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Bill Would Overhaul CPSC

Rep. James Florio (D-NJ), joined by members of the House Subcommittee on Commerce, Consumer Protection, and Competitiveness, which he chairs, introduced legislation in September to overhaul the Consumer Product Safety Commission (CPSC) and "put the [commission] back to work protecting consumers."

The "Consumer Product Safety Improvement Act of 1987," H.R. 3343, was designed as a response to the CPSC's failure to act on a number of important safety issues. That failure to act was documented in a CFA report, "The CPSC: Guiding or Hiding from Product Safety?"

The report, which was issued last Spring in conjunction with CPSC reauthorization hearings in the Senate and the House, concluded that the recent unwillingness of the CPSC either to regulate or to enhance private sector safety initiatives is costing the nation hundreds of lives, tens of thousands of injuries, and more than $1 billion each year.

Procedural Changes Outlined

In response to these problems, H.R. 3343 would reform the procedures of the CPSC "to require prompt action in the face of product hazards and to ensure consumer input in regulatory decisions," said Rep. Dennis E. Eckart, a member of the subcommittee.

In an attempt to reduce delays in commission action, the bill would require the CPSC to begin the regulatory process if it finds a product poses a significant risk of injury and would set deadlines for action by the agency. The agency would be able to defer only to existing voluntary standards, developed through a consensus process.

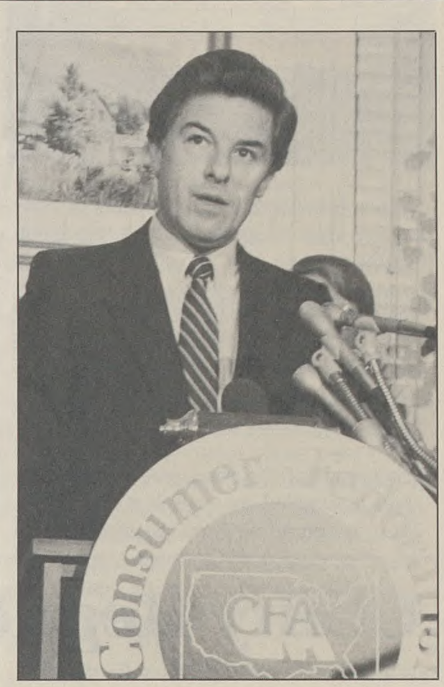
In addition, consumers would be given greater access to information received by the commission on product safety hazards, and the commission would be required to act in a timely manner on consumer petitions for new or improved consumer product safety rules.

"This measure is a tremendous step in reversing the paralysis that has come to characterize the CPSC in the past six years," said Susan Weiss, CFA Legislative Representative. "By streamlining agency practices and redirecting the CPSC back on its mandated course, this bill would put taxpayer dollars to good use, providing this nation's consumers with effective product safety protection."

Chairman's Powers Restricted

In addition to streamlining CPSC procedures, the bill would make changes in commission structure.

The proposed legislation calls for the CPSC chairman to be elected by the other commissioners, and it establishes a quorum of two when only three commissioners are sitting. It also requires senior staff to be responsive to the entire commission, "not just to the whims of a misguided chairman," Eckart said.


Rep. James Florio (D-NJ)

These latter provisions followed charges that CPSC Chairman Terrence Scanlon was attempting to dismantle from within the agency he is supposed to direct. Of particular concern was a series of controversial personnel decisions made by Scanlon despite the reported strong disapproval of his fellow commissioners.

Most controversial was Scanlon's decision in late August to reassign David Schmeltzer, long-time, highly respected head of the commission's compliance and administrative litigation division, to a special project assignment overseeing the commission's branch offices.

In response, Reps. Florio and Eckart issued a statement calling on Scanlon to consider submitting his resignation.

"The record of the commission under its current leadership structure is horrifying," Rep. Florio said at the news conference to introduce the bill. "The subcommittee has documented case after case where the commission has been unable to act decisively to protect consumers from safety hazards.

"Under its current leadership, the commission has retreated again and again from its responsibility to consumers," he said. "When an agency falls as dangerously short of its mission, and when that mission is so blatantly disregarded by the agency's top official, strong action is needed."

