

1-1 By: Van de Putte S.B. No. 972
1-2 (In the Senate - Filed February 27, 2007; March 7, 2007,
1-3 read first time and referred to Committee on State Affairs;
1-4 April 30, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 30, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 972 By: Van de Putte

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to prohibiting the use of unsafe children's products;
1-11 providing a civil penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. This Act shall be known as the Children's Product
1-14 Safety Act.

1-15 SECTION 2. Subtitle A, Title 9, Health and Safety Code, is
1-16 amended by adding Chapter 761 to read as follows:

1-17 CHAPTER 761. CHILDREN'S PRODUCTS SAFETY

1-18 Sec. 761.001. DEFINITIONS. In this chapter:

1-19 (1) "Child-care facility" has the meaning assigned by
1-20 Section 42.002, Human Resources Code.

1-21 (2) "Children's product" means a product that is
1-22 designed or intended to be used by a child under eight years of age
1-23 or used in the care of a child under eight years of age and that is
1-24 designed or intended to come into contact with the child while the
1-25 product is used. The term includes a crib, toddler bed, bed, car
1-26 seat, chair, high chair, booster chair, hook-on chair, bath seat,
1-27 gate or other enclosure for confining a child, play yard,
1-28 stationary activity center, carrier, stroller, walker, swing, or
1-29 toy or play equipment. The term does not include:

1-30 (A) an item that may be used by a child under
1-31 eight years of age or used in the care of a child under eight years
1-32 of age if the item is designed or intended to be used by the general
1-33 population or segments of the general population and not solely or
1-34 primarily by a child under eight years of age or in the care of a
1-35 child under eight years of age; or

1-36 (B) a food, drug, device, or cosmetic subject to
1-37 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.),
1-38 Chapter 431, or Chapter 432.

1-39 (3) "Crib" means a bed designed to provide sleeping
1-40 accommodations for a child less than 35 inches tall and younger than
1-41 three years of age. The term includes full-size cribs and
1-42 non-full-size cribs.

1-43 Sec. 761.002. PRESUMPTION. (a) A children's product is
1-44 presumed to be unsafe for purposes of this chapter if:

1-45 (1) it does not conform to all federal laws and
1-46 regulations setting forth standards for the product;

1-47 (2) it has been recalled for any reason by an agency of
1-48 the federal government or the product's manufacturer, distributor,
1-49 or importer and the recall has not been rescinded; or

1-50 (3) an agency of the federal government has issued a
1-51 warning that the product's intended use constitutes a safety hazard
1-52 and the warning has not been rescinded.

1-53 (b) In addition to the requirements of Subsection (a), a
1-54 crib is presumed to be unsafe for purposes of this chapter if it
1-55 does not conform to:

1-56 (1) the most recent safety guidelines adopted by the
1-57 United States Consumer Product Safety Commission, including 16
1-58 C.F.R. Parts 1303, 1508, and 1509; and

1-59 (2) the standards published by ASTM International for
1-60 corner posts and structural integrity of baby cribs, including ASTM
1-61 F966-00, ASTM F1169-03, and ASTM F406-06, as those standards
1-62 existed on January 1, 2007.

1-63 (c) A children's product that has been recalled for any

2-1 reason by an agency of the federal government or the product's
 2-2 manufacturer, distributor, or importer is not presumed to be unsafe
 2-3 if the product has been remanufactured or retrofitted so that the
 2-4 product is safe.

2-5 Sec. 761.003. LIST OF UNSAFE CHILDREN'S PRODUCTS; CAR
 2-6 SEATS. (a) The Department of State Health Services shall maintain
 2-7 a list of unsafe children's products. The department shall make the
 2-8 list available to the public at no cost through the department's
 2-9 Internet website. The department may provide a link on the
 2-10 department's Internet website to the list of recalled children's
 2-11 products on the United States Consumer Product Safety Commission's
 2-12 Internet website.

2-13 (b) Not later than 24 hours after the Department of State
 2-14 Health Services learns that a children's product is unsafe, the
 2-15 department shall add the product to the list maintained under
 2-16 Subsection (a).

