

## 2007 DRAFTING REQUEST

### Bill

Received: 10/26/2006

Received By: csundber

Wanted: As time permits

Identical to LRB:

For: Julie Lassa (608) 266-3123

By/Representing: Jessica Kelly

This file may be shown to any legislator: NO

Drafter: csundber

May Contact:

Addl. Drafters: gmalaise

Subject: Trade Regulation - other

Extra Copies:

Submit via email: YES

Requester's email: Sen.Lassa@legis.wisconsin.gov

Carbon copy (CC:) to: christopher.sundberg@legis.wisconsin.gov

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### Pre Topic:

No specific pre topic given

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### Topic:

Children's product safety

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### Instructions:

See Attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 10/31/2006 gmalaise 10/31/2006	kfollett 11/09/2006		_____			S&L
/P1	csundber 01/05/2007		pgreensl 11/09/2006	_____	sbasford 11/09/2006		S&L
/1	gmalaise 01/10/2007	kfollett 01/12/2007	pgreensl 01/12/2007	_____	sbasford 01/12/2007	cduerst 01/23/2007	S&L

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For: "1" @ intro  
02-14-2007

<END>

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/?	csundber 10/31/2006 gmalaise 10/31/2006	kfollett 11/09/2006	<i>1/12</i>	<i>1/12</i>			S&L
/P1		<i>1/15 f</i> <i>1/12</i>	pgreensl 11/09/2006	<i>ps</i> <i>ps</i>	sbasford 11/09/2006		

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**2007 DRAFTING REQUEST**

**Bill**

Received: 10/26/2006

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Jessica Kelly**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters: **gmalaize**

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

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**Pre Topic:**

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**Topic:**

Children's product safety

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**Instructions:**

See Attached

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NN

FE Sent For:

<END>

## Malaise, Gordon

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**From:** Kelly, Jessica  
**Sent:** Thursday, October 26, 2006 12:35 PM  
**To:** Malaise, Gordon  
**Subject:** Changes/redraft of 2005 SB 454

Gordon, can you have this sent to us as a P: draft? I would appreciate it. We had a large meeting last week and came up with some ideas on how to reduce the fiscal estimate on the bill, as well as improve the overall policy.

(1) In order to remove DHFS fiscal estimate we need to remove any language mandating that childcare licensers check for recalled products at the facility every two years. DHFS will need to trust that providers are abiding by the rules to remove any recalled toy/crib/children's product every month and show that form to licensers during their relicensing session (every two years). We will allow DHFS/DATCP to create an administrative rule on how to get recall information to providers...allow them to use the internet or if they don't have it, allow providers to receive "snail mail" updates from the state on recalled products every month.

(2)With respect to retailers needing to post recalled products on the premises of their store...we need to insert that those notices are posted in a "conspicuous" location.

(3)Illinois law encompasses foster homes, group homes, child care institutions (certified and licensed), maternity homes & youth emergency shelters under their law. I would like to get all these places too, and am wondering if maternity homes and youth emergency shelters are subject to licensing.

Thanks, Gordon.

**Jessica Ford Kelly**  
Office of Senator Julie Lassa  
State Capitol, Room 109 - South  
P.O. Box 7882  
Madison, WI 53707-7882  
608-266-3123  
1-800-925-7491 toll-free  
608-267-6797

## Fiscal Estimate Narratives

DHFS 1/10/2006

LRB Number	05-1911/2	Introduction Number	SB-454	Estimate Type	Original
<b>Description</b> Regulation of unsafe children's products, extending the time limit for and providing an exemption from emergency rule procedures, requiring the exercise of rule-making authority, and providing a penalty					

### Assumptions Used in Arriving at Fiscal Estimate

This bill regulates the sale by commercial suppliers of products that are designed principally for the care of, or use by, children under 12 years of age (children's products), including children's furniture, apparel, and toys. The bill requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to maintain a list of products and make the list available on the internet that 1) fail to conform to any state or federal safety law or regulation 2) have been recalled by DATCP or a federal agency and 3) that DATCP or a federal agency has issued a warning of a safety hazard. The bill also prohibits the sale by commercial suppliers of baby cribs that fail to meet certain requirements under federal regulations.

The bill prohibits a day care center that is licensed by DHFS, certified by a county department, or established or contracted for by a school board from using or having on the premises where child care is provided a children's product or baby crib whose commercial use is prohibited under the bill. The bill requires DHFS to provide all day care centers licensed by DHFS, a county department to provide all day care providers certified by the county department, and a school board to provide all day care programs contracted for by the school board, with notice of the requirements under the bill relating to children's products and baby cribs and with the list maintained by DATCP under the bill of all children's products whose commercial use is prohibited under the bill. The notice and list must be provided before DHFS licenses or continues a license of a day care center, before a county department certifies or recertifies a day care provider, and before a school board contracts or renews a contract with a day care program. In addition, the notice and list must be provided three times a year during the license, certification, or contract and whenever personnel from the above three visit or inspect the day care provider or day care program. The Department must promulgate rules to implement the provision of requiring the notice and list as well as distribute a form for certifying the removal of unsafe children's products as defined by the bill to day care provider facilities and, upon completion by the provider, retain and file the completed form.