Non-Bank Check-Cashing Costs Excessive

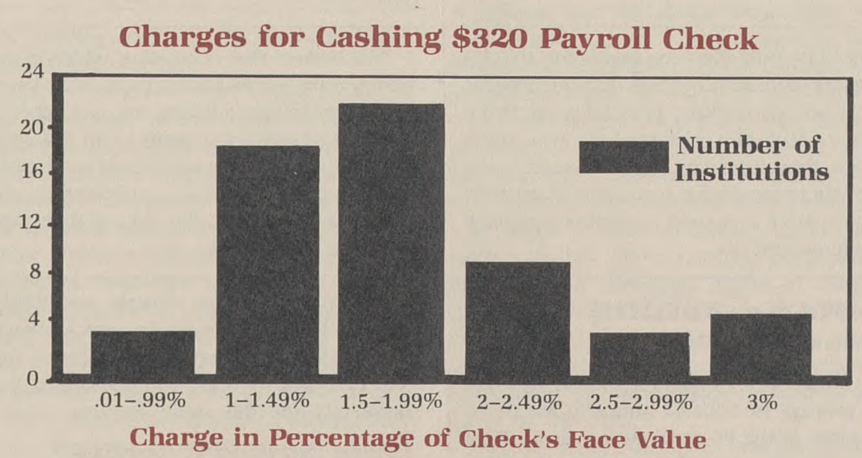
Consumers who use check-cashing services instead of banks pay fees as high as three percent of the value of government checks, adding up to annual costs of several hundred dollars, according to a survey conducted by Consumer Federation of America.

The survey, released in September, examined fees charged by 60 check-cashing outlets in 20 major U.S. cities and found "excessively high fees for check-cashing services from coast to coast."

"Consumers will usually pay less at banks and thrifts than at check-cashing services, and they will get more for their money," said CFA Legislative Representative Alan Fox, who conducted the survey with CFA Legislative Aide Tom Ciaglo. "But where consumers must use check-cashing services because these alternatives are not available, they should shop around. Prices do vary, and consumers can save hundreds of dollars a year," Fox said.

Bank Services Unavailable

Bank and thrift services are not available to many government benefit recipients, who are thus forced to rely on check-cashing outlets. Many neighborhoods in urban centers have had most or all of their bank branches closed in recent years.



In addition, CFA's annual surveys of bank and thrift fees have found that more than 70 percent of the institutions surveyed will not cash government checks for noncustomers, forcing consumers who cannot meet balance or identification requirements into the arms of high-priced check cashers.

Congress Considers Action

This problem has attracted the attention of Congress in recent months. Sen. Howard Metzenbaum (D-OH), citing CFA's figures, won passage on the Senate floor of an amendment to a major banking bill to require federally insured banks and thrifts to cash government checks for noncustomers at no charge.

The provision was deleted in a House-Senate conference committee, however, and replaced with a direction to the General Accounting Office (GAO) to study the difficulties consumers have cashing such checks. The GAO, which is Congress' investigatory arm, is required to report its findings in early February. Congressional hearings are expected after the report is issued.

Survey Findings Reported

CFA's survey found that check-cashing services typically charge about 1.5 percent of the value of a payroll or government check. Those amounts equal nearly $5 for cashing a weekly payroll check of $320 or $7.50 for a monthly Social Security check of $500.

The total annual cost can be hundreds of dollars a year for consumers who rely on these services instead of banks, typically poorer consumers who cannot maintain the minimum balance required by most banks or who live in neighborhoods with no bank branches.

For example, a wage earner who cashes a $320 payroll check every week and who

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FCC Proposes Telephone Regulation Change

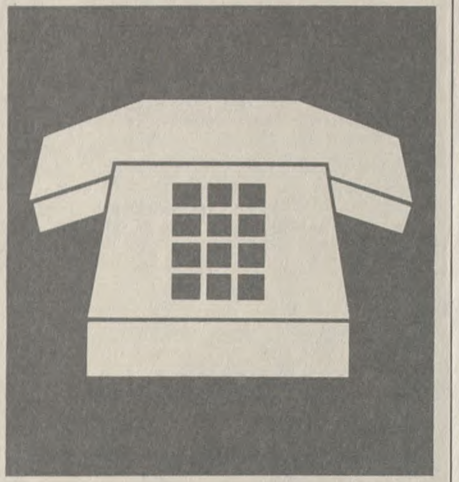
The Federal Communications Commission (FCC) has issued a proposal to change dramatically the way dominant long distance carriers are regulated for interstate services.

A Notice of Proposed Rulemaking has been issued to replace rate-of-return regulation for dominant carriers (AT&T and the Regional Bell Operating Companies) with ceilings on prices charged for interstate services. Comments on the proposal are being accepted by the FCC until October 19.

