
SENATE BILL 6444

State of Washington 60th Legislature 2008 Regular Session

By Senators Kohl-Welles, Keiser, Oemig, Franklin, Delvin, Fairley, Weinstein, and Rasmussen

Read first time 01/16/08. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to creating the children's product safety act;
2 amending RCW 70.111.010, 70.111.020, 70.111.030, 70.111.060,
3 70.111.900, and 43.70.660; adding new sections to chapter 70.111 RCW;
4 adding a new section to chapter 43.215 RCW; repealing RCW 70.111.040;
5 prescribing penalties; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 70.111.010 and 1996 c 158 s 1 are each amended to read
8 as follows:

9 (1) The legislature finds all of the following:

10 (a) The disability and death of children and infants resulting from
11 injuries sustained in cribs ~~((accidents))~~ or from other unsafe
12 children's products are a serious threat to the public health, welfare,
13 and safety of the people of this state.

14 (b) Children and infants are an especially vulnerable class of
15 people which makes the recent numerous recalls regarding children's
16 products, including cribs, particularly alarming.

17 (c) The design and construction of a baby or portable crib must
18 ensure that it is safe to leave an infant unattended for extended
19 periods of time. A parent or caregiver has a right to believe that the

1 crib in use is a safe place to leave an infant. A parent or caregiver
2 should also expect that other children's products they use are safe for
3 their intended use.

4 (d) (~~Over thirteen~~) Almost ten thousand infants are injured in
5 unsafe cribs every year. Over sixty thousand children under the age of
6 four are rushed to the emergency room due to injuries from nursery
7 products, and another two hundred thousand children are rushed to the
8 emergency room due to toy injuries.

9 (e) (~~In the past decade, six hundred twenty two infants died (a~~
10 ~~rate of sixty two infants each year) from injuries sustained in unsafe~~
11 ~~cribs~~) Approximately sixty-one children die each year from unsafe
12 children's products, of which twenty-one are infants who die from
13 injuries sustained from unsafe cribs.

14 (f) The United States consumer product safety commission estimates
15 that the cost to society resulting from injuries and death due to
16 unsafe (~~cribs is two hundred thirty five million~~) children's products
17 exceeds five billion dollars per year.

18 (g) Secondhand, hand-me-down, and heirloom cribs pose a special
19 problem(~~. There were four million infants born in this country last~~
20 ~~year, but only one million new cribs sold. As many as~~) given that
21 three out of four infants are placed in secondhand, hand-me-down, or
22 heirloom cribs.

23 (h) (~~Most injuries and deaths occur in secondhand, hand me down,~~
24 ~~or heirloom cribs.~~

25 (~~i~~) Existing state and federal legislation is inadequate to deal
26 with (~~this~~) these hazards.

27 (~~+~~) (i) Prohibiting the remanufacture, retrofit, sale,
28 contracting to sell or resell, leasing, or subletting of unsafe
29 (~~cribs, particularly unsafe secondhand, hand me down, or heirloom~~
30 ~~cribs,~~) children's products will prevent injuries and deaths caused by
31 (~~cribs~~) children's products.

32 (2) The purpose of this chapter is to prevent the occurrence of
33 injuries and deaths to infants as a result of unsafe (~~cribs~~)
34 children's products by making it illegal to remanufacture, retrofit,
35 sell, contract to sell or resell, lease, sublet, or otherwise place in
36 the stream of commerce, after (~~June 6, 1996~~) January 1, 2009, any
37 unsafe children's product including, but not limited to, a full-size or
38 nonfull-size crib that is unsafe for any infant using the crib.

1 (3) It is the intent of the legislature to encourage public and
2 private collaboration in disseminating materials relative to the safety
3 of (~~baby cribs~~) children's products to parents, child care providers,
4 and those who would be likely to place unsafe (~~cribs~~) children's
5 products in the stream of commerce. The legislature also intends that
6 informational materials regarding (~~baby crib safety~~) children's
7 products and sleep safety information be available to consumers through
8 the department of health.

