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PROTECTING CHILDREN FROM UNSAFE PRODUCTS

Children's consumer safety came to the forefront as an urgent issue in 2007. National media reported on massive recalls of children's toys, affecting toy company giants Mattel and Fisher-Price, and ranging from simple play blocks to commercially popular Barbie and Polly Pocket playsets. One of the major concerns prompting the toy recalls was the use of lead paint in products manufactured overseas.

Federal regulators in the U.S. Consumer Product Safety Commission (CPSC) were criticized for lax oversight, while at the same time it was revealed that the agency lacked the money and staff to fully carry out its duties. Public outcry in the face of recalls that affected some of the most popular children's toys brought about legislative action on both the federal and state level.

With federal legislation stalled in Congress, various state legislatures have taken up the task of addressing children's consumer safety issues. Since 2007, legislation has been passed in five states to regulate "children's products" in some form, while 25 other states have seen legislation introduced in relation to child product safety. One bill was introduced in Wisconsin and was passed by the senate, but it was not acted on by the assembly before the end of the 2007-2008 general floor session.

CHEMICALS OF CONCERN

The four substances that have received the most attention in legislation and media reports are lead, bisphenol A, phthalates, and cadmium.

Lead has been found in the paint used on children's toys and in pieces of jewelry marketed to children. Exposure to high levels of lead at an early age can lead to brain and nervous system damage, behavioral problems, slowed growth, and hearing problems, according to the Environmental Protection Agency. According to the *New York Times*, lead paint is used by overseas toy companies because it is cheaper than paint without lead and is sometimes easier to apply to hard surfaces.

Bisphenol A (BPA), which is used in the manufacture of plastics, has been shown to have hormone-like effects in animal testing. Until recently, the chemical was used in the production of Nalgene brand water bottles; but after public scrutiny, the company announced that it would phase out the use of BPA. The chemical is also used in plastic baby bottles. The Canadian government recently announced that it would prohibit the sale of baby bottles made with BPA, and retailers Wal-Mart and Toys R US have announced their intent to phase out the sale of baby products with BPA. The Centers for Disease Control and Prevention has conducted tests indicating widespread exposure to bisphenol A in the United States.

Phthalates, a class of chemicals used to make plastic flexible and to bind fragrances to cosmetics, have been linked to reproductive defects and cancer in animal testing. Cadmium, also used in plastics, is associated with kidney problems and may be a carcinogen.

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STATES' RESPONSES

State of Washington

The state of Washington has so far passed the broadest regulations on the safety of children's products, targeting three of the substances that have caused concern: lead, phthalates, and cadmium. The legislation was passed in March 2008 and signed by Washington's governor in April of the same year. Under the new law, beginning July 1, 2009, manufacturers, wholesalers, and retailers will be prohibited from knowingly selling or distributing children's products that contain certain amounts of lead, phthalates, and cadmium. Six months before the law goes into effect, the state's Department of Ecology must submit a report to the legislature identifying chemicals that are of high concern for children, identifying children's products that contain those chemicals, and including policy options to address those products.

The act also requires toy manufacturers to recall prohibited toys and reimburse retailers or other purchasers for the recalled products. They are subject to civil penalties not to exceed \$5,000 for each violation on a first offense, and not to exceed \$10,000 for each repeat offense. In addition, the governor of Washington has announced that she will establish an advisory group to work with the Department of Ecology to implement the act's provisions and identify legislative fixes for the state's next legislative session.

California and others

California's law, enacted in October 2007, focuses specifically on phthalates and restricts the manufacture, sale, or distribution of certain toys and child care articles containing certain amounts of those chemicals. The law takes effect January 1, 2009.

Laws have also been passed in Michigan, New Jersey, and Oregon on recalled or "toxic"

toys. Michigan's law, signed in December 2007, included four bills relating to lead used in children's articles. It allows for civil penalties if the law is violated. New Jersey's and Oregon's laws restrict the sale of toys that have been recalled. The New Jersey law was signed in August 2007, while the Oregon law was signed in March 2008.

WISCONSIN LEGISLATION

Sales restrictions

In Wisconsin, 2007 Senate Bill 37, introduced February 14, 2007, proposed to regulate the sale of children's products. Specifically, it would have created a provision in the Wisconsin Statutes prohibiting a commercial supplier from selling, leasing, remanufacturing, or retrofitting a children's product that:

- fails to conform to any state or federal regulation;
- has been recalled by the state or federal government; or
- has been the subject of a warning issued by the state or federal government relating to the intended use of the product.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) would have been required to maintain a list of all children's products that fall within those three conditions. DATCP would also have been directed to create administrative rules to ensure child product safety consistent with industry standards. The bill also singled out baby cribs, requiring the department to include certain design and performance requirements.

SB-37 would have required a commercial supplier to post a conspicuous notice for customers if it has sold children's products that are included on the list compiled by DATCP. The seller would have been allowed to retrofit a recalled product as long as the retrofit was approved by the recalling agency

and the seller ensured that a notice accompanied the product. Retrofits would not have been allowed for baby cribs.