The FCC has suggested the change be implemented first for AT&T.

Proponents of the proposal claim it is designed to encourage greater efficiency and innovation by allowing the carrier to retain at least some of the profits arising from increased efficiency or creativity that they believe elimination of rate-of-return regulation will foster.

An additional goal is to decrease incentives to shift costs from more to less competitive service offerings. According to the FCC, the rules governing the periodic revision of the caps could reduce, if not eliminate, any perverse incentives to inflate rate bases, as carriers would no longer be able to exploit factors within their control to increase their earnings at ratepayers' expense.



Other benefits the FCC expects to arise from a shift to price ceiling regulation include:

- greater protection for ratepayers against sudden steep rate increases than cost-of-service regulation can provide;
- simpler administration than the current approach;
- reduction of the resources competitors feel compelled to commit to participation in the administrative process; and
- a resulting increase in the resources carriers could bring to competition in the marketplace.

CFA Questions Proposal

CFA Legislative Director Gene Kimmelman expressed concern over the possible abandonment of rate-of-return regulation. "There does not appear to be much to be gained for consumers," he said. "On the other hand, there appears to be a great deal that can be lost."

"Certainly there has not been much, if any, pain and suffering visited upon us as a result of rate-of-return regulation, not until recently when people started monkeying with it," said Mark Cooper, CFA Research Director.

Currently, regulated telephone companies' earnings are much too high, Cooper said. Compared to the Standard and Poor 400, AT&T's rate of return is now a full percentage point higher and the Regional Bell Operating Companies' rate of return is three percentage points higher than they have historically been.

"These vigorous efforts to change the way we look at rates represent an effort to institutionalize rates of profit that are way out of line with the historical pattern," Cooper said.

"Not only are rates too high because the return on equity is too high, but in the past half decade there has been a dogged campaign to increase the recovery of costs from residential users," Cooper said, citing monthly charges that are up sharply while usage and business service rates are flat or down.

"If you look at these numbers and make a deal for a price cap to replace rate-of-return regulation, you are making a very bad deal for the consumer," Cooper said. "Starting from rates that are too high and without any evidence that rate-of-return regulation has imposed any damage, you would institutionalize excess profits both in the present (because the starting point is too high) and in the future (because the escalator is likely to be too large)."

Consumer Protections Needed

If changes in rate-of-return regulation are inevitable, Cooper said, those changes should include:

- rate-of-return ceilings to prevent excessive returns;
- price bands to prevent excessive price discrimination;
- rules for determining what is and is not competitive; and
- rules for reclassifying services if they don't prove to be competitive.

"Will this reduce the regulatory burden? A little, perhaps, by stretching the period between rate cases and by providing more flexibility to the companies, but not much," Cooper said. "The simple fact of the matter is that we still see telecommunications as a monopoly at the local level. Even in long distance, competition has proven feeble at best.

"Regulation came into existence to restrain the abuse of market power, and that market power still exists, and we think serious regulation should too," he concluded.

CFA Proposes Utility Regulation Reform

The failure of the nuclear power program has made clear the need to reform regulation of electric utilities, but wholesale deregulation of the industry is uncalled for and would be hazardous to the consumer interest, CFA Research Director Mark Cooper told the House Subcommittee on Energy and Power at a September hearing on electric utility regulation.

Instead, Cooper proposed a program, based on an analysis of the successes and failures of deregulation in other industries, that would combine incentives for competition and rate-of-return regulation.

"Although the two thrusts of regulatory reform emerging from the nuclear fiasco may seem contradictory, they need not be," Cooper said. "Competition under conditions of strict equal access to bottleneck facilities should be encouraged where it is workable. Where residual regulation is necessary, it should be rate-of-return regulation that injects incentives and polices costs vigorously.

Mark Cooper, CFA Research Director

Rep. Philip R. Sharp (D-IN), Chairman of the House Subcommittee on Energy and Power

"Where competitive principles can be injected within the context of vigorous regulation, they should be," he continued, citing bidding proposals for acquisition of generating capacity as a good example if properly implemented.

"We believe that regulation which gives competitive forces a freer hand and allows incentives to play a larger role can achieve the bulk of efficiency gains in an industry which still possesses significant monopoly characteristics, without unnecessarily exposing consumers to the risks of deregulation," he concluded.

