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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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March 5, 2008

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The Honorable Mark Pryor
Chairman
Subcommittee on Consumer Affairs, Insurance, and Automotive Safety
Committee on Commerce, Science, and Transportation
United States Senate
257 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Pryor:

As Chairmen of the House Committee on Energy and Commerce and the Subcommittee on Commerce, Trade, and Consumer Protection, we would like to commend you and Senators Stevens, Inouye, Collins, Nelson, Klobuchar, Durbin, and Schumer for introducing S. 2663, the "CPSC Reform Act", a bill to provide greater consumer product safety protection in the United States.

Moreover, we appreciate your acknowledgement of the hard work that went into the bipartisan consumer protection legislation passed unanimously by the House last December, but we are troubled that you have repeatedly mischaracterized the House bill during the debate on the Senate floor.

As introduced last week, S. 2663 does contain several highly prescriptive measures not found in H.R. 4040. At the same time, the House bill has many protections that greatly promote consumer health and safety that are noticeably absent from the Senate bill.

Like the Senate bill, the House bill promotes transparency

You claim that the Senate bill is more "transparent" than the House legislation. We believe that is a reference to measures that provide the Consumer Product Safety Commission (CPSC) with greater authority to release information to the American public about unsafe products, and we fail to see striking differences between the two bills. Indeed, S. 2663 adopted the very same language as H.R. 4040 to amend section 6 of the Consumer Product Safety Act to authorize the CPSC to release information immediately about unsafe products when the agency

publishes a finding that the “public health and safety require.” Both bills also include provisions for the creation of a public database with information about unsafe products. The Senate bill requires the CPSC, within one year of enactment, to establish and maintain a publicly available, searchable database that includes reports of injuries, illness, death or risk of same related to the use of consumer products received by the CPSC. The House bill requires the CPSC to evaluate its current database, and to submit to Congress, within six months, a detailed plan and implementation schedule for expanding that database to include additional information (similar to Senate bill) and a public awareness campaign to increase consumer awareness of the database. The Committee on Energy and Commerce anticipates hands-on involvement in the development of the database through the vigorous exercise of its oversight responsibilities as the CPSC develops a workable plan. Finally, the House and Senate bills contain virtually identical provisions on sharing information with Federal, State, local and foreign governmental authorities.

Like the Senate bill, the House bill provides for greater CPSC enforcement

You stated that the Senate bill promotes “more enforcement.” This, too, is not supported by a comparison of the provisions of the two bills. Both bills in similar fashion expand the reach of Federal consumer product safety law by permitting State Attorneys General (AG) enforcement but also limiting the AG to injunctive relief against violators. Both bills also apply identical provisions to streamline rulemaking at the CPSC to allow the agency to respond more quickly and nimbly to product safety developments. Finally, both bills raise the cap on civil penalties to \$10 million, the primary penalty provision amendment that consumer groups championed, although the Senate bill would also allow an additional \$10 million for undefined “aggravated circumstances.”

Like the Senate bill, the House bill supports greater CPSC resources

Both bills provide for greatly increased resources for the CPSC, although we agree that the House authorization amounts (and to a certain extent the Senate as well) will have to be revisited in light of the greatly improved appropriation for FY2008, which was enacted as the House bill was moving out of the full Committee. We note, however, that an authorization is an aspiration, albeit a meaningful one. The appropriation is where the money is. What matters most is that the House and Senate continue to work in a bipartisan manner with the appropriators to make sure that the agency receives the funds that it needs to carry out its important mission.

The House bill contains tough standards to protect children from lead-tainted products

You stated that the Senate bill protects children from lead-tainted products “in a better way than the House bill does,” but this is not supported by a comparison of the provisions of the two bills. Both bills arrive at identical standards – which would be the toughest standards in the world today – for protecting children from both lead content and lead paint. While the Senate

bill phases in the lowest standard for lead content sooner than the House bill, the House bill adopts the new, lower standard on lead paint more quickly than the Senate bill. Both bills further direct the CPSC to review the lead content standard and, by rule, to set it at the lowest feasible level. We are pleased to see that the new Senate bill followed the lead of the House bill to adopt lower, more protective standards for lead content than those found in the predecessor Senate bill, S. 2045.

