



Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 37: Regulation of Unsafe Children's Products

Senate Bill 37 would regulate unsafe children's products such as baby cribs, baby furniture, car seats, strollers, and toys. The bill would prohibit the sale of unsafe children's products; direct the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate administrative rules to enforce the provisions; create penalties; prohibit certain types of facilities and homes that serve children from having unsafe children's products on their premises; and authorize the Department of Health and Family Services (DHFS) and other agencies that regulate facilities and homes that serve children to enforce the provisions of the bill.

SB 37 was introduced on February 14, 2007, and referred to the Senate Committee on Economic Development, Job Creation, Family Prosperity and Housing. On April 25, 2007, the Senate Committee reported adoption of Senate Amendment 1 to SB 37 by a vote of 7-0, and recommended passage as amended by a vote of 7-0. On October 29, 2007, SB 37 was referred to the Joint Committee on Finance.

CURRENT LAW

DATCP is responsible for the identification and regulation of consumer products that may present an unreasonable risk of injury to the public. In addition, the Department establishes packaging standards for household products to prevent hazards such as poisoning. Under section 100.42 of the statutes, DATCP has general authority to ban the sale or distribution of any consumer product determined to present an unreasonable risk or imminent hazard to the public health, welfare or safety.

DHFS is responsible for the regulation and licensing of certain types of facilities and homes that serve children, including day care centers, residential care centers for children and youths,

group homes, and shelter care facilities. DHFS, county human service departments, and child welfare agencies license and regulate foster homes and treatment foster homes.

Under Wisconsin Shares, the state subsidizes the cost of child care for qualified families by making payments directly to the child care provider chosen by the parent. The parent may choose a child care provider from four types: (a) a licensed day care center; (b) a Level I certified day care provider; (c) a Level II certified day care provider; or (d) a day care program provided or contracted for by a school board. Day care providers that are not required to be licensed by DHFS or established by a school board, but are reimbursed under the subsidy program, must be certified by the county department of social or human services. As of December, 2007, there were approximately 2,000 certified child care providers receiving Wisconsin Shares payments. The Department of Workforce Development (DWD) promulgates rules for county departments to establish standards for the certification of child care providers.

Facilities and homes licensed by DHFS must comply with numerous requirements, established by rule, relating to staffing, physical plant and equipment, and programming. Staff in the DHFS Bureau of Regulation and Licensing routinely visits day care centers and other facilities to ensure compliance with these requirements. Currently, there are approximately 5,800 group day care centers licensed by DHFS.

SUMMARY OF BILL

Department of Agriculture, Trade and Consumer Protection

Prohibition. SB 37 would prohibit the sale of certain children's products designed principally for the care of, or use by, children under 12 years of age. Regulated children's products would include baby cribs; baby and toddler furniture; apparel; bath seats; baby walkers, baby jumpers, and similar devices; gates for containing children; car seats; strollers and other devices for transporting children; play equipment; and toys. Children's products would not include food, medicine, or any other products that are designed to be ingested, injected, or otherwise applied to the human body.

A commercial supplier would be prohibited from selling, leasing, remanufacturing, retrofitting, or otherwise putting into commercial use a children's product to which any of the following apply: (a) the children's product fails to conform to any state or federal safety law or regulation; (b) the children's product has been recalled by the Department of Agriculture, Trade and Consumer Protection (DATCP), a federal agency, or by the product's manufacturer, distributor, or importer, and the recall has not been rescinded; or (c) DATCP or a federal agency has issued a warning that the intended use of the children's product constitutes a safety hazard and the warning has not been rescinded. A commercial supplier would include a person who is in the business of selling, leasing, manufacturing, remanufacturing, retrofitting, or otherwise putting into commercial use a children's product. It would also include a person who is in the business of selling or leasing used merchandise, if the merchandise regularly includes children's products, but does not include a person who sells or leases a children's product on an occasional basis. DATCP would be required to promulgate a rule to define "occasional basis."

DATCP would be required to maintain, and quarterly update, a list of all children's products to which the prohibition applies, and to make the list available to the public at no charge on the Internet. The prohibition from sale, lease, remanufacture, retrofit, or other commercial use would not apply to a children's product that was not included on the Department's list on the day immediately prior to the day the product was sold, leased, remanufactured, retrofitted, or otherwise put into commercial use.

