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Third Time Lucky? Canada Proposes New Product Safety Law

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On June 9, 2010, the federal government reintroduced for the third time consumer protection legislation aimed at strengthening Canadian consumer product safety law.¹ Bill C-36, the proposed *Canada Consumer Product Safety Act* (CCPSA), is intended to prevent and address dangers to human health or safety posed by consumer products. The bill would establish a broad prohibition against manufacturing, importing, advertising or selling consumer products that pose an unreasonable hazard to human health or safety.² The bill is substantially similar to previous versions of the legislation discussed in [Torys' December 2009 Food and Drug Regulatory Bulletin](#) and [Torys' May 2008 Food and Drug Regulatory Bulletin](#).

Consumer products in Canada are currently regulated through a patchwork of federal statutes and regulations, supplemented by Health Canada's policies and guidelines. The primary legislation governing consumer product safety is the federal *Hazardous Products Act*.

Key Features of the CCPSA

Most of the key features of the CCPSA have not changed from the previous versions of the legislation and are as follows:

- It empowers the Minister of Health to order manufacturers and importers to conduct product testing and to share test results and other information with the Minister.
- It requires industry to prepare and maintain documents to facilitate product tracing.
- It creates mandatory reporting obligations for manufacturers, importers and sellers who know about a serious incident or death resulting from a consumer product.

¹ The proposed legislation was first introduced by the Harper government in April 2008 (as Bill C-52), but died in the fall of 2008 when an election was called. It was then reintroduced in January 2009 (as Bill C-6) and passed by both the House of Commons and the Senate. As a result of the Senate's amendments to the bill, it was sent back to the House for consideration but Parliament was prorogued before this occurred.

² The CCPSA does not apply to natural health products, food, drugs, cosmetics or medical devices.

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- It empowers the Minister to disclose confidential business information to certain government authorities, without consent or notice, if there is a serious or an imminent danger to human health or safety.
- It authorizes inspectors to enter premises and to seize and detain products if there are reasonable grounds to believe that the product poses a danger to human health or safety.
- It provides significant fines and penalties for violating the CCPSA. For example, if prosecutors proceed by way of indictment, a person may be fined up to \$5 million and/or imprisoned for up to two years.
- It holds directors and officers liable for offences committed under the CCPSA. Section 42 states that officers and directors who “direct, authorize, assent to, acquiesce in or participate in the commission of an offence” are parties to the offence and are liable for the same fines and penalties described above.

Differences Between Proposed CCPSA and Previous Versions

The proposed CCPSA contains a number of additional features that were not in the earlier versions of the proposed legislation:

- The powers of inspectors no longer include the right to order recalls. Only the Minister of Health may initiate a product recall.
- Time limits are imposed on the Minister of Health. Under the CCPSA, a person who is ordered to recall a consumer product or take another measure may make a written request for review of that order. Upon request, review of an order must be completed “no later than 30 days after the day on which the request is provided to the Minister.” Previously, no time frame was explicitly defined; rather, a review officer was required to complete the review “within a reasonable time.”

Bill C-36 is currently at its first reading and must therefore go through the legislative process before it is enacted. If enacted into law, Bill C-36 will establish Health Canada as a powerful regulator over manufacturers, importers, sellers and advertisers of consumer products in Canada. 