

CONSUMER NEWS

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CPCS Rendered Virtually Powerless

The resignation of chairman Hal Stratton from the Consumer Product Safety Commission (CPSC) has left the CPSC virtually powerless to impose civil penalties or to regulate the activities of companies with respect to consumer products.¹ The CPSC is a federal commission that consists of three commissioners.² However, the chairman of the CPSC, Hal Stratton, resigned from his position on the commission.³ The Consumer Product Safety Act governs the CPSC and states that the CPSC can continue to operate with two commissioners for six months.⁴ However, after six months, the CPSC can neither impose civil penalties nor regulate consumer products.⁵

President Bush appointed Hal Stratton to the CPSC in 2002.⁶ Stratton was the co-chair of New Mexico's Lawyers for Bush during the 2000 presidential campaign.⁷ Stratton was previously the Attorney General of New Mexico but had no previous experience in con-

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¹ Enoch, Joseph. *Consumer Safety Agency In Limbo*, Consumer Aff. (Feb. 6, 2007) www.consumeraffairs.com/news04/2007/02/cpsc_adrift.html.

² Enoch, *Consumer Safety Agency in Limbo*, *supra* note 2.

³ Hood, James. *Consumer Safety Chief Quits Abruptly*, Consumer Aff. (July 19, 2006) www.consumeraffairs.com/news04/2006/07/cpsc_stratton.html.

⁴ Enoch, *supra* note 2.

⁵ *Id.*

⁶ Lazarus, David. *Vacancy Stymies Safety Panel*, San Francisco Chron. (Feb. 14, 2007) www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/02/14/BUGU9O44C21.DTL&feed=rss.dlazarus.

⁷ Lazarus, *supra* note 7.

sumer advocacy.⁸ Stratton resigned from his CPSC position on July 15th, 2006 in order to join a Washington, D.C. law firm.⁹ Stratton's departure left the CPSC with two commissioners, Nancy Nord and Thomas Moore.¹⁰

On January 15, 2007, six months after Stratton's departure, the CPSC was left powerless to impose civil penalties or to regulate consumer products.¹¹ Under the Consumer Product Safety Act, two commissioners can make up a quorum for six months after a vacancy in the Commission occurs.¹² However, after six months, the CPSC can no longer impose civil penalties nor regulate products.¹³ Therefore, the CPSC cannot regulate potentially dangerous products that are currently being marketed.¹⁴ Furthermore, if a manufacturer needs to recall a product because it is potentially dangerous to the public, the manufacturer will not face the threat of any civil penalties while there are only two commissioners.¹⁵

Critics have expressed concern that President Bush is not acting quickly enough to fill the void created in the CPSC when Stratton resigned.¹⁶ These same critics point to the existence of dangerous products currently being sold on the market in need of regulation.¹⁷ For example, in the past two years, there have been more than a dozen lead-related recalls on children's toy jewelry.¹⁸ Often times, children swallow these products which can lead to various health problems including behavioral problems, stunted growth, impaired hearing, mental retardation and sometimes death.¹⁹ In December of

⁸ Hood, *supra* note 4.

⁹ *Id.*

¹⁰ Lazarus, *supra* note 7.

¹¹ Enoch, *supra* note 2.

¹² Skrzycki, Cindy. *Consumer Commission Loses its Bite*, Seattle Post-Intelligencer (Feb. 22, 2007) http://seattlepi.nwsourc.com/opinion/304578_consumerproduct22.html.

¹³ Enoch, *supra* note 2.

¹⁴ Lazarus, *supra* note 7.

¹⁵ *Id.*

¹⁶ Enoch, Joseph. *Children Die of Lead Poisoning; Safety Agency Powerless to Act*, Consumer Aff. (Feb. 7, 2007) http://www.consumeraffairs.com/news/04/2007/02/cpsc_adrift2.html.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

2006, the CPSC approved an advance notice of proposed rulemaking that may lead to a ban on children's jewelry containing more than .06 percent total lead.²⁰ However, the CPSC is prohibited from acting on this proposed rule until a new commissioner is nominated.²¹

Some in Congress are attempting to take action that would remedy the quorum situation.²² Mark Pryor, a Democrat from Arkansas, is chairman of the committee's consumer affairs subcommittee and has introduced legislation that would give the two remaining commissioners another six months of authority.²³ Pryor hopes that such legislation will give the President more time to replace Stratton.²⁴ Lisa Ackerman, spokeswoman for Pryor, said that Pryor hopes that the bill will "light a fire under the administration to get things moving."²⁵

The CPSC's effectiveness will not be restored until it can properly regulate dangerous products effecting consumers. The situation will only be remedied by swift action by the Bush administration and prompt approval by the U.S. Senate. Until then, consumers will continue to be put in danger due to the diminished authority of the CPSC.

