

## Sundberg, Christopher

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**From:** Malaise, Gordon  
**Sent:** Wednesday, January 03, 2007 12:56 PM  
**To:** Sundberg, Christopher  
**Subject:** FW: Changes to LRB 0599/P1

Chris:

Here are some changes that Jessica wants to the children's products draft. I haven't retrieved it from hold or anything yet, so if you want to do your parts and then pass it on to me that would be OK with me.

Gordon

---

**From:** Kelly, Jessica  
**Sent:** Wednesday, January 03, 2007 11:00 AM  
**To:** Malaise, Gordon  
**Subject:** Changes to LRB 0599/P1

Ca you please make the following changes and then have a "regular" draft sent over for introduction? Thanks.

- 1) Remove the ability for DATCP to issue recall notices via "snail mail" to reduce the fiscal estimate.
- 2) Section 10 (2) (c) - can we state that child care facilities only need to maintain the list for one year after the product is recalled?
- ✓ 2) Section 19 1(c): Can we include manufacturing in there, not just remanufacturing(was recently added to the Illinois law)
- ✓ 3) Section 19 (2)(b)(1) - is there a way to not make this cover products that may have been retrofitted once as the provisions of the act allow, but may then be recalled for another reason - this reads as if those are exempt - even if the retrofit had nothing to do with the recall.
- ✓ 4) Section 19 (2) (d): the last phrase may need to be reworked. Sometimes the fix for the recall isn't the return of the product, but getting a repair kit or removing one part and using the product without it. Perhaps it could read: "...that the children's product is unsafe and giving instructions for complying with the recall or warning."
- 5) Page 9 Section 3...can we state that the recipient of the recall notices fill out a form stating that they have removed recalled products from their facility and have that form ready for the department to pick up and file at the date of their recertification or relicensure?
- 6) Page 9 Section 3b...can we take out the "three times a year" provision? We are assuming that daycare providers will be vigilant about removing recalled products, and get these products via listserve through the Consumer Product Safety Commission when they are announced...the timelines are confusing. We'll just mandate that the licensing department will pick up and file the notification sheets during recertification/relicensure.

**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

## Sundberg, Christopher

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**From:** Kelly, Jessica  
**Sent:** Friday, January 05, 2007 9:21 AM  
**To:** Sundberg, Christopher  
**Subject:** RE: Changes to LRB 0599/P1

Yes. They still have to compile the notices, but can decide how to do that through administrative rule. I think most likely we will ask providers who have internet access to subscribe to the Consumer Product Safety Commission's listserv on recalls. I have been subscribing to it for a few months and it's pretty good. DATCP is afraid if they have to have two separate lists - one for emailing providers and another for doing large mailings to providers, the fiscal will skyrocket. Those providers without computers could check with their CCR&R agencies... DATCP is suggesting that they find the CPSC information as a "cost of doing business".

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**From:** Sundberg, Christopher  
**Sent:** Friday, January 05, 2007 9:13 AM  
**To:** Kelly, Jessica  
**Subject:** FW: Changes to LRB 0599/P1

Can you clarify something?

1) Remove the ability for DATCP to issue recall notices via "snail mail" to reduce the fiscal estimate.

By 'notices' do you mean the list under proposed s. 100.375 (2) (c) (page 14)?

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1) Remove the ability for DATCP to issue recall notices via "snail mail" to reduce the fiscal estimate.

2) Section 10 (2) (c) - can we state that child care facilities only need to maintain the list for one year after the product is

recalled?

- 2) Section 19 1(c): Can we include manufacturing in there, not just remanufacturing(was recently added to the Illinois law)
- 3) Section 19 (2)(b)(1) - is there a way to not make this cover products that may have been retrofitted once as the provisions of the act allow, but may then be recalled for another reason - this reads as if those are exempt - even if the retrofit had nothing to do with the recall.
- 4) Section 19 (2) (d): the last phrase may need to be reworked. Sometimes the fix for the recall isn't the return of the product, but getting a repair kit or removing one part and using the product without it. Perhaps it could read: "...that the children's product is unsafe and giving instructions for complying with the recall or warning."
- 5) Page 9 Section 3...can we state that the recipient of the recall notices fill out a form stating that they have removed recalled products from their facility and have that form ready for the department to pick up and file at the date of their recertification or relicensure?
- 6) Page 9 Section 3b...can we take out the "three times a year" provision? We are assuming that daycare providers will be vigilant about removing recalled products, and get these products via listserv through the Consumer Product Safety Commission when they are announced...the timelines are confusing. We'll just mandate that the licensing department will pick up and file the notification sheets during recertification/relicensure.

