

Antitrust & Federal Regulation: Senate Passes Consumer Product Safety Act Reauthorization

More Litigation and Regulation on the Way

3/7/2008

On March 6, 2008, the U.S. Senate passed S. 2663, the most ambitious reauthorization and amendment to the Consumer Product Safety Act and related statutes since the creation of the Consumer Product Safety Commission (CPSC or the "Commission") in the 1970s. The Senate bill must be reconciled in a House-Senate conference with the almost equally ambitious House bill H.R. 4040. This could occur by July 2008.

Mintz Levin has been actively engaged as a leader in the National Association of Manufacturers Coalition representing manufacturers and retailers on this critical issue. However the final legislation comes out, certain realities are apparent for manufacturing, supply chains and retail:

Civil penalties will be increased dramatically; from the present maximum of \$2 million to at least \$10 million and per-violation penalties (e.g. the sale of one defective unit) of as much as \$250,000. Criminal penalties for knowing and willful actions have been increased. This most likely will create a need for a review of director's and officer's insurance coverage

Enhanced authority for state attorneys general to enforce federal product safety requirements through injunctive actions, which will increase the volume of lawsuits and will change the complexity of negotiations with the Commission

New employee "whistleblower" actions may be allowed at the U.S. Department of Labor and in the federal courts for disgruntled federal and private sector employees who claim that employment actions have been taken against them because they have raised questions about safety issues

Increased public disclosure of consumer and other complaints about named products, manufacturers and retailers, and less protection of company-submitted information to the Commission

A host of new CPSC product and other safety regulations, particularly for imports, juvenile products, and jewelry

New testing certification requirements for importers, as well as targeting of importers and categories of products by the Department of Homeland Security and CPSC

We urge companies to prepare to comply with the new standards. This will minimally encompass reviewing testing standards, supply chain arrangements, insurance coverage, and internal safety review mechanisms in order to deal with these new federal and state regulatory realities. Mintz Levin's Consumer Product Safety Litigation Group is assisting clients now on pending investigations and to avoid problems before they happen.

For more information, please contact one of the attorneys listed below or the Mintz Levin attorney who ordinarily handles your legal affairs.

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