

COALITION FOR SENSIBLE SAFEGUARDS

Hide No Harm Act: Holding Corporate Wrongoing Accountable

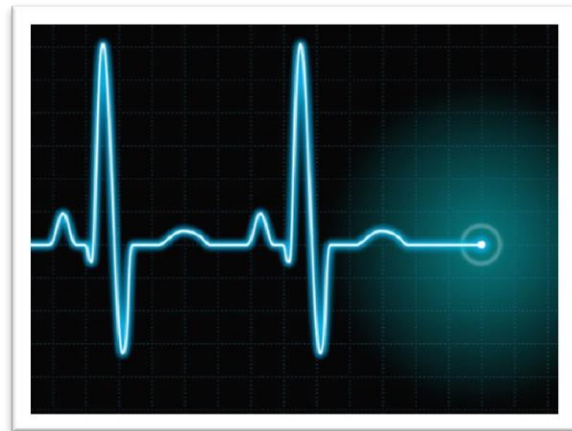
“Hide No Harm” would hold corporate officers criminally accountable if they knowingly conceal serious dangers that lead to consumer or worker deaths or injuries. Penalties could include jail time. The bill comes in response to the recent General Motors recall scandal, in which an ignition switch defect was linked to at least 13 deaths, and documents showed that some GM officials knew about problems with the device as early as 2001.

Under existing law, while companies can face criminal fines, individual officers are often under no duty to inform consumers or employees of known safety hazards that could lead to serious injury or death. Too many times, corporate officials decide to keep selling a dangerous product to consumers or choose not to address an unsafe workplace condition, knowing that even if they get caught, the penalties will be small. This bill would protect the public because it would finally put strong penalties on these rule-breakers and help deter them. Below are examples of other times when corporations knowingly hid a defect that killed.

Guidant Heart Defibrillators

The Harm: In 2002, Guidant learned of an electrical problem with its defibrillators that caused the device to short circuit.¹

How the Corporation Hid It: Guidant kept selling its inventory of 37,000 defective devices, despite knowing the dangers it posed and even after a safer version was produced.² The company chose not to inform doctors, regulators or patients of the problem.³



Unnecessary Death: In March 2005, Joshua Oukrop, a 21-year-old college student from Minnesota, died of cardiac arrest when his Guidant defibrillator malfunctioned.⁴ Guidant then told his doctor of the defect and of 25 other cases in which defibrillators malfunctioned due to the same flaw that killed Joshua.⁵ Guidant also said it

¹ Barry Meier, *Maker of Heart Device Kept Flaw from Doctors*, New York Times, May 24, 2005.

² *Lawyer Subpoenaed for Guidant Documents*, Wall Street Journal, January 29, 2006.

³ Meier, *supra* at Note 1.

⁴ Meier, *supra* at Note 1.

⁵ Meier, *supra* at Note 1.

had no intention of alerting other doctors to the defect.⁶ In June 2005, Guidant finally recalled nearly 50,000 defibrillators.⁷

Johnson & Johnson's Propulsid

The Harm: Shortly after Propulsid was approved by the FDA in 1993 to treat heartburn in adults, regulators and doctors began noticing deaths and serious heart problems in patients taking the drug.⁸ By July 1996, 57 patients had developed serious heart problems after taking the medication, with children at particular risk.⁹



How the Corporation Hid It: Though Johnson & Johnson agreed not to market Propulsid to children directly, the company still invested in educational seminars, books, and advocacy groups to advocate the drug's pediatric use.¹⁰ When the FDA proposed updating the drug's warning label, Johnson & Johnson rejected nearly all of the changes for fear of losing sales.¹¹ In 2000, when the FDA called a public hearing to discuss safety concerns about Propulsid, Johnson & Johnson discontinued the product.¹²

Unnecessary Death: When Gage Stevens' parents took their infant son to the hospital for heartburn and diarrhea, a specialist wrote them a prescription for Propulsid. Six months later, the Pennsylvania family suffered a tragedy when Gage died from cardiac arrhythmia, a side effect of the drug known to the manufacturer.¹³ While Propulsid was on the market, it caused at least 300 deaths and 16,000 injuries.¹⁴

⁶ Meier, *supra* at Note 1.