9 **Sec. 2.** RCW 70.111.020 and 1996 c 158 s 3 are each amended to read
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

13 (1) (~~"Infant" means any person less than thirty five inches tall~~
14 ~~and less than three years of age.~~

15 (2)) "Children's product" means a product including, but not
16 limited to, a full-size crib, nonfull-size crib, toddler bed, bed, car
17 seat, high chair, booster chair, hook-on chair, bath seat, gate or
18 other enclosure for confining a child or infant, play yard, stationary
19 activity center, carrier, stroller, walker, swing, or toy or play
20 equipment that meets the following criteria:

21 (a) The product is designed or intended for the care of, or use by,
22 any child under the age of twelve; and

23 (b) The product is designed or intended to come into contact with
24 the child while the product is used.

25 (c) A product is not a "children's product" under this chapter if:

26 (i) It can be used for the care of, or use by, a child under the
27 age of twelve, but it is designed or intended for use by the general
28 population or segments of the general population and not solely or
29 primarily for the care of, or use by, a child; or

30 (ii) It is a medication, drug, or food, or is intended to be
31 ingested.

32 (2) "Commercial dealer" means any person who deals in children's
33 products or who otherwise by one's occupation holds oneself out as
34 having knowledge or skills peculiar to children's products, or any
35 person who is in the business of remanufacturing, retrofitting,
36 selling, leasing, subletting, or otherwise placing in the stream of
37 commerce children's products.

1 (3) "Crib" means a bed or containment designed to accommodate an
2 infant.

3 ~~((3))~~ (4) "Distributor" and "wholesaler" means any person, other
4 than a manufacturer or retailer, who sells or resells or otherwise
5 places into the stream of commerce a children's product.

6 (5) "End consumer" means a person who purchases a children's
7 product for any purpose other than resale.

8 (6) "First seller" means any retailer selling a children's product
9 that has not been used or has not been previously owned. A first
10 seller does not include an entity such as a secondhand or resale store.

11 (7) "Full-size crib" means a full-size crib as defined in Section
12 1508.3 of Title 16 of the Code of Federal Regulations regarding the
13 requirements for full-size cribs.

14 ~~((4))~~ (8) "Importer" means any person who brings into this
15 country and places into the stream of commerce a children's product.

16 (9) "Infant" means any person less than thirty-five inches tall and
17 less than three years of age.

18 (10) "Manufacturer" means any person who makes any part of a
19 children's product that is placed into the stream of commerce.

20 (11) "Nonfull-size crib" means a nonfull-size crib as defined in
21 Section 1509.2(b) of Title 16 of the Code of the Federal Regulations
22 regarding the requirements for nonfull-size cribs.

23 ~~((5))~~ (12) "Person" means any natural person, firm, corporation,
24 limited liability company, association, or agent or employee thereof.

25 ~~((6) "Commercial user" means any person who deals in full size or~~
26 ~~nonfull size cribs of the kind governed by this chapter or who~~
27 ~~otherwise by one's occupation holds oneself out as having knowledge or~~
28 ~~skill peculiar to the full size or nonfull size cribs governed by this~~
29 ~~chapter, including child care facilities and family child care homes~~
30 ~~licensed by the department of social and health services under chapter~~
31 ~~74.15 RCW, or any person who is in the business of remanufacturing,~~
32 ~~retrofitting, selling, leasing, subletting, or otherwise placing in the~~
33 ~~stream of commerce full size or nonfull size cribs.))~~

34 NEW SECTION. Sec. 3. A new section is added to chapter 70.111 RCW
35 to read as follows:

36 (1) A commercial dealer, manufacturer, importer, distributor,
37 wholesaler, or retailer may not manufacture, remanufacture, retrofit,

1 distribute, sell at wholesale or retail, contract to sell or resell,
2 lease, or sublet, advertise or otherwise place in the stream of
3 commerce a children's product that is unsafe.

4 (2) A children's product is deemed to be unsafe under this chapter
5 only if it meets any of the following criteria:

6 (a) It does not conform to all federal laws and regulations setting
7 forth standards for the children's product;

8 (b) It has been recalled for any reason or in cooperation with an
9 agency of the federal government or the product's manufacturer,
10 wholesaler, distributor, or importer, and the recall has not been
11 rescinded; or

12 (c) An agency of the federal government or the product's
13 manufacturer, wholesaler, distributor, or importer has issued a warning
14 that a specific product's intended use constitutes a safety hazard and
15 the warning has not been rescinded.

