

(b) Exception

Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 2063(a) of this title to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

(Pub. L. 92-573, §19, Oct. 27, 1972, 86 Stat. 1224; Pub. L. 94-284, §§12(b), 13(a), May 11, 1976, 90 Stat. 508, 509; Pub. L. 95-319, §3(b), July 11, 1978, 92 Stat. 390; Pub. L. 95-631, §6(b), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97-414, §9(j)(4), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 101-608, title I, §112(d), Nov. 16, 1990, 104 Stat. 3117; Pub. L. 110-314, title II, §216(a), Aug. 14, 2008, 122 Stat. 3056; Pub. L. 112-28, §2(b), Aug. 12, 2011, 125 Stat. 279.)

AMENDMENTS

2011—Subsec. (a)(14). Pub. L. 112-28 substituted “, or to subdivide the production of any children’s product into small quantities that have the effect of evading any third party testing requirements under section 2063(a)(2) of this title;” for period at end.

2008—Subsec. (a)(1), (2). Pub. L. 110-314, §216(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this chapter;

“(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this chapter;”.

Subsec. (a)(6). Pub. L. 110-314, §216(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “fail to furnish a certificate required by section 2063 of this title or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 2063(c) of this title (relating to labeling);”.

Subsec. (a)(7) to (10). Pub. L. 110-314, §216(a)(3)–(6), struck out “or” at end of par. (7) and “and” at end of par. (8) and substituted semicolon for period at end of par. (9) and (10).

Subsec. (a)(12) to (16). Pub. L. 110-314, §216(a)(7), added pars. (12) to (16).

1990—Subsec. (a)(11). Pub. L. 101-608 added par. (11).

1983—Subsec. (a)(7). Pub. L. 97-414, §9(j)(4)(A), substituted “section 2058(g)(2)” for “section 2058(d)(2)”.

Subsec. (a)(8). Pub. L. 97-414, §9(j)(4)(B), redesignated par. (9) as (8) and struck out former par. (8) which made it unlawful for any person to fail to comply with any rule under section 2062 of this title (relating to prior notice and description of new consumer products).

Subsec. (a)(9), (10). Pub. L. 97-414, §9(j)(4)(B), redesignated par. (10), as added by Pub. L. 95-319, as (9). Former par. (9) redesignated (8).

1978—Subsec. (a)(10). Pub. L. 95-631 added par. (10), providing that it be unlawful to fail to file a statement with the Commission pursuant to section 2067(b) of this title.

Pub. L. 95-319 added par. (10), providing that it be unlawful to fail to comply with any rule or requirement under section 2082 of this title.

1976—Subsec. (a). Pub. L. 94-284 substituted “to” for “and to” and inserted “, and to prohibited acts” after “refund” in par. (5), inserted “or fail or refuse to establish or maintain records,” after “copying of records,” in par. (3), and added pars. (8) and (9).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-314 effective on the date that is 30 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.

DUTY TO REPORT CHOKING INCIDENTS CAUSED BY CHILDREN’S TOYS OR GAMES

For purposes of subsec. (a)(3) of this section, requirement to report information relating to choking incidents caused by children’s toys or games to Consumer Product Safety Commission deemed a requirement under this chapter, see section 102 of Pub. L. 103-267, set out as a Reporting Requirements note under section 2064 of this title.

§ 2069. Civil penalties**(a) Amount of penalty**

(1) Any person who knowingly violates section 2068 of this title shall be subject to a civil penalty not to exceed \$100,000 for each such violation. Subject to paragraph (2), a violation of section 2068(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) of this title shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations. A violation of section 2068(a)(3) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 2068(a) of this title—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(3)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of penalties greater than \$10,000 but less than or equal to \$100,000, the nearest multiple of \$5,000;

(iii) in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000; and

(iv) in the case of penalties greater than \$200,000, the nearest multiple of \$25,000.

(D) For purposes of this subsection:

(i) The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term “cost-of-living adjustment for the preceding five years” means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(b) Relevant factors in determining amount of penalty

In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 2068(a) of this title, the Commission shall consider the nature, circumstances, extent, and gravity of the violation, including the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate.

(c) Compromise of penalty; deductions from penalty

Any civil penalty under this section may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the 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,¹ 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 sec-

¹ So in original. The comma probably should not appear.

tion 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).

(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 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