

This is a preliminary transcript of a Committee markup. It has not yet been subject to a review process to ensure that the statements within are appropriately attributed to the witness or member of Congress who made them, to determine whether there are any inconsistencies between the statement within and what was actually said at the proceeding, or to make any other corrections to ensure the accuracy of the record.

1 {York Stenographic Services, Inc.}

2 HIF132.170

3 MARKUP ON H.R. _____, ENHANCING CPSC AUTHORITY AND DISCRETION

4 ACT OF 2011 (ECADA)

5 THURSDAY, MAY 12, 2011

6 House of Representatives,

7 Subcommittee on Commerce, Manufacturing, and Trade

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 9:17 a.m., in
11 Room 2322 of the Rayburn House Office Building, Hon. Mary
12 Bono Mack [Chairwoman of the Subcommittee] presiding.

13 Members present: Representatives Bono Mack, Blackburn,
14 Bass, Harper, Lance, Cassidy, Guthrie, Olson, McKinley,
15 Pompeo, Kinzinger, Barton, Butterfield, Dingell, Schakowsky,
16 and Waxman (ex officio).

17 Staff present: Charlotte Baker, Press Assistant; Gary
18 Andres, Staff Director; Jim Barnette, General Counsel;

19 Allison Busbee, Legislative Clerk; Paul Cancienne, Policy
20 Coordinator, CMT; Peter Kielty, Senior Legislative Analyst;
21 Brian McCullough, Senior Professional Staff Member, CMT;
22 Carly McWilliams, Legislative Clerk; Gib Mullan, Chief
23 Counsel, CMT; Shannon Wienberg, Counsel, CMT; Tom Wilbur,
24 Staff Assistant; Kristin Amerling, Democratic Chief Counsel
25 and Oversight Staff Director; Michelle Ash, Democratic Chief
26 Counsel, Commerce, Manufacturing, and Trade; Phil Barnett,
27 Democratic Staff Director; Jen Berenholz, Democratic Chief
28 Clerk; Karen Lightfoot, Democratic Communications Director,
29 and Senior Policy Advisor; Felipe Mendoza, Democratic
30 Counsel; and Will Wallace, Democratic Policy Analyst.

|
31 Mrs. {Bono Mack.} The Subcommittee will come to order.
32 The Chair recognizes herself for an opening statement. Today
33 we are taking an important first step toward making the
34 Consumer Product Safety Improvement Act, or CPSIA, the kind
35 of truly landmark legislation it was originally intended to
36 be.

37 When CPSIA was signed into law in 2008, it modernized
38 and strengthened the Consumer Product Safety Commission in
39 many different and meaningful ways. It was also the first
40 significant reform of the CPSC in nearly 2 decades.

41 While CPSIA has many virtues, there are some unintended
42 consequences of the law as well. Over the past 4 months, we
43 have carefully reviewed the provisions, which have turned out
44 to be overreaching, and today we are offering legislation to
45 fix them. Admittedly, this is a careful balancing act, but
46 even the CPSC has recognized the problems with CPSIA and has
47 rightly requested greater flexibility and implementing the
48 new law.

49 For thousands of businesses, which strive to be
50 responsible, let us do what is best for consumers. CPSIA has
51 consumed an inordinate amount of their time trying to
52 understand how each new regulation and standard will affect
53 them and unfortunately, many have gone out of business,

54 attributing their demise to some of the burdens of
55 compliance.

56 Today, we are attempting to strike a careful balance.
57 As a Nation, we simply cannot afford to lose jobs or stifle
58 innovation because of questionable regulations. Frankly,
59 many businesses have never even heard of CPSIA until well
60 after it was enacted. Most were shocked to learn of the
61 onerous requirements it would impose on them if they
62 manufactured or sold any children's product, even though they
63 had never done anything wrong and never had a single product
64 recall.

65 It all began with the best of intentions. In 2007, the
66 widely publicized toy recalls or violations of existing lead
67 paint standard gave way to a new prohibition on lead content
68 in children's products. As interpreted by the Commission,
69 this category goes far beyond just toys to covering sporting
70 goods, library books, ATVs, educational products, CDs,
71 clothing, as well as many other items. The goal was a noble
72 one making products safer for our kids, but within just
73 months of passage both the Commission and Congress realized
74 that problems with the new law would need to be addressed.

75 Earlier this year the Commission announced yet another
76 stay of enforcement to avert potentially disastrous results
77 for many American businesses. Today the Commission has

78 jurisdiction over literally thousands of different types of
79 products. It is critically important that they should be
80 able to prioritize their resources to address the products
81 that pose the greatest risk to consumers.

82 As I have said many times as mother, I have very strong,
83 passionate feelings about protecting all children. But also,
84 as a former small business owner I know all too well how
85 unnecessary regulations, even well-intentioned ones, can
86 destroy lives, too. Today we have a chance to fulfill
87 CPSIA's potential by working together to make a good law even
88 better.

89 Since becoming chairman, we have held two hearings on
90 the issue. We have met with all of the key stakeholders
91 including consumer groups. I have also tried very hard to
92 make this a bipartisan process by soliciting input from my
93 colleagues on the other side of the aisle, including Mr.
94 Waxman, Mr. Dingell, Mr. Butterfield, and Ms. Schakowsky.

95 While I understand that we still have differences of
96 opinion, I hope that we can continue to work together to
97 improved CPSIA in ways that benefit all Americans and not
98 just some of that. And I recognize my friend from North
99 Carolina, Mr. Butterfield, for his opening statement.

100 [The prepared statement of Mrs. Bono Mack follows:]

101 ***** COMMITTEE INSERT *****

|
102 Mr. {Butterfield.} Let me thank you, Chairman Bono
103 Mack, for recognizing me and thank you for calling this
104 hearing today.

105 Let me just say for the record that the Health
106 Subcommittee I believe is convening at 10:00 this morning and
107 we have some members of this subcommittee who also serve on
108 that subcommittee. And so I have spoken to the chairman
109 about it and she can correct me if I am wrong. I believe we
110 have an agreement that we are going to do the opening
111 statements now and reconvene after the Subcommittee on Health
112 completes its work. And then we will call up the bill and
113 mark it up later today.

