

business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including,<sup>1</sup> the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed, and such other factors as appropriate. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

**(d) “Knowingly” defined**

As used in the first sentence of subsection (a)(1) of this section, the term “knowingly” means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(Pub. L. 92-573, §20, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 94-284, §13(b), May 11, 1976, 90 Stat. 509; Pub. L. 95-631, §6(c), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97-35, title XII, §1211(c), Aug. 13, 1981, 95 Stat. 721; Pub. L. 101-608, title I, §§112(e), 115(a), Nov. 16, 1990, 104 Stat. 3117, 3118; Pub. L. 110-314, title II, §217(a)(1), (b)(1)(A), Aug. 14, 2008, 122 Stat. 3058.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-314, §217(a)(1)(A), (B), substituted “\$100,000” for “\$5,000” and substituted “\$15,000,000” for “\$1,250,000” in two places.

Subsec. (a)(3)(B). Pub. L. 110-314, §217(a)(1)(C), which directed amendment of subsec. (a)(1) by substituting “December 1, 2011,” for “December 1, 1994,” in par. (3)(B), was executed by making the substitution in subsec. (a)(3)(B) to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 110-314, §217(b)(1)(A)(i), inserted “the nature, circumstances, extent, and gravity of the violation, including” after “shall consider”, substituted “products distributed,” for “products distributed, and”, and inserted “, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate” before period at end.

Subsec. (c). Pub. L. 110-314, §217(b)(1)(A)(ii)(II), inserted “, and such other factors as appropriate” after “products distributed”.

Pub. L. 110-314, §217(b)(1)(A)(ii)(I), which directed amendment of subsec. (c) by inserting “, including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including” after “person charged”, was executed by making the insertion after “person charged” the first place appearing, to reflect the probable intent of Congress.

1990—Subsec. (a)(1). Pub. L. 101-608, §§112(e), 115(a)(1), (2), substituted “\$5,000” for “\$2,000”, and “(10), or (11)” for “or (10)”, and substituted “\$1,250,000” for “\$500,000” in two places.

Subsec. (a)(3). Pub. L. 101-608, §115(a)(3), added par. (3).

1981—Subsecs. (b) to (d). Pub. L. 97-35 added subsec. (b), redesignated former subsec. (b) as (c), substituted “the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed” for “the appropriateness of such penalty to the size of

the business of the person charged and the gravity of the violation shall be considered”, and redesignated subsec. (c) as (d).

1978—Subsec. (a)(1). Pub. L. 95-631 made violation of section 2068(a)(10) of this title a separate offense.

1976—Subsec. (a)(1). Pub. L. 94-284 inserted reference to pars. (8) and (9).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 217(a)(1) of Pub. L. 110-314 effective on the date that is the earlier of the date on which final regulations are issued under section 217(b)(2) of Pub. L. 110-314, set out below, or 1 year after Aug. 14, 2008, see section 217(a)(4) of Pub. L. 110-314, set out as a note under section 1194 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

CIVIL PENALTY CRITERIA

Pub. L. 110-314, title II, §217(b)(2), Aug. 14, 2008, 122 Stat. 3059, provided that: “Not later than 1 year after the date of enactment of this Act [Aug. 14, 2008], and in accordance with the procedures of section 553 of title 5, United States Code, the [Consumer Product Safety] Commission shall issue a final regulation providing its interpretation of the penalty factors described in section 20(b) of the Consumer Product Safety Act (15 U.S.C. 2069(b)), section 5(c)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(3)), and section 5(e)(2) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(2)), as amended by subsection (a).”

**§ 2070. Criminal penalties**

(a) Violation of section 2068 of this title is punishable by—

(1) imprisonment for not more than 5 years for a knowing and willful violation of that section;

(2) a fine determined under section 3571 of title 18; or

(3) both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 2068 of this title shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a) of this section.

(c)(1) In addition to the penalties provided by subsection (a), the penalty for a criminal violation of this chapter or any other Act enforced by the Commission may include the forfeiture of assets associated with the violation.

