

SECOND REGULAR SESSION

HOUSE BILL NO. 1361

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DONNELLY (Sponsor), BAKER (25), LAMPE, KOMO, SPRENG, YAEGER, ROORDA, LOW (39), PAGE, ZWEIFEL, STORCH, WILDBERGER, McCLANAHAN, MOORE, HUGHES AND CURLS (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

3281L.01I

AN ACT

To amend chapter 650, RSMo, by adding thereto eleven new sections relating to product safety for children, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 650, RSMo, is amended by adding thereto eleven new sections, to be known as sections 650.600, 650.602, 650.604, 650.606, 650.608, 650.610, 650.612, 650.614, 650.616, 650.618, and 650.620, to read as follows:

650.600. Sections 650.600 to 650.620 shall be known and may be cited as the "Children's Product Safety Act".

650.602. As used in sections 650.600 to 650.620, the following words shall mean:

(1) "Children's product":

(a) A product, including but not limited to, a full-size crib, nonfull-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on

chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment, that meets the following criteria:

a. The product is designed or intended for the care of, or use by, any child under the age of nine; and

b. The product is designed or intended to come into contact with the child while the product is used;

(b) Notwithstanding any other provision of this section, a product is not a children's product for purposes of sections 650.600 to 650.602 if:

a. It may be used by or for the care of a child under the age of nine, but it is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by or the care of a child; or

b. It is a medication, drug, or food or is intended to be ingested;

(2) "Commercial dealer", any person who deals in children's products or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to children's products, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce children's products;

(3) "Crib", a bed or containment designed to accommodate an infant;

(4) "Distributor", any person, other than a manufacturer or retailer, who sells or resells or otherwise places into the stream of commerce a children's product;

(5) "End consumer", a person who purchases a children's product for any purpose other than resale;

(6) "First seller", any retailer selling a children's product that has not been used or has not previously been owned. A first seller does not include an entity such as a second-hand or resale store;

(7) "Full-size crib", any full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs;

(8) "Importer", any person who brings into this country and places into the stream of commerce a children's product;

(9) "Infant", any person less than thirty-five inches tall and less than three years of age;

(10) "Manufacturer", any person who makes any part of a children's product, as defined under this section, that is placed into the stream of commerce;

(11) "Nonfull-size crib", a nonfull-size crib as defined in Section

1509.2 of Title 16 of the Code of Federal Regulations regarding the requirements for nonfull-size cribs;

(12) "Person", a natural person, firm, corporation, limited liability company, or association, or an employee or agent of a natural person or an entity included in this definition;

(13) "Retailer", any person other than a manufacturer, distributor, or wholesaler who sells, leases, or sublets children's products;

(14) "Wholesaler", any person, other than a manufacturer or retailer, who sells or resells or otherwise places into the stream of commerce a children's product.

650.604. 1. On and after August 28, 2008, no commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer may manufacture, remanufacture, retrofit, distribute, sell at wholesale or retail, contract to sell or resell, lease, or sublet, or otherwise place in the stream of commerce a children's product that is unsafe.

2. A children's product is deemed to be unsafe for purposes of sections 650.600 to 650.620 only if it meets any of the following criteria:

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

(2) It has been recalled for any reason by 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

(3) 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.

3. The attorney general shall:

(1) Maintain and update a comprehensive list of children's products that have been identified as meeting any of the criteria set forth in subsection 2 of this section;

(2) Update the comprehensive list within twenty-four hours after a children's product has been identified as meeting any of the criteria set forth in subsection 2 of this section;

(3) Make the comprehensive list available to the public at no cost and post it on the Internet. The Internet posting shall provide a link to www.recalls.gov or its successor and shall otherwise make available a link to the specific recall notice or warning concerning the children's product that has been recalled or for which a warning has been issued. The attorney general shall review and update these links on a regular basis;

(4) Include information regarding the comprehensive list of unsafe children's products maintained under this section in regular publications or mailings such as those sent to persons including, but not limited to:

(a) Pediatricians;

(b) Special Supplemental Nutrition Program for Women, Infants, and Children clinics; and

(c) Local health departments.