16 (3) A commercial dealer, manufacturer, importer, distributor,
17 wholesaler, or retailer who willfully and knowingly violates this
18 section is guilty of a misdemeanor, punishable by a fine not exceeding
19 one thousand dollars.

20 **Sec. 4.** RCW 70.111.030 and 2003 c 53 s 361 are each amended to
21 read as follows:

22 (1) ~~((No))~~ A commercial ((user)) dealer, manufacturer, importer,
23 distributor, wholesaler, or retailer may not remanufacture, retrofit,
24 sell, contract to sell or resell, lease, sublet, or otherwise place in
25 the stream of commerce(~~(, on or after June 6, 1996,)~~) a full-size or
26 nonfull-size crib that is unsafe for any infant using the crib.

27 (2) A crib is presumed to be unsafe pursuant to this chapter if it
28 does not conform to all of the following:

29 (a) Part 1508 (commencing with Section 1508.1) of Title 16 of the
30 Code of Federal Regulations;

31 (b) Part 1509 (commencing with Section 1509.1) of Title 16 of the
32 Code of Federal Regulations;

33 (c) Part 1303 (commencing with Section 1303.1) of Title 16 of the
34 Code of Federal Regulations;

35 (d) ~~((American Society for Testing Materials Voluntary Standards~~
36 ~~F966-90))~~ ASTM F966;

1 (e) (~~American Society for Testing Materials Voluntary Standards~~
2 ~~F1169-88~~) ASTM F1169;

3 (f) Any regulations that are adopted in order to amend or
4 supplement the regulations described in (a) through (e) of this
5 subsection.

6 (3) Cribs that are unsafe or fail to perform as expected pursuant
7 to subsection (2) of this section include, but are not limited to,
8 cribs that have any of the following dangerous features or
9 characteristics:

10 (a) Corner posts that extend more than one-sixteenth of an inch;

11 (b) Spaces between side slats more than two and three-eighths
12 inches;

13 (c) Mattress support than can be easily dislodged from any point of
14 the crib. A mattress segment can be easily dislodged if it cannot
15 withstand at least a twenty-five pound upward force from underneath the
16 crib;

17 (d) Cutout designs on the end panels;

18 (e) Rail height dimensions that do not conform to the following:

19 (i) The height of the rail and end panel as measured from the top
20 of the rail or panel in its lowest position to the top of the mattress
21 support in its highest position is at least nine inches;

22 (ii) The height of the rail and end panel as measured from the top
23 of the rail or panel in its highest position to the top of the mattress
24 support in its lowest position is at least twenty-six inches;

25 (f) Any screws, bolts, or hardware that are loose and not secured;

26 (g) Sharp edges, points, or rough surfaces, or any wood surfaces
27 that are not smooth and free from splinters, splits, or cracks;

28 (h) Nonfull-size cribs with tears in mesh or fabric sides.

29 (4) (~~On or after January 1, 1997,~~) Any commercial ((user))
30 dealer, manufacturer, importer, distributor, wholesaler, or retailer
31 who willfully and knowingly violates this section is guilty of a
32 misdemeanor, punishable by a fine not exceeding one thousand dollars.
33 (~~Hotels, motels, and similar transient lodging, child care facilities,~~
34 ~~and family child care homes are not subject to this section until~~
35 ~~January 1, 1999.))~~

36 NEW SECTION. Sec. 5. A new section is added to chapter 70.111 RCW
37 to read as follows:

1 (1) If a manufacturer, importer, wholesaler, or distributor of
2 children's products has placed into the stream of commerce in
3 Washington a children's product for which a recall or warning has
4 subsequently been issued by either a manufacturer, importer,
5 wholesaler, or distributor, or by a federal agency, the manufacturer,
6 importer, wholesaler, or distributor must initiate the following steps
7 within twenty-four hours after issuing or receiving the recall or
8 warning:

