

BILL ANALYSIS

C.S.H.B. 217
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2007, according to the U.S. Consumer Product Safety Commission, children's products were recalled an average of four times a week, yet recall information is not effectively reaching consumers. When a recall occurs, the commission alerts the media, but no further action is required to ensure use of the recalled product is discontinued. This means that dangerous children's products continue to be used rather than withdrawn from circulation. On average, more than 100 children die annually and more than 275,000 are injured in incidents associated with children's products. There is currently no mandatory requirement to check specifically for recalled products in Texas.

C.S.H.B. 217 prohibits the use of unsafe children's products in certain child-care facilities. The bill requires the Department of Family and Protective Services to provide Internet access to information on product recalls and to provide notice of the bill's requirements to child-care facilities in plain, nontechnical language.

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

C.S.H.B. 217 amends the Human Resources Code to prohibit a licensed day-care center, licensed group day-care home, or registered family home from using an unsafe children's product or having an unsafe children's product on the premises unless the product is an antique or collectible children's product, or is being retrofitted to make it safe, and is not used by or accessible to any child in the facility. The bill establishes the presumption that a children's product is unsafe if it has been recalled for any reason by the U.S. Consumer Product Safety Commission and the recall has not been rescinded. The bill provides an exception to the presumption for a product that has been recalled if it has been remanufactured or retrofitted so that it is safe. The bill defines "children's product."

C.S.H.B. 217 requires the Department of Family and Protective Services (DFPS) to include on its Internet website a link to the U.S. Consumer Product Safety Commission's Internet website. The bill requires the DFPS to notify a facility subject to the bill of the bill's provisions in plain, nontechnical language that will enable the facility to effectively inspect the children's products at the facility and identify unsafe children's products. The bill requires the DFPS to provide the notice during its pre-application interview for a license, registration, or certification, and also during an inspection. The bill requires each child-care facility subject to the bill, at least annually, to certify in writing that the facility has reviewed each of the bulletins and notices issued by the U.S. Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe prohibited products in the facility. The bill requires the facility to retain the certification form completed by each facility in the facility's licensing file. The bill requires the executive commissioner of the Health and Human Services Commission to adopt

rules and forms necessary to implement the above provisions.

C.S.H.B. 217 requires a child-care facility subject to the bill to include, in the sign the facility is currently required to post describing reporting requirements applicable to the facility and certain childhood diseases and syndromes, a description of how to access a listing of unsafe children's products on the U.S. Consumer Product Safety Commission's Internet website or through the DFPS public website.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 217 omits the definition of "crib" contained in the original. The substitute removes the definition of "child-care facility" by reference to other provisions of the code contained in the original, and instead applies the bill's provisions only to a licensed day-care center, licensed group day-care home, or registered family home. The substitute defines "children's product" as a product that is designed or intended to be used by a child under 13 years of age or used by a caregiver during the care of a child under 13 years of age, rather than a child under eight years of age as in the original. The substitute omits the specification in the original further defining the product as one that is designed or intended to come into contact with the child while the product is used and listing types of products included. The substitute, like the original, excludes from the definition an item that is not designed or intended to be used solely or primarily by a child or in the care of a child, but unlike the original, does not exclude an item designed or intended to be used by the general population or segments of the general population. The substitute excludes clothing from the definition, whereas the original does not.

C.S.H.B. 217, unlike the original, does not add a new chapter to the Health and Safety Code. The substitute consequently omits a provision contained in the original, amending the Human Resources Code, that requires a child-care facility to comply with the new Health and Safety Code chapter.

C.S.H.B. 217 establishes the presumption that a children's product is unsafe if it has been recalled for any reason by the U.S. Consumer Product Safety Commission and the recall has not been rescinded, whereas the original establishes that presumption if the product has been recalled for any reason by an agency of the federal government or the product's manufacturer, distributor, or importer, and the recall has not been rescinded; if 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; or if it does not conform to all federal laws and regulations setting forth standards for the product. The substitute omits a provision contained in the original that establishes the presumption that a crib is unsafe if it does not conform to the most recent safety guidelines adopted by the U.S. commission and the standards published by ASTM International for corner posts and structural integrity of baby cribs.

C.S.H.B. 217 differs from the original by making a conforming change, with respect to the presumption that a product is not unsafe if it has been remanufactured or retrofitted to be safe.

C.S.H.B. 217 omits a provision contained in the original allowing a child-care facility to have an unsafe children's product on the premises if the product has been manufactured or retrofitted so that the product is safe.

C.S.H.B. 217 omits provisions contained in the original requiring the Department of State Health Services (DSHS) to maintain a list of unsafe children's products, to update the list within 24 hours of learning that a product is unsafe, to make the list available on its Internet website, to inform child-care facilities about the list and the Internet address where the list may be accessed,

and to provide a written copy of the list to a child-care facility that does not have Internet access. The substitute adds a provision, not in the original, requiring the Department of Family and Protective Services (DFPS) to include on its website a link to the U.S. Consumer Product Safety Commission's Internet website.

C.S.H.B. 217 specifies that the DFPS is required to give notice of the bill's provisions to each child-care facility during the department's pre-application interview for a license, registration, or certification, and during an inspection, rather than at the time an application for a license, registration, or certification or a renewal is submitted to the DFPS and during a license, registration, or certificate monitoring visit, as in the original.

C.S.H.B. 217 differs from the original by requiring each child-care facility to certify that the facility has reviewed each of the bulletins and notices issued by the U.S. Consumer Product Safety Commission at least annually, whereas the original requires each child-care facility to certify that the facility has reviewed each of the bulletins and notices issued by the DSHS as part of the licensing, renewal, or periodic update process conducted by the DFPS. The substitute, in its provision requiring the certification to confirm that there are no unsafe products in the facility, makes an exception for the products that are allowed on the premises even if they are unsafe, whereas the original in its certification provision does not include that exception.

C.S.H.B. 217 differs from the original by requiring a child-care facility to retain the certification form in the facility's licensing file, whereas the original requires the DFPS to retain the certification form and requires the facility to maintain all written information provided by DFPS or DSHS in a file accessible to staff and parents. The substitute requires a facility to include a description of how to access the U.S. commission's Internet listing of unsafe children's products in a sign the facility currently is required to post, whereas the original requires the facility to post notification of the existence and website address for the comprehensive list of unsafe children's products maintained by the DSHS.

C.S.H.B. 217 omits provisions contained in original creating a civil penalty for a person who violates the bill's provisions or a rule adopted under those provisions and authorizing the attorney general to bring suit to recover a civil penalty.