This bill will increase workload and costs for DHFS. Currently there are 5,635 licensed child care providers under DHFS regulation. It is assumed that the workload of providing notices and lists to each regulated entity and retaining and filing removal certification forms will require a 1.0 FTE program assistant costing \$33,900 GPR and approximately \$8,800 GPR annually in costs for material, postage, and printing costs. (While the bill specifies that the notices and lists can be provided via email, many providers do not have this capability. Therefore paper copies must be sent.) It is assumed that, to comply with the bill, DATCP will direct providers to a cumulative list of recalled products maintained by the U.S. Consumer Product Safety Commission (CPSC). The list would include products recalled over several years, possibly numbering in the thousands. It is also assumed that DHFS will monitor providers for compliance with the requirements of the bill while performing regular monitoring visits. This estimate assumes that the Department will monitor facilities for the existence of 25 of the most dangerous children's products, identified by DATCP, from the cumulative list maintained by CPSC of recalled products (consistent with the monitoring practices of Illinois, which has similar legislation). Specifically, this will require licensing specialists to inspect toy bins, cribs, outdoor play equipment, furniture, apparel and other children's products in the provider's environment to determine if any products present are on the list of 25 most dangerous recalled items and in violation of the bill. Licensing specialists must closely examine items because recalled products may differ only in small ways from non-recalled items. In some cases, specialists will need to verify that products have been repaired by the manufacturer to make them safe. Monitoring for unsafe children's products will add one hour each to the 12,000 monitoring visits the Department conducts annually, resulting in an additional 5.75 FTE licensing and certification specialists and \$307,600 GPR in costs to the Department. In summary, the provisions of the bill will result in approximately \$350,300 GPR of ongoing cost to DHFS annually.

The bill's fiscal impact on county human and social service departments is indeterminate because data on the number of county monitoring visits is not available. However, there are approximately 5,000 county certified providers. Assuming that the number of monitoring visits parallel that of the Department, workload and costs could be similar to the estimate for DHFS.



10/31/06 Jessica Kelly

Add to redraft of 2005 SB 454:

Commercial supplier must post notice of recalled products sold by the CS in a conspicuous location at CS place of business.

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LRB-1911/2  
CTS&GMM:kjf:ks  
stays

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2005 SENATE BILL 454

November 29, 2005 - Introduced by Senators LASSA and MILLER, cosponsored by Representatives GUNDERSON, LEHMAN, VRUWINK, BERCEAU, BLACK, SHERIDAN and WASSERMAN. Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

Regenerate

1 AN ACT *to amend* 48.65 (1), 48.651 (1) (intro.), 48.657 (1) (a), 48.657 (1) (b), 48.657  
2 (2g), 48.66 (5), 48.68 (1), 48.69, 48.715 (2) (c), 48.715 (2) (d), 48.715 (2) (f), 48.715  
3 (3) (intro.), 48.715 (4) (a), 48.715 (4) (b) and 48.715 (4) (d); and *to create* 48.658  
4 and 100.375 of the statutes; **relating to:** regulation of unsafe children's  
5 products, extending the time limit for and providing an exemption from  
6 emergency rule procedures, requiring the exercise of rule-making authority,  
7 and providing a penalty.

**Analysis by the Legislative Reference Bureau**

**SALE OF UNSAFE CHILDREN'S PRODUCTS**

This bill regulates the sale by commercial suppliers of products that are designed principally for the care of, or use by, children under 12 years of age (children's products), including children's furniture, apparel, and toys. Under the bill, a commercial supplier includes a person in the business of selling or leasing used merchandise, but does not include a person who sells or leases a children's product on an occasional basis, as defined by the Department of Agriculture, Trade and Consumer Protection (DATCP) by rule.

The bill prohibits the sale of a children's product by a commercial supplier if any of the following apply: 1) the children's product fails to conform to any state or federal safety law or regulation; 2) the children's product has been recalled by DATCP, by a

**SENATE BILL 454**

federal agency, or by the manufacturer, distributor, or importer, and the recall has not been rescinded; or 3) DATCP or a federal agency has issued a warning that the intended use of the product presents a safety hazard and the warning has not been rescinded. The bill requires DATCP to maintain a list of such products and to make the list available to the public on the Internet. The bill also prohibits the sale by commercial suppliers of baby cribs that fail to meet certain requirements under federal regulations.

INS  
CS-A

Also under the bill, a product that is subject to a recall may be retrofitted if the retrofit is approved by the agency that recalled the product. A retrofitted product may be sold to a consumer only if the product is accompanied by a notice containing certain information including a description of the problem that required the recall and an explanation of how the retrofit has eliminated the problem.

The bill requires DATCP to promulgate rules to ensure the safety of children's products. The rules must be consistent with nationally recognized industry standards for children's products, and must include certain design and performance requirements for baby cribs.

Under the bill, DATCP, the Department of Justice, the district attorney, or any other person may bring an action for an injunction against a commercial supplier who sells a children's product or baby crib in violation of the prohibitions in the bill. The bill also provides for a forfeiture of \$100 to \$10,000 for each violation.

**USE OF UNSAFE CHILDREN'S PRODUCTS BY CHILD CARE PROVIDERS**

~~Under current law, any person who, for compensation, provides care and supervision for four or more children under the age of seven for less than 24 hours a day must obtain a license to operate a day care center from the Department of Health and Family Services (DHFS) and must abide by standards established by DHFS by rule for the health, safety, and welfare of the children in the care of the day care center. Also, under current law, a county department of human services or social services (county department) must certify a day care provider who is not required to be licensed by DHFS in order for the day care provider to be eligible for reimbursement under the Wisconsin Works (W-2) Program, and a day care provider certified by a county department must abide by standards for certification established by the Department of Workforce Development by rule. In addition, under current law, a school board may establish or contract for day care programs for children, and a day care program established or contracted for by a school board must meet the standards for a licensed day care center established by DHFS by rule.~~

~~This bill prohibits a day care center that is licensed by DHFS, a day care provider that is certified by a county department, or a day care program that is established or contracted for by a school board from using or having on a premises where child care is provided a children's product or baby crib whose commercial use is prohibited under the bill. That prohibition, however, does not apply to an antique or collectible children's product or baby crib that is not used by, or accessible to, any child on the premises where the child care is provided. The bill requires DHFS to provide all day care centers licensed by DHFS, a county department to provide all day care providers certified by the county department, and a school board to provide all day care programs contracted for by the school board, with notice of that~~

**SENATE BILL 454**

prohibition and of the requirements under the bill relating to children's products and baby cribs whose commercial use is prohibited under the bill and with the list maintained by DATCP under the bill of all children's products whose commercial use is prohibited under the bill.