9 (a) Contact all of its commercial customers, other than end
10 consumers, to whom it sold, leased, sublet, or transferred that
11 particular children's product in Washington. This contact must include
12 providing the recall notice or warning and must be made to the person
13 designated by the retailer for that product;

14 (b) If the manufacturer, importer, wholesaler, or distributor
15 maintains a web site, it must place on the home page, or the first
16 entry point, of its web site a link to recall or warning information
17 that contains the specific recall notice or warning that was issued for
18 the product in question. The recall or warning information must
19 include a description of the product, the reason for the recall or
20 warning, a picture of the product, and instructions on how to
21 participate in the recall or warning. The information must include
22 only the product recall information and not sales or marketing
23 information on that product or any other product, excluding return and
24 exchange policies. The recall or warning information must allow
25 persons to participate in the recall through the web site of the
26 manufacturer, importer, wholesaler, or distributor; and

27 (c) If the manufacturer, importer, wholesaler, or distributor sold
28 directly to a noncommercial consumer, and the consumer provided either
29 a shipping address or e-mail address at the time of sale, the
30 manufacturer, importer, wholesaler, or distributor must send a notice
31 of the recall or warning to the consumer at either address provided.
32 The notice must include a description of the product, the reason for
33 the recall or warning, and instructions on how to participate in the
34 recall or warning. The notice must include only the product recall
35 information and not sales or marketing information on that product or
36 any other product, excluding return and exchange policies.

37 (2) If a retailer receives notice of a recall or warning regarding
38 a children's product from a manufacturer, importer, wholesaler, or

1 distributor or, in the case of an involuntary recall, from a federal
2 agency, and if the retailer at any time offered the product for sale in
3 Washington, then the retailer must:

4 (a) Within three business days after receiving the recall or
5 warning from the manufacturer, importer, wholesaler, or distributor by
6 a person designated by the retailer, the retailer must remove the
7 children's product from the shelves of its stores or program its
8 registers to ensure that the item cannot be sold.

9 (b) If the children's product was sold through the retailer's web
10 site, then within three business days after receipt of the recall or
11 warning by the person designated by the retailer, the retailer must
12 remove the children's product from the web site or remove the ability
13 of a consumer to purchase the children's product through the web site.

14 (c) Within five business days after receipt of the recall or
15 warning by the person designated by the retailer from a manufacturer,
16 importer, wholesaler, or distributor, or from a federal agency in the
17 case of an involuntary recall, the retailer must post in a prominent
18 location in each retail store the recall or warning notice. This
19 notice must remain posted for one hundred twenty days.

20 (d) If the children's product for which a recall or warning was
21 issued was sold on the retailer's web site, the retailer must within
22 five business days post on the home page, or the first entry point, of
23 its web site a link to recall or warning information that contains the
24 specific recall notice or warning that was issued for the product in
25 question. The recall or warning information must include a description
26 of the product, the reason for the recall or warning, a picture of the
27 product if one was provided, and instructions on how to participate in
28 the recall or warning. The information must include only the product
29 recall information and not sales or marketing information on that
30 product or any other product, excluding return and exchange policies.

31 (3) Within five business days after a recalled children's product
32 is placed on the department of health's comprehensive list maintained
33 under section 10 of this act, a retailer who is not a first seller must
34 comply with subsection (2) of this section, except that the retailer
35 has five business days to comply with subsections (1)(a) and (2)(b) of
36 this section.

37 (4) A manufacturer, importer, wholesaler, or distributor who is
38 also a retailer must comply with subsections (1) and (2) of this

1 section, except that a manufacturer, importer, wholesaler, or
2 distributor who is also a retailer must, within twenty-four hours after
3 issuing or receiving the recall or warning, post on the home page, or
4 first entry point, of its web site a link to recall or warning
5 information that contains the specific recall notice or warning that
6 was issued for the product in question.

7 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.215 RCW
8 to read as follows:

9 (1) A child day care center or family day care provider may not use
10 or have on the premises an unsafe children's product as described in
11 sections 3 and 4 of this act. This subsection does not apply to an
12 antique or collectible children's product if it is not used by or
13 accessible to any child in the child care facility or home.

