

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to the 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. Despite the average recall of children's products of twice 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.

As proposed, S.B. 972 prohibits the sale, lease, or other distribution of dangerous children's products or the use of those 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 provides regulation for the sale of products designed principally for the care of or use by children under eight years of age, including furniture, apparel, and toys. This bill also requires that the Department of Family and Protective Services, through its licensing division, to 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 that child care facilities are penalized for non-compliance. The bill establishes civil penalties for violations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 761.006, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 9, Health and Safety Code, by adding Chapter 761, as follows:

CHAPTER 761. CHILDREN'S PRODUCTS SAFETY

Sec. 761.001. DEFINITIONS. Defines "child-care facility," "children's product," "commercial user," and "crib."

Sec. 761.002. COMMERCIAL USER PROHIBITION. (a) Prohibits a commercial user from taking certain actions that would place an unsafe children's product in the stream of commerce.

(b) Provides that a commercial user does not violate this section if the unsafe product was not included on the Department of State Health Services' (DSHS) list of unsafe children's products on the day before the date the commercial user placed the product in the stream of commerce.

(c) Authorizes a commercial user to place a children's product that has been remanufactured or retrofitted so that the product is safe in the stream of commerce, notwithstanding Subsection (a), if the product is accompanied by a notice declaring that the product is safe for a child under eight years of age to use (notice) at the time it is placed in the stream of commerce. Requires the commercial user to ensure that the notice is present with the remanufactured or

retrofitted product at the time that said product is provided to the consumer. Sets forth certain required provisions to be included in the notice.

(d) Authorizes a commercial user to place in the stream of commerce a children's product that has been retrofitted without the notice required under Subsection (c) if the retrofit meets certain conditions, or if the seller of a previously unsold product accomplishes the repair approved or recommended by an agency of the federal government before the product is provided to the consumer.

Sec. 761.003. PRESUMPTION. (a) Sets forth certain criteria under which that a children's product is presumed unsafe for the purposes of this chapter.

(b) Sets forth certain criteria, in addition to the criteria under Subsection (a), under which a crib is presumed unsafe for the purposes of this chapter.

(c) Provides that a children's product that has been recalled for any reason by a federal agency or the product's manufacturer, distributor, or importer is not presumed to be unsafe if the product has been remanufactured or retrofitted and provided in compliance with the requirements of Sections 761.002(c) or (d), Health and Safety Code.

Sec. 761.004. LIST OF UNSAFE CHILDREN'S PRODUCTS. (a) Requires DSHS to maintain a list of unsafe children's products (list) and to make the list available to the public at no cost through DSHS' Internet website.

(b) Requires DSHS to add a children's product to the list not later than 24 hours after DSHS learns that the product is unsafe.

(c) 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 DSHS' website. Requires DSHS to provide a written copy of the list to a facility that does not have access to the Internet.

Sec. 761.005. CHILD-CARE FACILITY. (a) Prohibits a facility from using, or from having on the facility's premises, an unsafe children's product, except as provided by Subsection (b).

(b) Authorizes a facility to have an unsafe children's product on the premises if certain conditions are met.

(c) Requires the Department of Family and Protective Services (DFPS) to notify a facility of the provisions of this chapter 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.

(d) Requires DFPS to provide the notice required in Subsection (c) at the time an application for or a renewal of a license, registration, or certification is submitted to DFPS, and during a license, registration, or certificate monitoring visit.

(e) Requires each facility, as a part of DFPS' licensing, renewal, or periodic update process, 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. Requires DFPS to retain the facility's certification form in that facility's licensing file.

(f) Requires a facility to 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.

(g) 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.

Sec. 761.006. RULES. Requires the executive commissioner of the Health and Human Services Commission to adopt rules and forms necessary to implement this chapter.

Sec. 761.007. CIVIL PENALTY. (a) 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.

(b) Provides that each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(c) Authorizes the attorney general to bring suit to recover a civil penalty imposed under this section.

SECTION 2. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.0423, as follows:

Sec. 42.0423. UNSAFE CHILDREN'S PRODUCTS. Requires a facility to comply with Chapter 761, Health and Safety Code, and the rules adopted under that chapter.

SECTION 3. Effective date: September 1, 2007.