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Check-Cashing Costs

(Continued from Page 1)

buys six money orders a month will pay an average of $301.44 annually for those services at the 60 services surveyed. Total annual costs ranged from $174 to $518.

Social Security and other government benefit recipients pay between $69 and $324 a year to cash a monthly $500 check and to buy four money orders a month. The average annual cost was $125.70. While these costs are competitive with the cost of maintaining a small checking account in many cities, free checking accounts are available for senior citizens at many banks that would otherwise impose service charges.

The survey uncovered wide variations in costs within individual cities even though only a few outlets in each city were surveyed. In Philadelphia, Seattle, and Washington, D.C., for example, some check cashing services charge three times the fees charged by their competitors in the same city for the same services.

Costs Termed Extortive

Only in New York City, where check-cashing fees are regulated by the state, were costs below one percent of a check's value. Despite these relatively low prices, there are many check-cashing outlets in New York, suggesting, according to the report, that "the charges permitted in New York are sufficient for check cashers to earn a profit and that the higher charges observed elsewhere in the country are excessive and extortive."

The report calls on state legislators to follow the New York example and act to strictly limit check-cashing charges.

CPSC to Require DCM Labeling

CPSC has voted to issue a Statement of Interpretation and Enforcement Policy declaring that certain household products containing methylene chloride (DCM) are hazardous substances under the Federal Hazardous Substances Act.

The new policy will require manufacturers of certain types of consumer products to begin including a warning of the cancer hazards associated with inhalation of methylene chloride on the product labels.

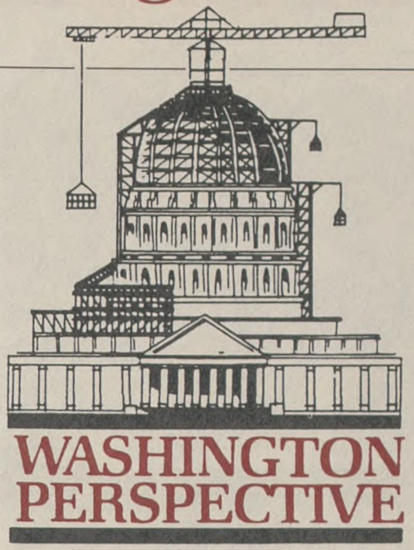
"These labeling requirements represent an important first step in communicating chronic risks associated with consumer product use to the public," said CFA Product Safety Director Mary Ellen Fise.

Precautionary use information and other labeling will also be required to inform consumers how to limit their exposure to DCM.

The commission action came as a result of its multi-year investigation of methylene chloride and a 1985 CFA petition requesting that CPSC declare the chemical hazardous and limit the concentration of DCM allowed in consumer products. The commission has not taken action on the second part of the petition.

Poor Lack Access to Banking Services

By Stephen Brobeck, Executive Director



In the 1980s, consumer and community groups have grown increasingly concerned about bank discrimination against small depositors and nondepositors. This discrimination takes many forms, including price hikes on transaction accounts, refusal to cash checks, and branch closings. It is the principal reason for the declining percentage of low- and moderate-income households with bank accounts.

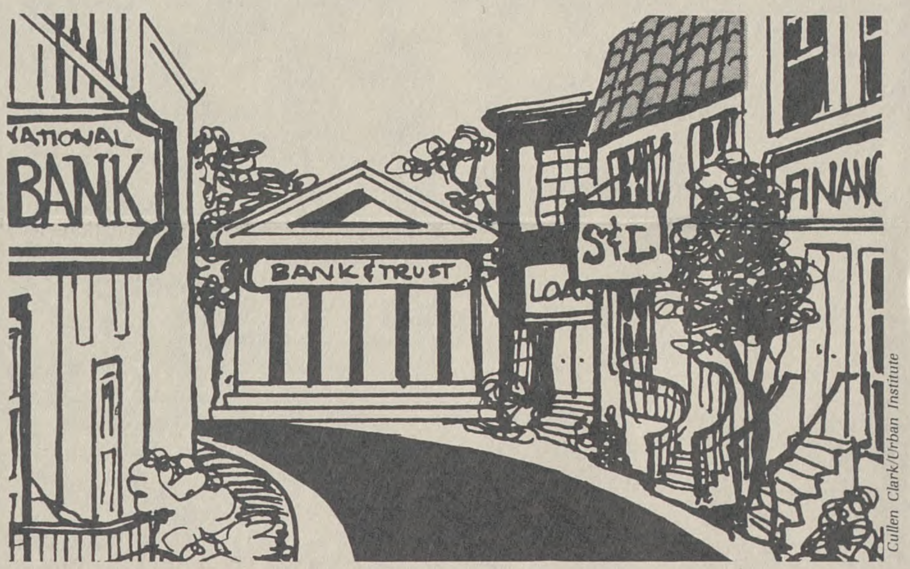
Consumerists believe that institutions enjoying the special privileges and protections provided by the federal bank regulatory system have an obligation to make essential banking services available to all communities.