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**Malaise, Gordon**

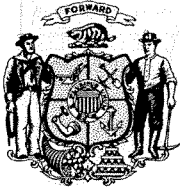
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- UP 5) Page 9 Section 3...can we state that the recipient of the recall notices fill out a form stating that they have removed recalled products from their facility and have that form ready for the department to pick up and file at the date of their recertification or relicensure? *this is initial certification - recertification covered in para. (b)*
- GM 6) Page 9 Section 3b...can we take out the "three times a year" provision? We are assuming that daycare providers will be vigilant about removing recalled products, and get these products via listserve through the Consumer Product Safety Commission when they are announced...the timelines are confusing. We'll just mandate that the licensing department will pick up and file the notification sheets during recertification/relicensure.

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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0599/PT

CTS&GMM:kjf:ng

RAMR

DRAFT

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2007 BILL

Regen

1 AN ACT to amend 48.60 (1), 48.625 (1), 48.65 (1), 48.651 (1) (intro.), 48.657 (1)  
2 (a), 48.657 (1) (b), 48.657 (2g), 48.66 (5), 48.68 (1), 48.69, 48.715 (2) (c), 48.715  
3 (2) (d), 48.715 (2) (f), 48.715 (3) (intro.), 48.715 (4) (a), 48.715 (4) (b), 48.715 (4)  
4 (d) and 938.22 (7) (a); and to create 48.687 and 100.375 of the statutes;  
5 relating to: regulation of unsafe children's products, extending the time limit  
6 for and providing an exemption from emergency rule procedures, requiring the  
7 exercise of rule-making authority, and providing a penalty.

SALES  
*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

The provisions of the bill apply to persons who sell, lease, manufacture, or remanufacture children's products (commercial suppliers).

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. 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.

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

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

*NO PP* A list provided under the bill must be retained by its recipient for one year after the date of its receipt.

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.

*(and lists retained)*

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

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

1

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

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

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

11           48.625 (1) Any person who receives, with or without transfer of legal custody,  
12 5 to 8 children, not including children who under sub. (1m) are not counted toward  
13 that number, to provide care and maintenance for those children shall obtain a  
14 license to operate a group home from the department. To obtain a license under this  
15 subsection to operate a group home, a person must meet the minimum requirements  
16 for a license established by the department under s. 48.67, meet the requirements  
17 specified in ~~s.~~ ss. 48.685 and 48.687, and pay the license fee under sub. (2). A license  
18 issued under this subsection is valid until revoked or suspended, but shall be  
19 reviewed every 2 years as provided in s. 48.66 (5).

20           **SECTION 3.** 48.65 (1) of the statutes is amended to read:

21           48.65 (1) No person may for compensation provide care and supervision for 4  
22 or more children under the age of 7 for less than 24 hours a day unless that person  
23 obtains a license to operate a day care center from the department. To obtain a  
24 license under this subsection to operate a day care center, a person must meet the  
25 minimum requirements for a license established by the department under s. 48.67,



1 meet the requirements specified in s. ss. 48.685 and 48.687, and pay the license fee  
2 under sub. (3). A license issued under this subsection is valid until revoked or  
3 suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

4 **SECTION 4.** 48.651 (1) (intro.) of the statutes is amended to read:

5 48.651 (1) (intro.) Each county department shall certify, according to the  
6 standards adopted by the department of workforce development under s. 49.155 (1d),  
7 each day care provider reimbursed for child care services provided to families  
8 determined eligible under s. 49.155, unless the provider is a day care center licensed  
9 under s. 48.65 or is established or contracted for under s. 120.13 (14). Each county  
10 may charge a fee to cover the costs of certification. To be certified under this section,  
11 a person must meet the minimum requirements for certification established by the  
12 department of workforce development under s. 49.155 (1d), meet the requirements  
13 specified in s. ss. 48.685 and 48.687, and pay the fee specified in this section. The  
14 county shall certify the following categories of day care providers:

15 **SECTION 5.** 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. 48.687 (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 6.** 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. 48.687 (3) or 48.67, or provision of licensure under s. 48.70 (1) by the day care  
24 center.