The notice and list must be provided before DHFS may license or continue the license of a day care center, before a county department may certify or recertify a day care provider, before a school board may contract or renew a contract with a day care program, three times a year during the period of the license, certification, or contract, and whenever personnel of DHFS, the county department, or the school board visit or inspect the day care center, day care provider, or day care program. The notice and list must be provided in plain, nontechnical language that will enable each child care provider to inspect the children's products and baby cribs on its premises and identify those children's products and baby cribs that are unsafe. The bill requires a day care center, day care provider, or day care program to review the notice and list, immediately remove from its premises any children's products and baby cribs that are unsafe, and certify that all unsafe children's products and baby cribs have been removed from its premises. The bill also requires a day care center, day care provider, or day care program to maintain a file of all notices and lists provided under the bill and to permit the parent, guardian, or legal custodian of any child who is receiving care, or who is a prospective recipient of care, from the day care center, day care provider, or day care program to inspect those notices and lists during its hours of operations.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

Insert  
A-2

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 48.65 (1) of the statutes is amended to read:

48.65 (1) No person may for compensation provide care and supervision for 4 or more children under the age of 7 for less than 24 hours a day unless that person obtains a license to operate a day care center from the department. To obtain a license under this subsection to operate a day care center, a person must meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in ~~s. 48.685, complete the certification required under s. 48.658 (2) (a) 2,~~ and pay the license fee under sub. (3). A license issued under

Insert  
3-1

ss

and 48.687,

**SENATE BILL 454**

**SECTION 1**

1 this subsection is valid until revoked or suspended, but shall be reviewed every 2  
2 years as provided in s. 48.66 (5). 55 ✓

3 **SECTION 2.** 48.651 (1) (intro.) of the statutes is amended to read:

4 48.651 (1) (intro.) Each county department shall certify, according to the  
5 standards adopted by the department of workforce development under s. 49.155 (1d),  
6 each day care provider reimbursed for child care services provided to families  
7 determined eligible under s. 49.155, unless the provider is a day care center licensed  
8 under s. 48.65 or is established or contracted for under s. 120.13 (14). Each county  
9 may charge a fee to cover the costs of certification. To be certified under this section,  
10 a person must meet the minimum requirements for certification established by the  
11 department of workforce development under s. 49.155 (1d), meet the requirements and 48.687,

12 ~~specified in s. 48.685, complete the certification required under s. 48.658 (2) (a) 2,~~  
13 and pay the fee specified in this section. The county shall certify the following  
14 categories of day care providers: 48.687 ✓

15 **SECTION 3.** 48.657 (1) (a) of the statutes is amended to read:

16 48.657 (1) (a) Violations of statutes, rules promulgated by the department  
17 under s. ~~48.658 (3)~~ or 48.67, or provisions of licensure under s. 48.70 (1) by the day  
18 care center. In providing information under this paragraph, the department may not  
19 disclose the identity of any employee of the day care center.

20 **SECTION 4.** 48.657 (1) (b) of the statutes is amended to read:

21 48.657 (1) (b) A telephone number at the department that a person may call  
22 to complain of any alleged violation of a statute, rule promulgated by the department  
23 under s. ~~48.658 (3)~~ or 48.67, or provision of licensure under s. 48.70 (1) by the day care  
24 center. 48.687 ✓

25 **SECTION 5.** 48.657 (2g) of the statutes is amended to read:

SENATE BILL 454

48.687

1           48.657 (2g) If the report under sub. (1) indicates that the day care center is in  
2 violation of a statute, a rule promulgated by the department under s. ~~48.658~~ (3) or  
3 48.67, or a provision of licensure under s. 48.70 (1), the day care center shall post with  
4 the report any notices received from the department relating to that violation.

5 ~~SECTION 6 - 48.658 of the statutes is created to read:~~

6           **48.658 Unsafe children's products.** (1) (a) Except as provided in par. (b),  
7 a day care center that is licensed under s. 48.65 (1), a day care provider that is  
8 certified under s. 48.651 (1), or a day care program that is established or contracted  
9 for under s. 120.13 (14) may not use or have on the premises where the day care  
10 center, day care provider, or day care program provides child care a children's  
11 product, as defined in s. 100.375 (1) (b), whose commercial use is prohibited under  
12 s. 100.375 (2) (a), or a baby crib, as defined in s. 100.375 (1) (a), whose commercial  
13 use is prohibited under s. 100.375 (4).

14           (b) Paragraph (a) does not apply to an antique or collectible children's product  
15 or baby crib that is not used by, or accessible to, any child on the premises of the day  
16 care center, day care provider, or day care program.

17           (2) (a) Before the department of health and family services may issue or  
18 continue a license to operate a day care center under s. 48.65 (1), before a county  
19 department may certify or recertify a day care provider under s. 48.651 (1), before  
20 a school board may contract or renew a contract with a day care program under s.  
21 120.13 (14), 3 times a year during the period of the license, certification, or contract,  
22 and whenever personnel of the department of health and family services, county  
23 department, or school board visit or inspect the day care center, day care provider,  
24 or day care program, all of the following shall occur:

**SENATE BILL 454****SECTION 6**

1           1. The department of health and family services, the county department, or the  
2 school board shall provide the day care center, day care provider, or day care program  
3 with notice of the prohibitions under sub. (1), the requirements under s. 100.375 (2)  
4 (a) relating to children's products, and the requirements under s. 100.375 (4) and (5)  
5 relating to baby cribs and with a copy of the list of unsafe children's products  
6 maintained under s. 100.375 (2) (c) in plain, nontechnical language that will enable  
7 the day care center, day care provider, or day care program to inspect children's  
8 products and baby cribs on its premises and identify children's products and baby  
9 cribs that are unsafe. The notice and list provided under this subdivision may be  
10 provided by electronic mail.

