



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

CHILDREN'S PRODUCT SAFETY ACT

Senate Bill 738 as passed by the Senate First Analysis (5-24-00)

Sponsor: Sen. Bev Hammerstrom
House Committee: Families and Children Services
Senate Committee: Families, Mental Health and Human Services

THE APPARENT PROBLEM:

Each year, children are killed or injured by products that are found to be defective or dangerous. If the death or injury is indeed a result of a defective or dangerous product, the manufacturer, the Consumer Products Safety Commission, or another agency may issue a warning or recall the product. Often this results in many of the potentially dangerous items being removed from general use. However, the warnings and recalls are often missed, leaving many of these items to be recirculated as hand-me-downs, sold at garage sales, or sold at resale shops.

In recent years, several deaths of young children involving unsafe products have occurred in child care facilities. In 1998, an Illinois toddler was strangled by a portable crib while he napped at his licensed child care facility. The family later found that their son was not the first to die in that type of crib; he was the fifth. Three months after the little boy died, an infant was killed in the same model crib. To date, 13 children have died from injuries caused by that particular portable crib, including a Michigan infant. Though reportedly over 1.5 million of these cribs have been recalled, it is estimated that another 1.2 million may still be in use.

The problem is not restricted to cribs, but to a wide range of children's products, including car seats, high chairs, beds, and swings. Just within the last month, a warning went out via the media about dangers posed by a particular model of infant swing, unfortunately spurred by the injuries of many young children. Parents, of course, shoulder the primary responsibility to make careful purchases of products for their children. However, with so many families relying on child care services, a parent's protection can only extend so far. Recently, several states have enacted laws to prevent licensed child care facilities from using unsafe products for children. Many believe that

Michigan should enact similar legislation in order to better protect its youngest citizens.

THE CONTENT OF THE BILL:

The bill would create the Children's Product Safety Act to prohibit child care facilities from using or having unsafe children's products on the premises and to prohibit commercial users from selling, leasing, or otherwise placing unsafe children's products in the marketplace. A "children's product" would include full- and non-full-size cribs, toddler bed, beds, car seats, chairs and high chairs, booster chairs and hook-on chairs, bath seats, gates, play yards, stationary activity centers, carriers, strollers, walkers, and infant swings that are designed to come into contact with a child while the product is being used. Certain exceptions would apply.

A "commercial user" would mean a person who deals in children's products or who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing children's products in the stream of commerce.

As of January 1, 2001, a commercial user could not remanufacture, retrofit, sell, lease, or otherwise place an unsafe children's product in the stream of commerce. A children's product would be unsafe if it met any of the following criteria:

- The product did not conform to all federal laws and regulations that set standards for that product.
- The product had been subject to a recall and had been listed as a recalled product by the Consumer Product Safety Commission (CPSC).
- A warning had been issued by a federal agency and not rescinded that the product poses a safety hazard.

Senate Bill 738 (5-24-00)

A licensed child care facility or registered family day care home could not use or have on the premises, on or after July 1, 2001, an unsafe children's product. Antiques or collectibles would be exempt as long as they were not used by a child or accessible to a child in the facility. The Department of Consumer and Industry Services (CIS) would have to maintain a comprehensive list of children's products that have been identified as meeting any of the criteria for an unsafe children's product. The list would have to be available to the public at no charge and also be posted on the Internet. Lists would be provided to all persons who inspect child care facilities for the purpose of licensing. The department would have to notify licensees on an ongoing basis of the provisions of the bill and of unsafe children's products in plain, nontechnical terms that would enable the facilities to effectively inspect products and identify unsafe ones. Licensees would have to conspicuously post an updated copy of the list of recalled children's products. A licensee could also use information provided by the CPSC in determining if a children's product was a recalled product. The department could revoke or deny a license or certificate of registration for noncompliance. The department could work with the Family Independence Agency (FIA) to provide a copy of the list of unsafe children's products to FIA enrolled day care aides and relative care providers who provide child care for low-income families.

The bill would allow a retrofit, as prescribed in the bill, of an unsafe children's product before being used. A retrofitted product could be sold if accompanied with required documentation as specified in the bill. Some exemptions would apply. A commercial user would not be in violation of the bill if the specific recalled product that was sold was not on the department's list 30 days before the sale. A commercial user who willfully and knowingly violated the bill would be guilty of a misdemeanor and subject to a fine up to \$100 or by imprisonment for not more than 90 days, or both.

The attorney general or a prosecuting attorney could bring an action in a court of competent jurisdiction to enforce the bill's provisions. Any remedies available under the bill would be in addition to remedies or procedures available under any other provisions of law to an aggrieved party.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reports that the bill would have no fiscal impact on the Department of Consumer and Industry Services. (5-8-00)

ARGUMENTS:

For:

Reportedly, about 50 infants die and 9,000 more are injured every year in unsafe baby cribs. According to one Consumer Products Safety Commission study, about 23 percent of deaths and injuries to infants and children can be linked to unsafe baby cribs, play pens, and car seats. These are deaths and injuries that are easily preventable. Once a product has been identified as having a potential for harm, information needs to be disseminated and the products removed from circulation as quickly as possible. To this end, the bill would increase awareness of dangerous products that are in general use, and would increase the likelihood that such products would be identified and removed before a child suffered an injury.

With so many children being cared for in child care settings, it makes sense to educate licensed child care providers about which products are unsafe. Since licensees would have to post lists of dangerous and recalled products, the likelihood of more parents becoming aware of such dangers also increases. Reportedly, most major retail stores are very good about pulling recalled products off their shelves and posting notices to customers, but the small resale or thrift shop may not receive product recall notices and so may be unaware that they are selling potentially dangerous items. In that regard, the bill would have an important impact by increasing the number of persons reached and assisting more people to identify and remove dangerous products before injuries can occur.

Against:

The definition of "commercial user" is very broad and would seem to include retailers, thrift shops, resale shops, consignment shops, flea markets, and rental stores, and possibly even craft show vendors and nonprofit agencies or groups that collect baby products and distribute them to low-income families. Though testimony given in committee seemed to indicate that the purpose was not to go after people sponsoring garage sales, unless they were specifically excluded, the definition could be construed to include them, also.

Against:

Many child care facilities receive donated items or buy items at garage sales and thrift shops due to limited budgets. A facility may not realize that it is in violation of the bill. In addition, many thrift shops buy items at auction, sell on consignment, and so on. The point is that it may be difficult to have a proper paper trail for some merchants to prove that a product was bought or sold before the item appeared on the recall list published by the Department of Consumer and Industry Services, and so they may also unwittingly be in violation of the bill's restrictions.

Response:

It is unlikely that the license sanctions and penalties under the bill would be used to punish unwitting violations of the bill. The strong point of the bill is that the sanctions and penalties would alert licensed child care providers and merchants that there are consequences to noncompliance, and provide them with information needed to be in compliance. Once people get in the habit of checking both old and new products against the list of recalled or dangerous products, compliance shouldn't be a problem. The result is that fewer children will be injured or killed needlessly by a product that could have been identified, in a matter of minutes, as being dangerous.

POSITIONS:

The Department of Consumer and Industry Services supports the bill. (5-23-00)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.