

BILL ANALYSIS

S.B. 972
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to the United States Consumer Product Safety Commission (CPSC), an estimated 60,000 children under the age of four were injured and 61 were killed due to dangerous children's products in 2005. Even though the average recall of children's products is two per week, CPSC research shows that this recall information is not reaching consumers in an effective manner. There are no current statutes that require a retailer to check for recalled products, nor are there any standards in place in relation to defective products. Legislation may be necessary to strengthen the children's product safety system and to protect children from preventable injury and death.

S.B. 972 prohibits the use of dangerous children's products in licensed child-care facilities, and provides for parents and caregivers to learn about these products on the Department of State Health Services' website. This bill also requires that the Department of Family and Protective Services, through its licensing division, ensure that notice of this bill's requirements are provided to child care facilities, that the child care facilities comply with certain requirements of the bill, and provides penalties for a violation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

ANALYSIS

S.B. 972 requires this Act to be known as the Children's Product Safety Act.

The bill amends Subtitle A, Title 9, Health and Safety Code, by adding Chapter 761.

The bill defines "child-care facility," "children's product," and "crib."

The bill sets forth certain criteria under which a children's product is presumed unsafe for the purposes of this chapter. A child's product is presumed to be unsafe for purposes of this chapter if: it does not conform to all federal laws and regulations setting forth standards for the product; it has been recalled for any reason by an agency of the federal government, the product's manufacture, distributor, or importer and the recall has not been rescinded; or an agency of the federal government has issued a warning that the product's intended use constitutes a safety hazard and the warning has not been rescinded.

The bill provides that a crib is presumed to be unsafe for purposes of this chapter if, in addition to the above requirements, it does not conform to: the most recent safety guidelines of the United States Consumer Product Safety Commission; and the standards published by ASTM International for corner posts and structural integrity as of January 1, 2007. If a children's product that has been recalled for any reason by an agency of the federal government or the product's manufacturer, distributor, or importer is not presumed to be unsafe if the product has been remanufactured or retrofitted so that the product is safe.

The bill requires the Department of State Health Services (DSHS) to maintain a list of unsafe children's products (list) and to make the list available to the public at no cost through the DSHS Internet website. The bill authorizes DSHS to provide a link on its Internet website to the list of

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recalled children's products on the United States Consumer Product Safety Commission's Internet website.

The bill requires DSHS to add a children's product to the list not later than 24 hours after DSHS learns that the product is unsafe.

S.B. 972 requires DSHS to inform child-care facilities (facility) about the list and to provide those facilities with the Internet address to access the list on the DSHS website. In addition, the bill requires DSHS to provide a written copy of the list to a facility that does not have access to the Internet.

The bill requires DSHS to provide information relating to children's car seats by including links on the DSHS Internet website to the Internet websites of the United States Consumer Product Safety Commission and the National Highway Traffic Safety Administration.

The bill prohibits a facility from using, or from having on the facility's premises, an unsafe children's product. The bill authorizes a facility to have an unsafe children's product on the premises if: the product is an antique or collectible children's product and is not used by, or accessible to, any child in the child-care facility; the unsafe children's product has been remanufactured or retrofitted; or the unsafe children's product is being retrofitted and the product is not used by, or accessible to, any child in the child-care facility.

The bill requires the Department of Family and Protective Services (DFPS) to notify a facility of the provisions of this chapter (notice) in plain, nontechnical language to enable the facility to inspect children's products at the facility and to identify which of those products is unsafe. The bill requires DFPS to provide the notice at the time an application for a license, registration, or certification is submitted to DFPS.

The bill requires each facility, as part of the licensing inspection process conducted by DFPS, to certify in writing that the facility has reviewed each of the bulletins and notices issued by DSHS regarding unsafe children's products and that there are no unsafe products in the facility. It also requires DFPS to retain the most recent written certification completed by each facility in the facility's licensing file.

The bill provides that a facility maintain all written information provided by DFPS or DSHS regarding unsafe children's products in a file accessible to facility staff and to parents of children attending the facility.

The bill requires a facility to post written notification relating to the list and the list's Internet address in a prominent location regularly visited by parents.

The bill requires the executive commissioner of the Health and Human Services Commission to adopt rules and forms necessary to implement this chapter.

The bill provides that a person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$1,000 for each violation.

The bill authorizes that each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment and authorizes the attorney general to bring suit to recover a civil penalty imposed under this section.

The bill amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.0423.

The bill requires a facility to comply with Chapter 761, Health and Safety Code, and the rules adopted under that chapter.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

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