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Senate Bill 738 (as enrolled)  
Sponsor: Senator Bev Hammerstrom  
Senate Committee: Families, Mental Health and Human Services  
House Committee: Family and Children Services

**PUBLIC ACT 219 of 2000**

Date Completed: 2-7-01

### **RATIONALE**

Each year, people are killed or injured by products that are found to be defective or dangerous. If a death or injury is indeed a result of a defective or dangerous product, the manufacturer, the Consumer Product Safety Commission (CPSC), or another agency may issue a warning and/or recall the product. Often, this results in many of the potentially dangerous items' being removed from general use. Information about these warnings and recalls can be missed, however, leaving defective and potentially hazardous items to continue being used in the community.

The presence of these items in child care facilities is of particular concern to many people. According to the CPSC, during the 1990s at least 28 children died in child care settings from suffocation and/or asphyxia related to nursery equipment or soft bedding. In 1998, the CPSC conducted a national study to identify potential safety hazards in child care settings. The CPSC examined eight product areas, including cribs, soft bedding, child safety gates, and recalled children's products. The study found that two-thirds of the child care settings visited had at least one of the targeted safety hazards.

To address these dangers, several states reportedly have enacted laws that prevent licensed child care facilities from using unsafe products for children. Many people advocated that Michigan should enact similar legislation.

### **CONTENT**

**The bill created the "Children's Product Safety Act" to do all of the following:**

- **Prohibit a "commercial user" from remanufacturing, retrofitting, selling, leasing, or otherwise placing an unsafe "children's product" in the stream of commerce, and specify a criminal penalty for violations.**
- **Allow unsafe children's products to be retrofitted under certain conditions.**

- **Require the Department of Consumer and Industry Services (DCIS) to maintain and make available to the public a comprehensive list of children's products that meet the bill's criteria for being unsafe.**
- **Prohibit a child care facility from using or having on the premises an unsafe children's product.**

### **Definitions**

"Commercial user" means a person who deals in children's products or who holds himself or herself out as having knowledge or skill relating to children's products, or a person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing children's products in the stream of commerce.

"Children's product" means a product that is designed or intended to come into contact with a child while the product is used, including a crib or bed, seat or chair, gate or other confining enclosure, play or activity equipment, carrier, stroller, walker, or infant swing. A product is not included in the definition if either of the following applies:

- It can be used by or for the care of a child under six years old, but is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by a child or for the care of a child.
- It is a medication, drug, or food or is intended to be ingested.

"Child care facility" means a child care center, child care organization, or child caring institution as those terms are defined under the child care licensing Act. "Child" means a person under 18 years old.

### **Unsafe Children's Products**

The bill prohibits a commercial user from remanufacturing, retrofitting, selling, contracting to

sell or resell, leasing, subletting, or otherwise placing an unsafe children's product in the stream of commerce on or after January 1, 2001. A commercial user who willfully and knowingly violates this provision is guilty of a misdemeanor punishable by up to 90 days' imprisonment, a maximum fine of \$100, or both. A commercial user is not in violation of the bill if the specific recalled product sold was not on the DCIS comprehensive list of unsafe children's products 30 days before the sale.

A children's product is considered unsafe under the bill if it meets one or more of the following criteria:

- The product does not conform to all Federal laws and regulations setting forth standards for the product.
- The product has been recalled for any reason by a Federal agency or the product's manufacturer, distributor, or importer; the recall has not been rescinded; and the product has been listed by the CPSC as a recalled product.
- A Federal agency has issued a warning that a specific children's product's intended use constitutes a safety hazard and the warning has not been rescinded.

For purposes of the bill, a crib is considered unsafe if it does not conform to the standards endorsed or established by the CPSC.

#### Retrofitting

An unsafe children's product may be retrofitted if the retrofit has been approved by the Federal agency issuing the recall or warning or the Federal agency responsible for approving the retrofit. A retrofitted children's product may be sold if it is accompanied at the time of sale by a notice declaring that it is safe to use. The notice must include all of the following:

- A description of the original problem that made the recalled children's product unsafe.
- A description of the retrofit that explains how the original problem was eliminated and declaring that it is now safe to use.
- The name and address of the commercial user who accomplished the retrofit, certifying that the work was done, along with the name and model number of the retrofitted product. The commercial user is responsible for ensuring that the notice is present with the retrofitted product at the time of sale.