²⁰ Huffman, Mark. *Safety Agency Needs to Get the Lead Out*, Consumer Aff. (Feb. 20, 2007) http://www.consumeraffairs.com/news04/2007/02/cpsc_lead.html.

²¹ *Id.*

²² Skrzycki, *supra* note 13.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Smoke Free Casinos? Don't Bet On It.

Smoking bans in restaurants and bars are sweeping the nation, but New Jersey casinos are still fighting to allow smoking on casino floors. For a few months, it looked as if the City of Council of Atlantic City was going to pass an ordinance banning smoking in casinos entirely.²⁶ However, the City Council of Atlantic City settled on a city ordinance that only bans smoking on 75% of casino gambling floors.²⁷ The 75% ban is a small victory for the New Jersey casino industry, which estimates that smoking gamblers are half of their clientele.²⁸

Last year, the New Jersey Legislature passed a law banning smoking from most indoor public places within New Jersey.²⁹ However, legislators believed that they could not have garnered enough votes to pass the law had it included banning smoking from casinos.³⁰ Therefore, when the bill was passed, it contained an exemption for the state's casinos.³¹

Nevertheless, the City Council of Atlantic City began considering its own measure to ban smoking in casinos following the state issued exemption.³² The proposed ordinance was introduced unanimously by the City Council.³³ The City Council cited health concerns as the main factor contributing to its consideration of a possible ban.³⁴ However, outside pressures were also present.³⁵ Shortly after

²⁶ *Atlantic City Smoking Ban Moves Forward*, CBS News (Nov. 16, 2006) <http://www.cbsnews.com/stories/2006/11/16/ap/health/mainD8LEF4DO0.shtml>.

²⁷ *Atlantic City Smoking Ban Extends (Partly) to Casino Floors*, *supra* note 35.

²⁸ Mansnerus, Laura. *As Atlantic City Eyes Smoking Ban, Casinos Fear Losses*, The New York Times (Nov. 29, 2006) available at <http://query.nytimes.com/gst/fullpage.html?sec=health&res=9C04EEDB113EF93AA15752C1A9609C8B63&partner=rssnyt&emc=rss>.

²⁹ *Atlantic City Postpones Vote on Smoking Ban*, USA Today (Dec. 29, 2006) available at http://www.usatoday.com/travel/news/2006-12-29-atlantic-city-smoking-ban_x.htm?csp=34.

³⁰ *Id.*

³¹ *Id.*

³² *Atlantic City Casinos Face Smoking Ban Join Together* (Nov. 22, 2006) <http://www.jointogether.org/news/headlines/inthenews/2006/atlantic-city-casinos-face.html>.

³³ *Id.*

³⁴ *Id.* "People were giving their testimony about their lives and how their lives were impacted. Legislation at the state level takes a long time," said City Council-

the New Jersey legislature passed the smoking ban, restaurant owners sued the state challenging the law claiming it discriminates against their businesses.³⁶

Therefore, following the announcement of the proposed ordinance, public opinion seemed to be generally in favor of the idea of banning smoking in New Jersey casinos.³⁷ However, the idea was met with heavy opposition from the casino industry, specifically the Casino Association of New Jersey.³⁸ The Casino Association made a public statement claiming the measure was irresponsible and should be reconsidered.³⁹ The Casino Association, as well as the rest of the New Jersey casino industry, feared that banning smoking would hurt the casinos' bottom line.⁴⁰ The casino industry argued that 3,400 jobs and 20 percent of its revenues would be potentially lost if the city imposed the smoking ban.⁴¹