25 **SECTION 7.** 48.657 (2g) of the statutes is amended to read:

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. 48.687 (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 8.** 48.66 (5) of the statutes is amended to read:

6           48.66 (5) A child welfare agency, group home, day care center or shelter care  
7 facility license, other than a probationary license, is valid until revoked or  
8 suspended, but shall be reviewed every 2 years after the date of issuance as provided  
9 in this subsection. At least 30 days prior to the continuation date of the license, the  
10 licensee shall submit to the department an application for continuance of the license  
11 in the form and containing the information that the department requires. If the  
12 minimum requirements for a license established under s. 48.67 are met, the  
13 application is approved, the applicable fees referred to in ss. 48.68 (1) and 48.685 (8)  
14 are paid and, any forfeiture under s. 48.715 (3) (a) or penalty under s. 48.76 that is  
15 due is paid, and the actions required under s. 48.658 (2) (b) are completed, the  
16 department shall continue the license for an additional 2-year period, unless sooner  
17 suspended or revoked. If the application is not timely filed, the department shall  
18 issue a warning to the licensee. If the licensee fails to apply for continuance of the  
19 license within 30 days after receipt of the warning, the department may revoke the  
20 license as provided in s. 48.715 (4) and (4m) (b).

21           **SECTION 9.** 48.68 (1) of the statutes is amended to read:

22           48.68 (1) After receipt of an application for a license, the department shall  
23 investigate to determine if the applicant meets the minimum requirements for a  
24 license adopted by the department under s. 48.67 and meets the requirements  
25 specified in s. ss. 48.685 and 48.687, if applicable. In determining whether to issue

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

13 **SECTION 10.** 48.687 of the statutes is created to read:

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

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

6 (2) (a) Before the department may issue an initial license for a child welfare  
7 agency to operate a residential care center for children and youth under s. 48.60 (1)  
8 or issue an initial license to operate a foster home or treatment foster home under  
9 s. 48.62 (1), group home under s. 48.625 (1), day care center under s. 48.65 (1), or  
10 shelter care facility under s. 938.22 (7) (a); before a county department may issue an  
11 initial license to operate a foster home or treatment foster home under s. 48.62 (1)  
12 or initially certify a day care provider under s. 48.651 (1); before a child welfare  
13 agency may issue an initial license to operate a foster home or treatment foster home  
14 under s. 48.62 (1); and before a school board may initially contract with a day care  
15 program under s. 120.13 (14); all of the following shall occur:

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

19 2. The department, county department, child welfare agency, or school board  
20 shall provide the residential care center for children and youth, foster home,  
21 treatment foster home, group home, day care center, day care provider, day care  
22 program, or shelter care facility with notice of the prohibitions under sub. (1), the  
23 requirements under s. 100.375 (2) (a) relating to children's products, and the  
24 requirements under s. 100.375 (4) and (5) relating to baby cribs and with a copy of  
25 the list of unsafe children's products maintained under s. 100.375 (2) (c) in plain,

no #

A list provided under this subdivision shall be retained by the recipient of the list for one year after the date of receipt of the list.

1 nontechnical language that will enable the recipient of the notice and list to inspect  
2 children's products and baby cribs on its premises and identify children's products  
3 and baby cribs that are unsafe. The notice and list provided under this subdivision  
4 may be provided by electronic mail.

