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S.B. No. 972

A BILL TO BE ENTITLED

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AN ACT

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

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

SECTION 1. This Act shall be known as the Children's Product  
Safety Act.

SECTION 2. 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 eight years of age  
or used in the care of a child under eight 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  
eight years of age or used in the care of a child under eight years  
of age if the item is designed or intended to be used by the general

1 population or segments of the general population and not solely or  
2 primarily by a child under eight years of age or in the care of a  
3 child under eight years of age; or

4 (B) a food, drug, device, or cosmetic subject to  
5 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.),  
6 Chapter 431, or Chapter 432.

7 (3) "Crib" means a bed designed to provide sleeping  
8 accommodations for a child less than 35 inches tall and younger than  
9 three years of age. The term includes full-size cribs and  
10 non-full-size cribs.

11 Sec. 761.002. PRESUMPTION. (a) A children's product is  
12 presumed to be unsafe for purposes of this chapter if:

13 (1) it does not conform to all federal laws and  
14 regulations setting forth standards for the product;

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17 or importer and the recall has not been rescinded; or

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20 and the warning has not been rescinded.

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

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

27 (2) the standards published by ASTM International for

1 corner posts and structural integrity of baby cribs, including ASTM  
2 F966-00, ASTM F1169-03, and ASTM F406-06, as those standards  
3 existed on January 1, 2007.

4 (c) A children's product that has been recalled for any  
5 reason by an agency of the federal government or the product's  
6 manufacturer, distributor, or importer is not presumed to be unsafe  
7 if the product has been remanufactured or retrofitted so that the  
8 product is safe.

9 Sec. 761.003. LIST OF UNSAFE CHILDREN'S PRODUCTS; CAR  
10 SEATS. (a) The Department of State Health Services shall maintain  
11 a list of unsafe children's products. The department shall make the  
12 list available to the public at no cost through the department's  
13 Internet website. The department may provide a link on the  
14 department's Internet website to the list of recalled children's  
15 products on the United States Consumer Product Safety Commission's  
16 Internet website.

17 (b) Not later than 24 hours after the Department of State  
18 Health Services learns that a children's product is unsafe, the  
19 department shall add the product to the list maintained under  
20 Subsection (a).

21 (c) The Department of State Health Services shall inform  
22 child-care facilities about the list maintained under Subsection  
23 (a) and provide the facilities with the Internet address to access  
24 the list on the department's website. The department shall provide  
25 a written copy of the list to a child-care facility that does not  
26 have access to the Internet.

27 (d) The Department of State Health Services shall provide

1 information relating to children's car seats by including links on  
2 the department's Internet website to the Internet websites of the  
3 United States Consumer Product Safety Commission and the National  
4 Highway Traffic Safety Administration.

5 Sec. 761.004. CHILD-CARE FACILITY. (a) Except as provided  
6 by Subsection (b), a child-care facility may not use an unsafe  
7 children's product or have an unsafe children's product on the  
8 premises of the child-care facility.

9 (b) A child-care facility may have an unsafe children's  
10 product on the premises if:

11 (1) the product is an antique or collectible  
12 children's product and is not used by, or accessible to, any child  
13 in the child-care facility;

14 (2) the unsafe children's product has been  
15 remanufactured or retrofitted; or

16 (3) the unsafe children's product is being retrofitted  
17 and the product is not used by, or accessible to, any child in the  
18 child-care facility.

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

24 (d) The Department of Family and Protective Services shall  
25 provide the notice required by Subsection (c) at the time an  
26 application for a license, registration, or certification is  
27 submitted to the department.

1       (e) Each child-care facility shall, as part of the licensing  
2 inspection process conducted by the Department of Family and  
3 Protective Services, certify in writing that the facility has  
4 reviewed each of the bulletins and notices issued by the Department  
5 of State Health Services regarding unsafe children's products and  
6 that there are no unsafe products in the facility. The Department  
7 of Family and Protective Services shall retain the most recent  
8 written certification completed by each facility in the facility's  
9 licensing file.

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

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

19       Sec. 761.005. RULES. The executive commissioner of the  
20 Health and Human Services Commission shall adopt rules and forms  
21 necessary to implement this chapter.

22       Sec. 761.006. CIVIL PENALTY. (a) A person who violates  
23 this chapter or a rule adopted under this chapter is liable to the  
24 state for a civil penalty not to exceed \$1,000 for each violation.

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

27       (c) The attorney general may bring suit to recover a civil

1 penalty imposed under this section.

2 SECTION 3. Subchapter C, Chapter 42, Human Resources Code,  
3 is amended by adding Section 42.0423 to read as follows:

4 Sec. 42.0423. UNSAFE CHILDREN'S PRODUCTS. A child-care  
5 facility shall comply with Chapter 761, Health and Safety Code, and  
6 rules adopted under that chapter.

7 SECTION 4. This Act takes effect immediately if it receives  
8 a vote of two-thirds of all the members elected to each house, as  
9 provided by Section 39, Article III, Texas Constitution. If this  
10 Act does not receive the vote necessary for immediate effect, this  
11 Act takes effect September 1, 2007.