

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	7 - 0 - 0
Yeas:	Bonamici, Galizio, Gilliam, Nelson, Riley, Sprenger, Holvey
Nays:	-
Exc.:	-
Prepared By:	Jim Stembridge, Administrator
Meeting Dates:	2/5, 2/6

WHAT THE MEASURE DOES: Prohibits retailers from selling, offering for sale, or distributing children's products subject to a recall issued by the Consumer Product Safety Commission (CPSC) or subject to a warning either by the product manufacturer or another federal or state agency. Makes violation a violation of the Unfair Trade Practices Act (UTPA). Requires retailers to arrange to receive recall notices and warnings issued by the CPSC or manufacturers from whom the retailers receive children's products. Requires retailers to dispose of children's product(s) identified in a recall in strict compliance with disposal instructions included with the recall. Requires retailers to comply with all return, repair, retrofitting, or remediation instructions issued with a recall. Declares emergency, effective upon passage, with prohibitions operative May 1, 2008.

ISSUES DISCUSSED:

- Current authority to prevent the sale of recalled products
- Methods for notifying retailers of recalled products
- Private right of action
- Burden of proof and presumption of actual or constructive knowledge
- Responsibility for returned goods
- Current authority within the Department of Human Services on hazardous substances
- Honest mistakes as opposed to intentional fraud
- Legislation under consideration in other states
- Alternative enforcement through the Department of Consumer and Business Services

EFFECT OF COMMITTEE AMENDMENT: Removes presumption of retailer knowledge of recalls. Adds specific cite of Department of Human Services declaration authority in ORS 453.055.

BACKGROUND: The U.S. Consumer Product Safety Commission (CPSC), charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products, has issued over 4,000 product recalls and recall alerts, according to its website <http://www.cpsc.gov/>. Of 34 product recalls announced in January, 2008, for example, 16 had to do with children's products, including Kenmore play stoves (tip-over hazard), wooden blocks (lead paint), racing cars (lead paint), pacifiers (choking), Tinker Bell lamps (lead paint), Baby Einstein crib toys (choking), and Tick Tack Turtle Toss Mats (lead paint). All the product recalls were done voluntarily in cooperation with the CPSC. In announcing voluntary recalls, the CPSC typically recommends that consumers immediately take the recalled product away from children and contact the manufacturer or distributing firm for instructions on returning the products for full refund. Because the recalls are voluntary, no additional enforcement action is taken.

The Director of the Department of Human Services currently has the authority to require that a children's product be removed from commerce if it bears a hazardous substance.

Oregon's Unfair Trade Practices Act is enforced by the Attorney General. After a complaint is filed, the Attorney General determines if a violation has occurred and can then: 1) review the retailer's policies and procedures for staying informed of recalls; 2) demand the retailer remove the items from their shelves; or 3) assess a fine in egregious cases.

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This summary has not been adopted or officially endorsed by action of the committee.