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

12 (b) Before the department may continue a license for a child welfare agency to  
13 operate a residential care center for children and youth, renew a license to operate  
14 a foster home or treatment foster home, or continue a license to operate a group home,  
15 day care center, or shelter care facility; before a county department may renew a  
16 license to operate a foster home or treatment foster home or recertify a day care  
17 provider; before a child welfare agency may renew a license to operate a foster home  
18 or treatment foster home; before a school board may renew a contract with a day care  
19 program; ~~8 times a year during the period of the license, certification, or contract~~ and  
20 whenever personnel of the department, county department, child welfare agency, or  
21 school board visit or inspect the premises where care for children is provided; the  
22 department, county department, child welfare agency, or school board shall provide  
23 the residential care center for children and youth, foster home, treatment foster  
24 home, group home, day care center, day care provider, day care program, or shelter

*no #*  
*A list provided under this paragraph shall be retained by the recipient of the list for one year after the date of receipt of the list.*

*and lists retained*

1 care facility with the notice and list under par. (a) 2., and the person provided with  
 2 the notice and list shall take the actions specified in par. (a) 3.

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

11 (3) Except as provided in this subsection, the department of health and family  
 12 services shall promulgate rules to implement this section and prescribe a form for  
 13 the certification under sub. (2) (a) 3. The department of workforce development shall  
 14 promulgate rules to implement this section and prescribe a form for the certification  
 15 under sub. (2) (a) 3. with respect to day care providers that are certified under s.  
 16 48.651 (1).

17 **SECTION 11.** 48.69 of the statutes is amended to read:

18 **48.69 Probationary licenses.** Except as provided under s. 48.715 (6) and (7),  
 19 if any child welfare agency, shelter care facility, group home, or day care center that  
 20 has not been previously issued a license under s. 48.66 (1) (a) applies for a license,  
 21 meets the minimum requirements for a license established under s. 48.67, meets the  
 22 requirements specified in s. 48.687, and pays the applicable fee referred to in s. 48.68  
 23 (1), the department shall issue a probationary license to that child welfare agency,  
 24 shelter care facility, group home, or day care center. A probationary license is valid  
 25 for up to 6 months after the date of issuance unless renewed under this section or

1 suspended or revoked under s. 48.715. Before a probationary license expires, the  
2 department shall inspect the child welfare agency, shelter care facility, group home,  
3 or day care center holding the probationary license and, except as provided under s.  
4 48.715 (6) and (7), if the child welfare agency, shelter care facility, group home, or day  
5 care center meets the minimum requirements for a license established under s. 48.67  
6 and meets the requirements specified in s. 48.687, the department shall issue a  
7 license under s. 48.66 (1) (a). A probationary license issued under this section may  
8 be renewed for one 6-month period.

9 **SECTION 12.** 48.715 (2) (c) of the statutes is amended to read:

10 48.715 (2) (c) That a licensee stop violating any provision of licensure under s.  
11 48.70 (1) or rules promulgated by the department under s. 48.687 (3) or 48.67.

12 **SECTION 13.** 48.715 (2) (d) of the statutes is amended to read:

13 48.715 (2) (d) That a licensee submit a plan of correction for violation of any  
14 provision of licensure under s. 48.70 (1) or rule promulgated by the department under  
15 s. 48.687 (3) or 48.67.

16 **SECTION 14.** 48.715 (2) (f) of the statutes is amended to read:

17 48.715 (2) (f) That a licensee close the intake of any new children until all  
18 violations of the provisions of licensure under s. 48.70 (1) and the rules promulgated  
19 by the department under s. 48.687 (3) or 48.67 are corrected.

20 **SECTION 15.** 48.715 (3) (intro.) of the statutes is amended to read:

21 48.715 (3) (intro.) If the department provides written notice of the grounds for  
22 a penalty, an explanation of the types of penalties that may be imposed under this  
23 subsection, and an explanation of the process for appealing a penalty imposed under  
24 this subsection, the department may impose any of the following penalties against  
25 a licensee or any other person who violates a provision of licensure under s. 48.70 (1)

1 or rule promulgated by the department under s. 48.687 (3) or 48.67 or who fails to  
2 comply with an order issued under sub. (2) by the time specified in the order:

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

4 48.715 (4) (a) The department has imposed a penalty on the licensee under sub.  
5 (3) and the licensee or a person under the supervision of the licensee either continues  
6 to violate or resumes violation of a rule promulgated under s. 48.687 (3) or 48.67, a  
7 provision of licensure under s. 48.70 (1), or an order under this section forming any  
8 part of the basis for the penalty.