If a children's product that was sold by a commercial supplier is included in DATCP's list of prohibited products, the commercial supplier would be required to post a notice in a conspicuous location at the commercial supplier's place of business, which informs customers that the product is unsafe. The notice would also be required to provide instructions for customers who purchased the product.

Retrofit. A commercial supplier would be authorized to retrofit a children's product that was recalled or for which a warning was issued. The retrofit would have to be approved by the state or federal agency that issued the recall or warning, or by a state or federal agency that is responsible for approving the retrofit. (The bill does not define "retrofit," but dictionaries include definitions such as "to modify equipment in service using parts made available after the original manufacture.") A commercial supplier would be authorized to sell or lease to a consumer a children's product that has been retrofitted if the commercial supplier includes a notice with the children's product at the time of sale or lease. The notice would be required to include the following information: (a) name and model of the children's product; (b) declaration that the product is safe for use by a child who meets the conditions specified by the manufacturer of the product; (c) description of the original problem that required the recall or warning regarding the product; (d) description of the retrofit that explains how the original problem has been eliminated; and (e) name and address of the person that accomplished the retrofit.

Baby Cribs. DATCP would be required to promulgate administrative rules to ensure the safety of children's products that are consistent with nationally recognized industry standards for the design and manufacture of children's products and include all of the following: (a) design requirements for corner posts of full-size and nonfull-size baby cribs; (b) testing requirements for structural integrity and design requirements for nonfull-size cribs; and (c) performance requirements and test procedures to determine the structural integrity of baby cribs. No commercial supplier would be allowed to sell, lease, remanufacture, retrofit, or otherwise put to commercial use a baby crib that violates the DATCP rules.

A baby crib would be "rebuttably presumed" to be unsafe for use by an infant if the crib does not comply with DATCP rules or federal regulatory code design requirements. An infant would include any child less than 35 inches tall and less than three years of age. The use of "rebuttably presumed" would mean the product manufacturer or seller would have to prove a baby crib is safe if the baby crib does not comply with DATCP or federal requirements.

Penalties and Injunctions. A commercial supplier who violates the general prohibition on the sale, lease, remanufacture, retrofit or commercial use of unsafe children's products, or the

specific prohibition on the sale, lease, remanufacture, retrofit or commercial use of baby cribs, would be subject to a forfeiture of not less than \$100 nor more than \$10,000 for each violation.

The bill would authorize DATCP, the Department of Justice, any district attorney, or any other person, to bring an action for an injunction to stop a commercial supplier from violating the prohibitions related to unsafe children's products and baby cribs. The court would be authorized to award a person who prevails in such an action reasonable attorney fees and costs.

Regulation and Licensing of Facilities and Homes that Serve Children

The bill would prohibit residential care centers for children and youths, foster homes, treatment foster homes, group homes, day care centers, day care providers, day care programs and shelter care facilities ("facilities") from using, or having on their premise where care for children is provided, a children's product or baby crib whose commercial use is prohibited under the bill. The bill would exempt antique or collectible children's products or baby cribs that are not used or accessible to children from this prohibition.

Under the bill, prior to issuing an initial license or certification for a facility, the state or county agency would be required to:

- Inspect the premises where care for children is provided to ensure compliance with the prohibitions relating to unsafe children's products; and
- Provide the facility with: (a) a notice of the prohibitions against having unsafe children's products on the premises and prohibitions on the sale, lease, manufacture, retrofitting and commercial use of children's unsafe children's products, including cribs; and (b) a copy of the list of unsafe children's products in plain, non-technical language that will enable the recipient of the notice and list to inspect children's products and baby cribs on its premises and identify children's products and baby cribs that are unsafe.

The state or county agency would be permitted to provide the notice and list through electronic mail. The recipient would be required to retain the list for one year after the date it is received.

The recipient of the notice and list would be required to review the notice and list, immediately remove from its premises any children's products and baby cribs that are unsafe, certify on a form prescribed by DHFS or DWD that it has reviewed the notice and list and that all unsafe children's products and baby cribs have been removed from its premises, and return the completed form to the agency that provided the notice and list. The agency would be required to retain the completed form in its files.

