

JAN 29 2003
HUMAN RESOURCES

HOUSE FILE 69
BY FOEGE

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to children's product safety and providing civil
2 penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 237A.12, subsection 1, Code 2003, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. i. Requirements relating to unsafe
4 children's products pursuant to section 237A.31.

5 Sec. 2. NEW SECTION. 237A.31 CHILDREN'S PRODUCT SAFETY.

6 1. Beginning January 1, 2004, a child care facility shall
7 not use or have on the premises an unsafe children's product.
8 This prohibition does not apply to an antique or collectible
9 children's product if the product is not used by or accessible
10 to any child in the child care facility.

11 2. The department shall, no later than September 1, 2003,
12 send a notice to all licensed or registered child care
13 facilities informing the facilities of the provisions of this
14 section. The department shall send notices to child care
15 facilities on a periodic basis of the provisions of this
16 section and of the most recent listing of unsafe children's
17 products maintained by the office of the attorney general
18 pursuant to section 714.26.

19 3. A licensed or registered child care facility shall
20 conspicuously post on the premises the most recently updated
21 copy of the list of unsafe children's products provided by the
22 department.

23 4. a. A licensed or registered child care facility shall
24 maintain a file of all notices sent by the department
25 regarding unsafe children's products, and shall make the file
26 available to facility personnel and to the parents of children
27 attending the facility.

28 b. A licensed or registered child care facility shall make
29 the file available to the department as part of any
30 inspection, investigation, or licensing or registration
31 process, and the facility shall certify in writing during any
32 of the processes, on a form provided by the department, that
33 the facility has reviewed each of the notices and that no
34 unsafe children's products are on the premises of the
35 facility. The department shall create and provide to all

1 licensed or registered child care facilities a certification
2 form to be used under this section.

3 5. The department may suspend or revoke the license or
4 certificate of registration of a child care facility or may
5 reduce the license of a child care facility to a provisional
6 license in accordance with section 237A.8, if the child care
7 facility does not comply with the requirements of this
8 section.

9 6. For the purposes of this section, "child", "children's
10 product", and "unsafe children's product" mean the same as
11 defined in section 714.26.

12 Sec. 3. NEW SECTION. 714.26 CHILDREN'S PRODUCT SAFETY --
13 PENALTIES.

14 1. As used in this section, unless the context otherwise
15 requires:

16 a. "Child" means an unmarried person who is under eighteen
17 years of age.

18 b. "Children's product" means a product, including but not
19 limited to a full-size baby crib, non-full-size baby crib,
20 toddler bed, bed, car seat, chair, high chair, booster chair,
21 hook-on chair, bath seat, gate or other enclosure for
22 confining a child, play yard, stationary activity center,
23 carrier, stroller, walker, swing, or toy or play equipment,
24 that meets all of the following criteria:

25 (1) The product is designed or intended for the care of,
26 or use by, children under six years of age or is designed or
27 intended for the care of, or use by, both children under six
28 years of age and children six years of age or older.

29 (2) The product is designed or intended to come into
30 contact with the child while the product is used.

31 "Children's product" does not include a product that may be
32 used by or for the care of a child under six years of age, but
33 the product is designed or intended for use by the general
34 population or segments of the general population and not
35 solely or primarily for use by or for the care of a child, or

1 a product that is a medication, drug, or food or is intended
2 to be ingested.

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

9 d. "Consumer product safety commission" means the consumer
10 product safety commission created by the federal Consumer
11 Product Safety Act, Pub. L. No. 92-573, 86 Stat. 1210.

12 e. "Crib" means a bed or containment designed to
13 accommodate an infant.

14 f. "Full-size baby crib" means a full-size baby crib as
15 defined in 16 C.F.R. § 1508.1(a).

16 g. "Infant" means a person less than thirty-five inches
17 tall and less than three years of age.

18 h. "Non-full-size baby crib" means a non-full-size baby
19 crib as defined in 16 C.F.R. § 1509.2(b).

20 i. "Unsafe children's product" means any of the following:

21 (1) A children's product that does not conform to all
22 federal laws and regulations for the specific children's
23 product.

24 (2) The children's product has been recalled for any
25 reason by an agency of the federal government or the product's
26 manufacturer, distributor, or importer and the recall has not
27 been rescinded.

28 (3) An agency of the federal government has issued a
29 warning that the specific children's product's intended use
30 constitutes a safety hazard and the warning has not been
31 rescinded.

32 (4) With regard to a children's product that is a crib,
33 "unsafe children's product" means a crib that does not conform
34 to the standards endorsed or established by the consumer
35 product safety commission.

1 2. a. A commercial user shall not remanufacture,
2 retrofit, sell, resell, contract to sell or resell, lease,
3 sublet, or otherwise place in the stream of commerce, an
4 unsafe children's product.