114 Madam Chairman, I wish I could say this morning that I
115 support the draft bill that we are marking up.
116 Unfortunately, years of partisan bickering about ways to
117 improve the Consumer Product Safety Improvement Act have
118 taken us full circle and we are right back to where we have
119 started. I understand there are occasionally unintended
120 burdens in some bills that become law like some of the issues
121 with CPSIA. When Mr. Waxman was Chairman of the Full
122 Committee, he developed a Fix Bill that offered targeted
123 relief of certain types of products. That was called the
124 Consumer Product Safety Enhancement Act. The National

125 Association of Manufacturers, the retail and Industry
126 leaders, the Association of Motorcycle Industry Council, the
127 Handmade Toy Alliance, and Goodwill Industries supported it.
128 Even consumer groups agreed not to oppose it. We had a
129 consensus, but my colleagues on the other side of the aisle
130 and refused to support that bill.

131 So here we are today marking up the Enhancing CPSC
132 Authority and Discretion Act of 2011. After our meeting that
133 followed last month's hearing on this issue, I was hopeful
134 that the Chairman that we could work together to arrive at a
135 compromise that provided targeted relief for Industry while
136 keeping our children safe. I am disappointed that Democratic
137 staff was only able to continue to air our concerns with this
138 bill. At no point was our Democratic staff shown or
139 consulted about language to revise the bill or even told if
140 or when changes would be made.

141 Not surprisingly, what we got on Tuesday night was a
142 revised draft that looks remarkably like the problematic
143 first draft. This draft bill does not preserve protections
144 for children from potential harms. Children in some daycare
145 centers shouldn't be placed in cribs that don't meet up-to-
146 date and rigorous safety standards. And lead content limits
147 should not be stretched to the benefit--to benefit Industry
148 and to the detriment of our children when only a very narrow

149 universe of products can't seem to meet the limits. And
150 mandatory third party testing for a large number of
151 children's products made by even the largest of manufacturers
152 shouldn't be eliminated to alleviate the difficulties faced
153 by our smallest businesses.

154 A toy box shouldn't be a game of roulette and the risk
155 to the safety and well-being of our children are just too
156 great. And Madam Chairman, I agree that there are issues
157 with the law. We disagree, however on how to best address
158 those issues. I hope you will work with me and with our
159 staffs in the coming weeks to arrive at a compromise prior to
160 the full committee markup that provides targeted relief to
161 Industry while maintaining the common sense safeguards
162 afforded by CPSIA. I want to thank you and I yield back the
163 balance of my time.

164 [The prepared statement of Mr. Butterfield follows:]

165 ***** COMMITTEE INSERT *****

|
166 Mrs. {Bono Mack.} Gentleman yields back. Pursuant to
167 the committee rules, all members' opening statements will be
168 made part of the record. Are there further opening
169 statements? Mr. Barton is recognized for 5 minutes.

170 Mr. {Barton.} Madame Chairwoman, I don't think I will
171 take 5 minutes. I do want to compliment you for the
172 discussion draft that you circulated. And I also want to
173 compliment you for the changes that you have made in that
174 discussion draft. I want to applaud you for bringing the
175 bill before the subcommittee.

176 We need to make some common sense sensible changes to
177 the Consumer Product Safety Improvement Act. And I think the
178 bill that we are going to begin to markup today does that.
179 It better defines the role of the agency that has been
180 charged with overseeing the implementation of CPSIA. It also
181 outlines the original intent of the underlying bill, and I
182 believe accomplishes the task that we set out to when we
183 passed that bill several years ago.

184 There are some that are saying that we are fast tracking
185 this process. I would point out that we have actually slowed
186 it down and delayed it to give the stakeholders and members
187 interested an opportunity to comment on the original
188 discussion draft. As you know you were at one time asked by

189 Full Committee Chairman Upton to have done this markup I
190 think 3 weeks ago--2 or 3 weeks ago. So we are trying to
191 work with our friends on the minority side to get a consensus
192 agreement.

193 This is a journey that began back in 2007 when the
194 Chairman Dingell was the Chairman of the Full Committee. It
195 is a journey that continued in the last Congress under
196 Chairman Waxman as the original bill was attempting to be
197 implemented. We saw that there was kind of a law of
198 unintended consequences that came into being. And we were in
199 the process of creating a regulatory and a compliance
200 nightmare. We tried to amend the bill--the law last Congress
201 without any success and under your leadership, Chairwoman, I
202 am sure that we are going to actually be able to make some
203 common sense changes and implement the law in this Congress.

204 Some of the substantive changes that are included in
205 this bill that we are going to markup include points that
206 former Chairman Waxman has been advocating for specifically:
207 provisions of relating to the application of lead limits in
208 used products; the prospective application of a .01 lead
209 limit; an exception for small batch manufacturers; an
210 automatic revision of the standard for durable nursery
211 products; removal of double enforcement concerns between the
212 CPSC and the FDA; the limitation to accessible parts as it

213 relates to phthalates; and other provisions relating to the
214 CPSC subpoena authority are all changes that have been made
215 to the original discussion draft that Mr. Waxman has been
216 advocating for.

217 It is my hope that over the course of this markup, we
218 will have a constructive discussion of the bill and if
219 amendments are offered, I hope that we can address those in a
220 bipartisan fashion. I do believe that we need to protect our
221 children. And I do believe that the law if we could perfect
222 it will do that. So Madame Chairwoman, I commend you for
223 your leadership and I look forward to working with you and
224 Mr. Butterfield, and Ms. Schakowsky, and Mr. Waxman and
225 others as we move the bill forward.

226 And finally, this is my little mascot. This is
227 something that came from a debate that I had with Senator
228 Boxer on the conference Committee several years ago when we
229 were discussing the issue of phthalates. And my recollection
230 is a child would have to eat 7,000 of these in order to get a
231 toxicity level in their bloodstream that could be harmful.
232 So hopefully we can work to make sure that no child in
233 America ever is exposed to the predator rubber duck and the
234 phthalates that are in that ducky. With that I yield back.

