

By: Van de Putte

S.B. No. 972

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

1 child under eight 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 sell, offer for sale, lease, sublet, give
17 away, offer to give away, allow the use of, or otherwise place in
18 the stream of commerce a children's product that is unsafe.

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

24 (c) Notwithstanding Subsection (a), a commercial user may
25 place in the stream of commerce a children's product that has been
26 remanufactured or retrofitted so that the product is safe if the
27 product is accompanied at the time it is placed in the stream of

1 commerce by a notice declaring that the product is safe for a child
2 under eight years of age to use. The commercial user shall ensure
3 that the notice is present with the remanufactured or retrofitted
4 product at the time the product is provided to the consumer. The
5 notice must include:

6 (1) the name and model number of the product that has
7 been remanufactured or retrofitted;

8 (2) a description of the problem which made the
9 product unsafe;

10 (3) a description of the repair that explains how the
11 problem was eliminated;

12 (4) the name and address of the commercial user who
13 remanufactured or retrofitted the product; and

14 (5) a declaration certifying that the product is now
15 safe for a child under eight years of age to use.

16 (d) A commercial user may place in the stream of commerce a
17 children's product that has been retrofitted without the notice
18 required by Subsection (c) if:

19 (1) the retrofit is for a children's product that
20 requires assembly by the consumer, the approved retrofit is
21 provided with the product by the commercial user, and the retrofit
22 is accompanied at the time the product is provided to the consumer
23 by instructions explaining how to apply the retrofit; or

24 (2) the seller of a previously unsold product
25 accomplishes the repair, approved or recommended by an agency of
26 the federal government, before the product is provided to the
27 consumer.

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

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

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

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

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

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

17 (2) the standards published by ASTM International for
18 corner posts and structural integrity of baby cribs, including ASTM
19 F966-00, ASTM F1169-03, and ASTM F406-06, as those standards
20 existed on January 1, 2007.

21 (c) A children's product that has been recalled for any
22 reason by an agency of the federal government or the product's
23 manufacturer, distributor, or importer is not presumed to be unsafe
24 if the product has been remanufactured or retrofitted and provided
25 in compliance with the requirements of Section 761.002(c) or (d).

26 Sec. 761.004. LIST OF UNSAFE CHILDREN'S PRODUCTS. (a) The
27 Department of State Health Services shall maintain a list of unsafe

1 children's products. The department shall make the list available
2 to the public at no cost through the department's Internet website.

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

6 (c) The Department of State Health Services shall inform
7 child-care facilities about the list and provide the facilities
8 with the Internet address to access the list on the department's
9 website. The department shall provide a written copy of the list to
10 a child-care facility that does not have access to the Internet.

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

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

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

20 (2) the unsafe children's product has been
21 remanufactured or retrofitted; or

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

25 (c) The Department of Family and Protective Services shall
26 notify a child-care facility of the provisions of this chapter in
27 plain, nontechnical language that will enable the child-care

1 facility to effectively inspect the children's products at the
2 facility and identify unsafe children's products.

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

5 (1) at the time an application for a license,
6 registration, or certification or a renewal is submitted to the
7 department; and

8 (2) during a license, registration, or certificate
9 monitoring visit.

10 (e) Each child-care facility shall, as part of the
11 licensing, licensing renewal, or periodic update process conducted
12 by the Department of Family and Protective Services, certify in
13 writing that the facility has reviewed each of the bulletins and
14 notices issued by the Department of State Health Services regarding
15 unsafe children's products and that there are no unsafe products in
16 the facility. The Department of Family and Protective Services
17 shall retain the certification form completed by each facility in
18 the facility's licensing file.

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

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

1 Sec. 761.006. RULES. The executive commissioner of the
2 Health and Human Services Commission shall adopt rules and forms
3 necessary to implement this chapter.

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

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

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

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

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

16 SECTION 3. This Act takes effect September 1, 2007.