

Summary of Enhancing CPSC Authority and Discretion Act of 2011

- On August 1, 2011, Congress passed H.R. 2715, entitled “The Enhancing CPSC Authority and Discretion Act of 2011 “[t]o provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes.”
- Key provisions of the new legislation include:
 - CPSC’s Consumer Complaint Database SaferProducts.gov:
 - When CPSC receives notice that a “report of harm” contains materially inaccurate information, it must stay the publication of the report for a period of no more than 5 additional days.
 - CPSC is required to ask consumers submitting a “report of harm” for the model or serial number of the product or, if not available, a photograph of the product if this information was omitted from the original report and relay immediately that information to the manufacturer. Nevertheless, CPSC must publish the report on the 15th business day after receipt, even without such information. CPSC may not (1) delay transmission of a report to the manufacturer or private labeler until it has received such information or (2) make a report’s inclusion in the database contingent upon the availability of such information.
 - Limitation on Lead in Children’s Products
 - Limitations on lead in children’s products will have only prospective effect, i.e., those limitations will apply only to products manufactured after the effective date of the respective limit.
 - CPSC may grant exceptions to otherwise applicable lead limits for specific products if it determines that (1) the product requires the inclusion of lead because it is not practicable or technologically feasible to manufacture the product by removing the excessive lead or by making the lead inaccessible; (2) the product is not likely to be ingested by a child; and (3) the exception for the product will have no measurable adverse effect on public health or safety.
 - Lead limitations are eliminated with regard to used children’s products.
 - Phthalates in Plastic Components of Children’s Products
 - Phthalate limits in plasticized components of children’s toys or child care articles may be excluded from components which are not accessible to a child.
 - Third-Party Testing
 - In implementing third-party testing requirements, CPSC must take into consideration any limits on the ability of small batch manufacturers to comply with such requirements and provide alternative testing requirements for such manufacturers. If no alternative testing requirement is available or practicable, CPSC must exempt small batch manufacturers from third-party testing requirements if those manufacturers are registered to receive exemption from the CPSC.
 - CPSC is required to seek public comment on opportunities to reduce the cost of third-party testing requirements.

- Tracking Labels
 - CPSC is authorized to exclude specific products or classes of products from the tracking label requirement if it determines that the requirement is not practicable for those products.

If you have any questions regarding the issues raised in this alert, please contact either the Womble Carlyle attorney with whom you usually work or one of the following attorneys:

[Bill Womble, Jr.](#)
(336) 721-3630
bwomble@wcsr.com

[John Sweeney](#)
(410) 545-5821
jsweeney@wcsr.com

[Sky Woodward](#)
(410) 545-5823
swoodward@wcsr.com

Womble Carlyle client alerts are intended to provide general information about significant legal developments and should not be construed as legal advice regarding any specific facts and circumstances, nor should they be construed as advertisements for legal services.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).