

[DISCUSSION DRAFT]

APRIL 15, 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 the user’s
21 health or safety, taking into account nor-
22 mal and foreseeable use and abuse by all
23 foreseeable users.

24 “(B) PROCEDURES FOR GRANTING EXCEP-
25 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 confine the evidence it considers to only
17 that evidence presented by interested par-
18 ties.

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

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

8 “(C) LIMITATION ON EXCEPTION.—If the
9 Commission grants an exception for a product,
10 component part, or material under subpara-
11 graph (A), the Commission may, as necessary
12 to protect the health and safety of all foresee-
13 able users—

14 “(i) require each manufacturer of
15 such product, component part, or material
16 to reduce the level of lead in such product,
17 component part, or material; or

18 “(ii) place a manufacturing expiration
19 date on such exception or establish a
20 schedule after which the manufacturer of
21 such product, component part, or material
22 shall be in full compliance with the limits
23 in subsection (a).

24 “(D) APPLICATION OF EXCEPTION.—An
25 exception under subparagraph (A) for a prod-

1 uct, component part, or material shall apply re-
2 gardless of the date of manufacture unless the
3 Commission expressly provides otherwise.

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

15 (5) in the heading of paragraph (5) (as so re-
16 designated), by striking “EXCEPTION” and inserting
17 “EXCLUSION”.

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

20 (a) EXCLUSION OF CERTAIN USED CHILDREN’S
21 PRODUCTS.—101(b) of the Consumer Product Safety Im-
22 provement Act of 2008 (15 U.S.C. 1278a(b)) (as amended
23 by section 2) is further amended by inserting after para-
24 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, either directly or indirectly, from a per-
11 son who obtained such children’s product for
12 use and not for the purpose of resale. Such
13 term also includes a children’s product that was
14 donated to the seller for charitable distribution
15 or resale to support charitable purposes. Such
16 term shall not include—

17 “(i) children’s metal jewelry;

18 “(ii) painted children’s toys (as the
19 term ‘children’s toy’ is defined in section
20 108(e)(1)(B));

21 “(iii) items composed primarily of ac-
22 cessible vinyl;

23 “(iv) any item known by a donating
24 party or by the seller to be in violation of
25 the lead limits in this section; or

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

3 For purposes of this definition, the term ‘seller’
4 includes a person who lends or donates a used
5 children’s product.

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

11 (b) PROSPECTIVE APPLICATION OF 100 PPM LEAD
12 LIMIT.—Section 101(a)(2)(C) of the Consumer Product
13 Safety Improvement Act of 2008 (15 U.S.C.
14 1278a(a)(2)(C)) is amended by inserting “in the case of
15 a product manufactured on or after such date,” after “this
16 Act,”.

17 **SEC. 4. RELIEF FOR SMALL MANUFACTURERS AND OTHER**
18 **BUSINESSES.**

19 (a) ALTERNATIVE TESTING REQUIREMENTS FOR
20 SMALL BATCH MANUFACTURERS.—Section 14(d) of the
21 Consumer Product Safety Act (15 U.S.C. 2063(d)) is
22 amended by adding at the end the following new para-
23 graph:

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

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

21 “(B) LIMITATION.—The Commission shall
22 not provide or permit to continue in effect any
23 alternative testing requirements under this
24 paragraph where full compliance with sub-
25 section (a) or (b) is necessary to protect the

1 user's health and safety, taking into account
2 normal and foreseeable use and abuse by all
3 foreseeable users. The Commission shall not
4 provide any alternative testing requirements
5 for—

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

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

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

17 “(i) manufactured no more than
18 5,000 units of the product in the previous
19 fiscal year;

20 “(ii) had no more than \$30,000 in
21 gross revenue from the sales of that prod-
22 uct in the previous fiscal year; and

23 “(iii) had no more than \$500,000 in
24 total gross revenue in the previous fiscal
25 year.

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

6 (b) OFFICE FOR EDUCATION, OUTREACH, AND
7 SMALL BUSINESS OMBUDSMAN.—

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

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

22 (2) AUTHORIZATION OF APPROPRIATIONS.—
23 There are authorized to be appropriated to the Con-
24 sumer Product Safety Commission \$1,800,000 for

1 each of fiscal years 2011 through 2018 for the office
2 established under paragraph (1).

3 (c) COOPERATION WITH SMALL BUSINESSES.—

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

8 **“SEC. 4. COOPERATION WITH SMALL BATCH MANUFACTUR-**
9 **ERS.**

10 “The Commission shall work cooperatively with small
11 batch manufacturers—

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

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

20 “(3) in using its discretion under section 103(a)
21 to ensure practicability of any tracking label require-
22 ments for small batch manufacturers, taking into ac-
23 count any economic, administrative, or other con-
24 straints on small batch manufacturers.”.