235 [The prepared statement of Mr. Barton follows:]

236 ***** COMMITTEE INSERT *****

|
237 Mrs. {Bono Mack.} Gentleman yields back. Are there
238 further opening statements? Mr. Waxman is recognized for 5
239 minutes for the purposes of an opening statement.

240 Mr. {Waxman.} Madame Chairwoman, as usual, Congressman
241 Barton has given us something to chew on. I agree with our
242 Chairman Bono Mack that changes are needed to the Children's
243 Product Safety Bill we passed in 2008. That legislation was
244 an historic step forward, but like most legislation it was
245 not perfect. It had some unintended consequences and needs
246 refinement.

247 After the subcommittee hearing last month, Ranking
248 Member Butterfield and I asked to meet with Chairman Bono
249 Mack. We said that we wanted to work with her and other
250 members to find a bipartisan consensus. And we said that
251 believed it should be possible to address the concerns being
252 raised by ATV manufacturers, bicycle manufacturers, makers of
253 handcrafted toys and other groups without fundamentally
254 undermining the law.

255 Since that meeting, our staffs have had several
256 additional meetings. They have been constructive, but we did
257 not get new language from the majority until late Tuesday.
258 The new language makes many changes in the draft that our
259 staffs never discussed. And now some of the changes are

260 helpful, the draft bill still have fundamental flaws.

261 The rationale for short-circuiting our discussions and
262 proceeding to markup is the need to move quickly. But
263 passing another partisan bill out of the committee and the
264 House won't provide any relief to Industry. A partisan bill
265 that puts our children at risk has no prospect of passing the
266 Senate or being signed by President Obama. There is only one
267 quick path to a bill that can be signed into law and that is
268 for us to reach agreement.

269 There are many problems with the bill before us today,
270 and just listen to what the experts are saying. The Consumer
271 Federation of America told us yesterday that it is profoundly
272 disappointed because the legislation ``moves the pendulum
273 backwards and removes existing protections making our
274 children vulnerable once again''.

275 Consumers Union said, `` this draft bill sets a possible
276 hurdles that would likely mean toys and other children's
277 products wouldn't be adequately tested for safety.'' The
278 American Academy of Pediatrics said it has profound concerns
279 because the bill would allow more lead in toys and other
280 products designed for children. Health experts say that
281 products with 100 parts per million of lead could be
282 dangerous to young children. This bill would allow
283 children's lunchboxes, large toys, and many other children's

284 products to have three times this level of lead.

285 The bill would eviscerate the third party testing
286 requirements that give parents assurance that the toys they
287 buy meet safety standards. And it would undermine the new
288 Consumer Complaint Database by letting manufacturers block
289 the posting of any consumer complaint they allege is
290 materially inaccurate.

291 There is a consensus that ATV and bicycle makers should
292 receive some relief from the 2008 law, but this bill says
293 that all manufacturers of outdoor products can have lead
294 levels up to 40,000 parts per million. That is 400 times
295 more lead than the law allows. ATV and bicycle manufacturers
296 are asking if for targeted relief, not a huge and dangerous
297 loophole like this.

298 In fact, the All Terrain Vehicle Association wrote us
299 yesterday that it ``disapproves of the process in which this
300 draft bill was scheduled for consideration.'' We need to
301 move past the idea that compromise is a bad word. Legitimate
302 concerns have been raised by manufacturers. If we work
303 together we can address those concerns without jeopardizing
304 children's health, and we can produce a law that the
305 President will sign.

306 I want to make a strong suggestion. Chairman Bono Mack
307 and Chairman Emeritus--Chairman Upton should not bring this

308 legislation to the Full Committee until we have reached
309 agreement or we have exhausted the possibility of reaching
310 agreement. Our committee needs accomplishments not more
311 partisan bills and unilateral action by the majority. And we
312 stand ready, and anxious, and willing to work with you.

313 I thought this issue could have easily been resolved
314 before today. I am sorry it has not been, and I continue to
315 hope that we will reach a consensus. Yield back my time.

316 [The prepared statement of Mr. Waxman follows:]

317 ***** COMMITTEE INSERT *****

|
318 Mrs. {Bono Mack.} The gentleman yields back and the
319 Chair recognizes Mrs. Blackburn for her opening statement for
320 3 minutes.

321 Mrs. {Blackburn.} I thank you, Madame Chairman, and I
322 want to thank the Chairman and the committee for the
323 thoughtful way that they have moved forward in this
324 legislation, and also thank our staff for the amount of work
325 that they have done. You know when you look at the fact that
326 we had a meeting in January. We had an oversight hearing in
327 February. We had a hearing on the discussion draft in April
328 and here we are in May, I think that that is an efficient and
329 an appropriate way to move forward, and I thank you for the
330 leadership that has been there.

331 There are a few things that we want to accomplish in
332 this markup today. One is what we are hearing from our
333 constituents, reduce these regulatory burdens. They are as
334 my mother--pardon me--my mother would say they are ill and
335 fatigued. Industry has grown ill and fatigued with the
336 overreach and the burdensome regulations that gets heaped on
337 them. We want to enhance the CPSC's ability to investigate
338 complaints and to do it promptly and appropriately and then
339 the database issue--improve the utility and efficiency. And
340 of course I am one of those that think that we are not

341 undermining the database as my colleague thinks.

342 I think that we would never allow Industry to have a
343 database that did not function and was putting out incomplete
344 information. We would never allow that to take place. And
345 the FTC needs to take this database down in my opinion until
346 they get it right. I think that that is the only fair thing
347 to do.

348 A couple of things in the bill, the exceptions dealing
349 with products that are sold through our charities, through
350 resale--I appreciate that we have that exception in there.
351 And then with the third party testing that we have a small
352 batch manufacturing exception in that. I am glad those are
353 included. And Madame Chairman, I will look forward to
354 continuing to work through. And in the interest of time I am
355 yielding back.

356 [The prepared statement of Mrs. Blackburn follows:]

357 ***** COMMITTEE INSERT *****

|
358 Mrs. {Bono Mack.} Gentlelady yields back. The Chair
359 recognizes Ms. Schakowsky for 3 minutes.