The House bill contains an additional feature that will protect children from lead that is not found in the Senate bill. To promote greater detection and enforcement against lead-tainted toys immediately, H.R. 4040 permits the use of alternative measurements of lead – units of mass per area – so that the CPSC and other enforcers can test toys in stores and at ports with quick and portable XRF technology. The House bill requires the CPSC to review this alternative standard in three years to determine if advances in science and technology allow it to be made even more protective. The Senate bill requires only that the CPSC study this technology.

The House bill grants the CPSC the authority to ban the export of non-compliant and recalled products

You implied that the House bill would not prohibit the export (including the re-export) of non-compliant consumer products. This is just wrong. Just like the Senate bill, the House bill in section 213 grants the CPSC the authority to prohibit any person from exporting a consumer product that has been designated a banned hazardous substance, an imminent hazard, is subject to a voluntary corrective action, or in general does not comply with applicable consumer product safety rules.

The House is on record as supporting enhanced whistleblower protections

We strongly support the valuable role that whistleblowers play in unearthing fraud, waste, and abuse. Indeed, the Committee on Energy and Commerce, and in particular its legendary Subcommittee on Oversight and Investigations, has relied on tips from whistleblowers to unearth private sector and Government rascality and save taxpayers billions of dollars. Concomitantly, we support the rights of and protections for whistleblowers. We voted, as did Ranking Member Barton, for H.R. 985, the Whistleblower Protection Enhancement Act, which passed the House 331-94 on March 14, 2007. We continue to believe that this issue should be dealt with in a comprehensive manner, not in a piecemeal and potentially inconsistent agency-by-agency fashion. Nonetheless, we look forward to discussing this issue with our Senate counterparts at the appropriate time.

The House bill represents significant reform and includes critical provisions not included in the Senate bill

We take greatest exception to your claim that the Senate bill represents more comprehensive reform than the House bill. While it is true that the Senate bill covers a number of single-product issues and also dictates staffing and budget details, usually managed by an agency itself with Congressional oversight, the House bill contains important provisions that the Senate bill lacks. Many of these House provisions are critical to protecting the safety of children and consumers:

- H.R. 4040 bans lead and requires pretesting and certification for products intended for children UP TO AGE 12. The protections of the Senate bill stop at products for children 7 years of age and under.
- The House bill requires mandatory standards, pretesting, and certification of a dozen specific nursery products – including cribs, high chairs and strollers—necessary items bought by new parents to protect their babies and toddlers. The Senate bill ignores this critical provision.
- The House bill bans CPSC officials from accepting industry-sponsored travel to promote the integrity of the product safety regulatory system and protect against undue corporate influence. There is no such provision in the Senate bill.
- Finally, the House bill enhances the recall authority of CPSC much more than the Senate bill. The House bill allows the agency to order an immediate cessation in distribution of a product and to notify appropriate State and local public health officials of the danger. The House bill also directs the agency to advertise recalls over TV and radio and in languages other than English to reach a broad spectrum of consumers, especially those in underserved communities. Lastly, the House bill requires that the CPSC prepare annual reports on recall effectiveness to assess and improve the recall process. The Senate bill does none of these things.

Congress cannot delay in fixing our Nation's broken consumer product safety system. To this end, we look forward to working with you to reconcile differences between H.R. 4040 and S. 2663 and presenting the White House with a consensus bill that is tough, comprehensive, and effective in safeguarding the health and safety of the American people. Given the many similarities between the two bills, we are confident that we can work cooperatively and in a bipartisan fashion to pass legislation to overhaul the Consumer Product Safety Commission, provide it with enhanced resources, and strengthen its authority to protect consumers and their children from hazardous toys and other unsafe products.

The Honorable Mark Pryor
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Sincerely,



John D. Dingell
Chairman



Bobby L. Rush
Chairman
Subcommittee on Commerce, Trade, and
Consumer Protection