11           2. The day care center, day care provider, or day care program shall review the  
12 notice and list provided under subd. 1., immediately remove from its premises any  
13 children's products and baby cribs that are unsafe, certify on a form prescribed under  
14 sub. (3) that it has reviewed that notice and list and that all unsafe children's  
15 products and baby cribs have been removed from its premises, and return the  
16 completed form to the department, county department, or school board that provided  
17 the notice and list, which shall retain the completed form in its files.

18           (b) A day care center, day care provider, or day care program shall maintain a  
19 file of all notices and lists provided under par. (a) 1. and shall permit the parent,  
20 guardian, or legal custodian of any child who is receiving care and supervision, or  
21 who is a prospective recipient of care and supervision, from the day care center, day  
22 care provider, or day care program to inspect those notices and lists during its hours  
23 of operation.

24           (3) The department of health and family services shall promulgate rules to  
25 implement this section and prescribe a form for the certification under sub. (2) (a) 2.

## SENATE BILL 454

1 with respect to day care centers that are licensed under s. 48.65 (1) and day care  
 2 programs that are established or contracted for under s. 120.13 (14). The department  
 3 of workforce development shall promulgate rules to implement this section and  
 4 prescribe a form for the certification under sub. (2) (a) 2. with respect to day care  
 5 providers that are certified under s. 48.651 (1).

6 SECTION 7. 48.66 (5) of the statutes is amended to read:

7 48.66 (5) A child welfare agency, group home, day care center or shelter care  
 8 facility license, other than a probationary license, is valid until revoked or  
 9 suspended, but shall be reviewed every 2 years after the date of issuance as provided  
 10 in this subsection. At least 30 days prior to the continuation date of the license, the  
 11 licensee shall submit to the department an application for continuance of the license  
 12 in the form and containing the information that the department requires. If the  
 13 minimum requirements for a license established under s. 48.67 are met, the  
 14 application is approved, the applicable fees referred to in ss. 48.68 (1) and 48.685 (8)  
 15 are paid and, any forfeiture under s. 48.715 (3) (a) or penalty under s. 48.76 that is  
 16 due is paid, <sup>keep</sup> ~~and in the case of a day care center licensed under s. 48.65 (1), the~~  
 17 ~~certification required under s. 48.658 (2) (a) 2 is completed.~~ <sup>(b) are</sup> ~~(a) 2 is~~ completed, the department shall  
 18 continue the license for an additional 2-year period, unless sooner suspended or  
 19 revoked. If the application is not timely filed, the department shall issue a warning  
 20 to the licensee. If the licensee fails to apply for continuance of the license within 30  
 21 days after receipt of the warning, the department may revoke the license as provided  
 22 in s. 48.715 (4) and (4m) (b).

23 SECTION 8. 48.68 (1) of the statutes is amended to read:

24 48.68 (1) After receipt of an application for a license, the department shall  
 25 investigate to determine if the applicant meets the minimum requirements for a



SENATE BILL 454

Amend 48.687 ✓

SECTION 8

1 license adopted by the department under s. 48.67 and meets the requirements  
 2 specified in s. ~~ss. 48.658 (2) (a) 2. and~~ 48.685, if applicable. In determining whether  
 3 to issue or continue a license, the department may consider any action by the  
 4 applicant, or by an employee of the applicant, that constitutes a substantial failure  
 5 by the applicant or employee to protect and promote the health, safety, and welfare  
 6 of a child. Upon satisfactory completion of this investigation and payment of the fee  
 7 required under s. 48.615 (1) (a) or (b), 48.625 (2) (a), 48.65 (3) (a) or 938.22 (7) (b), the  
 8 department shall issue a license under s. 48.66 (1) (a) or, if applicable, a probationary  
 9 license under s. 48.69 or, if applicable, shall continue a license under s. 48.66 (5). At  
 10 the time of initial licensure and license renewal, the department shall provide a  
 11 foster home licensee with written information relating to the age-related monthly  
 12 foster care rates and supplemental payments specified in s. 48.62 (4), including  
 13 payment amounts, eligibility requirements for supplemental payments and the  
 14 procedures for applying for supplemental payments.

Inser  
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SECTION 9. 48.69 of the statutes is amended to read:

16 **48.69 Probationary licenses.** Except as provided under s. 48.715 (6) and (7),  
 17 if any child welfare agency, shelter care facility, ~~or~~ group home <sup>(plan)</sup> or day care center that  
 18 has not been previously issued a license under s. 48.66 (1) (a) applies for a license,  
 19 meets the minimum requirements for a license established under s. 48.67, and pays  
 20 the applicable fee referred to in s. 48.68 (1) ~~or if any day care center that has not been~~  
 21 ~~previously issued a license under s. 48.66 (1) (a) applies for a license, meets those~~  
 22 ~~minimum requirements, completes the certification required under s. 48.658 (2) (a)~~  
 23 ~~2. and pays that applicable fee,~~ the department shall issue a probationary license  
 24 to that child welfare agency, shelter care facility, group home, or day care center. A  
 25 probationary license is valid for up to 6 months after the date of issuance unless

meets the requirements specified in  
s. 48.687,

SENATE BILL 454

and meets the  
- 9 - requirements  
specified in s. 48.687

1 renewed under this section or suspended or revoked under s. 48.715. Before a  
2 probationary license expires, the department shall inspect the child welfare agency,  
3 shelter care facility, group home, or day care center holding the probationary license  
4 and, except as provided under s. 48.715 (6) and (7), if the child welfare agency, shelter  
5 care facility, ~~or~~ group home <sup>(plan)</sup> or day care center meets the minimum requirements for  
6 a license established under s. 48.67 ~~or if the day care center meets those minimum~~  
7 ~~requirements and completes the certification required under s. 48.658 (2) (a) 2~~ the  
8 department shall issue a license under s. 48.66 (1) (a). A probationary license issued  
9 under this section may be renewed for one 6-month period.

