

SENATE BILL REPORT

SB 6444

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 05, 2008

Title: An act relating to creating the children's product safety act.

Brief Description: Creating the children's product safety act.

Sponsors: Senators Kohl-Welles, Keiser, Oemig, Franklin, Delvin, Fairley, Weinstein and Rasmussen.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/29/08, 2/05/08 [DPS, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6444 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, King, Murray and Prentice.

Minority Report: That it be referred without recommendation.

Signed by Senator Hewitt.

Staff: Ingrid Mungia (786-7423)

Background: In 1996 Washington enacted the Infant Crib Safety Act. This Act requires that any crib that is sold, leased, manufactured or otherwise placed into the stream of commerce must comply with federal safety regulations and voluntary industry safety standards. Any crib is presumed to be unsafe if it does not comply with federal regulations under the federal Consumer Product Safety Commission and the American Society for Testing Materials Voluntary Standards.

Cribs that are not intended to be used for an infant are exempt if accompanied by a notice. Commercial users are exempt from liability if they provide the required notice. The Department of Health is required to make materials on crib safety available to the public and to encourage public and private collaboration in distributing materials about crib safety to parents, child care providers, and those who sell cribs.

Summary of Bill (Recommended Substitute): Amends the Infant Crib Safety Act, expands and renames it the Children's Product Safety Act. After January 1, 2009, a commercial dealer,

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manufacturer, importer, distributor, wholesaler or retailer may not manufacture, remanufacture, retrofit, distribute, sell at wholesale or retail, contract to sell or resell, lease or sublet, advertise, or otherwise place in the stream of commerce a children's product that is unsafe.

A children's product is deemed unsafe if it meets any of the following criteria:

- it does not conform to all federal laws and regulations setting standards for the children's product;
- it has been recalled for any reason or in cooperation with an agency of the federal government or the product's manufacturer, wholesaler, distributor, or importer and the recall has not been rescinded; or
- an agency of the federal government or the product's manufacturer, wholesaler, distributor, or importer has issued a warning that a specific product's intended use constitutes a safety hazard and the warning has not been rescinded.

Language is added to clarify that a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer, not only users, may not remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce a crib that is unsafe to any infant using the crib.

If a manufacturer, importer, wholesaler, or distributor of children's products has placed into the stream of commerce in Washington a children's product for which a recall or warning has been issued by either a manufacturer, importer, wholesaler, or distributor, or by a federal agency, the manufacturer, importer, wholesaler, or distributor must within 24 hours after issuing or receiving the recall or warning:

- contact the commercial customers, to whom it sold, leased, sublet, or transferred the product to in Washington;
- place on the home page of its website or the first entry point a link to the recall or warning information; and
- if the product was sold directly to a noncommercial consumer, and the consumer provided either a shipping address or e-mail address at the time of sale, send a notice of the recall or warning to the consumer at either address provided.

If a retailer receives notice of a recall or warning regarding a children's product from a manufacturer, importer, wholesaler, or distributor or, in the case of an involuntary recall, from a federal agency, and the product was offered for sale in Washington, the retailer must:

- within seven business days remove the children's product from the shelves of its stores or program its registers to ensure the item cannot be sold;
- if the product was sold through the retailer's website, within seven business days remove the product from the website or remove the ability of a consumer to purchase the product on the website;
- within seven business days the retailer must post in a prominent location in each retail store the recall or warning notice for 90 days; and
- if the product was sold through the retailer's website, within seven business days post on the home page, or the first point of entry, a link to the recall or warning information that contains the specific recall notice or warning for the product.

A retailer who is not a first seller has five business days after a recalled children's product is placed on the Department of Health's (DOH) list to remove the product from the shelves of its stores and website and post the recall notice in its business and on its website.

A manufacturer, importer, wholesaler, or distributor who is also a retailer must within 24 hours after issuing or receiving the recall or warning, post on the home page or first entry point, of its website a link to the recall or warning information that contains the specific recall notice or warning.

A child day care center or family day care provider must not use or have on the premises an unsafe children's product. This requirement does not apply to antique or collectible children's products if not used by or accessible to any child in the child care facility or home. The Department of Early Learning must notify child care providers of the list of unsafe children's products available from the DOH. Child care providers must place in prominent locations a written notification of the list of unsafe children's products on the internet.

The DOH is directed to make a list available to the public on the internet as part of the product safety education campaign. DOH must also provide the link to recalls.gov or its successor website and make available a link to specific notices or warnings concerning children's products that have been recalled or issued a warning.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE, RESEARCH & DEVELOPMENT COMMITTEE (Recommended Substitute): Changes the number of days from three to seven once a retailer has received notice of a recall or warning regarding a children's product from the manufacturer, importer, wholesaler or distributor to remove the recalled product from the store shelves and website. Changes the number of days from five to seven once a retailer has received notice of a recall or warning regarding a children's product from the manufacturer, importer, wholesaler or distributor to post the recall or warning in the retail store and on its website. The requirement that a business post in a prominent location in each retail store the recall or warning is changed from 120 days to 90 days. Changes the language from permissive to mandatory that child day care centers and family day care providers cannot use or have on the premises an unsafe children's product as described in the bill.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: When a product has been recalled by the federal government, there is no requirement that action take place. It is only voluntary to stop selling a product. We need to make sure these recalled toys are pulled off store shelves. If a product is found to be dangerous or harmful, retailers immediately pull the product from the shelves. The Retail Association would prefer a national solution. The three-day time period to remove harmful products from the shelves might not be long enough because some of the organizations that sell toys are located out of state. Interested in where the 120-day posting period comes from. It is almost impossible not to notice all the toxic toys

that were recalled over the summer, and the unwillingness of the federal consumer protection to act more sternly. There is an unevenness in the way recalls are being handled by different retailers.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Mark Johnson, Washington Retail Association; Nick Fererici, Washington Toxics Coalition.