⁷ Ben Harder, *Heart Device Recall; For Patients with Suspect Models, Tough Choices*, Washington Post, June 28, 2005.

⁸ Gardiner Harris and Eric Koli, *Lucrative Drug, Danger Signals and the F.D.A.*, New York Times, June 10, 2005.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ David Willman, *Propulsid: A Heartburn Drug, Now Linked to Children's Deaths*, L.A. Times, December 2000.

¹⁴ *Id.*

Second Chance Body Armor Bulletproof Vests

The Harm: In 1998, executives at bulletproof vest-maker Second Chance became aware that the Zylon material it used to stop bullets was suffering degradation problems that could render the vests penetrable.¹⁵

How the Corporation Hid It: Second Chance said nothing. It kept selling the defective vests to hundreds of thousands of law enforcement and military personnel. In 2002, an executive outlined the company's options for addressing the problem, one of which was, "operating as though nothing is wrong until one of our customers is killed or wounded."¹⁶ No warnings were issued.¹⁷

Unnecessary Death: In June 2003, during a routine traffic stop, Oceanside, Calif., police officer Tony Zeppetella was shot in the chest and killed when the bullet penetrated his bullet proof Second Chance vest.¹⁸ Two months later, Second Chance finally warned its customers, recalling 130,000 vests made entirely with Zylon, then recalling another 98,000 vests in 2005 upon learning that vests only partially made from Zylon also were failing.¹⁹ The recalls sent Second Chance into bankruptcy.²⁰

Peanut Corporation of America Peanuts²¹

The Harm: Peanut butter and other peanut products made by Peanut Corporation of America (PCA) were regularly contaminated by salmonella as early as 2004.²²

How the Corporation Hid It: PCA fired a private inspection firm that repeatedly found salmonella in samples and instead hired a firm known for giving virtually all plants an "excellent" rating.²³ FDA



¹⁵ John Solomon, *Maker of bulletproof vests may face charges*, Associated Press, September 26, 2005.

¹⁶ *Id.*

¹⁷ Scott Marshall, *Trial begins in lawsuit over slain OPD officer's vest*, North County Times, August 10, 2006.

¹⁸ *Id.*

¹⁹ Kevin Johnson, *Company recalls nearly 100,000 bulletproof vests*, USA Today, June 22, 2005. Amy L. Edwards, *Bulletproof Vests May Not Be*, Orlando Sun-Sentinel, July 10, 2005.

²⁰ Edwards, *supra* Note 19.

²¹ As of June 2014, three PCA executives targeted by the FBI's investigation of the salmonella outbreak are scheduled to stand trial. However, the government indictment only alleges that customers suffered monetary harm, and makes no mention of the sickness and deaths caused by the contaminated peanuts. Dan Flynn, *Defense Again Raises Possibility of Separate Trials for Parnell Brothers*, Food Safety News, June 20, 2014.

²² Julie Schmit, *Broken Links in Food Safety Chain Hid Peanut Plants' Risk*, USA Today, April 27, 2009.

²³ *Id.*

investigators found 12 instances in which the PCA identified salmonella in its product but sold it anyway.²⁴

Unnecessary Death: In December 2008, 72-year-old grandmother and cancer survivor Shirley Almer was about to be released from an elder care facility when doctors notified her family that she had only hours to live. The facility had purchased, and Shirley had consumed, peanut butter made with PCA's contaminated peanuts.²⁵ Before PCA agreed to recall its products in 2009, more than 700 people were sickened and nine died from eating the contaminated foods²⁶.

Toyota

The Harm: Between 2001 and 2009, Toyota and Lexus owners lodged more than 1,000 complaints to Toyota and the federal government about instances of sudden acceleration.²⁷

How the Corporation Hid It: Following a 2009 recall of 3.8 million Lexuses, Toyota issued a statement to the public that there was "no defect" in the cars, a claim the National Highway Traffic Safety Administration (NHTSA) immediately characterized as "inaccurate and misleading."²⁸ At the time, Toyota knew there was a defect that could cause the accelerator pedal to stick, but did not inform regulators for several months, violating a legal obligation to inform them within five days.²⁹

Unnecessary Death: In August 2009, off-duty California Highway Patrol Officer Mark Saylor and three family members were killed when Saylor was unable to stop the vehicle's sudden acceleration and subsequently crashed.³⁰ NHTSA estimates that 89 people died in accidents caused by the defect between 2000 and 2009.³¹ Ultimately, Toyota recalled more than 6 million defective cars in the U.S.³²

²⁴ Lyndsey Layton, *Peanut Company at Center of Outbreak Shuts Its Texas Plant after Salmonella is Found*, Washington Post, February 11, 2009.