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

6 “(9) SMALL BATCH MANUFACTURER.—The
7 term ‘small batch manufacturer’ means a manufac-
8 turer—

9 “(A) for which at least $\frac{2}{3}$ of the manufac-
10 turer’s products meet the following conditions:

11 “(i) the manufacturer manufactured
12 or imported no more than 5,000 units of
13 the product in the previous calendar year;

14 “(ii) the manufacturer’s gross revenue
15 from the product was no more than
16 \$30,000 in the previous calendar year; and

17 “(B) that had no more than \$500,000 in
18 total gross revenue in the previous calendar
19 year.

20 For purposes of determining the number of units of
21 products and the amount of gross revenue of a man-
22 ufacturer under this paragraph, the products and
23 gross revenue of a manufacturer shall be considered
24 to include all products and gross revenue of each en-
25 tity that controls, is controlled by, or is under com-

1 mon control with such manufacturer. The Commis-
2 sion shall take steps to ensure that all relevant busi-
3 ness affiliations are considered in determining
4 whether or not a manufacturer meets this defini-
5 tion.”.

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

12 “(c) EXCLUSION FOR INACCESSIBLE COMPONENT
13 PARTS.—

14 “(1) IN GENERAL.—The prohibitions estab-
15 lished under subsections (a) and (b) shall not apply
16 to any component part of a children’s toy or child
17 care article that is not accessible to a child through
18 normal and reasonably foreseeable use and abuse of
19 such product, as determined by the Commission. A
20 component part is not accessible under this para-
21 graph if such component part is not physically ex-
22 posed by reason of a sealed covering or casing and
23 does not become physically exposed through reason-
24 ably foreseeable use and abuse of the product. Rea-
25 sonably foreseeable use and abuse shall include,

1 swallowing, mouthing, breaking, or other children’s
2 activities, and the aging of the product.

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

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

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

18 “(B) adopt the same guidance with respect
19 to inaccessibility that was adopted by the Com-
20 mission with regards to accessibility of lead
21 under section 101(b)(5)(B), with additional
22 consideration, as appropriate, of whether such
23 component can be placed in a child’s mouth.

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. If the organiza-
22 tion (or its successor entity) proposes to revise
23 the voluntary standard, it shall notify the Com-
24 mission of the proposed revision within 60 days.

1 “(B) COMMISSION ACTION ON REVISED
2 VOLUNTARY STANDARD.—If an organization re-
3 vises a standard that has been adopted as a
4 consumer product safety standard under sub-
5 paragraph (A), the revised voluntary standard
6 shall be considered to be a consumer product
7 safety standard issued by the Commission
8 under section 9 of the Consumer Product Safe-
9 ty Act (15 U.S.C. 2058), effective 180 days
10 after the date on which the organization notifies
11 the Commission unless, within 90 days after re-
12 ceiving that notice, the Commission notifies the
13 organization that it has determined that the
14 proposed revision does not improve the safety of
15 the consumer product covered by the standard
16 and that the Commission is retaining the exist-
17 ing consumer product safety standard. In the
18 case of such notification, the Commission may,
19 within 60 days, initiate a rulemaking in accord-
20 ance with section 553 of title 5, United States
21 Code, to amend the consumer product safety
22 standard to be more stringent than the revised
23 voluntary standard, if the Commission deter-
24 mines that more stringent standards would fur-

1 ther reduce the risks of injury associated with
2 such products.”.

3 (b) CLARIFICATION OF AUTHORITY.—Section 106(a)
4 of the Consumer Product Safety Improvement Act (15
5 U.S.C. 2056b(a)) is amended by inserting “or any provi-
6 sion that restates or incorporates a regulation promul-
7 gated by the Food and Drug Administration or any stat-
8 ute administered by the Food and Drug Administration”
9 after “or by statute”.

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

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

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

16 (3) by redesignating paragraph (9) as para-
17 graph (10) and inserting after paragraph (8) the fol-
18 lowing:

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

23 (4) in paragraph (10) (as so redesignated), by
24 inserting “(except as provided in paragraph (9))”
25 after “paragraph (3)”.

1 (d) ELIGIBILITY OF LOCALITIES TO RECEIVE POOL
2 AND SPA SAFETY GRANTS.—

3 (1) ELIGIBILITY.—A State or a political sub-
4 division of a State shall be eligible for a grant under
5 section 1405 of the Virginia Graeme Baker Pool and
6 Spa Safety Act (15 U.S.C. 8004). For purposes of
7 carrying out the grant program under such Act, the
8 term “State” as it used in sections 1405 and 1406
9 of such Act is deemed to include a political subdivi-
10 sion of a State, and references to a law or statute
11 of a State in such sections is deemed to include a
12 law or ordinance of a municipality or other political
13 subdivision of a State.

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

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

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

24 (b) PREEMPTION RULES NOT AFFECTED.—No
25 amendment made by this Act shall be construed to modify

- 1 or otherwise affect section 231 of the Consumer Product
- 2 Safety Improvement Act of 2008 (15 U.S.C. 2051 note).