4. A crib is presumed to be unsafe for purposes of sections 650.600 to 650.620 if it does not conform to the standards endorsed or established by the Consumer Product Safety Commission, including but not limited to Title 16 of the Code of Federal Regulations and the standards endorsed or established by the American Society for Testing and Materials (ASTM), as follows:

(1) Part 1508 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement the regulations;

(2) Part 1509 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement the regulations;

(3) Part 1303 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement the regulations;

(4) The following standards and specifications of ASTM for corner posts of baby cribs and structural integrity of baby cribs:

(a) ASTM Standard F966 (corner post standard);

(b) ASTM Standard F1169 (structural integrity of full-size baby cribs);

(c) ASTM Standard F406 (nonfull-size cribs).

The attorney general shall make the requirements set forth in this subsection available to the public.

5. An unsafe children's product, as determined under subsection 2 of this section, may be retrofitted if the retrofit has been approved by the agency of the federal government issuing the recall or warning or the agency responsible for approving the retrofit is different from the agency issuing the recall or warning. A retrofitted children's product may be sold if it is accompanied at the time of sale by a notice declaring that it is safe to use for a child under the age of nine. The notice shall include:

(1) A description of the original problem which made the recalled product unsafe;

(2) A description of the retrofit which explains how the original problem was eliminated and declaring that it is now safe to use for a child

under the age of nine; and

(3) The name and address of the commercial dealer, manufacturer, importer, distributor, or wholesaler who accomplished the retrofit certifying that the work was done along with the name and model number of the product retrofitted. The commercial dealer, manufacturer, importer, distributor, or wholesaler is responsible for ensuring that the notice is present with the retrofitted product at the time of sale.

6. A retrofit is exempt from sections 650.600 to 650.620 if:

(1) The retrofit is for a children's product that requires assembly by the consumer, the approved retrofit is provided with the product by the commercial dealer, manufacturer, importer, distributor, or wholesaler, and the retrofit is accompanied at the time of sale by instructions explaining how to apply the retrofit; or

(2) The seller of a previously unsold product accomplishes the repair, approved or recommended by an agency of the federal government, prior to sale.

650.606. 1. If a manufacturer, importer, wholesaler, or distributor of children's products has placed into the stream of commerce in this state a children's product for which a recall or warning has subsequently been issued by such entities or by an agency of the federal government, then the manufacturer, importer, wholesaler, or distributor shall initiate the following steps within twenty-four hours after issuing or receiving the recall or warning:

(1) Contact all of its commercial customers, other than end consumers, to whom it sold, leased, sublet, or transferred that particular children's product in this state. This contact shall include providing the recall notice or warning and shall be made to the person designated by the retailer for that product;

(2) If the manufacturer, importer, wholesaler, or distributor maintains a web site, the entity shall place on the home page, or the first entry point, of its web site a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question. The recall or warning information shall include a description of the product, the reason for the recall or warning, a picture of the product, and instructions on how to participate in the recall or warning. The information shall include only the product recall information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies. The recall or warning information shall allow persons to participate in the recall through the web site of the manufacturer, importer, wholesaler, or distributor;

(3) If the manufacturer, importer, wholesaler, or distributor sold directly to a noncommercial consumer, and the consumer provided either a shipping address or e-mail address at the time of sale, then the manufacturer, importer, wholesaler, or distributor shall send a notice of the recall or warning to the consumer at either address provided. The notice shall include a description of the product, the reason for the recall or warning, and instructions on how to participate in the recall or warning. The notice shall include only the product recall information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies.