360 Ms. {Schakowsky.} Thank you, Madame Chairman. Today we
361 are considering making changes to the Consumer Product Safety
362 Improvement Act, a bill that was passed in honor of the many
363 children who have been injured or killed by dangerous
364 products including Danny Keysar.

365 Danny was just 16 months old when he was strangled in a
366 portable crib that collapsed. When Danny was killed, the
367 crib model had been recalled for 5 years already and had
368 caused the deaths of four other children. Danny died on May
369 12, 1998, exactly 13 years ago today and here we are honoring
370 his memory by considering legislation that would roll back
371 the protections in landmark legislation that bears his name.

372 Madame Chairwoman, I understand that the current draft
373 of this legislation restores third party testing for durable
374 infant products including cribs so that we can prevent deaths
375 like Danny. I appreciate your efforts to protect these
376 provisions, which I authored and which were named in Danny's
377 honor.

378 Durable infant goods are the items that get used over a
379 period of years often for multiple children and they get
380 passed around among family, friends, and neighbors. Ensuring

381 that such products are safe is absolutely critical. Parents
382 should feel confident that the cribs, bassinets, and
383 playpens they use where young children sleep and are left
384 alone for significant periods of time are safe.

385 However, while this bill protects third party testing
386 for those items, at the same time it dramatically undermines
387 third party testing for countless other children's products.
388 This bill would place so many burdens on the CPSC that
389 mandating third party testing for lead, phthalates and the
390 toy safety standard would be nearly impossible. It would
391 take us back to the situation we were in before we passed the
392 CPSIA to the days when our children were the test subjects
393 for safety.

394 The CPSIA was drafted, negotiated, and passed with
395 strong bipartisan support at every step of the process. We
396 all acknowledge that there are some technical fixes as Mr.
397 Waxman has outlined and had offered over the last couple
398 years. And that would allow the CPSC to better implement the
399 bill. This subcommittee should be able to come to an
400 agreement on a bipartisan basis to make those fixes.
401 Unfortunately, the bill before us today does not represent
402 the type of collaboration and agreement and I can't support
403 it as written.

404 I certainly remember the early negotiations with Mr.

405 Barton, back and forth on practically every paragraph. It
406 was a great effort working together. I think we can do that
407 again to improve this legislation. We are all in agreement
408 that it could use improvement, but I think the manner in
409 which the committee has operated now does not lend itself to
410 that kind of compromise.

411 And finally, let me say when we talk about constituents,
412 I hope we are not just talking about Industry. We are
413 talking about the many consumers and children that are out
414 there that need our advocacy. I yield back.

415 [The prepared statement of Ms. Schakowsky follows:]

416 ***** COMMITTEE INSERT *****

|
417 Mrs. {Bono Mack.} Gentlelady yields back. The Chair
418 now recognizes Mr. Harper for 3 minutes.

419 Mr. {Harper.} Thank you, Chairman Bono Mack. First of
420 all I would like to follow up on something that Mr. Waxman
421 referred to about. I believe it was the American
422 Motorcyclist Association that opposed it. I will make it
423 clear that the motorcycle industry Council, the manufacturers
424 strongly support this legislation and work with us. I don't
425 believe the other reached out to us in time and I wanted to
426 make sure there was clarification on that that we do have the
427 full support of the manufacturers on this for the ETV--or the
428 ATV's I mean.

429 I believe the changes found in this legislation provide
430 the Consumer Protection Safety Commission the direction and
431 flexibility it needs to assess risk and provide leadership on
432 consumer product safety matters. During the 112th Congress,
433 this subcommittee has held multiple hearings where we have
434 heard from numerous affected parties including the Consumer
435 Product Safety Commission, which has to administer and
436 enforce these standards to businesses that must comply with
437 the standards.

438 While the effort to keep harmful products away from our
439 kids and our households is of utmost importance, we have seen

440 many unintended consequences from the Consumer Product Safety
441 Improvement Act of 2008. These consequences have put a huge
442 burden on businesses large and small and have taken toys and
443 other products off the market that were intended for our
444 youth. Specific instances include ATV's, off-road
445 motorcycles and other motorized recreational vehicles
446 designed primarily for children 12 and under.

447 While the commission acknowledged there was no
448 measurable risk for lead absorption while operating this
449 equipment, they were unable to grant an exclusion. The
450 commission has continually issued stays of enforcement, but
451 still the result has seen a majority of ATV manufacturers no
452 longer sell these youth modes while 90 percent of ATV related
453 deaths and injuries to children occur on larger, faster,
454 adult sized models. This has been a detriment to children's
455 safety and a detriment to business.

456 There are many other instances where commission staff
457 has reported that the economic costs associated with CPSIA
458 would be in the billions of dollars. I believe that CADA is
459 a good step in the right direction to ensure compliance
460 without saddling businesses with unwarranted burdens and
461 cost.

462 Another aspect of this legislation that I believe
463 provides more guidance and flexibility is through changes to

464 third party testing requirements. While the commission
465 maintains the authority to require third party testing, this
466 legislation ensures that the benefits outweigh the risk. I
467 am also in support of the changes this legislation makes to
468 the public database requirements.

469 The eligibility requirements ensure the individuals who
470 suffered harm or risk of harm or individual's permission are
471 authorized will have the ability to submit these reports.
472 Again, I would like to thank the Chairman for her leadership
473 on this issue and I look forward to our work to ensure
474 consumer product safety is a priority. With that, I yield
475 the balance of my time. Thank you.

476 [The prepared statement of Mr. Harper follows:]

477 ***** COMMITTEE INSERT *****

|
478 Mrs. {Bono Mack.} Gentleman yields back. The Chair
479 recognizes Mr. Olson for 3 minutes for his opening statement.

480 Mr. {Olson.} Thank you, Madame Chair for your
481 leadership in bringing forward this legislation to fix
482 Enhance Consumer Product Safety. I am pleased to be here
483 this morning for this markup.