A retrofit need not comply with the bill if either of the following applies:

- The retrofit is for a children's product that requires assembly by the consumer, the approved retrofit is provided with the product by the commercial user, and the retrofit is accompanied at the time

of sale by instructions that explain how to apply the retrofit.

- The seller of a previously unsold children's product accomplished the repair prior to sale and the repair was approved or recommended by a Federal agency.

#### DCIS Comprehensive List

The DCIS must maintain a comprehensive list of children's products that have been identified as meeting any of the bill's criteria for unsafe children's products. The DCIS must make the list available to the public at no cost and post it on the Internet and encourage links to it.

The DCIS also must provide a copy of the list to any individual required by the Department to inspect a child care facility for the purpose of issuing or renewing a license or certificate of registration.

The DCIS may work with the Family Independence Agency to provide a copy of the list to each person providing child care.

#### Child Care Facilities

On or after July 1, 2001, a child care facility may not use or have on its premises an unsafe children's product. This prohibition does not apply to an antique or collectible children's product if it is not used by, or accessible to, a child in the facility.

The DCIS must notify child care facilities, on an ongoing basis, of the provisions of the bill and of unsafe children's products in plain, nontechnical language that enables each facility to inspect children's products effectively and identify unsafe children's products.

The operator of a child care facility must post conspicuously on the premises an updated copy of the DCIS comprehensive list of recalled children's products. The operator also may use information provided by the CPSC to determine if a children's product is a recalled product for purposes of the bill.

The DCIS may revoke or refuse to renew a child care facility's license or certificate of registration or refuse to issue a license or certificate if the licensee, registrant, or applicant does not comply with the bill.

#### Enforcement

The Attorney General or the prosecuting attorney in a county in which a violation of the bill occurs may bring an action to enforce it. Remedies available under the bill are in addition to any other remedies or procedures under any other provision of law that are available to an aggrieved party.

MCL 722.10510-722.1085

#### ARGUMENTS

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

##### Supporting Argument

According to Senate committee testimony, in 1998 an Illinois toddler was strangled by a portable crib while he napped at his licensed child care facility. The family subsequently found that their son was the fifth to die in that type of crib. Three months later, another child was killed in the same model crib. Reportedly, as of May 2000, 13 children had died from injuries caused by that particular portable crib, including a Michigan infant. Though over 1.5 million of these cribs evidently were recalled, it has been estimated that about 1.2 million may still be in use.

These deaths and injuries are preventable. Once a product has been identified as having a potential for harm, information needs to be disseminated and the product removed from circulation as quickly as possible. To this end, the bill should increase awareness of dangerous children's products that are in general use, and enhance the likelihood that those products will be identified and removed before a child suffers an injury.

With large numbers of children being cared for in out-of-the-home child care settings, it is sensible to

educate child care providers about which products are unsafe. Since the bill requires child care providers to post lists of dangerous and recalled products, it is likely that more parents will become aware of potential hazards. Reportedly, most major retail stores are very good about removing recalled products from 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 it is selling potentially dangerous items. In that regard, the bill should have an important impact by increasing the number of people reached and assisting more people to identify and remove dangerous products before injuries can occur.

**Response:** The definition of "commercial user" may be too broad. It seemingly includes retailers, thrift shops, resale shops, consignment shops, flea markets, rental stores, and possibly even craft show vendors and nonprofit agencies or groups that collect baby products and distribute them to low-income families.

##### Opposing Argument

Many child care facilities reportedly receive donated items or buy items at garage sales and thrift shops due to limited budgets. These facilities may not realize it if they are in violation of the bill. In addition, many thrift shops apparently buy items at auction, sell on consignment, and generally operate in streams of commerce that may be out of the mainstream. 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 DCIS, so they may unwittingly violate the bill.

**Response:** It is unlikely that the license sanction will be used to punish unwitting violators, and the criminal penalty applies only to violations committed willfully and knowingly. The bill's sanction and penalty, however, should alert licensed child care providers and merchants that there are consequences to noncompliance, and the bill establishes a mechanism to provide them with information they need to comply. Once people get in the habit of checking both old and new products against the list of recalled or dangerous products, compliance should not be a problem. The desired result is that fewer children will be injured or killed by a product that quickly and easily could have been identified as dangerous.

Legislative Analyst: P. Affholter

##### FISCAL IMPACT

The bill will have no fiscal impact on the Department of Consumer and Industry Services.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.