



Consumer Product Safety Law

June 23, 2011

Far-Reaching Button Cell and Lithium Battery Law in the Works

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On June 9, 2011, Senator Jay Rockefeller (D-WV), Chairman of the Senate Commerce, Science and Transportation Committee, which has jurisdiction over consumer protection and product safety, introduced [new legislation \(S. 1165\)](#) that would regulate all consumer products that contain lithium or button cell batteries.

The proposed Button Cell Battery Safety Act of 2011 would require warning labels and more secure battery compartments to lessen the risk of children swallowing small batteries. The law would cover a wide range of products, including cell phones, smartphones, watches, cameras, remote car locks, calculators, electronic toys, and laptops. If enacted, companies will need to evaluate their product lines and take appropriate steps to make sure their product designs and marketing materials comply with the new law. All interested stakeholders should consider taking measures to engage in legislative advocacy to ensure your company and product interests are taken into consideration as Congress considers this bill. Manatt is preparing efforts to assist companies that have concerns about the scope and impact of this proposed legislation.

Broad Scope of the Bill S. 1165 would direct the Consumer Product Safety Commission (CPSC) to establish a new mandatory standard requiring that button cell

battery compartments of consumer products are “secured, to the greatest extent practicable, in a manner that reduces access to button cell batteries by children that are 3 years of age or younger.” The bill would also require warning labels on the product, on product packaging, and on accompanying literature. The warning labels must inform consumers of the risk of ingestion of the batteries and that they should “keep new and used batteries out of the reach of children and to seek immediate medical attention if a battery is ingested.”

Although the legislation calls for the regulation of products containing “button cell batteries,” it broadly defines this as any battery less than 32 mm in diameter. As a result, it would apply to most lithium batteries as well, which are ubiquitous in electronic devices. However, the bill also permits the CPSC to regulate “any other battery, regardless of the technology used to produce an electrical charge,” if the CPSC determines that it poses an ingestion hazard.

According to Senator Rockefeller, “These tiny batteries are just the sort of thing a curious child might swallow. And the damage can be irreparable. We need to make sure that these batteries are securely enclosed in products and can’t be removed by children, and we must also make sure that parents and caretakers are aware of the danger. We have the ability to better protect children and it’s our responsibility to do so.”

Research Prompting Legislation The legislation was proposed in response to recent research showing that although the rate of battery ingestions has remained steady for several years, the severity of the injuries has increased due to improved battery technology – in other words, more power in a smaller place. According to a study published in the journal *Pediatrics* in June 2010, approximately 3500 battery ingestion cases were reported to U.S. poison centers annually in the last several years. However, the data showed almost a sevenfold increase in the number of serious injuries or fatalities from battery ingestions since 1985.

Button cell batteries can become lodged in the throat and the chemicals in these batteries, if released, can burn through living tissue and cause serious internal damage. Consumers Union wrote a [letter](#) supporting the bill and emphasizing the nature of the potential injury, including the concern that because the batteries resemble coins on X-rays, they are often misdiagnosed by physicians.

Based on this recent research, the CPSC in March 2011 issued an updated [warning](#) on these batteries, telling consumers to discard them properly and keep them out of the reach of children. The CPSC noted that seniors are also at higher risk of swallowing the batteries because they can resemble pills.

Why It Matters If passed, this bill will have a significant impact on millions of products that contain lithium and button cell batteries. It also opens the door to mandatory regulation covering other types of batteries and consumer products if the CPSC determines that they pose a hazard. If enacted, this law would no doubt require companies to redesign their products, packaging, and marketing materials. Because the bill does not have specific guidance regarding the level of security needed for battery compartments, it grants the CPSC broad regulatory discretion.

As we have learned from the enactment of the Consumer Product Safety Improvement Act of 2008 (CPSIA), vague laws can lead to unnecessarily harsh unintended consequences that may not serve the objective of effective product safety. While S. 1165 is in its infancy, this is the optimal time to weigh in on the legislation to prevent vagueness and overbreadth that could impose an unnecessary or disproportionate burden on businesses, without effectively advancing safety concerns.

For additional information on this issue, contact Kerrie Campbell or Michael Bhargava.

Ms. Campbell specializes in consumer product safety counseling and represents major manufacturers, importers, distributors and retailers in investigation, enforcement, and penalty proceedings before the CPSC and in matters referred to the U.S. Department of Justice. She provides advice and counsel on reporting requirements and compliance with product safety laws administered by the CPSC, including sweeping new provisions of the CPSIA. Ms. Campbell advises clients on product recalls, corrective actions, responses to agency inquiries and Freedom of Information Act requests. She is a member of the Advisory Board for BNA's *Product Safety and Liability Reporter*.

Mr. Bhargava is a member of the Litigation group of the firm's Washington, D.C., office. His practice focuses on complex commercial and appellate litigation, false advertising litigation, regulatory agency enforcement matters, and intellectual property.

He represents manufacturers and importers in reporting safety concerns to the CPSC and advises clients on compliance with federal product safety laws.

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