²⁵ Schmit, *supra* Note 22.

²⁶ Schmit, *supra* Note 22.

²⁷ Ralph Vartabedian and Ken Bensinger, *Runaway Toyota Cases Ignored*, LA Times, November 8, 2009.

²⁸ Ralph Vartabedian and Ken Bensinger, *Regulators Slam Toyota Over 'No Defect' Claim*, LA Times, November 5, 2009.

²⁹ Micheline Maynard, *US is Seeking a Fine of \$16.4 Million Against Toyota*, New York Times, April 5, 2010.

³⁰ Nick Bunkley, *Toyota Settles Over California Deaths*, New York Times, September 18, 2010.

³¹ Nadeem Muadi, *NHTSA: 89 Deaths Caused by Unintended Acceleration in Toyota Vehicles*, US News, May 26, 2010.

³² Scott Evans and Angus MacKenzie, *The Toyota Recall Crisis*, Motor Trend, January 2010.

BP Deepwater Horizon Macondo Rig

The Harm: On April 20, 2010 the Deepwater Horizon oil rig exploded and sunk, creating a gush of oil that went uncapped for 87 days, releasing nearly 5 million gallons of oil into the Gulf of Mexico and causing billions of dollars in damage in what is considered the largest accidental oil spill in history.³³



How the Corporation Hid It: The event was just one in a series of BP spills and safety lapses.³⁴ A 2014 government report placed much of the blame on the failure of a blowout preventer.³⁵ Before the explosion, BP declined to run manufacturer-recommended tests on the blowout preventer. The tests BP did run failed to reveal two sets of faulty wiring and a dead battery in the blowout preventer.³⁶ BP had been informed that it had to replace the battery each year, but at the time of the explosion had not

changed it in three years.³⁷ After the explosion, BP told the government that only 5,000 barrels of oil were leaking per day, while internal BP emails showed that the well could be leaking up to 146,000 barrels each day.³⁸ BP also prevented reporters and photographers from accessing oiled beaches to document the disaster.³⁹

Unnecessary Death: Eleven BP employees were immediately killed in the explosion.⁴⁰ During and after the spill, more than 100,000 birds, turtles and sea mammals were killed.⁴¹ Though greater safety protections have been put in place since the BP disaster, similar models of the failed blowout preventer are still in place on drilling rigs,⁴² and government experts state that there are still enough safety gaps in oil and gas drilling that other similar catastrophic accidents could occur.⁴³

³³ John M. Broder, *BP Shortcuts Led to Gulf Oil Spill, Report Says*, New York Times, September 14, 2011.

³⁴ Jad Mouawad, *For BP, A History of Spills and Safety Lapses*, New York Times, May 8, 2010.

³⁵ Clifford Krauss, *Fixes After BP Spill Not Enough, Board Says*, New York Times, June 5, 2014.

³⁶ Seth Borenstein, *BP Oil Spill Report Cites Risks for Blowout Preventers*, Associated Press, June 5, 2014.

³⁷ *BP Oil Spill Trial: Blowout Preventer on Macondo Well Had Dead Battery, Miswired Solenoid, Expert Testifies*, The Times Picayune, March 7, 2013.

³⁸ Mark Hertsgaard, *What BP Doesn't Want You to Know About the 2010 Gulf Spill*, Newsweek, April 22, 2013.

³⁹ Matthew Philips, *Photographers Say BP Restricts Access to Oil Spill*, Newsweek, May 25, 2010.

⁴⁰ Broder, *supra* Note 33.

⁴¹ Center for Biological Diversity, *A Deadly Toll: The Gulf Oil Spill and the Unfolding Wildlife Disaster*, April 2011.

⁴² The Times Picayune, *supra* Note 37.

⁴³ Krauss, *supra* Note 35.