5 b. Notwithstanding paragraph "a", an unsafe children's
6 product may be retrofitted if the retrofit has been approved
7 by the federal agency issuing the recall or warning or the
8 federal agency responsible for approving the retrofit if that
9 federal agency is not the same federal agency issuing the
10 recall or warning. A retrofitted children's product may be
11 sold if the children's product is accompanied at the time of
12 the sale by a notice declaring that the product is safe to
13 use. The notice shall include all of the following:

14 (1) A description of the original problem that made the
15 recalled product an unsafe children's product.

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

19 (3) The name and address of the commercial user who
20 accomplished the retrofit certifying that the work was done
21 along with the name and model number of the product
22 retrofitted. The commercial user shall be responsible for
23 ensuring that the notice is provided with the retrofitted
24 product at the time of the sale.

25 c. A retrofit is not required to comply with paragraph
26 "b", subparagraphs (1) through (3), if either of the following
27 apply:

28 (1) The retrofit is for a children's product that requires
29 assembly by the consumer, the approved retrofit is provided
30 with the product by the commercial user, and the retrofit is
31 accompanied at the time of sale by instructions explaining how
32 to apply the retrofit.

33 (2) The seller of a previously unsold children's product
34 accomplishes the repair prior to the sale and the repair is
35 approved or recommended by a federal agency.

1 3. a. The office of the attorney general shall create,
2 maintain, and update a comprehensive list of unsafe children's
3 products no later than January 1, 2004. The list shall be
4 available to the public at no cost and the list shall be
5 available on the office of the attorney general's internet
6 site.

7 4. A commercial user who willfully and knowingly violates
8 this section commits an unlawful practice and shall be subject
9 to the provisions of section 714.16 relating to an unlawful
10 practice.

11 5. A commercial user is not in violation of this section
12 if the specific unsafe children's product in question was not
13 included in the department listing thirty days prior to the
14 product being placed in the stream of commerce.

15 6. Remedies available under this section are in addition
16 to any other remedies or procedures that may be available to
17 an aggrieved party.

18	EXPLANATION
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19 This bill relates to unsafe children's products. The bill
20 provides that beginning January 1, 2004, a licensed or
21 registered child care facility is prohibited from using or
22 having on its premises an unsafe children's product. No later
23 than September 1, 2003, the department of human services is to
24 send a notice of the prohibition to each child care facility
25 and is to send periodic notices that include information
26 regarding the prohibition and the most recently updated list
27 of unsafe children's products maintained by the office of the
28 attorney general to each child care facility. Each child care
29 facility is to maintain a file of all notices received and is
30 to conspicuously post on the premises the most recently
31 updated copy of the list of unsafe children's products, is to
32 maintain a file of all notices sent by the department
33 regarding unsafe children's products, is to make the file
34 available to facility personnel and to the parents of children
35 attending the facility, is to make the file available to the

1 department as part of any inspection, investigation, licensing
2 or registration process, and is to certify in writing during
3 any of the processes, on a form provided by the department,
4 that the facility has reviewed each of the notices and that no
5 unsafe children's products are on the premises of the
6 facility. The bill directs the department of human services
7 to create and provide to all child care facilities the
8 certification form to be used. A child care facility that
9 does not comply with the requirements related to children's
10 product safety is subject to suspension or revocation of
11 licensure or certificate of registration or to reduction of a
12 license to a provisional license.

13 The bill also prohibits a commercial user as defined in the
14 bill from remanufacturing, retrofitting, selling, reselling,
15 contracting to sell or resell, leasing, subletting, or
16 otherwise placing in the stream of commerce, an unsafe
17 children's product. The bill provides exceptions for certain
18 retrofitting of products. The bill provides definitions of
19 "child", "children's product", "commercial user", "consumer
20 product safety commission", "crib", "full-size baby crib",
21 "infant", "non-full-size baby crib", and "unsafe children's
22 product". The bill directs the office of the attorney general
23 to create, maintain, and update a comprehensive list of unsafe
24 children's products no later than January 1, 2004. The list
25 is to be available to the public at no cost and is also to be
26 available on the office of the attorney general's internet
27 site. The bill provides that a commercial user who willfully
28 and knowingly violates the bill commits an unlawful practice
29 and is subject to the provisions of the consumer frauds law,
30 which provides for civil penalties and injunctive relief. The
31 bill also provides that remedies available under the bill are
32 in addition to any other remedies or procedures that may be
33 available to an aggrieved party. A commercial user is not in
34 violation of the bill if the specific unsafe children's
35 product in question was not included in the attorney general's

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1 listing 30 days prior to the product being placed in the
2 stream of commerce.

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