

**WRITTEN TESTIMONY OF STEVE BURNSIDE,**

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**House Committee on Small Business**

**Subcommittee on Investigations and Oversight**

**Hearing: “The Consumer Product Safety Improvement Act and Small Business”**

**May 14, 2009**

Chairman Altmire and members of the Subcommittee on Investigations and Oversight of the Committee on Small Business, thank you for the opportunity to submit testimony regarding the significant impact that the Consumer Product Safety Improvement Act’s lead content provisions have had on motorcycle and ATV dealers.

I represent a small town community: Parkersburg, West Virginia, where I own a little motorcycle and ATV dealership. Some people may not understand that, in our world, this off-road segment of motorcycles and ATVs is used by everybody for farming, fishing, hunting; it’s just fun. That’s the biggest segment of our business by far and away.

This past couple of years in this downturned economy, we have suffered some losses already that have been tough to overcome. Since the economy took a turn for the worse in the Fall of 2008, we had been waiting for this Spring – our main selling and riding season – to be our salvation.

People are not spending money like they did; what money they do have they are spending on the kids, especially in our segment. But now they can’t because of the new law passed by Congress.

Since the CPSIA lead ban on youth motorcycles and ATVs, we have had somewhere from twenty-five to thirty-five percent of our business jerked out from underneath us. But that is not the end of the losses. Many of the people that come to my business will not purchase vehicles for themselves because they cannot buy the proper age-size for their kids. They are just getting out of the game entirely because it is a family sport.

The ones that we really are concerned about are those who are going to put kids on the wrong size product. We do the right thing and tell parents they cannot and should not buy adult vehicles for their kids, but it is a tough spot to be in because we are hungry for sales.

We have embraced families ever since we started our business in 2003. I have had everybody from toddlers to teenagers in my shop and they are not chewing, eating or licking the bike, or anything that will cause them to ingest lead. And even the toddlers, they want to be on the seat and holding the handlebars. That's what they want to do – "Mom and Dad get me up on there," when they're not trying to climb on there themselves. Lead consumption from motorcycles and ATVs is not an issue – we've never seen it be an issue and we don't feel like it's necessary to treat it as an issue.

Last month, the CPSC issued a stay of enforcement of the lead content provisions for ATVs and motorcycles to try to get dealers to start selling again and keep kids off of adult size vehicles. But the stay does not solve the problem. The reality is that this stay of enforcement is simply inadequate to protect dealers, like me, who wish to sell these products.

First, the stay requires manufacturers to provide unnecessary and burdensome information about parts of these vehicles. But the CPSC staff has already found these parts present no health hazard to children. And the manufacturers have already explained functional alternatives to the lead are not available.

In addition, the stay does not prevent state Attorneys General from taking enforcement action against companies who distribute or dealers who sell these products. Youth ATVs and motorcycles sold under the stay are still a "banned hazardous product" in the hands of customers. The stay does not protect dealers from private lawsuits based upon the legal status of these vehicles as "banned" products either. Dealers and other small businesses should not have to face these risks because the CPSC provided inadequate relief and Congress has not yet taken action to fix the law.

Finally, the stay is only temporary, with a stated duration of two years. There is nothing to prevent a Commission with new and different members, like those nominated by the President last week, from revoking it at any time, leaving manufacturers and dealers subject to enforcement for products sold under the stay.

Since the stay does not provide the necessary relief to manufacturers or dealers, some manufacturers and dealers simply will not sell youth model ATVs and motorcycles, resulting in more lost sales and more children 12 and under riding larger, faster, adult-size vehicles where they are at risk of serious injury. Those that do sell face serious business and legal risks.

The CPSC should have granted the industry's petition to exclude ATVs and motorcycles from the CPSIA lead content limits. The petition was based upon science showing that the small amounts of lead contained in metal parts of these vehicles do not present any health hazard to children who use them. Yet, the Commissioners said that they had no authority to grant the petition because of the way the CPSIA exclusion provision is written by Congress.

Now, the only way to obtain complete and permanent relief for manufacturers, dealers and riders from this ban is for Congress to take action. The CPSIA must be amended to grant an exemption for youth ATVs and motorcycles which contain small amounts of lead that present no health risk to children. This is the approach taken by H.R. 1587, a bill introduced by Congressman Denny Rehberg with 38 bi-partisan co-sponsors. A separate bill introduced by Congressman Joe Barton, H.R. 1815, takes an alternative approach by revising the CPSIA exclusion provision to give the CPSC authority to grant exemptions in situations, such as youth ATVs and off-highway motorcycles, where small amounts of lead in components present no health hazard to children.

I urge Congress to provide manufacturers, dealers and riders with a permanent end to the ban on youth model ATVs and motorcycles by adopting such an amendment to the CPSIA.

Thank you for giving me the opportunity to present how CPSIA is impacting my industry and my livelihood.