2. 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 if the retailer at any time offered the product for sale in this state, then the retailer shall do the following:

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

(2) If the product was sold through the retailer's web site, then within three business days after receipt of the recall or warning by the person designated by the retailer, the retailer shall remove the children's product from the web site or remove the ability of a consumer to purchase the children's product through the web site;

(3) If an e-mail or shipping address was provided at the time a children's product, for which a recall or warning was subsequently issued, was purchased on the retailer's web site, the retailer shall attempt to contact the purchaser at either address provided with the recall or warning information. The recall or warning information shall include a description of the product, the reason for the recall or warning, and instructions on how to participate in the recall or warning. The information shall include only the product recall information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies. The retailer shall comply with this subdivision within thirty days after receiving the notice of the recall or warning from a manufacturer, importer, wholesaler, or distributor;

(4) Within five business days after receipt of the recall or warning by the person designated by the retailer from a manufacturer, importer, wholesaler, distributor, or from a federal agency in the case of an

involuntary recall, the retailer shall post in a prominent location in each retail store the recall or warning notice. This notice shall remain posted for one hundred twenty days;

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

3. Within five business days after a recalled children's product is placed on the attorney general's comprehensive list maintained under section 650.604, a retailer who is not a first seller shall comply with subsection 2 of this section, except that such a retailer has five business days to comply with both subdivisions (1) and (2) of subsection 2 of this section.

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

650.608. The commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer shall not be found in violation of section 650.604 if the specific recalled product sold was not included on the attorney general's list on the day before the sale.

650.610. Except as provided in section 650.608, a commercial dealer, importer, distributor, wholesaler, or retailer who violates sections 650.600 to 650.620 by failing to exercise reasonable care is subject to a civil penalty in an amount not to exceed five hundred dollars for each day that the violation continues.

650.612. Nothing in sections 650.600 to 650.620 shall be interpreted to allow a unit of state or local government or any other entity within the state to issue recalls.

650.614. Nothing in sections 650.600 to 650.620 relieves a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer from

compliance with stricter requirements that may be imposed by an agency of the federal government.

650.616. 1. The attorney general or a prosecuting attorney in the county in which a violation of sections 650.600 to 650.620 occurred, may bring an action in the name of the people of the state of Missouri to enforce the provisions of sections 650.600 to 650.620.

2. When it appears to the attorney general that a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer has engaged in or is engaging in any practice declared to be in violation of sections 650.600 to 650.620, or the attorney general receives a written complaint from a consumer of the commission of a practice declared to be in violation of sections 650.600 to 650.620, or the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in or is engaging in any practice declared to be in violation of sections 650.600 to 650.620, the attorney general may:

(1) Require that person to file, on terms that the attorney general prescribes, a statement or report in writing under oath or otherwise, as to all information the attorney general considers necessary;

(2) Examine under oath any person in connection with the conduct of any trade or commerce;

(3) Examine any merchandise or sample thereof, record, book, document, account, or paper the attorney general considers necessary;

(4) Under an order of the circuit court, impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with sections 650.600 to 650.620, and retain it in the attorney general's possession until the completion of all proceedings in connection with which it is produced.

3. In the administration of sections 650.600 to 650.620, the attorney general may accept an assurance of voluntary compliance with respect to any practice deemed to be a violation of sections 650.600 to 650.620 from any commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer who has engaged in or is engaging in that practice. The assurance of voluntary compliance shall be in writing and shall be filed with and subject to the approval of the circuit court of the county in which the alleged violator resides or has his or her principal place of business, or the circuit court of Cole County. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose.

4. Whenever the attorney general or a prosecuting attorney has reason to believe that any commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer has engaged in or is engaging in any

practice in violation of sections 650.600 to 650.620 and that proceedings would be in the public interest, he or she may bring an action in the name of the people of the state of Missouri against that commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer to restrain by preliminary or permanent injunction the use of that practice.

650.618. Remedies available under sections 650.600 to 650.620 are in addition to any other remedies or procedures under any other provision of law that may be available to an aggrieved party.

650.620. The attorney general shall promulgate rules to implement the provisions of sections 650.600 to 650.620. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

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