

112TH CONGRESS  
1ST SESSION

# S. 330

To prohibit the sale of any product to a consumer that is subject to a recall, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2011

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To prohibit the sale of any product to a consumer that is subject to a recall, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Recall Pro-  
5 tection Act of 2011”.

6 **SEC. 2. PROHIBITION ON THE SALE OF RECALLED PROD-**  
7 **UCTS.**

8 (a) DEFINITIONS.—In this section:

9 (1) COVERED PRODUCT.—The term “covered  
10 product” means any of the following:

1 (A) A motor vehicle or replacement equip-  
2 ment, as such terms are defined in section  
3 30102 of title 49, United States Code.

4 (B) Food, drugs, devices, and cosmetics as  
5 such terms are defined in section 201 of the  
6 Federal Food, Drug, and Cosmetic Act (21  
7 U.S.C. 321).

8 (C) A biological product as such term is  
9 defined in section 351(i) of the Public Health  
10 Service Act (42 U.S.C. 262(i)).

11 (D) A consumer product, as such term is  
12 used in section 3(a) of the Consumer Product  
13 Safety Act (15 U.S.C. 2052(a)).

14 (E)(i) A meat or meat food product within  
15 the meaning given such terms in the Federal  
16 Meat Inspection Act (21 U.S.C. 601 et seq.).

17 (ii) A poultry or poultry product as such  
18 terms are defined in section 4 of the Poultry  
19 Products Inspection Act (21 U.S.C. 453).

20 (iii) An egg or egg product as such terms  
21 are defined in section 4 of the Egg Products In-  
22 spection Act (21 U.S.C. 1033).

23 (2) RECALL.—With respect to a covered prod-  
24 uct, the term “recall” means the following:

1 (A) In the case that the Secretary of  
2 Transportation makes a determination under  
3 section 30118(b)(1) of title 49, United States  
4 Code, that a covered product described in para-  
5 graph (1)(A) contains a defect related to motor  
6 vehicle safety or does not comply with an appli-  
7 cable motor vehicle safety standard prescribed  
8 under chapter 301 of such title, giving notifica-  
9 tion under section 30119 of such title and rem-  
10 edying such defect or noncompliance under sec-  
11 tion 30120 of such title.

12 (B) In the case of—

13 (i) a device, as defined in section 201  
14 of the Federal Food, Drug, and Cosmetic  
15 Act (21 U.S.C. 321), an order under sub-  
16 section (b)(1)(A) or (e) of section 518 of  
17 such Act (21 U.S.C. 360h(b)(1)(A) and  
18 (e));

19 (ii) infant formula, as such term is  
20 defined in section 201 of the Federal Food,  
21 Drug, and Cosmetic Act (21 U.S.C. 321),  
22 a recall of infant formula begun by a man-  
23 ufacturer of infant formula that is carried  
24 out in accordance with section 412(f) of  
25 such Act (21 U.S.C. 350a(f)); and

1 (iii) any other covered product de-  
2 scribed in paragraph (1)(B), a recall of the  
3 covered product by the manufacturer or  
4 distributor in response to an advisory or  
5 other alert issued by the Commissioner of  
6 Food and Drugs that advises consumers to  
7 avoid the covered product.

8 (C) In the case of a product described in  
9 paragraph (1)(C), an order under section  
10 351(d) of the Public Health Service Act (42  
11 U.S.C. 262(d).

12 (D) In the case of a covered product de-  
13 scribed in paragraph (1)(D), an action under  
14 subsection (c) and (d) of section 15 of the Con-  
15 sumer Product Safety Act (15 U.S.C. 2064).

16 (E) In the case of a covered product de-  
17 scribed in paragraph (1)(E), a recall of the cov-  
18 ered product under—

19 (i) the Federal Meat Inspection Act  
20 (21 U.S.C. 601 et seq.);

21 (ii) the Poultry Products Inspection  
22 Act (21 U.S.C. 451 et seq.); or

23 (iii) the Egg Products Inspection Act  
24 (21 U.S.C. 1031 et seq.).

25 (b) PROHIBITION.—

1           (1) IN GENERAL.—Except as provided in para-  
2 graph (2), a person may not sell to a consumer any  
3 covered product that is subject to a recall.

4           (2) REMEDIED PRODUCTS.—Paragraph (1)  
5 shall not apply to the sale to a consumer of a cov-  
6 ered product that was subject to a recall because of  
7 a defect in such product if—

8                   (A) such defect was remedied prior to such  
9 sale; and

10                   (B) the seller of such product notifies such  
11 consumer of such recall, defect, and remedy.

12 (c) ENFORCEMENT.—

13           (1) UNFAIR OR DECEPTIVE ACT OR PRAC-  
14 TICE.—A violation of a prohibition described in sub-  
15 section (b) shall be treated as a violation of a rule  
16 defining an unfair or deceptive act or practice de-  
17 scribed under section 18(a)(1)(B) of the Federal  
18 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

19           (2) ACTIONS BY THE FEDERAL TRADE COMMIS-  
20 SION.—The Federal Trade Commission shall enforce  
21 the provisions of this section in the same manner, by  
22 the same means, and with the same jurisdiction,  
23 powers, and duties as though all applicable terms  
24 and provisions of the Federal Trade Commission Act

1 (15 U.S.C. 41 et seq.) were incorporated into and  
2 made part of this section.

3 (3) REGULATIONS.—The Federal Trade Com-  
4 mission shall prescribe such regulations as the Com-  
5 mission considers necessary to carry out this sub-  
6 section and subsections (a) and (b).

7 (d) LIST OF RECALLED PRODUCTS.—

8 (1) IN GENERAL.—The Consumer Product  
9 Safety Commission shall, in cooperation with the  
10 Secretary of Agriculture, the Commissioner of Food  
11 and Drugs, the Federal Trade Commission, and the  
12 Secretary of Transportation, establish, maintain,  
13 and make available to the public a list of covered  
14 products that are subject to a recall.

15 (2) MANNER OF PUBLICATION.—The Consumer  
16 Product Safety Commission shall make the list re-  
17 quired by paragraph (1) available to the public as a  
18 single searchable list containing all covered products  
19 subject to a recall regardless of agency jurisdiction.

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