(2) In this subsection, the term “criminal violation” means a violation of this chapter or any other Act enforced by the Commission for which the violator is sentenced to pay a fine, be imprisoned, or both.

(Pub. L. 92-573, §21, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 110-314, title II, §217(c)(1), (2), (d), Aug. 14, 2008, 122 Stat. 3060.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-314, §217(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Any person who knowingly and willfully violates section 2068 of this title after having received notice of noncompliance from the Commission

<sup>1</sup> So in original. The comma probably should not appear.

shall be fined not more than \$50,000 or be imprisoned not more than one year, or both."

Subsec. (b). Pub. L. 110-314, §217(c)(2), struck out "and who has knowledge of notice of noncompliance received by the corporation from the Commission," after "section 2068 of this title".

Subsec. (c). Pub. L. 110-314, §217(d), added subsec. (c).

### § 2071. Injunctive enforcement and seizure

#### (a) Jurisdiction

The United States district courts shall have jurisdiction to take the following action:

(1) Restrain any violation of section 2068 of this title.

(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 2064(d) of this title.

(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule.

Such actions may be brought by the Commission (without regard to section 2076(b)(7)(A) of this title) or by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

#### (b) Products liable to proceeding

Any consumer product—

(1) which fails to conform with an applicable consumer product safety rule, or

(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 2064(d) of this title,

when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving substantially similar consumer products are pending in courts of two or more judicial districts they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest upon notice to all other parties in interest.

(Pub. L. 92-573, §22, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 94-284, §§11(b), 12(c), May 11, 1976, 90 Stat. 507, 508.)

#### AMENDMENTS

1976—Subsec. (a). Pub. L. 94-284, §§11(b), 12(c)(1), designated existing provision as par. (1) and (3), added par. (2), and in provision following par. (3) substituted "(without regard to section 2076(b)(7)(A) of this title)" for "(with the concurrence of the Attorney General)".

Subsec. (b). Pub. L. 94-284, §12(c)(2), amended subsec. (b) generally, inserting provision designated as par. (2)

which included within consumer products liable to proceedings, a product of which the manufacture for sale, offering for sale, distribution in commerce, or importation into the United States has been prohibited.

### § 2072. Suits for damages

#### (a) Persons injured; costs; amount in controversy

Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, shall recover damages sustained and may, if the court determines it to be in the interest of justice, recover the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2060(f) of this title) and reasonable expert witnesses' fees: *Provided*, That the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and cost, unless such action is brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

#### (b) Denial and imposition of costs

Except when express provision is made in a statute of the United States, in any case in which the plaintiff is finally adjudged to be entitled to recover less than the sum or value of \$10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

#### (c) Remedies available

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law.

(Pub. L. 92-573, §23, Oct. 27, 1972, 86 Stat. 1226; Pub. L. 94-284, §10(c), May 11, 1976, 90 Stat. 507; Pub. L. 96-486, §3, Dec. 1, 1980, 94 Stat. 2369; Pub. L. 97-35, title XII, §1211(h)(3)(B), Aug. 13, 1981, 95 Stat. 723.)

#### AMENDMENTS

1981—Subsec. (a). Pub. L. 97-35 substituted "section 2060(f) of this title" for "section 2059(e)(4) of this title".

1980—Subsec. (a). Pub. L. 96-486, §3(a), struck out provision subjecting actions under this section to section 1331 of title 28 as to the amount in controversy and inserted proviso establishing minimum amount in controversy and excepting actions brought against the United States, or agencies, officers, or employees thereof.

Subsecs. (b), (c). Pub. L. 96-486, §3(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94-284 substituted "shall" for "and shall" and provision permitting the court to award costs in the interest of justice for a prior provision which permitted the court to award costs in its discretion.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT; APPLICABILITY

For effective date and applicability of amendment by Pub. L. 96-486, see section 4 of Pub. L. 96-486, set out as