484 This bill is long overdue and will correct many of the
485 major flaws and unintended consequences of the Consumer
486 Product Safety Improvement Act otherwise known as CPSIA. As
487 the father of two beautiful children there is nothing that is
488 more important to me than their health and their safety.
489 However, the health and safety of our children does not have
490 to come at the expense of small and family owned businesses
491 which is effectually what the CPSIA has done.

492 We all agree that the Consumer Product Safety Commission
493 has an important job to do, but the unintended consequences
494 of the CPSIA law need to be reconsidered and fixed. By
495 providing the Commission with the regulatory flexibility and
496 enhancing their ability to invest in the complaints more
497 accurately, we can grant need reforms while still maintaining
498 important consumer protections as originally intended under
499 CPSIA.

500 Beyond this, we need to seek a common sense approach to

501 ensure the safety of our children along with a robust future
502 for our Country's small businesses. Today this committee is
503 taking an important step forward in preserving American jobs
504 while ensuring the safety and health of our children.

505 Again, I thank the Chair for her leadership on this
506 matter and look forward to supporting reforms that this
507 legislation makes. I yield back the balance of my time.

508 [The prepared statement of Mr. Olson follows:]

509 ***** COMMITTEE INSERT *****

|
510 Mrs. {Bono Mack.} Gentleman yields back. The Chair
511 recognizes Mr. McKinley for 3 minutes for his opening
512 statement. No? Okay. I will pass and Chair recognizes Mr.
513 Pompeo for 3 minutes for his opening statement.

514 Mr. {Pompeo.} Thank you, Madame Chairwoman. I think
515 you have done a great job in bringing this forward. I think
516 we have had a wonderful process as we have worked with both
517 sides to improve on this act. You know I have been here four
518 months and the regulated community has just been clamoring
519 for changes to this act. We have had commissioners come talk
520 to us about changes that needed to be made.

521 But you know beyond those as I look at this myself,
522 there are requirements there that no State Legislature would
523 have possibly intended. I hear the folks on the other side
524 talk about the fact that this was a bipartisan piece of
525 legislation when it was passed, but I can promise you that
526 the 112th Congress, the House of Representatives doesn't
527 think that it makes sense to do all of the things that are in
528 there. I mean it is just no common sense.

529 No State legislature would knowingly forbid the sale of
530 second-hand winter coats to needy children for fear that some
531 stray zipper or button might conceivably contain some trivial
532 amount of lead which poses no risk to the wearer. But that

533 is what this act does.

534 No State legislation would require third party testing
535 for lead of ordinary paper clips because they happen to
536 appear in a science kit targeted for elementary students.
537 Yet that is what the act does. No State legislator would
538 outlaw the sale of child-sized brass instruments where there
539 is no evidence that any child musician has ever been harmed
540 from holding a brass and therefore, lead laden horn. But
541 that is what the act does. I hear story after story like
542 this.

543 In the first 6 weeks I was here in my hometown of
544 Wichita, Kansas I had a group of good people, some good
545 Samaritans from a local woodworking guild. They had run a
546 special project for years where they made toys for kids at
547 Christmas season. They made the toys by hand. They involved
548 art students from Wichita State University and other local
549 artists. They decorated the toys and distributed them
550 through the Salvation Army to needy children who otherwise
551 would not have toys.

552 Sadly, as a direct result of this law that program has
553 been shut down. No one benefits when the--works in this way.
554 I look forward to working to make this bill better and I
555 appreciate all the work you have done on this, Madame
556 Chairman. I yield back the balance of my time.

557 [The prepared statement of Mr. Pompeo follows:]

558 ***** COMMITTEE INSERT *****

|
559 Mrs. {Bono Mack.} Are there any members? The Chair
560 recognizes Mr. Kinzinger for 3 minutes for his opening
561 statement.

562 Mr. {Kinzinger.} Thank you, Madame Chairman. Talk
563 about in the nick of time--that is how you do it I guess.
564 Thank you, Madame Chairman, to you dedication to the issue
565 and bringing forward the Enhancing CPSC Authority and
566 Discretion Act to ensure the Consumer Protection Safety
567 Commission is addressing a primary safety concern that lead
568 to its creation in 2008.

569 As a freshman member of Congress and of this committee,
570 I have heard directly from consumers and product
571 manufacturers about the unintended consequences that will be
572 imposed if Congress fails to act. I have been pleased with
573 how this committee has worked to ensure the goals of the
574 original legislation are maintained and that children's
575 safety is protected.

576 Time and time again, Congress reacts to current events
577 with the best of intention, but often fails to ensure the
578 good outweighs the bad. The Consumer Product Safety
579 Improvement Act was written with the best intentions to
580 protect the health and welfare of children. Unfortunately
581 the overreaching lead requirements, misdirected public

582 database, and unmanageable third party testing is leading to
583 unintended consequences that this committee resolves in this
584 draft legislation. One unintended consequence of the 2008
585 Act prevented the manufacturing of child sized ATVs. This
586 resulted in children riding ATVs made for adults creating a
587 situation that is less safe for children.

588 I am pleased with the language in this legislation
589 before the committee today that provides an exemption for
590 recreational vehicles manufactured for use by children. I
591 look forward to working closely with the committee to ensure
592 this exemption is well defined and straightforward in report
593 language.

594 This Congress is focused on ensuring that Government is
595 not restricting competitiveness and job growth by fostering a
596 smarter and leaner bureaucracy. The Enhancing CPCS Authority
597 and Discretion Act has been years in the making. It is
598 legislation that is learned and improved from previous
599 bipartisan attempts. I am proud to support this bill and
600 subcommittee and look forward to working with my colleagues
601 to ensure floor action.

602 Thank you, Madame Chairman for the time and I yield
603 back.

604 [The prepared statement of Mr. Kinzinger follows:]

605 ***** COMMITTEE INSERT *****

|
606 Mrs. {Bono Mack.} Gentleman yields back. The Chair
607 thanks all members. We will now recess subject to the call
608 of the Chair. We will reconvene upon the conclusion of the
609 health markup downstairs and we will provide at least 15
610 minutes notice. So the Subcommittee stands recessed.

611 [Recess]

|

612 H.R. ____

613 2:55 p.m.