10 SECTION 10. 48.715 (2) (c) of the statutes is amended to read: 48.687  
11 48.715 (2) (c) That a licensee stop violating any provision of licensure under s.  
12 48.70 (1) or rules promulgated by the department under s. ~~48.658~~ (3) or 48.67.

13 SECTION 11. 48.715 (2) (d) of the statutes is amended to read:  
14 48.715 (2) (d) That a licensee submit a plan of correction for violation of any  
15 provision of licensure under s. 48.70 (1) or rule promulgated by the department under  
16 s. ~~48.658~~ (3) or 48.67. 48.687 (use twice)

17 SECTION 12. 48.715 (2) (f) of the statutes is amended to read:  
18 48.715 (2) (f) That a licensee close the intake of any new children until all  
19 violations of the provisions of licensure under s. 48.70 (1) and the rules promulgated  
20 by the department under s. ~~48.658~~ (3) or 48.67 are corrected.

21 SECTION 13. 48.715 (3) (intro.) of the statutes is amended to read:  
22 48.715 (3) (intro.) If the department provides written notice of the grounds for  
23 a penalty, an explanation of the types of penalties that may be imposed under this  
24 subsection, and an explanation of the process for appealing a penalty imposed under  
25 this subsection, the department may impose any of the following penalties against

(use 5 times)

**SENATE BILL 454**

**SECTION 13**

48.687

1 a licensee or any other person who violates a provision of licensure under s. 48.70 (1)  
2 or rule promulgated by the department under s. ~~48.658~~ (3) or 48.67 or who fails to  
3 comply with an order issued under sub. (2) by the time specified in the order:

4 **SECTION 14.** 48.715 (4) (a) of the statutes is amended to read:

5 48.715 (4) (a) The department has imposed a penalty on the licensee under sub.  
6 (3) and the licensee or a person under the supervision of the licensee either continues  
7 to violate or resumes violation of a rule promulgated under s. ~~48.658~~ (3) or 48.67, a  
8 provision of licensure under s. 48.70 (1), or an order under this section forming any  
9 part of the basis for the penalty.

10 **SECTION 15.** 48.715 (4) (b) of the statutes is amended to read:

11 48.715 (4) (b) The licensee or a person under the supervision of the licensee has  
12 committed a substantial violation, as determined by the department, of a rule  
13 promulgated under s. ~~48.658~~ (3) or 48.67, a provision of licensure under s. 48.70 (1),  
14 or an order under this section.

15 **SECTION 16.** 48.715 (4) (d) of the statutes is amended to read:

16 48.715 (4) (d) The licensee or a person under the supervision of the licensee has  
17 violated, as determined by the department, a rule promulgated under s. ~~48.658~~ (3)  
18 or 48.67, a provision of licensure under s. 48.70 (1), or an order under this section that  
19 is the same as or similar to a rule promulgated under s. ~~48.658~~ (3) or 48.67, a  
20 provision of licensure under s. 48.70 (1), or an order under this section that the  
21 licensee or a person under the supervision of the licensee has violated previously.

22 **SECTION 17.** 100.375 of the statutes is created to read:

23 **100.375 Children's products. (1) DEFINITIONS.** In this section:

24 (a) "Baby crib" means a full-size baby crib or a nonfull-size baby crib.

**SENATE BILL 454**

1           (b) “Children’s product” means a product that is designed principally for the  
2 care of, or use by, children under 12 years of age. “Children’s products” include baby  
3 cribs; baby and toddler furniture; apparel; bath seats; baby walkers, baby jumpers,  
4 and similar devices; gates for containing children; car seats; strollers and other  
5 devices for transporting children; play equipment; and toys. “Children’s products”  
6 do not include food, medicine, or any other products that are designed to be ingested,  
7 injected, or otherwise applied to the human body.

8           (c) “Commercial supplier” means a person who is in the business of selling,  
9 leasing, remanufacturing, retrofitting, or otherwise putting into commercial use a  
10 children’s product. “Commercial supplier” includes a person who is in the business  
11 of selling or leasing used merchandise, if the merchandise regularly includes  
12 children’s products, but does not include a person who sells or leases a children’s  
13 product on an occasional basis.

14           (d) “Consumer” means an individual who purchases or otherwise acquires a  
15 children’s product for personal or family use or a child care provider, as defined in s.  
16 49.001 (1), that purchases or otherwise acquires a children’s product for use in  
17 providing child care.

18           (e) “Full-size baby crib” means a full-size baby crib, as defined in 16 CFR Part  
19 1508.

20           (f) “Infant” means any child less than 35 inches tall and less than 3 years of age.

21           (g) “Lease” means to lease or sublease, offer to lease or sublease, or contract to  
22 lease or sublease.

23           (h) “Nonfull-size baby crib” means a nonfull-size baby crib, as defined in 16  
24 CFR Part 1509.

SENATE BILL 454

SECTION 17

1 (i) "Sell" means to sell, to resell, or to offer to sell or resell, or to contract to sell  
2 or resell.

