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Consumer Product Safety Database Poses Risks

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The panic over lead-contaminated toys revealed a serious shortcoming in safety efforts: Consumers, particularly parents, lack trusted sources to turn to for detailed information on the safety of the products they have in their homes. The Senate's proposed solution is to create a government-run database of all product safety complaints and comments made by any individual, group, or company. This proposal could actually have a negative impact on safety, because it would put the Consumer Product Safety Commission (CPSC) in the position of having to examine all submissions for their accuracy or truthfulness, a great burden on an already overstretched agency, or allow the database to include false information that may cause panics and undermine trust in the whole system. Even worse, a government database could crowd out more effective solutions from the market. Rather than rush into a half-baked, possibly counterproductive scheme, Congress should follow the lead of the House and take the time to give this complex proposal the attention and study that it requires.

A Government-Run Database. Heading into conference, the House and Senate CPSC reform packages contain very different product-safety database provisions that will have to be reconciled before final passage, which is expected by the end of July.

The Senate's legislation requires the CPSC to create "a publicly available searchable database" that includes "any reports of injuries, illness, death, or risk of such injury, illness, or death related to the use of consumer products."¹ These reports must be accepted from a variety of sources, including con-

sumers, government agencies, health care workers, and non-governmental sources, such as nonprofits and businesses. Any reports sent to the CPSC must be posted to the database, and thus made available to the public, within 15 days of their receipt.

The CPSC would have limited authority to restrict the kind of reports included in the database. While reports of injuries must be "related to" a product, this is an extremely low standard that would encompass virtually any consumer complaint, no matter its merit. The CPSC would be required to post online any report alleging any ill—real, potential, or imagined—having to do with a product.

The CPSC would also have little power to filter out false or misleading reports. Though the Senate bill would give the agency the authority to remove "incorrect" information, it could do this only "after investigation." Investigations, however, would consume manpower and other resources. Unless the CPSC is willing to reassign employees to the database, false and misleading reports would have to remain online.

The Senate bill would restrict the CPSC's discretion in other ways. It contains no exception to the posting requirement for reports containing, for example, trade secrets, personal information, libel-

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ous claims, copyright violations, or even confidential state secrets, such as those that may be revealed in reports on products made by certain government contractors. Nor does it specify or even seem to allow any procedure for removing such materials. If the bill did contain these exceptions or a removal process, however, it would impose a great burden on the CPSC, which would have to review all reports before posting and investigate requests for removal.

The one area in which the CPSC would have discretion to withhold information would be comments from manufacturers and other companies sent in response to safety reports. While the CPSC would be required to give these parties “an opportunity to comment” on reports concerning their products, it would not be required to post those comments alongside the reports that they concern. The bill does not state whether this “opportunity” would exist prior to the posting of reports, but the timeline for posting indicates that such advance notice would be unlikely.²

Worst of all is the risk that a government-run product safety database, no matter how exactly it is implemented and designed, will push potentially superior non-government alternatives out of the market. Few technology startups or consumer-interest groups have the resources to compete with the federal government.

This problem is especially acute because organizing and providing vast bodies of information to consumers are tasks at which private entities have excelled and where innovation is brisk. In just a few years, for example, the nonprofit Wikimedia Foundation has grown its online reference work Wikipedia from a few thousand article “stubs” to the world’s broadest general reference, drawing on public knowledge and expertise.³ No less remarkably, Wikipedia has managed to organize all of its information—with extensive search, cross-referencing, and categorization facilities—in ways that make it

easy for Internet users of all skill levels to navigate its massive contents. Similarly, Google, whose mission is “to organize the world’s information and make it universally accessible and useful,” has tamed the once-chaotic World Wide Web with its smart and ever-improving search tools.⁴

Though the government could certainly adopt an existing technology in creating its database, it would not be able to take advantages of the processes that continue to drive the innovation of services like Google and Wikipedia. Market forces—whether channeled through non-profits serving their memberships or for-profit entities competing against one another for market share—stand a much better chance of collecting and marshalling safety information into online services that empower consumers.

A Thoughtful Alternative. Rather than lay out plans for a database, the House legislation (H.R. 4040) takes the more modest approach of directing the CPSC to study the amount of product safety information already available to consumers and the feasibility of creating a database containing reports from the public and other sources.⁵ Specifically, the CPSC would have 180 days from enactment of the bill to craft a detailed implementation plan that considers, among other details unaddressed in the Senate proposal, exactly what types of information should be included in the database, how personal information would be protected, how the CPSC could vet information for accuracy and relevance, and how best to market the database to the public.

The House proposal would allow Congress, working with the CPSC’s input and guidance, to craft a database plan that addresses some of the shortcomings of the Senate proposal. Even better, it would give the CPSC and Congress the time and incentive to identify alternative solutions that harness market forces to bring consumers greater and more timely information about the products that they and their families use.

1. H.R. 4040 (Engrossed as Amended by the Senate), 110th Cong. § 7 (2008).
2. “Any such comments *may be included in the database* alongside the information involving such product if requested by the manufacturer, private labeler, or retailer” (italics added). *Id.*
3. History of Wikipedia, http://en.wikipedia.org/wiki/History_of_Wikipedia (last visited April 3, 2008).
4. Google, Corporate Information—Company Overview, <http://www.google.com/corporate> (last visited April 3, 2008).
5. H.R. 4040 (Engrossed in the House), 110th Cong. § 206(b).

Conclusion. Congress does not just wave its magic wand to create major new public services. New services are implemented by agencies that face all kinds of real-world tradeoffs, and the Senate's proposal for the CPSC to create and maintain a product safety database is no exception. Creating such a database would be a complex undertaking, and even seemingly minute details of implementation would affect its usefulness to the public and impact on other CPSC activities. There is also the real risk that the burdens of operating a database

could force the CPSC to make bad tradeoffs, to the detriment of overall public safety. The sparse provisions of the Senate's proposal, which fails to address any of these concerns, demonstrate that Congress has not given this issue the deliberation and thoughtfulness that it requires. The House's more modest proposal, then, is the more appropriate at this time.

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