614 Mrs. {Bono Mack.} Subcommittee will resume. The Chair
615 calls out the discussion draft and asks the clerk to report.

616 The {Clerk.} H.R. blank, a discussion draft to provide
617 Consumer Product Safety Commission with greater authority and
618 discretion in enforcing the consumer product safety laws and
619 for other purposes.

620 [H.R. ____ follows:]

621 ***** INSERT 1 *****

|
622 Mrs. {Bono Mack.} Without objection. The first reading
623 of the bill is dispensed with and the bill will be open for
624 amendment at any point. So ordered. The Chair recognizes
625 herself. I have two amendments and ask if they would be
626 offered en bloc. Without objection the Clerk will report
627 both amendments.

628 The {Clerk.} Amendment 001 offered by Mrs. Bono Mack
629 from California, and Amendment Tech 01 offered by Mrs. Bono
630 Back of California.

631 [The amendments follow:]

632 ***** INSERT 2, 3 *****

|
633 Mrs. {Bono Mack.} Without objection. The reading of
634 the amendment is suspended with and I recognize myself for 5
635 minutes in support of the amendment.

636 The Amendment 001 corrects a drafting error in the base
637 text that moves the effective date of the 0.03 percent step
638 down from August 2009 to February 2009--amended the date to
639 August 14, 2009, preserves current law. Without the
640 amendment, both the 0.06 percent and the 0.03 percent lead
641 limits would be effective at the same time.

642 The second amendment does a few things. First, it
643 clarifies that mandatory third party testing may only be
644 required if lab capacity is sufficient or likely to be
645 sufficient in a reasonable amount of time. Second, this
646 amendment clarifies that persons submitted by the law to
647 submit a report of harm on behalf of another person. For
648 example, law enforcement officers need only verify that they
649 are authorized by law to submit the report. They do not need
650 the permission of the person who is harmed. Third, now that
651 we permit people other than the victim submit reports of
652 harm; the amendment addresses an omission in CPSIA by
653 ensuring that the privacy of the person harmed is protected.
654 Lastly, the amendment corrects a drafting error and
655 redesignates the Section 14D as Section 14 I.

656 I urge members to support these amendments and I yield
657 back my time. Is there a discussion on the amendment? The--
658 for what purpose does the Gentlewoman seek recognition?

659 Ms. {Schakowsky.} The minority will accept those
660 amendments.

661 Mrs. {Bono Mack.} All right. Is there any further
662 discussion on our sides on the amendments? All right. If
663 there is no further discussion and the Chair is extremely
664 happy about that, the vote occurs on the amendment. All
665 those in favor shall signify I guess by saying aye. The ayes
666 have it. Thank you for agreeing. So the ayes have it. The
667 amendment is agreed to. Are there any further amendments?
668 For what purpose does the Gentlewoman seek recognition?

669 Ms. {Schakowsky.} Madame Chairman, I move to strike the
670 last word. I have a couple questions for counsel.

671 Mrs. {Bono Mack.} The Gentlelady is recognized for 5
672 minutes.

673 Ms. {Schakowsky.} Thank you. I have a question.

674 [Slide]

675 There is supposed to be a picture of a plastic ball.
676 Are we putting that up on the screen? That according to the
677 manufacturer is intended--it is not--is there a picture a
678 ball? Okay. That according to the manufacturer is intended
679 for use by babies and toddlers. Under current law, this

680 product cannot have more than 100 parts per million and that
681 is appropriate because it is expected that a baby will
682 repeatedly handle and mouth this toy. Although the American
683 Academy of Pediatrics recommends that toys such as this ball
684 not contain more than 40 parts per million of lead, under the
685 Republican discussion draft this ball could have 300 parts
686 per million and according to some supporters of the provision
687 up to 349 parts per million. This is because under the
688 Republican bill the only products that have to meet the 100
689 parts per million standards are those that can to quote the
690 language of the draft legislation ``be sucked or sucked and
691 chewed''. Objects like round balls that ``can only be
692 licked'' don't have to meet this standard.

693 So counsel, I wanted to confirm my reading of the bill.
694 As I read the draft this ball is round and too big to go
695 inside a child's mouth, so it doesn't meet the draft's test
696 for products that have to meet the 100 parts per million.
697 Instead, under the Republican discussion draft, this ball
698 could have by my reading 300 parts per million of lead. Is
699 that correct?

700 {Counsel.} Unless the CPSC changes the results which it
701 is allowed to do that would be correct.

702 Ms. {Schakowsky.} So that is one of my problems with
703 this and I think it is a serious problem in the draft. There

704 is no question that round objects like this plastic ball and
705 other large objects don't meet the suck and chew standard.
706 Under the bill we are considering, that means they can have
707 elevated levels in lead. To me, that is dangerous and
708 doesn't make sense.

709 So I have another product question. Let me--oh there is
710 the ball up there.

711 [Slide]

712 Now I am going to move onto jewelry for men for 7 to 12
713 year olds. See if we can get that called a mood necklace. I
714 wanted to ask counsel about this necklace. The necklace is
715 made for elementary school children, not children age 6 and
716 under. But as we all know younger children are attracted to
717 jewelry worn by their older siblings. They often wear their
718 older sibling's jewelry and sometimes put it in their mouth.
719 And actually, I certainly do see older kids, too, just kind
720 of sucking on things that are around their neck. But that is
721 why high lead levels in a product like this would be
722 especially a threat to young children.

723 So my question is Counsel, under current law, this
724 necklace would need to meet a lead standard of 100 parts per
725 million starting in August. Is that correct?

726 {Counsel.} It depends on whether or not the CPSC finds
727 that it is technologically feasible--potentially but

728 otherwise yes, that is correct.

729 Ms. {Schakowsky.} Under current law, but that a
730 different standard would apply now under the draft. My
731 question is because this product is intended for children
732 that are older than 6, so it would be subject to a more
733 lenient 300 parts per million standard. Right?

734 {Counsel.} That is correct unless the CPSC decides to
735 bring it down to the lower standard or otherwise takes action
736 on it, yes.