Essential Banking Services

At present, U.S. households have four important types of banking needs.

Payments: Consumers must make payments for numerous goods and services, including housing, electricity, home heating, and phone service. Many of these payments are difficult or impossible to make in person with cash.

Savings: Households require a means of saving money to meet a variety of special financial needs. These can be immediate, resulting from either income lost or unexpected expenses. Or they can be distant—coping with reduced income after retirement.



Cullen Clark/Urban Institute

Credit: Most households need to borrow in order to purchase a home. Many are unable to build sufficient savings to afford relatively expensive, but necessary, durable goods or medical services not covered by health insurance. A minority need credit for even inexpensive necessities such as clothing.

Check cashing: Most employees and recipients of Social Security, welfare, and other government transfer payments need a way to cash checks.

Evidence of Declining Access

Recently, the Federal Reserve Board published data suggesting that an increasing percentage of households, especially those with low or moderate incomes, are denied access to essential banking services. In 1977 and again in 1983, the Fed surveyed the financial characteristics of all households. It found a declining proportion with checking and savings accounts. In this six-year period, the percentage of all households with checking fell only from 81 to 79 percent. But the proportion of the poorest half that had checking declined from 71 to 65 percent, while the proportion of the poorest 10 percent with checking fell from 56 to 44 percent. In addition, between 1977 and 1983 the proportion of low- and moderate-income households (lowest quintile) without either a savings or checking account rose from 28 to 36 percent.

The same surveys also report data suggesting that consumer credit needs have grown. Particularly among low- and moderate-income households, liquid assets have declined. In 1977, 35 percent had less than $1,000 in cash, checking, savings, stocks, bonds, and trusts. By 1983, that proportion had increased to 39 percent. The large majority of these liquidity-poor households also receive low or moderate incomes. In 1983, those with incomes under $10,000 held median financial assets well under $1,000.

Discriminatory Practices Cause Declining Access

The principal cause of the declining access of low- and moderate-income households to essential banking services is discriminatory banking practices. This discrimination takes several forms.

Imposing conditions for opening accounts that are difficult or impossible to meet: A small but apparently increasing number of banks require the possession of a major credit card to open a checking account. This practice was first identified by Consumer Action in California. Consumer Federation of America's 1986 survey of accounts at more than 200 commercial banks found that 12 percent required a credit card to open a regular checking account, 14 percent to open a NOW account. Yet in 1983, only 42 percent of all households held a bank card, and these were more affluent than the average household.

Other banks have imposed conditions even more difficult to meet. These include the possession of several IDs or sponsorship by a current depositor.

In addition, a number of institutions require a relatively large initial deposit to open a checking account. These requirements are particularly high on NOW accounts, averaging over $425 in the Consumer Federation's 1986 survey. In two areas, Louisiana and New York City, averages exceeded $1,000.

Raising prices to small depositors: There is no dispute that banking institutions have hiked fees on deposit accounts. Between 1979 and 1983, the fees collected by commercial banks on all deposit accounts increased from five to ten billion dollars.

What discriminates against small depositors is the almost universal practice of waiving regular fees—typically, monthly service and transaction charges—when a minimum or average balance is maintained. In 1985, according to a Consumer Federation survey of more than 150 large banks and thrift institutions, the most common minimum balance required on a regular checking account was $500, on a NOW account, $1,000. Minimums on passbook or statement savings accounts were somewhat less, usually between $100 and $200, but ranged as high as $500.

Though often based in part on the number of transactions, the fees on low-balance checking and NOW accounts can be substantial. In the Consumer Federation's 1986 survey, these averaged almost $100 and ranged to a high of nearly $200. In the 1985 survey, the highest annual fees for a low-balance savings account were $60.

Refusing to lend money to low- and moderate-income households: Traditionally, banks have refused to provide credit to low-income households. When community credit unions are not available, the poor have been forced to borrow from finance companies and retailers at high rates.

