

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 95  
By: Van de Putte, Zaffirini  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

On average, 103 children die annually and 286,900 are injured in incidents associated with children's products. According to the United States Consumer Product Safety Commission (commission), in 2007, children's products were recalled an average of four times per week, yet recall information is not effectively reaching consumers. When a recall occurs, the commission alerts the media; however no further action is required to ensure that use of the product is discontinued. This means that dangerous children's products can unknowingly end up in homes, childcare facilities, or anywhere children's products are used. Currently, in Texas, there is no mandatory requirement to specifically check for recalled products.

As proposed, S.B. 95 (The Children's Product Safety Act) prohibits the use of dangerous children's products in licensed child care facilities. S.B. 95 requires the Department of State Health Services (DSHS) to post recall information on public websites.

S.B. 95 also requires the Department of Family and Protective Services (DFPS), through its licensing division, to ensure that notice of the requirements in S.B. 95 are provided to child care facilities, and that the facilities certify, in writing, that the facility has reviewed the notices and that there are no unsafe children's products in the facility. S.B. 95 requires the child care facilities to keep all written information provided by DFPS or DSHS regarding unsafe products in a file accessible to the facility staff and parents of the children attending the facility. The facility is required to prominently post a written notice of the existence of the comprehensive list of recalled products in the facility and the Internet address to access the list. Finally, S.B. 95 provides for a civil penalty for violations and authorizes the attorney general to bring suit to recover civil penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 762.005, 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 762, as follows:

#### **CHAPTER 762. CHILDREN'S PRODUCTS SAFETY**

Sec. 762.001. DEFINITIONS. Defines "child-care facility," "children's product," and "crib."

Sec. 762.002. PRESUMPTION. (a) Provides that a children's product is presumed to be unsafe for purposes of this chapter if it does not conform to all federal laws and regulations setting forth standards for the product; it 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; or 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.

(b) Provides that, in addition to the requirements of Subsection (a), a crib is presumed to be unsafe for purposes of this chapter if it does not conform to the most recent safety guidelines adopted by the United States Consumer Product Safety Commission, including 16 C.F.R. Parts 1303, 1508, and 1509; and the standards published by ASTM International for corner posts and structural integrity of baby cribs, including ASTM F966-00, ASTM F1169-07, and ASTM F406-08, as those standards existed on January 1, 2009.

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

Sec. 762.003. LIST OF UNSAFE CHILDREN'S PRODUCTS. (a) Requires the Department of State Health Services (DSHS) to maintain a list of unsafe children's products (unsafe products) and make the list available to the public at no cost through DSHS's Internet website.

(b) Requires DSHS to add a product to the list not later than 24 hours after DSHS learns that the product is unsafe.

(c) Requires DSHS to inform child-care facilities about the list, provide facilities with the Internet address to access the list on DSHS's website, and provide a written copy of the list to a child-care facility that does not have access to the Internet.

Sec. 762.004. CHILD-CARE FACILITY. (a) Prohibits a child-care facility from using an unsafe product or having an unsafe product on the premises of the facility, except as provided by Subsection (b).

(b) Authorizes a child-care facility to have an unsafe 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; the product has been remanufactured or retrofitted so that the product is safe; or the product is being retrofitted and the product is not used by, or accessible to, any child in the child-care facility.

(c) Requires the Department of Family and Protective Services (DFPS) 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 products.

(d) Requires DFPS to provide the notice required by Subsection (c) at the time an application for a license, registration, or certification or a renewal is submitted to DFPS and during a license, registration, or certificate monitoring visit.

(e) Requires each child-care facility, as part of the licensing, licensing renewal, or periodic update process conducted by DFPS, to certify in writing that the facility has reviewed each of the bulletins and notices issued by DSHS regarding unsafe products and that there are no unsafe products in the facility. Requires DFPS 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 DFPS or DSHS to the facility regarding unsafe 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 products and the Internet address to access the list.

Sec. 762.005. RULES. Requires the executive commissioner of the Health and Human Services Commission to adopt rules and forms necessary to implement this chapter.

Sec. 762.006. CIVIL PENALTY. (a) 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.

(b) Authorizes that a violation be considered a separate violation for each day that it continues for purposes of a civil penalty assessment.

(c) 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 42.0423, as follows:

Sec. 42.0423. UNSAFE CHILDREN'S PRODUCTS. Requires a child-care facility to comply with Chapter 762, Health and Safety Code, and rules adopted under that chapter.

SECTION 3. Effective date: September 1, 2009.