737 Ms. {Schakowsky.} So this illustrates another problem
738 with the bill. This particular necklace was actually
739 recalled by the CPSC for high lead levels. Because of the
740 risks to children there is no reason they should have any
741 lead at all, yet this bill would triple the allowable lead--
742 levels of lead in the necklace, and that is dangerous and
743 doesn't make any sense to me.

744 And in addition actually to the notes that were provided
745 to me I want to emphasize again that I have often seen
746 children including my own grandchildren that are older than 6
747 years old taking things that are hanging around their neck
748 and putting them in their mouths. And I am very concerned
749 about this. And that gets to the issue of lowering age
750 standards, too. So thank you and I yield back.

751 Mrs. {Bono Mack.} Thank the Chair and would recognize

752 myself for 5 minutes to follow onto those questions to
753 counsel. What is the current limit to which the ball in the
754 photograph it must be manufactured?

755 {Counsel.} The ball, I think would be a toy and so it
756 is subject to multiple limits, potentially it is difficult to
757 tell sometimes from a picture whether it has a surface
758 coating, but it could be subject to a surface coating
759 standard--actually two different ones. It could--it is also
760 subject I believe to a lead limit of 0.03 percent.

761 Mrs. {Bono Mack.} So what would be the limit to which
762 it must be manufactured under the draft?

763 {Counsel.} It would be the same.

764 Mrs. {Bono Mack.} Thank you. And just want to
765 reiterate, my desire is to work with you, Ms. Schakowsky on
766 the jewelry if that is a concern as well. And with that I
767 yield back my time.

768 Mr. {Waxman.} Will the Chairman yield to me on that?

769 Mrs. {Bono Mack.} Yes.

770 Mr. {Waxman.} When you say zero--what is it?

771 {Counsel.} 0.03 percent.

772 Mr. {Waxman.} That comes to 300 parts per million?

773 {Counsel.} They are equivalent as long as you are
774 measuring by weight, yes.

775 Mr. {Waxman.} Okay, thanks. Madame Chair, I would like

776 to be recognized my own time?

777 Mrs. {Bono Mack.} All right. I yield back my time and
778 recognize Mr. Waxman for 5 minutes.

779 Mr. {Waxman.} I have a question about this gardening
780 kit.

781 [Slide]

782 You see it is clearly intended for use by young kids and
783 under the current law it has to meet a 300 parts per million
784 lead standard and will have to meet 100 parts per million in
785 August. That is good because the law keeps children away
786 from products that have dangerous lead contents. But as I
787 read this draft, these protections are repealed. Under
788 Section 3-C3 of the Republican draft there is an exception to
789 the 100 and 300 parts per million total lead content limits
790 for any metal component in a children's product intended
791 primarily for outdoor recreational use.

792 Now Counsel, am I reading this draft correctly? This
793 product is intended for outdoor recreational use, so it would
794 seem to be exempt from the 100 parts per million and the 300
795 parts per million standard. Is that right?

796 {Counsel.} It depends upon whether or not you are
797 correctly categorizing it as outdoor recreational use. But
798 if that is true, then it would be subject to the higher limit
799 for the metal components of it.

800 Mr. {Waxman.} Well, just looking at the picture, it
801 seems likely this would be used--a toy rake and shovel, it is
802 more likely to be used outside than inside the house--

803 {Counsel.} But the key word--

804 Mr. {Waxman.} --unless they have a sandbox in the
805 house.

806 {Counsel.} --the key word is toy though. If a toy is
807 considered within the field of recreational products. There
808 is some categorization there.

809 Mr. {Waxman.} Okay. Well, I--the question is whether
810 it is intended primarily for outdoor recreational use. And
811 products that are exempted from 100 parts per million and 300
812 parts per million standards can have very high levels of
813 lead. Steel parts can contain up to 3,500 parts per million
814 lead. Aluminum parts can contain up to 4,000 parts per
815 million lead. Copper alloy parts can contain up to 40,000
816 parts per million lead. Pediatricians have told us that
817 these are lead levels that are dangerous for children.

818 I understand that the outdoor recreation exemption is in
819 the bill to deal with products like ATVs and I agree that we
820 need to provide a relief to ATVs. But the problem is that
821 the way this draft is worded, the exemption is a lot broader
822 than that. It is so broad it covers products like this toy
823 gardening set, which no one I would hope would want to have a

824 high level content.

825 I have another picture I want to hold up and this is a
826 teething ring. This is clearly a product intended for a
827 baby. It is also a product that was recalled by the CPSC
828 this past January because it posed an ingestion risk.
829 Counsel, my understanding is that under the 2008 law, toys
830 like these teething rings are supposed to be tested for
831 potential hazards by third party testers to determine whether
832 they are truly safe for children. This testing requirement
833 is not yet in effect because the agency is in the process of
834 promulgating, implementing regulations. But once these
835 regulations are finalized, testing will be mandatory. Is
836 that right?

837 {Counsel.} Under the current law if the CPSC finalizes
838 the regulations that a product that is a toy would be subject
839 to mandatory third party testing.

840 Mr. {Waxman.} Now this bill before us repeals this
841 requirement. It says that except for a few narrow categories
842 like lead paint there is no mandatory third party testing.
843 It gives the agency authority to require testing if the
844 agency can jump through a series of hurdles but it does not
845 mandate these testing--this testing. Am I right about this?
846 Does the bill delaminate mandatory third party testing for
847 products like this teething ring, Counsel?

848 {Counsel.} It gives the commission discretion whether
849 or not to require third party testing for products like that
850 under certain circumstances.

851 Mr. {Waxman.} Well, okay. Discretion is different than
852 a mandate and I believe this is a serious problem with the
853 draft. We have a current law that will give parents the
854 security that dangerous products like a teething ring if they
855 are dangerous will be tested for safety before they are
856 marketed. But this draft takes us back to the time when the
857 burden is on the agency in order to recall--order a recall
858 after children have already been hurt. And I point this out
859 in order to illustrate a problem we have with this bill that
860 we hope will be remedied by the time we get to Full
861 Committee. And we would like to continue to work together to
862 accomplish that goal. Yield back my time.