There is evidence to substantiate the casino industry's fears.⁴² The Canadian province of Ontario recently imposed a smoking ban in public places which included its popular casinos.⁴³ As a result, Canadian casinos that bordered the United States have suffered a revenue drop of more than 20 percent.⁴⁴ Following the implementation of the no smoking ban, the Casino Windsor laid off more than 300 employees.⁴⁵ Similarly, in 2002, Delaware instituted a smoking ban, which included all of its casinos.⁴⁶ Slot machine revenue dropped

man Bruce Ward. *Id.*

³⁵ *Casino Exemption Prompts N.J. Smoking Lawsuit Join Together* (April 20, 2006) <http://www.jointogether.org/news/headlines/inthenews/2006/casino-exemption-prompts-nj.html> (last visited 2/25/07).

³⁶ *Id.*

³⁷ Mansnerus, *supra* note 29.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Nakashima, Ryan. *Panel: Smoking Ban Hurts Casino Revenue*, Int'l Bus. Times (Nov. 15, 2006) available at <http://www.ibtimes.com/articles/20061115/add-smoking-gambling.htm>.

⁴¹ Schlossberg, Dan. *Smokers Win Atlantic City Gamble*, Consumer Aff. (Jan. 30, 2007) www.consumeraffairs.com/news04/2007/01/atlantic_city_smoking.html.

⁴² Nakashima, *supra* note 41.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

10% to 19% in Delaware after the ban was enacted.⁴⁷ After discovering that the City Council of Atlantic City was considering implementing a smoking ban in all casinos, Joseph Corbo Jr., President of the Casino Association, stated, “we could find ourselves in a much weaker competitive position in the very near future.”⁴⁸

Fortunately for Mr. Corbo, the City Council decided to only impose a ban on 75% of the casino floors, leaving a quarter of the floors as designated smoking areas. The smoking areas would be walled off from the floor to ceiling and separated from the non-smoking areas.⁴⁹ Additionally, a ventilation system will be installed into the casinos to help filter out the smoke.⁵⁰

Many critics argue that the City Council of Atlantic City did not go far enough and should have banned smoking in casinos entirely.⁵¹ Recently, yet another study was released concluding that passive smoke in the workplace can increase the risk of lung cancer.⁵² Leslie Stayner, a professor at the University of Illinois at Chicago, released research which found that individuals who were exposed to second hand smoke in the workplace were at a 24 percent higher risk of having lung cancer.⁵³ The health concern surrounding second hand smoke is the primary reason non-smoking opponents of the partial ban believe that the City Council of New Jersey did not go far enough.⁵⁴ Many experts believe that the separate designated smoking areas will not prevent smoke from seeping into the non-smoking areas within the casinos.⁵⁵ Furthermore, some argue that the ventilation systems that will be installed in the casinos will not be effective in filtering out smoke.⁵⁶ Regina Carlson, the Executive Director of the New Jersey Group Against Smoking Pollution, stated that the Atlantic City ordinance was “not an employee protection act” but rather

⁴⁷ Schlossberg, *supra* note 42.

⁴⁸ Mansnerus, *supra* note 29.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Study Confirms Passive Smoke Link To Cancer*, Consumer Aff. (February 2, 2007) http://www.consumeraffairs.com/news04/2007/02/passive_smoke.html.

⁵³ *Id.*

⁵⁴ Schlossberg, *supra* note 42.

⁵⁵ *Id.*

⁵⁶ *Id.*

“looks like a casino protection act.”⁵⁷

While the Atlantic City ordinance may not be as stringent as some opponents would like, the ordinance still bans smoking from 75 % of casinos. Whether this will be the beginning of a trend in casinos across the country is still left to be determined. Casinos in Las Vegas have yet to go smoke free despite the fact that Nevada has passed a statewide smoking ban in indoor public venues.⁵⁸ Smoke free advocates can only hope that the Atlantic City ordinance is the beginning of the end for smoke-filled casinos.

⁵⁷ *Atlantic City Smoking Ban Extends (Partly) to Casino Floors*, *supra* note 35..

⁵⁸ *Vegas Casinos, Others Ignoring Nevada Smoking Ban, Join Together* (Jan 9, 2007) <http://www.jointogether.org/news/headlines/inthenews/2007/vegas-casinos-others.html>.