

***Consumers Union * Consumer Federation of America * Public Citizen *
*Union of Concerned Scientists *U.S. Public Interest Research Group *
* Kids in Danger * National Research Center for Women & Families ***

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Consumer, Safety Groups Call Foul on False Attacks on Product Safety Reform Bill

Groups rebut charges; bill will be considered in the Senate beginning on Monday

(Washington, DC) – Consumer, public interest, safety, and scientific groups today condemned false charges from the office of Sen. Jim DeMint, released through the Republican Steering Committee, against a Senate bill that would overhaul the ailing Consumer Product Safety Commission, and urged Senators to approve the measure – without weakening amendments - when it is slated to come up for a vote next week.

The groups – Consumers Union, Consumer Federation of America, U.S. PIRG, Kids in Danger, the Union of Concerned Scientists and Public Citizen – released a statement rebutting the charges made against S. 2663, the Consumer Product Safety Commission Reform Act.

The groups refute point-by-point the misstatements contained in the DeMint/Republican Steering Committee document, “Top Ten Reasons to Oppose the CPSC “Reform” Act. The groups’ response, “Truth v. Fiction,” which explains the legislation, is below.

TRUTH v. FICTION: The CPSC Reform Act

The office of Senator DeMint, through the Senate Republican Steering Committee, is circulating a document entitled “The Top Ten Reasons to Oppose the CPSC ‘Reform’ Act (S. 2663).” Our coalition of public interest, safety, and scientific organizations offer the following rebuttal to this document filled with falsehoods and fictions regarding a common-sense, balanced legislative proposal designed to improve consumer safety reported by the Senate Commerce Committee and finalized in negotiations between Senators Mark Pryor, Daniel Inouye, and Ted Stevens.

FICTION #1: “Makes it legally impossible to fire disruptive employees . . . be they a union salt or just your average disgruntled employee...”

THE TRUTH: S. 2663's whistleblower provision will not prevent an employer from being able to discharge employees for cause. It wisely protects employees from being retaliated against if they blow the whistle about violations of consumer product safety laws and rules by allowing them to sue for such improper retaliatory firing. Since 2002, Congress has passed four other laws to protect private-sector whistleblowers: the 9/11 law (ground transportation workers); the Pipeline Products Safety Act; Sarbanes Oxley (publicly-traded corporations); and the Energy Policy Act (nuclear power and nuclear weapons industry). None of the affected industries has claimed that these laws have made it impossible to fire employees.

FICTION #2: "Creates a public government-sponsored website to anonymously smear companies . . . This places the imprimatur of the federal on the oftentimes frivolous complaints filed by left-wing interest groups . . ."

THE TRUTH: S. 2663 creates a database for the collection of consumer complaints and third-party information about potential product hazards to help consumers make safer, better informed choices in the marketplace. NHTSA has had a similar consumer complaint database available to the public for some time. The legislation specifically allows businesses to rebut such complaints, and includes these rebuttals in the data- base. The bill also requires the CPSC to promptly remove any information on the database that it finds to be incorrect.

FICTION #3: "Creates a new tool for anti-business state AGs to harass companies: Under the 'Spitzer Section' of the bill, State Attorneys General will now have a new cause of action to sue companies. . ."

THE TRUTH: Under S. 2663, the authority of state Attorneys General is limited to injunctive relief, and they may initiate action only if the residents of that state are threatened or adversely affected by a violation of a consumer product safety standard or rule. The state AG must give prior notice to the CPSC and may not sue if the federal government initiates an enforcement action first. The CPSC does not have the capacity to enforce recalls in every store and every city across the country. In order to protect children from unsafe toys and children's products, for instance, it makes sense to have 50 additional "cops on the beat."

FICTION #4: "Undermines a cooperative relationship between businesses and the CPSC: Under the information disclosure provisions of current law, information is reviewed for accuracy and fairness. Under the bill, this protection would go away and all information will be posted on the internet within 15 days....instead of having experts cooperating with experts, you'll have lawyers fighting with lawyers."

THE TRUTH: The CPSC was established to monitor and regulate the safety of consumer products on behalf of the public. We agree it is valuable to work cooperatively with businesses when it is reasonable to do so, but it should not come at the expense of fair and effective consumer protection and enforcement. Right now, the deck is stacked against consumers because current information disclosure

provisions allow important safety problems to remain secret from the public for at least 30 days, and even longer should a business decide to sue the CPSC -- an explicit and unique right granted companies by the agency's statute. The truth is that S. 2663 makes only modest changes to this section of current law -- it gives companies 15 days, instead of 30 days, to review information for accuracy at which time the agency could release information if it involves an imminent public health threat. It will not automatically make all information public on the internet within 15 days, and it will not eliminate a company's right to sue the CPSC to block release of information.

