NO. 42. AN ACT RELATING TO CHILDREN’S PRODUCT SAFETY.

(S.43)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS AND PURPOSE

(a) The general assembly finds that, in 1999 more than 65,000 children in the United States were taken to emergency rooms for injuries associated with products for infants. The children’s products industry is capable of rapid and widespread distribution of new products; thus, by the time a product is found to be unsafe hundreds of thousands or even millions of units may already be in use. The current scheme of voluntary recall of unsafe children’s products is not effective enough to prevent avoidable injuries. Even if a product is recalled it may still be sold to unsuspecting consumers.

(b) The general assembly also finds that the federal Consumer Product Safety Commission recalled 95 toys and infant products in 1999 and that the Consumer Product Safety Commission does not test products before they are put on the market but rather collects information about children’s products from consumers who are using the products. Further, few children’s products are regulated by mandatory federal standards, many are subject only to voluntary safety standards, and some newer products are subject to no standards. Many parents and caregivers are unaware of the dangers of untested children’s products and are unaware of recalls and incorrectly assume that widely sold and used children’s products are safe.

(c) Therefore, it is the purpose of this act to direct the department of health to create a list of unsafe children’s products for the education of the public, pediatricians, and day care centers and to protect Vermont children from these dangers by prohibiting the sale of children’s products which are on the department’s list. It is also the purpose of this act to add a consumer fraud protection for consumers of children’s products that will curtail the sale of unsafe children’s products to unsuspecting consumers and that will allow the Attorney General the same authority to protect the interests of consumers and enforce the law that was authorized by the general assembly by subchapter 1 (consumer fraud) of chapter 63 of Title 9.

Sec. 2. 9 V.S.A. § 2451a(g) is added to read:

§ 2451a. DEFINITIONS

For the purposes of this chapter:

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(g) "Lessor" means a person engaged in a business of leasing goods to consumers.

Sec. 3. 9 V.S.A. chapter 63, subchapter 1B is added to read:

Subchapter 1B. Children’s Product Safety
§ 2470a. DEFINITION
As used in this subchapter, "children’s product" means a product that is designed or intended for the care of, or use by, children under six years of age (1) it may be used by or for the care of a child under six years of age, but is designed or intended for use by the general population, and not solely (2) it is a medication, drug, or food or is intended to be ingested.

§ 2470b. UNSAFE CHILDREN’S PRODUCTS; PROHIBITION
(a) A children’s product is deemed to be unsafe for purposes of this subchapter if it (1) does not conform to all federal laws and regulations setting forth standards (2) it has been recalled for any reason by an agency of the federal government or th (3) An agency of the federal government has issued a warning that a specific product (b) The department of health shall create or adopt by reference, and shall maintain (c) It shall be an unfair or deceptive act or practice in commerce and a violation o (d)(1) A listed children's product may be retrofitted if the retrofit has been approved or sanctioned by the agency of the federal government issuing the recall or warning or the agency responsible for approving the retrofit, if different from the agency issuing the recall or warning. A retrofitted children's product may be sold or leased if it is accompanied at the time of sale or lease by a notice containing:

(A) a description of the original problem which made the recalled product unsafe; (B) 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 6 years of age; and (C) the name and address of the person who accomplished the retrofit.

(2) The seller or lessor is responsible for ensuring that the notice is present with the retrofitted product at the time of sale or lease. A retrofit is exempt from the provisions of this subchapter if:

(A) the retrofit is for a children's product that requires assembly by the consumer, the approved retrofit is provided with the product by the seller or lessor, and the retrofit is accompanied at the time of sale or lease by instructions explaining how to apply the retrofit; or (B) the seller or lessor of a previously unsold or unleased product accomplishes the repair, approved or recommended by an agency of the federal government, prior to sale or lease.

(e) It shall be an unfair or deceptive act or practice in commerce and a violation of section 2453 of this title, subject to enforcement and subject to the rights and remedies provided by subchapter 1 of this chapter, for a person to manufacture, and to sell, contract to sell, resell, lease, sublet, or otherwise place in the stream of commerce, on or after January 1, 2002, a children’s product that does not conform to all federal laws and regulations setting forth standards for the children’s product, including standards endorsed or established by the federal Consumer Product Safety Commission and the American Society for Testing and Materials.

(f) At least annually, the department of health shall notify day care facilities and (g) At least annually, the department of health shall notify pediatricians licensed § 2470c. EXCEPTION
A seller or lessor shall not be held in violation of any provision of this subchapter
§ 2470d. PENALTY; REMEDIES
(a) A seller or lessor who willfully and knowingly violates any provision of this su
(b) The rights and remedies available under this subchapter are in addition to any other rights and remedies that may exist in law or in equity for an aggrieved party, or for the attorney general.

Approved: June 13, 2001