3 (2) PROHIBITION; GENERAL. (a) Except as provided in par. (b), no commercial  
4 supplier may sell, lease, remanufacture, retrofit, or otherwise put into commercial  
5 use a children's product to which any of the following applies:

6 1. The children's product fails to conform to any state or federal safety law or  
7 regulation.

8 2. The children's product has been recalled by the department, by an agency  
9 of the federal government, or by the children's product's manufacturer, distributor,  
10 or importer, and the recall has not been rescinded.

11 3. The department or an agency of the federal government has issued a warning  
12 that the intended use of the children's product constitutes a safety hazard and the  
13 warning has not been rescinded.

14 (b) Paragraph (a) does not apply to any of the following:

15 1. A children's product that has been retrofitted under sub. (3) (a), if the product  
16 has not previously been sold to a consumer.

17 2. A children's product that was not included on the list maintained under par.  
18 (c) on the day immediately prior to the day on which the product was sold, leased,  
19 remanufactured, retrofitted, or otherwise put into commercial use.

20 (c) The department shall maintain and quarterly update a list of all children's  
21 products to which par. (a) applies. Notwithstanding s. 20.908, the department shall  
22 provide this list to any person at no cost, and may provide the list and updates to the  
23 list by electronic mail. The department shall make this list available to the public  
24 at no charge and on the Internet.

INS CS 12-24

**SENATE BILL 454**

1           (3) RETROFITTING. (a) Notwithstanding sub. (2) (a), a commercial supplier may  
2 retrofit a children's product that has been recalled as described under sub. (2) (a) 2.  
3 or for which a warning described under sub. (2) (a) 3. has been issued if the retrofit  
4 is approved by the state agency or agency of the federal government that issued the  
5 recall or warning or by a state agency or agency of the federal government that is  
6 responsible for approving the retrofit.

7           (b) Notwithstanding sub. (2) (a), a commercial supplier may sell or lease to a  
8 consumer a children's product that has been retrofitted under par. (a) if the  
9 commercial supplier ensures that a notice accompanies the children's product at the  
10 time of sale or lease.

11           (c) The notice under par. (b) shall include all of the following:

12           1. The name and model of the children's product.  
13           2. A declaration that the children's product is safe for use by a child who meets  
14 the conditions specified by the manufacturer of the children's product.

15           3. A description of the original problem that required that the children's  
16 product be recalled or that required a warning to be issued concerning the children's  
17 product.

18           4. A description of the retrofit that explains how the original problem has been  
19 eliminated.

20           5. The name and address of the person that accomplished the retrofit.

21           (4) PROHIBITION; BABY CRIBS. No commercial supplier may sell, lease,  
22 remanufacture, retrofit, or otherwise put to commercial use a baby crib that violates  
23 any rule promulgated by the department under sub. (6) (b).

**SENATE BILL 454****SECTION 17**

1           **(5) REBUTTABLE PRESUMPTION; BABY CRIBS.** A baby crib is rebuttably presumed  
2 to be unsafe for use by an infant if the baby crib does not comply with any rule  
3 promulgated by the department under sub. (6) (b) or if any of the following apply:

4           (a) The baby crib does not comply with 16 CFR Part 1508, if the baby crib is a  
5 full-size baby crib.

6           (b) The baby crib does not comply with 16 CFR Part 1509, if the baby crib is a  
7 nonfull-size baby crib.

8           (c) The baby crib does not comply with 16 CFR Part 1303.

9           **(6) RULE MAKING.** (a) The department shall promulgate a rule to define  
10 “occasional basis” for purposes of this section.

11           (b) The department shall promulgate rules to ensure the safety of children’s  
12 products. The rules promulgated by the department shall be consistent with  
13 nationally recognized industry standards for the design and manufacture of  
14 children’s products and shall include all of the following:

15           1. Design requirements for corner posts of full-size and nonfull-size baby cribs.

16           2. Testing requirements for structural integrity and design requirements for  
17 nonfull-size cribs.

18           3. Performance requirements and test procedures to determine the structural  
19 integrity of baby cribs.

20           **(7) INJUNCTION.** (a) In addition to any other right or remedy, any of the following  
21 may commence an action to enjoin a commercial supplier from violating sub. (2) or  
22 (4):

23           1. The department.

24           2. After consulting with the department, the department of justice or any  
25 district attorney.

SENATE BILL 454

1 3. Any other person.

2 (b) Notwithstanding s. 814.04 (1), the court may award a person who prevails  
3 in an action under this subsection reasonable attorney fees and costs.

4 (8) FORFEITURE. A commercial supplier who violates sub. (2) or (4) shall forfeit  
5 not less than \$100 nor more than \$10,000 for each violation.

6 **SECTION 18. Nonstatutory provisions.**

7 (1) UNSAFE CHILDREN'S PRODUCTS AND BABY CRIBS; RULES.

8 (a) *Proposed rules.* The department of agriculture, trade and consumer  
9 protection shall submit in proposed form the rules required under section 100.375  
10 (6) of the statutes, as created by this act, and the department of health and family  
11 services and the department of workforce development shall submit in proposed form  
12 the rules required under section 48.658 (3) of the statutes, as created by this act, to  
13 the legislative council staff under section 227.15 (1) of the statutes no later than the  
14 first day of the 7th month beginning after the effective date of this subsection.

15 Notwithstanding section 227.137 (2) of the statutes, the secretary of administration  
16 may not require the department of agriculture, trade and consumer protection, the  
17 department of health and family services, or the department of workforce  
18 development to prepare an economic impact report for the rules required under  
19 sections 100.375 (6) and 48.658 (3) of the statutes, as created by this act.

