

REVENUE: No revenue impact

FISCAL: No fiscal impact

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Action: Do Pass as Amended and Be Printed Engrossed

Vote: 5 - 0 - 0

Yeas: Atkinson, Avakian, Brown, Ferrioli, Devlin

Nays: 0

Exc.: 0

Prepared By: Theresa Van Winkle, Administrator

Meeting Dates: 2/14, 2/20

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**WHAT THE MEASURE DOES:** Prohibits retailers from selling, offering for sale, or distributing certain children's products subject to a recall issued by the Consumer Product Safety Commission (CPSC) or a successor agency; a warning either by the product manufacturer, the CPSC, or another federal agency; or subject to a declaration by the Director of the Department of Human Services under specified conditions. 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. Exempts children's products subject to a manufacturer's warning if the retailer has eliminated the health or safety hazard of the children's product and has made the product safe for sale for consumers in strict compliance with the warning's standards and instructions. Establishes that an unlawful trade practice has occurred if it has taken place 30 or more days after a recall notice, warning, or declaration is issued for the children's product that is the subject of the violation. Establishes an operating date of May 1, 2008 for certain provisions. Declares an emergency, effective upon passage.

**ISSUES DISCUSSED:**

- Types of children's products that would be included under the measure's definition
- Private right of action under the measure's provisions
- Effect of the measure on retailers, particularly small businesses
- Overview of Unlawful Trade Practices Act
- Presumption of retailers to know about product recalls and warnings

**EFFECT OF COMMITTEE AMENDMENT:** Establishes definition for "warning." Clarifies that warnings that are directed to consumers and affixed to the children's product or its packaging are not included in the measure's provisions. Exempts children's products subject to a manufacturer's warning if the retailer has eliminated the health or safety hazard of the children's product and has made the product safe for sale for consumers in strict compliance with the warning's standards and instructions. Clarifies children's products defined in the measure are subject to recall notices by either the Consumer Product Safety Commission or a successor agency. Clarifies that an unlawful trade practice has occurred if it has taken place 30 or more days after a recall notice, warning, or declaration is issued for the children's product that is the subject of the violation.

**BACKGROUND:** The U.S. Consumer Product Safety Commission (CPSC) is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products. 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 but there is nothing in current statute that prohibits recalled items to be sold or resold by Oregon businesses.

Under the measure, a “children’s product” is a consumer product that is designed or intended for the care of or use by a child under twelve years of age, or to come into contact with a child under twelve years of age at the time the product is used. To assist retailers with obtaining information about recalls or warnings, the Attorney General is required to assist retailers on obtaining information by providing links from the agency website to a website maintained by or in cooperation with the CSPC for the purpose of disseminating product recall notices.

Oregon’s Unlawful 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.