FICTION #5: "Massively increases fines, threatening small businesses for no good reason: The substitute increases maximum civil penalties more than 10-fold and the individual violation penalty more than 50-fold subjecting each product that wrongfully enters the stream of commerce to a \$250,000 fine. . ."

THE TRUTH: The massive number of toy recalls in recent years suggests that manufacturers have been unsuccessful in making sure their products are safe. Current civil penalties are capped at \$1.8 million and \$8,000 for individual violations -- fines that could be considered pocket change for most major corporations. While the new provision in S. 2663 raises the civil penalty cap to \$10 million, and can go as high as \$20 million in aggravating circumstances, it will be up to the CPSC to decide the actual fines to levy. The same is true for the \$250,000 per individual violation -- it is also a cap, not an automatically levied amount. Small, reputable businesses will not be driven into bankruptcy from this change. But the threat of higher fines for violations of consumer product safety laws will and should deter all companies from shortchanging safety concerns.

FICTION #6: "Dick Durbin's Garage Sale: [The Senator]. . .has included language in the bill that overrides the garage door safety standards developed by the non-profit independent Underwriters Laboratory and American National Standards Institute (UL 325). . ."

THE TRUTH: S. 2663 includes language that would require as a secondary garage door entrapment sensor a technology that would not require the garage door to make contact with a body before retracting. Such a "non-contact" sensor could be an optical sensor and is a valuable safety requirement.

FICTION #7: "Threatens to send the owners of small companies to prison for unknowingly selling a dangerous product. . .This may make the bill proponents feel good, but it does nothing to improve product safety."

THE TRUTH: S. 2663 maintains the current requirement that CPSC can seek criminal penalties only for *knowing and willful* violations of law. This restricts criminal liability to the narrowest possible scope, reserving it only for people who intentionally violate the law. S. 2663 does, however, repeal a provision that precludes the CPSC from pursuing criminal penalties unless the agency has given

notice of the violation and the criminal persisted. By definition, someone who violates criminal law “knowingly and willfully” should not need notice of the violation before being prosecuted.

FICTION #8: “Eliminates protections from disclosure of confidential preliminary information: . . . Under the vague authority to allow disclosure when the CPSC deems the information ‘in the public interest’ companies will be extremely unlikely to voluntarily share information because of fear of having all the information end up on the CPSC’s website regardless of whether it has an actual bearing on public safety.”

THE TRUTH: Much of the “voluntary” information that manufacturers supply is actually information that manufacturers are required by law to report to the CPSC. Manufacturers are statutorily required to report known injuries and deaths associated with their products – this reporting requirement is bolstered by fines for failure to report. Under current law, the CPSC may not release this reported information to the public unless the manufacturer gives permission or the CPSC goes to court. S. 2663 recognizes that it is entirely reasonable and appropriate for the CPSC to be able to release certain information about hazardous products more quickly when it deems the release to be in the “public interest.”

FICTION #9: “Increases the CPSC’s budget by nearly 100% and significantly increases the staffing at CPSC . . . While there may be needs at the CPSC, there has been scant justification for these increases in the size and scope of government.”

THE TRUTH: The CPSC has less than half the budget and half the staff it had in 1973, yet it is currently responsible for monitoring the safety of more than 15,000 products. The percentage of products imported from foreign countries has skyrocketed since the 1970’s, and the agency’s resources have not kept pace. The CPSC deserves to have a better budget than the National Endowment for the Arts. It is also a fact that the CPSC has less money to regulate all 15,000 types of consumer products than the FDA has to regulate animal medicines.

FICTION #10: “The Bill has been endorsed by the Consumer Federation of America and the Consumers Union.”

THE TRUTH: The authors of the DeMint document are correct! CFA and CU do support this common sense, bi-partisan measure as do other not-for-profit organizations, including the Union of Concerned Scientists, the American Academy of Pediatrics, Kids in Danger, U.S. PIRG, National Research Center for Women & Families, and Public Citizen. And thousands of concerned individuals across the country have also contacted Senators urging its passage. This legislation is urgently needed to restore consumers’ faith in the products they buy every day.