Enforcement

The Wisconsin Department of Justice, DATCP, a district attorney, or any other person would have been able to bring an action for an injunction against a seller of children's products that violated the bill's provisions. Violators would have been subject to forfeitures of \$100 to \$10,000 for each violation. A fiscal estimate of the bill projected the need for one full-time position in DATCP at a cost of \$65,000 per year, and one-time setup costs of \$10,000, to enable enforcement of the law.

Use in children's care facilities

In addition to regulating the sale of children's products, SB-37 would have prohibited the use of unsafe children's products in day care centers, foster homes, and other facilities providing care for children. The licensing of such a facility would have been contingent on an inspection of the premises by the issuing agency to ensure that unsafe products are not on the premises. The facility would have been supplied with notice of the prohibitions and requirements relating to children's products, and those notices would have been kept on file for inspection by parents. While the bill would have prohibited the facility from having unsafe products on the premises, it would not have prohibited the presence of antique or collectible toys as long as they were not used by or accessible to children.

History of 2007 Senate Bill 37

SB-37 was introduced by Senator Lassa and cosponsored in the assembly by Representative Albers. A public hearing on the bill was held in April 2007 before the Senate

Committee on Economic Development, Job Creation, Family Prosperity and Housing. Among those speaking in support of the bill were a representative of DATCP, a pediatrician, and a consumer advocate. The bill was unanimously recommended for passage with one amendment. The bill was then sent to the Joint Committee on Finance (JCF) in January 2008, and was recommended for adoption with two amendments. The full senate considered the proposal on February 19, adopting three amendments before passing the bill unanimously.

The first amendment to the bill was a technical change. Senate Amendment 2 deleted several provisions related to the inspections of and notifications to children's care facilities, in order to lessen the fiscal impact of those provisions. In response to comments made during the JCF hearing, Senate Amendment 3 changed language to require that stores must only remove products that have been recalled, not products that have had a warning issued against them. DATCP would still have been required to include those products with warnings on its list of unsafe children's products.

After passage in the senate, SB-37 was sent to the assembly and referred to the Committee on Consumer Protection and Personal Privacy, but no further action was taken prior to the end of the 2007 regular session.

The 2007 bill was a redraft based on 2005 Senate Bill 454, also introduced by Senator Lassa. That bill expired in a senate committee. A previous proposal had been drafted during the 2001 session. The language of the 2005 bill was based on legislation passed in Illinois, Michigan, Arkansas, Vermont, and Louisiana, according to the drafting file of SB-454.

FEDERAL LEGISLATION

As states act individually to tackle children's product safety, Congress is attempting to work out a compromise

proposal to differing measures passed by the House and Senate on CPSC reform.

The House version of the bill (H.R. 4040) was passed unanimously in December 2007. It authorizes appropriations to improve the CPSC's research, development, and testing facility and increases the maximum civil penalties for violations of federal consumer safety laws. The bill specifically targets lead in children's products, and would make any consumer product for children under 12 that contains excess amounts of lead a banned hazardous substance. The CPSC would need to periodically revise safety standards to require the lowest amount of lead feasible in a product. Among many other reforms in the bill, the CPSC would be required to notify each state's health department of a recall that it issues or of a voluntary recall of which the CPSC has received notice.

The Senate's version of the bill is much broader. In addition to lowering the amount of lead found in products, it would also treat a children's product containing certain phthalates as a banned hazardous substance, and prohibit the use of certain alternatives to phthalates. The bill would create protections for whistle-blowers in the public and private sector. It would also require the CPSC to maintain a searchable database on reports of injury, illness, or death related to the use of consumer products, which would be available to the public on its Web site. The Senate passed its version of the bill in March 2008.

As of May 2008, no agreement has been reached on a compromise bill.

FOR MORE INFORMATION

For more information about recalls and consumer safety, see the Web site of the Consumer Product Safety Commission at: www.cpsc.gov

For more information about the chemicals mentioned in this brief, see the Environmental Protection Agency Web site at: <http://epa.gov>; or the Centers for Disease Control and Prevention Web site at: <http://cdc.gov>

A copy of 2007 Senate Bill 37 can be viewed at: www.legis.state.wi.us/2007/data/SB-37.pdf

Committee records related to SB-37 may be found at: <http://nxt.legis.wi.gov>

State laws

Washington – Chapter 288, Laws of 2008: <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Law%202008/2647-S2.SL.pdf>

California – Chapter 672: www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1101-1150/ab_1108_bill_20071014_chaptered.pdf

Michigan – Press release on four-bill package signed: www.michigan.gov/gov/0,1607,7-168-23442_21974-182520--,00.html

New Jersey – P.L. 2007, Chapter 124: www.njleg.state.nj.us/2006/Bills/PL07/124_.pdf

Oregon – Chapter 31, 2008 Laws (enrolled bill version): www.leg.state.or.us/08ss1/measpdf/hb3600.dir/hb3631.en.pdf

Federal legislation

Search "H.R. 4040" on the Library of Congress Web site at: <http://thomas.loc.gov>