard to the organization. If the organiza-
12 tion (or its successor entity) proposes to revise
13 the voluntary standard, it shall notify the Com-
14 mission of the proposed revision within 60 days.

15 “(B) COMMISSION ACTION ON REVISED
16 VOLUNTARY STANDARD.—If an organization re-
17 vises a standard that has been adopted as a
18 consumer product safety standard under sub-
19 paragraph (A), the revised voluntary standard
20 shall be considered to be a consumer product
21 safety standard issued by the Commission
22 under section 9 of the Consumer Product Safe-
23 ty Act (15 U.S.C. 2058), effective 180 days
24 after the date on which the organization notifies
25 the Commission unless, within 90 days after re-

1 ceiving that notice, the Commission notifies the
2 organization that it has determined that the
3 proposed revision does not improve the safety of
4 the consumer product covered by the standard
5 and that the Commission is retaining the exist-
6 ing consumer product safety standard. In the
7 case of such notification, the Commission may,
8 within 60 days, initiate a rulemaking in accord-
9 ance with section 553 of title 5, United States
10 Code, to amend the consumer product safety
11 standard to be more stringent than the revised
12 voluntary standard, if the Commission deter-
13 mines that more stringent standards would fur-
14 ther reduce the risks of injury associated with
15 such products.”.

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

23 (c) FUNCTIONS OF COMMISSION.—Section 27(b) of
24 the Consumer Product Safety Act (15 U.S.C. 2076(b)(9))
25 is amended—

1 (1) in paragraph (3), by inserting “and phys-
2 ical” after “documentary”;

3 (2) in paragraph (8), by striking “and”;

4 (3) by redesignating paragraph (9) as para-
5 graph (10) and inserting after paragraph (8) the fol-
6 lowing:

7 “(9) to delegate to any officer or employee of
8 the Commission the authority to issue subpoenas
9 solely to Federal, State, or local government agen-
10 cies for evidence described in paragraph (3);” and

11 (4) in paragraph (10) (as so redesignated), by
12 inserting “(except as provided in paragraph (9))”
13 after “paragraph (3)”.

14 (d) ELIGIBILITY OF LOCALITIES TO RECEIVE POOL
15 AND SPA SAFETY GRANTS.—

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

1 law or ordinance of a municipality or other political
2 subdivision of a State.

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

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

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

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