

SUBJECT: Prohibiting the use of unsafe children's products

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Rose, J. Davis, Naishtat, Parker, Pierson

0 nays

1 present not voting — S. King

3 absent — Eissler, Herrero, Hughes

SENATE VOTE: On final passage, May 3 — 30–1 (Shapiro)

WITNESSES: None

BACKGROUND: According to the Consumer Product Safety Commission (CPSC), in 2005 an estimated 60,000 children under age four were injured and 61 were killed due to dangerous children's products. Children's products are recalled on an average of twice a week and constitute more than half of all products recalled by the CPSC.

DIGEST: SB 972 would add Health and Safety Code, ch. 761 to establish certain standards on children's product safety, to require the Department of State Health Services (DSHS) to maintain a list of unsafe children's products, and to prohibit the use of unsafe children's products in child-care facilities.

A "children's product" would be a product designed or intended to be used by a child under eight years old or used in the care of a child under eight and designed or intended to come into contact with the child while the product was used. The term would include a crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment.

**Presumption.** A children's product would be presumed to be unsafe if:

- it did not conform to all federal laws and regulations setting forth standards for the product;
- it had been recalled for any reason by an agency of the federal government or the product's manufacturer, distributor, or importer and the recall had not been rescinded; or
- an agency of the federal government had issued a warning that the product's intended use constituted a safety hazard and the warning had not been rescinded.

In addition to the above requirement, a crib would be presumed unsafe if it did not conform to the most recent safety guideline adopted by the U.S. Consumer Product Safety Commission (CPSC), including 16 C.F.R. Parts 1303, 1508, and 1509; and the standards published by ASTM International for corner posts and structural integrity of baby cribs as those standards existed on January 1, 2007.

A children's product that had been recalled for any reason by an agency of the federal government or the product's manufacturer, distributor, or importer would not be presumed to be unsafe if the product had been remanufactured or retrofitted so that the product was safe.

**List of unsafe children's products.** DSHS would have to maintain a list of unsafe children's products, which it would make available to the public at no cost through DSHS's Website. The department could provide a link on the DSHS Website to the list of recalled children's products on the U.S. CPSC's Website.

Not later than 24 hours after DSHS learned that a children's product was unsafe, the department would add the product to the required list of unsafe children's products specified above. DSHS would inform child-care facilities about the list and provide the facilities with the Internet address to access the list on the department's Website. DSHS would provide a written copy of the list to a child-care facility that did not have access to the Internet.

DSHS would provide information relating to children's car seats by including links of DSHS's Website to the Internet Websites of the U.S. CPSC and the National Highway Traffic Safety Administration.

**Child-care facilities.** A child-care facility could not use an unsafe children's product or have an unsafe children's product on the premises of the child-care facility. A child-care facility could have an unsafe children's product on the premises if the product was an antique or collectible children's product and was not used by, or accessible to, any child in the facility; if the unsafe children's product had been remanufactured or retrofitted; or if the unsafe children's product was being retrofitted and the product was not used by, or accessible to, any child in the facility.

The Department of Family and Protective Services (DFPS) would notify a child-care facility of the bill's provisions in plain, non-technical language that would enable the child-care facility effectively to inspect the children's products at the facility and identify unsafe children's products. DFPS would provide the required notice at the time an application for a license, registration, or certification was submitted to the department.

Each child-care facility would, as part of the licensing inspection process conducted by DFPS, certify in writing that the facility had reviewed each of the bulletins and notices issued by DSHS regarding unsafe children's products and that there were no unsafe products in the facility. DFPS would retain the most recent written certification completed by each facility.

A child-care facility would maintain all written information provided by DFPS or DSHS to the facility regarding unsafe children's products in a file accessible to facility staff and parents of children attending the facility.

A facility would post in a prominent location regularly visited by parents written notification of the existence of the comprehensive list of unsafe children's products and the Internet address to access the list.

**Civil Penalty.** A person who violated the bill's provisions or a related rule would be liable to the state for a civil penalty not to exceed \$1,000 for each violation. Each day a violation continued could be considered a separate violation for purposes of a civil penalty assessment. Under the bill, the attorney general could bring suit to recover a civil penalty.

The bill would amend Human Resources Code, sec. 42.042 to require that a child-care facility comply with Health and Safety Code, ch. 761 and rules adopted under that chapter.

The executive commissioner of the Health and Human Services Commission would adopt rules and forms necessary to implement provisions of the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.