Further, the bill would provide that, before an agency may continue or renew a license, and whenever agency personnel visit or inspect the premises where care for children is provided, the agency must provide the facility with the notice and list, to which the facility would be required to respond, as described above.

Facilities would be required to maintain a file of all notices and lists they receive from agencies, and to permit parents, guardians, or legal custodians of any child who receives care, or who is a prospective recipient of care from the facility, to inspect those notices and lists during its hours of operation.

Both DHFS and DWD would be required to promulgate rules to implement these new requirements and prescribe forms that facilities would use to certify compliance with the bill.

The bill would add references to the new requirements relating to unsafe children's products in current law provisions relating to probationary licenses and sanctions and penalties relating to the operation of facilities and homes that serve children.

Effective Date and Administrative Rule Timeline

The bill would generally take effect on the first day of the 12th month beginning after publication. However, the requirement that DATCP, DHFS, and DWD promulgate administrative rules to implement the bill would go into effect on the day after publication.

DATCP, DHFS, and DWD would be required to promulgate emergency rules to implement the bill. The emergency rules promulgated by each of the agencies would remain in effect until the first day of the 19th month after the effective date of the bill, or the date on which permanent rules take effect, whichever is sooner. The agencies would not be required to provide evidence that promulgating the rules as emergency rules are necessary for the preservation of the public peace, health, safety, or welfare, and would not be required to providing of emergency.

DATCP, DHFS, and DWD would be required to submit proposed permanent rules to the Legislative Council staff for review no later than the first day of the seventh month beginning after the effective date of the bill. The Secretary of the Department of Administration would not be permitted to require the agencies to prepare an economic impact report for the rules.

SUMMARY OF AMENDMENT

As introduced, the bill contains an incorrect cross-reference to a statutory section that would be created in the bill relating to unsafe children's products. Senate Amendment 1 to Senate Bill 37 would correct this cross-reference.

FISCAL EFFECT

Agriculture, Trade and Consumer Protection

In a fiscal note to the bill the Department of Agriculture, Trade and Consumer Protection (DATCP) indicates it may need approximately \$65,000 annually with 1.0 position to administer and enforce the provisions of the bill. Costs incurred would include: maintaining an internet listing of unsafe products; publicizing to consumers, manufacturers and sellers unsafe products; checking

for prohibited products; and issuing warnings or beginning enforcement actions when necessary. The agency indicates one-time costs for promulgating administrative rules could be absorbed.

The bill would not appropriate any funding or provide additional staff to DATCP to implement the bill. Therefore, DATCP would have to reallocate existing consumer protection resources in order to implement the bill, or seek additional funding in future legislation.

Forfeitures paid under the bill would be deposited to the common school fund. However, violators would also be subject to the 25% consumer protection surcharge. Revenues from this surcharge (\$67,000 in 2006-07) are deposited to a DATCP program revenue appropriation for consumer protection information and education.

Health and Family Services

The bill provides no additional funding or positions to DHFS to implement the new requirements. Consequently, to the extent that the new requirements of the bill would increase workload for DHFS, the Department would have to reallocate staff time to comply with the new requirements.

DHFS did not prepare a fiscal note to Senate Bill 37. However, DHFS would incur additional staff costs to ensure that the facilities and homes that it regulates comply with the new requirements. Specifically, the DHFS Bureau of Licensing and Regulation staff would be required to: (a) inspect facilities and homes to determine their compliance with the new requirements prior to providing an initial license to these facilities and homes; and (b) provide notices of the new law and lists of prohibited products to the facilities and homes each time it renews a license or visits or inspects a facility or home. These same requirements would apply to counties that are responsible for regulating day care providers and, thus, increase costs for county departments of human/social services. The bill does not provide additional funding for the counties.

In addition, DHFS would need to maintain certified forms submitted by facilities and homes that indicate that staff in these facilities and homes has reviewed the notices and lists and has removed prohibited products from their premises. Counties, child welfare agencies, and school boards would maintain this information for the facilities and homes for which they have regulatory responsibility.

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