2-17 (c) The Department of State Health Services shall inform
 2-18 child-care facilities about the list maintained under Subsection
 2-19 (a) and provide the facilities with the Internet address to access
 2-20 the list on the department's website. The department shall provide
 2-21 a written copy of the list to a child-care facility that does not
 2-22 have access to the Internet.

2-23 (d) The Department of State Health Services shall provide
 2-24 information relating to children's car seats by including links on
 2-25 the department's Internet website to the Internet websites of the
 2-26 United States Consumer Product Safety Commission and the National
 2-27 Highway Traffic Safety Administration.

2-28 Sec. 761.004. CHILD-CARE FACILITY. (a) Except as provided
 2-29 by Subsection (b), a child-care facility may not use an unsafe
 2-30 children's product or have an unsafe children's product on the
 2-31 premises of the child-care facility.

2-32 (b) A child-care facility may have an unsafe children's
 2-33 product on the premises if:

2-34 (1) the product is an antique or collectible
 2-35 children's product and is not used by, or accessible to, any child
 2-36 in the child-care facility;

2-37 (2) the unsafe children's product has been
 2-38 remanufactured or retrofitted; or

2-39 (3) the unsafe children's product is being retrofitted
 2-40 and the product is not used by, or accessible to, any child in the
 2-41 child-care facility.

2-42 (c) The Department of Family and Protective Services shall
 2-43 notify a child-care facility of the provisions of this chapter in
 2-44 plain, nontechnical language that will enable the child-care
 2-45 facility to effectively inspect the children's products at the
 2-46 facility and identify unsafe children's products.

2-47 (d) The Department of Family and Protective Services shall
 2-48 provide the notice required by Subsection (c) at the time an
 2-49 application for a license, registration, or certification is
 2-50 submitted to the department.

2-51 (e) Each child-care facility shall, as part of the licensing
 2-52 inspection process conducted by the Department of Family and
 2-53 Protective Services, certify in writing that the facility has
 2-54 reviewed each of the bulletins and notices issued by the Department
 2-55 of State Health Services regarding unsafe children's products and
 2-56 that there are no unsafe products in the facility. The Department
 2-57 of Family and Protective Services shall retain the most recent
 2-58 written certification completed by each facility in the facility's
 2-59 licensing file.

2-60 (f) A child-care facility must maintain all written
 2-61 information provided by the Department of Family and Protective
 2-62 Services or the Department of State Health Services to the facility
 2-63 regarding unsafe children's products in a file accessible to
 2-64 facility staff and parents of children attending the facility.

2-65 (g) A child-care facility shall post in a prominent location
 2-66 regularly visited by parents written notification of the existence
 2-67 of the comprehensive list of unsafe children's products and the
 2-68 Internet address to access the list.

2-69 Sec. 761.005. RULES. The executive commissioner of the

3-1 Health and Human Services Commission shall adopt rules and forms
3-2 necessary to implement this chapter.

3-3 Sec. 761.006. CIVIL PENALTY. (a) A person who violates
3-4 this chapter or a rule adopted under this chapter is liable to the
3-5 state for a civil penalty not to exceed \$1,000 for each violation.

3-6 (b) Each day a violation continues may be considered a
3-7 separate violation for purposes of a civil penalty assessment.

3-8 (c) The attorney general may bring suit to recover a civil
3-9 penalty imposed under this section.

3-10 SECTION 3. Subchapter C, Chapter 42, Human Resources Code,
3-11 is amended by adding Section 42.0423 to read as follows:

3-12 Sec. 42.0423. UNSAFE CHILDREN'S PRODUCTS. A child-care
3-13 facility shall comply with Chapter 761, Health and Safety Code, and
3-14 rules adopted under that chapter.

3-15 SECTION 4. This Act takes effect immediately if it receives
3-16 a vote of two-thirds of all the members elected to each house, as
3-17 provided by Section 39, Article III, Texas Constitution. If this
3-18 Act does not receive the vote necessary for immediate effect, this
3-19 Act takes effect September 1, 2007.

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