

**SUBSTITUTE FOR
SENATE BILL NO. 738**

A bill to prohibit the use of certain unsafe children's products; to prohibit child care facilities from using or having on the facility premises certain unsafe children's products; to prescribe powers and duties of certain departments, officers, and agencies; to provide for the promulgation of rules to carry out the provisions of this act; and to prescribe penalties for violation of the provisions of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "children's product safety act".

3 Sec. 2. As used in this act:

4 (a) "Child" means an individual less than 18 years old.

5 (b) "Child care facility" means a child care center, child
6 care organization, or child caring institution as defined in
7 section 1 of 1973 PA 116, MCL 722.111.

1 (c) "Children's product" means a product, including, but not
2 limited to, a full-size crib, non-full-size crib, toddler bed,
3 bed, car seat, chair, high chair, booster chair, hook-on chair,
4 bath seat, gate or other enclosure for confining a child, play
5 yard, stationary activity center, carrier, stroller, walker, or
6 infant swing that is designed or intended to come into contact
7 with the child while the product is used. Notwithstanding any
8 other provision of this section, a product is not a "children's
9 product" for purposes of this act if either of the following
10 applies:

11 (i) It may be used by or for the care of a child under 6
12 years old, but it is designed or intended for use by the general
13 population or segments of the general population and not solely
14 or primarily for use by a child or for the care of a child.

15 (ii) It is a medication, drug, or food or is intended to be
16 ingested.

17 (d) "CPSC" means the consumer product safety commission cre-
18 ated by the consumer product safety act, Public Law 92-573, 86
19 Stat. 1207.

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

26 (f) "Crib" means a bed or containment designed to
27 accommodate an infant.

1 (g) "Department" means the department of consumer and
2 industry services.

3 (h) "Full-size crib" means a full-size crib as defined in
4 section 1508.3 of title 16 of the code of federal regulations
5 regarding the requirements for full-size cribs.

6 (i) "Non-full-size crib" means a non-full-size crib as
7 defined in section 1509.2 of title 16 of the code of federal reg-
8 ulations regarding the requirements for non-full-size cribs.

9 (j) "Person" means an individual, partnership, corporation,
10 association, governmental entity, or other legal entity.

11 Sec. 5. A commercial user shall not remanufacture, retro-
12 fit, sell, contract to sell or resell, lease, sublet, or other-
13 wise place in the stream of commerce, on or after January 1,
14 2001, an unsafe children's product.

15 Sec. 6. (1) A children's product is unsafe for purposes of
16 this act if it meets 1 or more of the following criteria:

17 (a) The children's product does not conform to all federal
18 laws and regulations setting forth standards for the children's
19 product.

20 (b) The children's product has been recalled for any reason
21 by a federal agency the product's manufacturer, distributor, or
22 importer; the recall has not been rescinded; and the children's
23 product has been listed by the CPSC as a recalled product.

24 (c) A federal agency has issued a warning that a specific
25 children's product's intended use constitutes a safety hazard and
26 the warning has not been rescinded.

1 (2) For the purposes of this act, a crib is unsafe if it
2 does not conform to the standards endorsed or established by the
3 CPSC.

4 (3) An unsafe children's product, as determined under sub-
5 section (2), may be retrofitted if the retrofit has been approved
6 by the federal agency issuing the recall or warning or the fed-
7 eral agency responsible for approving the retrofit if it is dif-
8 ferent from the federal agency issuing the recall or warning. A
9 retrofitted children's product may be sold if it is accompanied
10 at the time of sale by a notice declaring that it is safe to
11 use. The notice shall include all of the following:

12 (a) A description of the original problem that made the
13 recalled children's product unsafe.

14 (b) A description of the retrofit that explains how the
15 original problem was eliminated and declaring that it is now safe
16 to use.

17 (c) The name and address of the commercial user who accom-
18 plished the retrofit certifying that the work was done along with
19 the name and model number of the product retrofitted. The com-
20 mercial user is responsible for ensuring that the notice is
21 present with the retrofitted product at the time of sale.

22 (4) A retrofit does not need to comply with this act if
23 either of the following applies:

24 (a) The retrofit is for a children's product that requires
25 assembly by the consumer, the approved retrofit is provided with
26 the product by the commercial user, and the retrofit is

1 accompanied at the time of sale by instructions explaining how to
2 apply the retrofit.

3 (b) The seller of a previously unsold children's product
4 accomplishes the repair prior to sale and the repair is approved
5 or recommended by a federal agency.

6 Sec. 10. (1) The department shall maintain a comprehensive
7 list of children's products that have been identified as meeting
8 any of the criteria set forth in sections 5 and 6. The depart-
9 ment shall make the comprehensive list available to the public at
10 no cost and shall post it on the internet and encourage links.

11 (2) The department shall provide a copy of the list of
12 unsafe children's products to any individual required by the
13 department to inspect a child care facility for the purpose of
14 issuing or renewing a license or certificate of registration.

15 (3) The department may work with the family independence
16 agency to provide a copy of the list of unsafe children's pro-
17 ducts to each person providing child care.

18 Sec. 11. A commercial user is not in violation of this act
19 if the specific recalled product sold was not on the department's
20 list 30 days before the sale.

21 Sec. 15. (1) A child care facility may not use or have on
22 the premises, on or after July 1, 2001, an unsafe children's
23 product. This section does not apply to an antique or collect-
24 ible children's product if it is not used by, or accessible to, a
25 child in the child care facility.

26 (2) The department shall notify child care facilities, on an
27 ongoing basis, of the provisions of this act and of unsafe

1 children's products in plain, nontechnical language that enables
2 each child care facility to effectively inspect children's pro-
3 ducts and identify unsafe children's products.

4 (3) The operator of a child care facility shall conspicu-
5 ously post on the premises an updated copy of the list of
6 recalled children's products provided by the department.

7 (4) The operator of a child care facility may use informa-
8 tion provided by the CPSC to determine if a children's product is
9 a recalled product for the purposes of this act.

10 Sec. 20. The department may revoke or refuse to renew the
11 license or certificate of registration of a child care facility
12 or refuse to issue a license or certificate of registration if
13 the licensee, registrant, or applicant does not comply with a
14 section of this act.

15 Sec. 25. A commercial user who willfully and knowingly vio-
16 lates section 5 is guilty of a misdemeanor punishable by a fine
17 of not more than \$100.00 or by imprisonment for not more than 90
18 days, or both.

19 Sec. 30. The attorney general or prosecuting attorney in
20 the county in which a violation of this act occurred may bring an
21 action in a court of competent jurisdiction to enforce the provi-
22 sions of this act.

23 Sec. 35. Remedies available under this act are in addition
24 to any other remedies or procedures under any other provision of
25 law that may be available to an aggrieved party.