

By: Menendez

H.B. No. 217

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the sale or use of unsafe children's products; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 762 to read as follows:

CHAPTER 762. CHILDREN'S PRODUCTS SAFETY

Sec. 762.001. DEFINITIONS. In this chapter:

(1) "Child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Children's product" means a product that is designed or intended to be used by a child under eight years of age or used in the care of a child under eight years of age and that is designed or intended to come into contact with the child while the product is used. The term includes a crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment. The term does not include:

(A) an item that may be used by a child under eight years of age or used in the care of a child under eight years of age if the item is designed or intended to be used by the general population or segments of the general population and not solely or primarily by a child under eight years of age or in the care of a

general population or segments of the general population and not solely or primarily by a child under eight years of age or in the care of a child under eight years of age; or

(B) a medication, a drug, food, or another item that is intended to be ingested.

(3) "Crib" means a bed designed to provide sleeping accommodations for a child less than 35 inches tall and younger than three years of age. The term includes full-size cribs and non-full-size cribs.

Sec. 762.002. PRESUMPTION. (a) A children's product is presumed to be unsafe for purposes of this chapter if:

(1) it does not conform to all federal laws and regulations setting forth standards for the product;

(2) 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an agency of the federal government or the product's manufacturer, distributor, or importer and the recall has not been rescinded; or

(3) 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has issued a warning that the product's intended use constitutes a safety hazard and the warning has not been rescinded.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) 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:

(1) 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

(2) the standards published by ASTM International for corner posts and structural integrity of baby cribs, including ASTM

1 F966-00, ASTM F1169-07, and ASTM F406-08, as those standards
2 existed on January 1, 2009.

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

8 Sec. 762.003. LIST OF UNSAFE CHILDREN'S PRODUCTS. (a) The
9 Department of State Health Services shall maintain a list of unsafe
10 children's products. The department shall make the list available
11 to the public at no cost through the department's Internet website.

12 (b) Not later than 24 hours after the Department of State
13 Health Services learns that a children's product is unsafe, the
14 department shall add the product to the list.

15 (c) The Department of State Health Services shall inform
16 child-care facilities about the list and provide the facilities
17 with the Internet address to access the list on the department's
18 website. The department shall provide a written copy of the list to
19 a child-care facility that does not have access to the Internet.

20 Sec. 762.004. CHILD-CARE FACILITY. (a) Except as provided
21 by Subsection (b), a child-care facility may not use an unsafe
22 children's product or have an unsafe children's product on the
23 premises of the child-care facility.

24 (b) A child-care facility may have an unsafe children's
25 product on the premises if:

26 (1) the product is an antique or collectible
27 children's product and is not used by, or accessible to, any child

1 in the child-care facility;

2 (2) the unsafe children's product has been
3 remanufactured or retrofitted so that the product is safe; or

4 (3) the unsafe children's product is being retrofitted
5 and the product is not used by, or accessible to, any child in the
6 child-care facility.

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

12 (d) The Department of Family and Protective Services shall
13 provide the notice required by Subsection (c):

14 (1) at the time an application for a license,
15 registration, or certification or a renewal is submitted to the
16 department; and

17 (2) during a license, registration, or certificate
18 monitoring visit.

19 (e) Each child-care facility shall, as part of the
20 licensing, licensing renewal, or periodic update process conducted
21 by the Department of Family and Protective Services, certify in
22 writing that the facility has reviewed each of the bulletins and
23 notices issued by the Department of State Health Services regarding
24 unsafe children's products and that there are no unsafe products in
25 the facility. The Department of Family and Protective Services
26 shall retain the certification form completed by each facility in
27 the facility's licensing file.

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

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

10 Sec. 762.005. RULES. The executive commissioner of the
11 Health and Human Services Commission shall adopt rules and forms
12 necessary to implement this chapter.

13 Sec. 762.006. CIVIL PENALTY. (a) A person who violates
14 this chapter or a rule adopted under this chapter is liable to the
15 state for a civil penalty not to exceed \$1,000 for each violation.

16 (b) Each day a violation continues may be considered a
17 separate violation for purposes of a civil penalty assessment.

18 (c) The attorney general may bring suit to recover a civil
19 penalty imposed under this section.

20 SECTION 2. Subchapter C, Chapter 42, Human Resources Code,
21 is amended by adding Section 42.0423 to read as follows:

22 Sec. 42.0423. UNSAFE CHILDREN'S PRODUCTS. A child-care
23 facility shall comply with Chapter 762, Health and Safety Code, and
24 rules adopted under that chapter.

25 SECTION 3. This Act takes effect September 1, 2009.