

By: Van de Putte

S.B. No. 375

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the sale or use of unsafe children's products; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 761 to read as follows:

CHAPTER 761. CHILDREN'S PRODUCTS SAFETY

Sec. 761.001. DEFINITIONS. In this chapter:

(1) "Child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Children's product" means a product that is designed or intended to be used by a child under six years of age or used in the care of a child under six years of age and that is designed or intended to come into contact with the child while the product is used. The term includes 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. The term does not include:

(A) an item that may be used by a child under six years of age or used in the care of a child under six years of age if the item is designed or intended to be used by the general population or segments of the general population and not solely or primarily by a child under six years of age or in the care of a child

1 under six years of age; or

2 (B) a medication, a drug, food, or another item
3 that is intended to be ingested.

4 (3) "Commercial user" means:

5 (A) a person who deals in children's products or
6 who otherwise by the person's occupation holds the person out as
7 having knowledge or skill peculiar to children's products; or

8 (B) a person who is in the business of
9 remanufacturing, retrofitting, selling, leasing, subletting, or
10 otherwise placing in the stream of commerce children's products.

11 (4) "Crib" means a bed designed to provide sleeping
12 accommodations for a child less than 35 inches tall and younger than
13 three years of age. The term includes full-size cribs and
14 non-full-size cribs.

15 Sec. 761.002. COMMERCIAL USER PROHIBITION. (a) A
16 commercial user may not remanufacture, retrofit, sell, offer for
17 sale, lease, sublet, give away, offer to give away, allow the use
18 of, or otherwise place in the stream of commerce a children's
19 product that is unsafe.

20 (b) A commercial user does not violate this section if the
21 unsafe product was not included on the Department of State Health
22 Services' list of unsafe children's products on the day before the
23 date the commercial user placed the unsafe children's product in
24 the stream of commerce.

25 Sec. 761.003. PRESUMPTION. (a) A children's product is
26 presumed to be unsafe for purposes of this chapter if:

27 (1) it does not conform to all federal laws and

1 regulations setting forth standards for the product;

2 (2) it has been recalled for any reason by an agency of
3 the federal government or the product's manufacturer, distributor,
4 or importer and the recall has not been rescinded; or

5 (3) an agency of the federal government has issued a
6 warning that the product's intended use constitutes a safety hazard
7 and the warning has not been rescinded.

8 (b) In addition to the requirements of Subsection (a), a
9 crib is presumed to be unsafe for purposes of this chapter if it
10 does not conform to:

11 (1) the most recent safety guidelines adopted by the
12 United States Consumer Product Safety Commission, including 16
13 C.F.R. Parts 1303, 1508, and 1509; or

14 (2) the standards published by ASTM International for
15 corner posts and structural integrity of baby cribs, including ASTM
16 F966-00, ASTM F1169-03, and ASTM F406-04, as those standards
17 existed on January 1, 2005.

18 Sec. 761.004. LIST OF UNSAFE CHILDREN'S PRODUCTS. (a) The
19 Department of State Health Services shall maintain a list of unsafe
20 children's products. The department shall make the list available
21 to the public at no cost through the department's Internet website.

22 (b) Not later than 24 hours after the Department of State
23 Health Services learns that a children's product is unsafe, the
24 department shall add the product to the list.

25 (c) The Department of State Health Services shall inform
26 child-care facilities about the list and provide the facilities
27 with the Internet address to access the list on the department's

1 website. The department shall provide a written copy of the list to
2 a child-care facility that does not have access to the Internet.

3 Sec. 761.005. CHILD-CARE FACILITY. (a) Except as provided
4 by Subsection (b), a child-care facility may not use an unsafe
5 children's product or have an unsafe children's product on the
6 premises of the child-care facility.

7 (b) A child-care facility may have an unsafe children's
8 product on the premises if the product is an antique or collectible
9 children's product and is not used by, or accessible to, any child
10 in the child-care facility.

11 (c) The Department of Family and Protective Services shall
12 notify a child-care facility of the provisions of this chapter in
13 plain, nontechnical language that will enable the child-care
14 facility to effectively inspect the children's products at the
15 facility and identify unsafe children's products.

16 (d) The Department of Family and Protective Services shall
17 provide the notice required by Subsection (c):

18 (1) at the time an application for a license,
19 registration, or certification or a renewal is submitted to the
20 department; and

21 (2) during a license, registration, or certificate
22 monitoring visit.

23 (e) Each child-care facility shall, as part of the
24 licensing, licensing renewal, or periodic update process conducted
25 by the Department of Family and Protective Services, certify in
26 writing that the facility has reviewed each of the bulletins and
27 notices issued by the Department of State Health Services regarding

1 unsafe children's products and that there are no unsafe products in
2 the facility. The Department of Family and Protective Services
3 shall retain the certification form completed by each facility in
4 the facility's licensing file.

5 (f) A child-care facility must maintain all written
6 information provided by the Department of Family and Protective
7 Services or the Department of State Health Services to the facility
8 regarding unsafe children's products in a file accessible to
9 facility staff and parents of children attending the facility.

10 (g) A child-care facility shall post in a prominent location
11 regularly visited by parents written notification of the existence
12 of the comprehensive list of unsafe children's products and the
13 Internet address to access the list.

14 Sec. 761.006. RULES. The executive commissioner of the
15 Health and Human Services Commission shall adopt rules and forms
16 necessary to implement this chapter.

17 Sec. 761.007. CIVIL PENALTY. (a) A person who violates
18 this chapter or a rule adopted under this chapter is liable to the
19 state for a civil penalty not to exceed \$1,000 for each violation.

20 (b) Each day a violation continues may be considered a
21 separate violation for purposes of a civil penalty assessment.

22 (c) The attorney general may bring suit to recover a civil
23 penalty imposed under this section.

24 SECTION 2. Subchapter C, Chapter 42, Human Resources Code,
25 is amended by adding Section 42.0422 to read as follows:

26 Sec. 42.0422. UNSAFE CHILDREN'S PRODUCTS. A child-care
27 facility shall comply with Chapter 761, Health and Safety Code, and

1 rules adopted under that chapter.

2 SECTION 3. This Act takes effect September 1, 2005.