Moderate-income households have found it difficult, but not always impossible, to obtain bank credit. Those judged to be good credit risks may be offered bank cards, installment credit, or even mortgage loans.

The most common complaint about denial of credit concerns "redlining." Even though this practice is prohibited by federal law, community groups maintain that it persists.

To support their contention, they cite several studies. One examined consumer deposits and mortgage loans at bank branches in the Bronx (a borough of New York City) between 1982 and 1985. In this period, these branches received $1.5 billion in deposits, but most made no mortgage loans in the area.

Refusing to cash checks for nondepositors: Over the past decade, an increasing proportion of banking institutions have refused to cash the checks of nondepositors. The Consumer Federation's 1985 survey found that most institutions surveyed were unwilling to do so. Others charged fees as high as $7 per check.

Closing bank branches: As the banking system has been deregulated, institutions have become increasingly concerned about the profitability of individual branches. They have grown more willing to shut down those which are unprofitable and more reluctant to open new branches. Consequently, the ratio of branch openings to closings has declined substantially. According to the Center for Community Change, this ratio fell from five to one in 1979 to under one to one by 1984.

Of greatest concern to community and consumer groups, however, is that branches in low- and moderate-income neighborhoods are most likely to be shut down. The most careful study of branch closings by one of these groups was undertaken by the Community Training and Resource Center in the New York City metropolitan area.

Between 1977 and 1984, this research found, New York City lost 65 percent of its branches while the suburbs gained eight percent. By 1984, the ratio of people to branches in the city was 6,435 to 1; in the suburbs, only 2,421 to 1. Sixteen city neighborhoods were left with no bank branches, and eight with only one. These communities had populations that were heavily low-income and nonwhite.

Alternative Banking Services

When neighborhood banks drive away small depositors with discriminatory practices or actually shut convenient branches, they deny residents important services and force them to pay much higher prices for others. Consumers lose access to savings accounts and safety deposit boxes. As a result, their incentive to save may diminish. Furthermore, any savings they do accumulate are much less safe.

To cash checks and make payments, these consumers are forced to patronize check-cashing outlets, convenience stores, or liquor stores where they pay premium prices. These outlets typically charge one to three percent, and as high as ten percent, of the face value of the check to be cashed. They also usually charge $1 to $2 for a money order. Accordingly, the household that cashes a $400 check every two weeks and writes four money orders monthly can expect to pay between $152 and $408 annually for these two services. And the charges may be even higher.

The Consumerist Response

Consumer groups object to bank discrimination against low- and moderate-income households because banking services are essential and because the institutions enjoy unusual privileges and protections under the federal bank regulatory system. The latter include access to funds, checking-clearing services, and deposit insurance.

The consumerist response has been twofold. First, consumer groups have lobbied on behalf of federal and state legislation that would guarantee affordable services to the less affluent. In Washington, for example, they have supported bills that would require banking institutions to cash government checks for free and to offer low cost checking accounts.

Second, community groups have used the Community Reinvestment Act (CRA) as leverage to pressure institutions expanding interstate to guarantee a variety of low-cost services to low- and moderate-income neighborhoods. Typically, groups in an area to which an out-of-state bank wishes to expand (usually through acquisition of a local institution) threaten to submit a CRA challenge unless these services are guaranteed. An increasing number of banks have been willing to negotiate agreements ensuring that less affluent neighborhoods will continue to receive essential banking services.

Tort System Saves Lives, Reduces Injuries

The social movement of the 1960s and 1970s, which demanded greater attention to quality and safety, has paid off in thousands of lives saved and millions of injuries avoided each year, according to a report released in September by the Consumer Federation of America.

Entitled "The Benefits of Tort Law in the Context of the Social Movement for Improved Safety and Quality in the National Economy," the report documents how changes in tort law and the creation of safety agencies have contributed to significant improvements in product safety and quality since the early 1970s.

"This report takes a fundamental step toward balancing the debate over tort reform," said Mark Cooper, CFA Research Director and author of the report. "Until now we have only heard about the *cost* of our legal system; this report shows that there are very substantial benefits associated with product liability litigation and safety regulation."

According to the report, concern about safety and quality led to two key developments:

- the redefinition of liability to reflect the realities of mass marketing, particularly the diffusion of the concept of strict liability through the states, and
- the creation of a number of governmental agencies whose primary purpose was to ensure safety.