20 (b) *Emergency rules.* Using the procedure under section 227.24 of the statutes,  
21 the department of agriculture, trade and consumer protection shall promulgate the  
22 rules required under section 100.375 (6) of the statutes, as created by this act, and  
23 the department of health and family services and the department of workforce  
24 development shall promulgate the rules required under section 48.658 (3) of the  
25 statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the

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**SENATE BILL 454****SECTION 18**

1 statutes, emergency rules promulgated under this paragraph remain in effect until  
2 the first day of the 19th month after the effective date of this subsection or the date  
3 on which permanent rules take effect, whichever is sooner. Notwithstanding section  
4 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of agriculture, trade and  
5 consumer protection, the department of health and family services, and the  
6 department of workforce development are not required to provide evidence that  
7 promulgating a rule under this subsection as an emergency rule is necessary for the  
8 preservation of the public peace, health, safety, or welfare and are not required to  
9 provide a finding of emergency for a rule promulgated under this paragraph.

10 **SECTION 19. Effective dates.** This act takes effect on the first day of the 12th  
11 month beginning after publication, except as follows:

12 (1) RULES. SECTION 18 (1) of this act takes effect on the day after publication.

13 (END)

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0599/P1insCS  
CTS:.....

1           **Insert CS A:**

No H

The bill requires a commercial supplier to post a conspicuous notice to customers if a children's product the commercial supplier has sold is included in the list of unsafe children's products maintained by DATCP.

2           **Insert CS 12-24:**

3           (d) If a product that has been sold by a commercial supplier is included in the  
4           list maintained under par. (c), the commercial supplier shall post in a conspicuous  
5           location at the commercial supplier's place of business a notice to customers that the  
6           children's product is unsafe and should be returned to the commercial supplier.

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**SECTION 1.** 48.60 (1) of the statutes is amended to read:

X  
48.60 (1) No person may receive children, with or without transfer of legal custody, to provide care and maintenance for 75 days in any consecutive 12 months' period for 4 or more such children at any one time unless that person obtains a license to operate a child welfare agency from the department. To obtain a license under this subsection to operate a child welfare agency, a person must meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in ~~s.~~ <sup>ss.</sup> 48.685 and 48.687, and pay the applicable license fee under s. 48.615 (1) (a) or (b). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

History: 1973 c. 90; 1975 c. 39; 1979 c. 300; 1989 a. 31, 107, 336; 1991 a. 39; 1993 a. 446; 1995 a. 27 ss. 2582, 9126 (19); 1995 a. 77; 1997 a. 27, 164; 1999 a. 9, 83; 2001 a. 59, 69.

**SECTION 2.** 48.625 (1) of the statutes is amended to read:

X  
48.625 (1) Any person who receives, with or without transfer of legal custody, 5 to 8 children, not including children who under sub. (1m) are not counted toward that number, to provide care and maintenance for those children shall obtain a license to operate a group home from the department. To obtain a license under this subsection to operate a group home, a person must meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in ~~s.~~ <sup>ss.</sup> 48.685 and 48.687, and pay the license fee under sub. (2). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

History: 1977 c. 418; 1985 a. 281; 1991 a. 39; 1993 a. 395, 446; 1995 a. 27; 1997 a. 27; 2001 a. 69.

(END OF INSERT)

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**SECTION 3.** 48.687 of the statutes is created to read:

**48.687 Unsafe children's products.** (1) (a) Except as provided in par. (b), a child welfare agency that is licensed to operate a residential care center for children and youth under s. 48.60 (1), a foster home or treatment foster home that is licensed under s. 48.62 (1), a group home that is licensed under s. 48.625 (1), a day care center that is licensed under s. 48.65 (1), a day care provider that is certified under s. 48.651 (1), a day care program that is established or contracted for under s. 120.13 (14), or a shelter care facility that is licensed under s. 938.22 (7) (a) may not use or have on the premises where care for children is provided a children's product, as defined in s. 100.375 (1) (b), whose commercial use is prohibited under s. 100.375 (2) (a), or a baby crib, as defined in s. 100.375 (1) (a), whose commercial use is prohibited under s. 100.375 (4).

(b) Paragraph (a) does not apply to an antique or collectible children's product or baby crib that is not used by, or accessible to, any child on the premises of the residential care center for children and youth, foster home, treatment foster home, group home, day care center, day care provider, day care program, or shelter care facility.

(2) (a) Before the department may issue an initial license for a child welfare agency to operate a residential care center for children and youth under s. 48.60 (1) or issue an initial license to operate a foster home or treatment foster home under s. 48.62 (1), group home under s. 48.625 (1), day care center under s. 48.65 (1), or shelter care facility under s. 938.22 (7) (a); before a county department may issue an initial license to operate a foster home or treatment foster home under s. 48.62 (1) or initially certify a day care provider under s. 48.651 (1); before a child welfare agency may issue an initial license to operate a foster home or treatment foster home

under s. 48.62 (1); and before a school board may initially contract with a day care program under s. 120.13 (14); all of the following shall occur:

1. The department, county department, child welfare agency, or school board shall inspect the premises where care for children is provided to ensure compliance with sub. (1).

2. The department, county department, child welfare agency, or school board shall provide the residential care center for children and youth, foster home, treatment foster home, group home, day care center, day care provider, day care program, or shelter care facility with notice of the prohibitions under sub. (1), the requirements under s. 100.375 (2) (a) relating to children's products, and the requirements under s. 100.375 (4) and (5) relating to baby cribs and with a copy of the list of unsafe children's products maintained under s. 100.375 (2) (c) in plain, nontechnical language that will enable the recipient of the notice and list to inspect children's products and baby cribs on its premises and identify children's products and baby cribs that are unsafe. The notice and list provided under this subdivision may be provided by electronic mail.

