

BILL ANALYSIS

Senate Research Center
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S.B. 375
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Children's products are recalled an average of twice a week by the Consumer Product Safety Commission (commission). The commission may alert the media of the recall without taking any other action to ensure product removal. According to Kids in Danger, recall laws pertain to products that are on the shelves; however, very rarely is there established protocol regarding products that are already in use by child care facilities.

As proposed, S.B. 375 stipulates protocol for reporting of defective products to child-care facilities, defines the terms necessary, and 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. Prohibits a commercial user from remanufacturing, retrofitting, selling, offering for sale, leasing, subletting, giving away, offering to give away, allowing the use of, or otherwise placing in the stream of commerce a children's product that is unsafe. Provides that a commercial user does not violate this section if the unsafe product was not included on the Department of State Health Services' (department) list of unsafe children's products on the day before the date the commercial user placed the unsafe children's product in the stream of commerce.

Sec. 761.003. PRESUMPTION. Provides guidelines for presuming a children's product to be unsafe, with additional guidelines for presuming a crib to be unsafe.

Sec. 761.004. LIST OF UNSAFE CHILDREN'S PRODUCTS. Requires the department to maintain a list of unsafe children's products, to make the list available to the public at no cost through the department's website, to add a product to the list within 24 hours of learning that the product is unsafe, to inform child-care facilities about the list and provide the facilities with the Internet address to access the list on the department's website, and to provide a written copy of the list to a child-care facility that does not have access to the Internet.

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

(b) Authorizes a child-care facility to have an unsafe children's product on the premises if the product is an antique or collectible children's product and is not used by, or accessible to, any child in the child-care facility.

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

(d) Requires the Department of Family and Protective Services to provide the noticed required by Subsection (c) at the time an application for a license, registration, or certification or a renewal is submitted to the department and during a license, registration, or certificate monitoring visit.

(e) Requires each child-care facility to, as part of the licensing, licensing renewal, or periodic update process conducted by the Department of Family and Protective Services, certify in writing that the facility has reviewed each of the bulletins and notices issued by the department regarding unsafe children's products and that there are no unsafe products in the facility. Requires the Department of Family and Protective Services to retain the certification form completed by each facility in the facility's licensing file.

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

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

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. 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 and that each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment. 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 42.0422, as follows:

Sec. 42.0422. UNSAFE CHILDREN'S PRODUCTS. Requires a child-care facility to comply with Chapter 761, Health and Safety Code, and rules adopted under that chapter.

SECTION 3. Effective date: September 1, 2005.