863 Mrs. {Bono Mack.} And the Gentleman's time is expired.
864 Thank you. And is there further discussion? For what
865 purpose does the Gentlelady seek recognition? Gentlelady is
866 recognized for 5 minutes.

867 Mrs. {Blackburn.} Thank you, Madame Chairman. And
868 Counsel, I have got two grandsons, a 3 year old and 2 year
869 old. Three year old is--are the--Jack is turning 3 today.
870 This is his birthday. They were out with me this weekend
871 gardening. I have got an herb garden and I love having them

872 dig that. So I have them outside with me. They dig in the
873 dirt. We garden. We pick veggies and so I am interested
874 that he would bring up a little case that looks like what I
875 have for Jack and Jase and would have those toys in it.

876 So Counsel, since this is very similar to what my
877 grandsons use, I would like to ask you where did the numbers
878 come from that Mr. Waxman, the limits that Mr. Waxman
879 referred to--where did you get those? Where do those numbers
880 come from?

881 {Counsel.} The numbers that are--that would be
882 applicable to outdoor recreational products are--were
883 established by--initially by the commission but based on
884 European standards for metals.

885 Mrs. {Blackburn.} Okay and then when did they adopt
886 those limits?

887 {Counsel.} They have adopted them in several different
888 contexts. But they were first adopted in consumer product
889 safety context in the area of electronic products, products
890 for children that are made out of electronics. And then they
891 were also applied to ATV's, snowmobiles, motorbikes in
892 approximately May of 2010. And then they were applied to
893 bicycles thereafter.

894 Mrs. {Blackburn.} Okay. So they--those limits were
895 adopted after Congress had passed?

896 Mr. {Counsel.} That is correct. They were adopted
897 while--the electronics limits were adopted pursuant to
898 Congressional mandate on the electronics to establish limits
899 for that category of products. And the ATV and bicycles
900 standard limits were set by the CPSC actually without a
901 particular authority. But because of the inability of the
902 products to meet the standards.

903 Mrs. {Blackburn.} Okay. Thank you, Counsel. I yield
904 back.

905 Mr. {Waxman.} Will the gentlelady yield? Yes, I will
906 yield to my colleague.

907 Mrs. {Blackburn.} Yes, I will yield to my colleague.

908 Mr. {Waxman.} So they would be covered under existing
909 law, but now they won't because there is an exception which
910 is--we have talked about ATV and--I think we are taking about
911 different things, but they are all under the coverage
912 together. Could be too late to read each one the same
913 standard because this is more likely your grandchildren, my
914 grandchildren playing with this outdoors.

915 So the way the Republican bill treats it is that there
916 is an exception to the total lead content limits for these
917 metal components in a children's product intended primarily
918 for outdoor recreational use. Primarily for outdoor
919 recreational use--were you thinking primarily of ATVs when

920 that phrase was developed?

921 {Counsel.} I had a broader category in mind. And I
922 think additional products are intended.

923 Mr. {Waxman.} Well, were you intending a product like
924 this to be excluded from the lead standard?

925 {Counsel.} I want to clarify that the products are not
926 excluded. They are subject to a different limit. As you--I
927 thought you understood that from your prior comment that they
928 have higher limits that are established for the metal parts.

929 Mr. {Waxman.} Um-hum.

930 {Counsel.} But the category of outdoor recreational
931 products is not defined in the statute but I do think it
932 would include more than ATVs. I am not clear that it would
933 include the product that you are demonstrating.

934 Mr. {Waxman.} Well, from my understanding is you can
935 have steel parts that can be very, very high in lead.
936 Aluminum parts can be even higher. Copper alloy, 40,000
937 parts per million. And pediatricians are telling us those
938 levels could be pretty high. I don't know what these tools
939 are made out of, but it seems to me that we ought to make
940 sure that if they are tools with a very high level of lead
941 that we shouldn't permit that.

942 Mrs. {Blackburn.} Reclaiming my time if I may. I think
943 what I am hearing Counsel say is these are recreational

944 products. There would not be an accelerated exposure by--it
945 looks like a wooden handle. Holding the wooden handle and
946 then using the little rake or the little shovel to help move
947 the soil and till the soil. So I thank Counsel for the
948 comments and I yield back.

949 Mrs. {Bono Mack.} Is there further discussion? Without
950 objection?

951 Mr. {Bono Mack.} Gentlelady is recognized for--

952 Ms. {Schakowsky.} I am sorry. I just wanted to clarify
953 a couple of things. Madame Chairman, when you followed up on
954 the question about the ball, Counsel answered correctly that
955 right now under the law, 300 parts per million are accepted.
956 But is it not true that for under the current--under the law
957 of the past that that ball would have gone--had to go down to
958 100 parts per million in August?

959 {Counsel.} It depends on if the commission determines
960 it is technologically feasible. But apart from that the
961 answer is yes. It would go down to 100 parts per million.

962 Ms. {Schakowsky.} And is that also true for that
963 outdoor recreational toy?

964 {Counsel.} The gardening set that Mr. Waxman is
965 showing?

966 Ms. {Schakowsky.} Yeah. If it fit into that category,
967 yeah, for children.

968 {Counsel.} It would be the same. It would be the same
969 standard, yes.

970 Ms. {Schakowsky.} It would go down to 100?

971 {Counsel.} Provided that it is technologically
972 feasible.

973 Ms. {Schakowsky.} Okay. Thank you very much. I yield
974 back.

975 Mrs. {Bono Mack.} Thank you, gentlelady. Is there
976 further discussion? All right, if there are no further
977 amendments and discussion the question occurs on favorably--
978 excuse me. No? All right. Okay. The question occurs on
979 favorably reporting the bill to the Full Committee. All
980 those in favor say aye. Those opposed, no. The ayes have it
981 and the bill is favorably reported. Without objection, staff
982 is authorized to make technical and conforming changes to the
983 bill approved by the subcommittee today. Hearing no
984 objections, so ordered. The Chair thanks all members and
985 staff. The subcommittee stands adjourned.

986 [Whereupon, at 3:15 p.m., the Subcommittee was
987 adjourned.]