3. The recipient of the notice and list under subd. 2. shall review the notice and list, immediately remove from its premises any children's products and baby cribs that are unsafe, certify on a form prescribed under sub. (3) that it has reviewed that notice and list and that all unsafe children's products and baby cribs have been removed from its premises, and return the completed form to the department, county department, child welfare agency, or school board that provided the notice and list, which shall retain the completed form in its files.

(b) Before the department may continue a license for a child welfare agency to operate a residential care center for children and youth, renew a license to operate

a foster home or treatment foster home, or continue a license to operate a group home, day care center, or shelter care facility; before a county department may renew a license to operate a foster home or treatment foster home or recertify a day care provider; before a child welfare agency may renew a license to operate a foster home or treatment foster home; before a school board may renew a contract with a day care program; 3 times a year during the period of the license, certification, or contract; and whenever personnel of the department, county department, child welfare agency, or school board visit or inspect the premises where care for children is provided; the department, county department, child welfare agency, or school board shall provide the residential care center for children and youth, foster home, treatment foster home, group home, day care center, day care provider, day care program, or shelter care facility with the notice and list under par. (a) 2., and the person provided with the notice and list shall take the actions specified in par. (a) 3.

(c) A residential care center for children and youth, foster home, treatment foster home, group home, day care center, day care provider, day care program, or shelter care facility shall maintain a file of all notices and lists provided under par. (a) 2. or (b) and shall permit the parent, guardian, or legal custodian of any child who is receiving care, or who is a prospective recipient of care, from the residential care center for children and youth, foster home, treatment foster home, group home, day care center, day care provider, day care program, or shelter care facility to inspect those notices and lists during its hours of operation.

(3) Except as provided in this subsection, the department of health and family services shall promulgate rules to implement this section and prescribe a form for the certification under sub. (2) (a) 3. The department of workforce development shall promulgate rules to implement this section and prescribe a form for the certification

under sub. (2) (a) 3. with respect to day care providers that are certified under s. 48.651 (1).

(END OF INSERT)

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**SECTION 4.** 938.22 (7) (a) of the statutes is amended to read:

938.22 (7) (a) No person may establish a shelter care facility without first obtaining a license under s. 48.66 (1) (a). To obtain a license under s. 48.66 (1) (a) to operate a shelter care facility, a person must meet the minimum requirements for a license established by the department of health and family services under s. 48.67, meet the requirements specified in ~~s.~~ <sup>ss.</sup> 48.685 and 48.687, and pay the license fee under par. (b). A license issued under s. 48.66 (1) (a) to operate a shelter care facility is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

**History:** 1995 a. 27 s. 9126 (19); 1995 a. 77, 352; 1997 a. 27, 35, 252; 1999 a. 9; 2005 a. 344.

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Under current law, no person may operate a residential care center for children and youth, group home, day care center, or shelter care facility unless the person is licensed by the Department of Health and Family Services (DHFS). Similarly, no person may operate a foster home or treatment foster home unless the person is licensed by DHFS, a county department of human services or social services (county department), or a child welfare agency. Also, under current law, a county department must certify a day care provider who is not required to be licensed by DHFS in order for the day care provider to be eligible for reimbursement under the Wisconsin Works (W-2) Program. In addition, under current law, a school board may establish or contract for day care programs for children.

This bill prohibits a residential care center for children and youth, foster home, treatment foster home, group home, day care center, day care provider, day care program, or shelter care facility from using or having on a premises where care for children is provided a children's product or baby crib whose commercial use is prohibited under the bill. That prohibition, however, does not apply to an antique

or collectible children's product or baby crib that is not used by, or accessible to, any child on the premises where the care is provided.

Under the bill, before DHFS may issue an initial license to operate a residential care center for children and youth, foster home, treatment foster home, group home, day care center, or shelter care facility; before a county department may issue an initial license to operate a foster home or treatment foster home or initially certify a day care provider; before a child welfare agency may issue an initial license to operate a foster home or treatment foster home; and before a school board may initially contract with a day care program; all of the following must occur:

1. DHFS, the county department, the child welfare agency, or the school board must inspect the premises where care for children is provided to ensure compliance with the bill.

2. DHFS, the county department, the child welfare agency, or the school board must provide the residential care center for children and youth, foster home, treatment foster home, group home, day care center, day care provider, day care program, or shelter care facility with notice of the prohibitions and requirements under the bill and with the list maintained by DATCP under the bill of all children's products whose commercial use is prohibited under the bill. The notice and list must be provided in plain, nontechnical language that will enable the recipient of the notice and list to inspect the children's products and baby cribs on its premises and identify those children's products and baby cribs that are unsafe.

3. The recipient of the notice and list must review the notice and list, immediately remove from its premises any children's products and baby cribs that are unsafe, and certify that all unsafe children's products and baby cribs have been removed from its premises.

The notice and list must also be provided, and the recipient of the notice and list must also immediately remove any unsafe children's products and baby cribs from its premises, before DHFS may continue the license of a residential care center for children and youth, group home, day care center, or shelter care facility or renew the license of a foster home or treatment foster home; before a county department may renew the license of a foster home or treatment foster home or recertify a day care provider; before a child welfare agency may renew the license of a foster home or treatment foster home; before a school board may renew a contract with a day care program; three times a year during the period of the license, certification, or contract; and whenever personnel of DHFS, the county department, the child welfare agency, or the school board visit or inspect the premises where care for children is provided.

Finally, the bill requires a residential care center for children and youth, foster home, treatment foster home, group home, day care center, day care provider, day care program, or shelter care facility to maintain a file of all notices and lists provided under the bill and to permit the parent, guardian, or legal custodian of any child who is receiving care, or who is a prospective recipient of care, to inspect those notices and lists during its hours of operation.

(END OF INSERT)

(END)

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