Major findings of the report include the following:

Businesses have been forced to pay greater attention to safety and quality in the past ten years. According to surveys of large businesses conducted by the Conference Board, a business organization, two thirds of the respondent firms had no formal product safety function prior to 1972. By 1978, only one in fifteen still had no such function.

CFA Legislative Director Gene Kimmelman (right) and Research Director Mark Cooper before the Senate Consumer Subcommittee.

Insurance costs related to product liability have not hurt American consumers. Conference Board surveys and other evidence show that the costs of our product liability system are not a great burden, constituting only one or two percent of total corporate revenues. In addition, other evidence reviewed in the report shows that the expansion of strict product liability has added very little cost to the output of goods and services in the national economy and has had virtually no impact on the international competitiveness of American firms.

Consumers perceive that they are receiving products that are safer and of higher quality. A series of national surveys, conducted by major polling organizations over the past decade and analyzed in the report, reflect a clear trend of improvement on all measures.

By 1984, there were between 6,000 and 7,500 fewer accidental deaths and as many as three million fewer injuries per year as a result of changes in tort law, regulatory policy, and social pressures. The report presents an econometric analysis of total accidental deaths, accidental deaths at home, and deaths at work. Controlling for population, income, and the stock of capital and equipment, the study finds a large and statistically significant improvement in the trend of accidental deaths and injuries, beginning when strict liability swept the nation and safety agencies were created in the early 1970s.

CFA Testifies on Tort Reform

The report was released in conjunction with a hearing on product liability reform by the Senate Commerce, Science, and Transportation Committee's Consumer Subcommittee, at which CFA Legislative Director Gene Kimmelman testified.

"We believe it is time these positive attributes of state product liability law enter the federal debate over problems in our civil justice system," Kimmelman said.

"A system which maximizes market incentives that promote safety is both the most humane and the most efficient," he said. "Accident prevention not only spares consumers needless injury and death, but it is by far the cheaper way to deal with injury than after-the-fact cost redistribution.

"The recent history of the consumer marketplace demonstrates that state product liability law has promoted significant improvements in product quality and safety."

Kimmelman concluded by urging the subcommittee to "turn its back on measures that would distort the fairness and safety-enhancing choices made by state product liability law and, instead, examine new ways to perfect the compensation and safety-promoting role of the product liability system."

Indoor Air Quality Bill Introduced in Senate

On the eve of Congress' summer recess, Sen. George Mitchell (D-ME) introduced a bill to authorize a comprehensive national program to reduce the health threat posed by exposure to indoor air contaminants. "The Indoor Air Quality Act of 1987," S. 1629, would create a new Title IV to the Clean Air Act.

The bill was sponsored jointly with Mitchell by fellow Environment and Public Works Committee members Senators John Chafee (R-RI), Dave Durenberger (D-MN), Max Baucus (D-MT), Barbara Mikulski (D-MD), Robert Stafford (R-VT), and Frank Lautenberg (D-NJ).

Major provisions of the proposed legislation include:

- clarification of EPA's responsibilities for indoor air quality, providing the agency with explicit research authority and directing EPA to issue health advisories for known contaminants;
- development by EPA of a national response plan for overall federal action to reduce indoor air pollution, to include specified response programs in federal buildings;
- EPA assistance in state development of strategies for managing and assessing indoor air quality;
- creation of a director-level Office of Air Quality at EPA;
- creation of a National Indoor Air Quality Council within the Executive Office of the President; and
- establishment of a National Indoor Air Quality Information Clearinghouse to disseminate IAQ information to federal, state, and local agencies as well as to individuals and private organizations.

The bill calls for an annual authorization of $58 million through FY 1992.

The legislation grew out of testimony presented at hearings last spring before the Senate Environmental Protection Subcommittee. Testifying at that hearing, CFA Executive Director Stephen Brobeck was among several witnesses who stressed the need for a high priority, coordinated federal response to the growing IAQ problem, which CFA has identified as "the number one hidden health threat to our society."

"We believe that the serious health threats of indoor air contamination are well documented and that it is time to consider legislation to address this problem," Sen. Mitchell said in introducing the bill. "This bill is intended as a reasonable response to the health threats identified at the recent hearings."

"We welcome this bill as an important first step toward addressing this problem," Brobeck said. "Only by constant and persistent attention will people finally confront the threat posed by indoor air pollutants—a threat that, in the face of inaction, ignorance, and apathy, grows daily."

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