14 (2) The department of early learning shall notify child care
15 providers of, on an ongoing basis, this section and chapter 70.111 RCW
16 and the list of unsafe children's products provided and maintained by
17 the department of health.

18 (3) Child care providers must place in prominent locations
19 regularly visited by parents a written notification of the existence of
20 the comprehensive list of unsafe children's products available on the
21 internet.

22 (4) The department of early learning shall adopt rules to carry out
23 this section.

24 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.111 RCW
25 to read as follows:

26 A violation of this chapter constitutes an unfair or deceptive
27 trade practice affecting the public interest under chapter 19.86 RCW.
28 All private and public remedies provided under chapter 19.86 RCW are
29 available to enforce this chapter.

30 **Sec. 8.** RCW 70.111.060 and 1996 c 158 s 7 are each amended to read
31 as follows:

32 Any person may maintain an action against any commercial (~~user~~)
33 dealer, manufacturer, importer, distributor, wholesaler, or retailer
34 who violates RCW 70.111.030 or section 3 of this act to enjoin the
35 remanufacture, retrofit, sale, contract to sell, contract to resell,

1 lease, or subletting of a (~~full-size or nonfull-size crib~~) children's
2 product that is unsafe for any infant or child using the (~~crib~~)
3 children's product, and for reasonable attorneys' fees and costs.
4 (~~This section does not apply to hotels, motels, and similar transient~~
5 ~~lodging, child care facilities, and family child care homes until~~
6 ~~January 1, 1999.~~)

7 **Sec. 9.** RCW 70.111.900 and 1996 c 158 s 2 are each amended to read
8 as follows:

9 This chapter may be known and cited as the (~~infant-crib~~)
10 children's product safety act.

11 **Sec. 10.** RCW 43.70.660 and 2001 c 257 s 2 are each amended to read
12 as follows:

13 (1) The legislature authorizes the secretary to establish and
14 maintain a product safety education campaign to promote greater
15 awareness of products designed to be used by infants and children(~~(~~
16 ~~excluding toys,~~) that:

17 (a) Are recalled by the United States consumer products safety
18 commission;

19 (b) Do not meet federal safety regulations and voluntary safety
20 standards; or

21 (c) Are unsafe or illegal to place into the stream of commerce
22 under (~~the infant-crib safety act,~~) chapter 70.111 RCW.

23 (2) As part of the product safety education campaign, the
24 department shall make a comprehensive list available to the public at
25 no cost and post it on the internet. The internet posting must provide
26 a link to <http://www.recalls.gov> or its successor web site and must
27 otherwise make available a link to the specific recall notice or
28 warning concerning the children's product that has been recalled or for
29 which a warning has been issued. The department must also review and
30 update these links on a regular basis.

31 (3) The department shall make reasonable efforts to ensure that
32 this infant and children product safety education campaign reaches the
33 target population. The target population for this campaign includes,
34 but is not limited to, parents, foster parents and other caregivers,
35 child care providers, consignment and resale stores selling infant and

1 child products, and charitable and governmental entities serving
2 infants, children, and families.

3 ~~((+3))~~ (4) The secretary may utilize a combination of methods to
4 achieve this outreach and education goal, including but not limited to
5 print and electronic media. The secretary may operate the campaign or
6 may contract with a vendor.

7 ~~((+4))~~ (5) The department shall coordinate this infant and
8 children product safety education campaign with child-serving entities
9 including, but not limited to, hospitals, birthing centers, midwives,
10 pediatricians, obstetricians, family practice physicians, governmental
11 and private entities serving infants, children, and families, and
12 relevant manufacturers.

13 ~~((+5))~~ (6) The department shall coordinate with other agencies and
14 entities to eliminate duplication of effort in disseminating infant and
15 children consumer product safety information.

16 ~~((+6))~~ (7) The department may receive funding for this infant and
17 children product safety education effort from federal, state, and local
18 governmental entities, child-serving foundations, or other private
19 sources.

20 NEW SECTION. **Sec. 11.** RCW 70.111.040 (Exemption) and 1996 c 158
21 s 5 are each repealed.

22 NEW SECTION. **Sec. 12.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2009.

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