9 **SECTION 17.** 48.715 (4) (b) of the statutes is amended to read:

10 48.715 (4) (b) The licensee or a person under the supervision of the licensee has  
11 committed a substantial violation, as determined by the department, of a rule  
12 promulgated under s. 48.687 (3) or 48.67, a provision of licensure under s. 48.70 (1),  
13 or an order under this section.

14 **SECTION 18.** 48.715 (4) (d) of the statutes is amended to read:

15 48.715 (4) (d) The licensee or a person under the supervision of the licensee has  
16 violated, as determined by the department, a rule promulgated under s. 48.687 (3)  
17 or 48.67, a provision of licensure under s. 48.70 (1), or an order under this section that  
18 is the same as or similar to a rule promulgated under s. 48.687 (3) or 48.67, a  
19 provision of licensure under s. 48.70 (1), or an order under this section that the  
20 licensee or a person under the supervision of the licensee has violated previously.

21 **SECTION 19.** 100.375 of the statutes is created to read:

22 **100.375 Children's products. (1) DEFINITIONS.** In this section:

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

24 (b) "Children's product" means a product that is designed principally for the  
25 care of, or use by, children under 12 years of age. "Children's products" include baby



1 cribs; baby and toddler furniture; apparel; bath seats; baby walkers, baby jumpers,  
2 and similar devices; gates for containing children; car seats; strollers and other  
3 devices for transporting children; play equipment; and toys. "Children's products"  
4 do not include food, medicine, or any other products that are designed to be ingested,  
5 injected, or otherwise applied to the human body.

6 (c) "Commercial supplier" means a person who is in the business of selling,  
7 leasing, remanufacturing, retrofitting, or otherwise putting into commercial use a  
8 children's product. <sup>manufacturing</sup> "Commercial supplier" includes a person who is in the business  
9 of selling or leasing used merchandise, if the merchandise regularly includes  
10 children's products, but does not include a person who sells or leases a children's  
11 product on an occasional basis.

12 (d) "Consumer" means an individual who purchases or otherwise acquires a  
13 children's product for personal or family use or a child care provider, as defined in s.  
14 49.001 (1), that purchases or otherwise acquires a children's product for use in  
15 providing child care.

16 (e) "Full-size baby crib" means a full-size baby crib, as defined in 16 CFR Part  
17 1508.

18 (f) "Infant" means any child less than 35 inches tall and less than 3 years of age.

19 (g) "Lease" means to lease or sublease, offer to lease or sublease, or contract to  
20 lease or sublease.

21 (h) "Nonfull-size baby crib" means a nonfull-size baby crib, as defined in 16  
22 CFR Part 1509.

23 (i) "Sell" means to sell, to resell, or to offer to sell or resell, or to contract to sell  
24 or resell.

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

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

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

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

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

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

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

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

23 (d) If a product that has been sold by a commercial supplier is included in the  
24 list maintained under par. (c), the commercial supplier shall post in a conspicuous

providing instructions for customers who purchased the product

indicating

(1) location at the commercial supplier's place of business a notice to customers that the  
(2) children's product is unsafe and should be returned to the commercial supplier

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

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

13 (c) The notice under par. (b) shall include all of the following:  
14 1. The name and model of the children's product.  
15 2. A declaration that the children's product is safe for use by a child who meets  
16 the conditions specified by the manufacturer of the children's product.  
17 3. A description of the original problem that required that the children's  
18 product be recalled or that required a warning to be issued concerning the children's  
19 product.

20 4. A description of the retrofit that explains how the original problem has been  
21 eliminated.

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

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

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.

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 20.** 938.22 (7) (a) of the statutes is amended to read:

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

15           **SECTION 21. Nonstatutory provisions.**

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

17           (a) *Proposed rules.* The department of agriculture, trade and consumer  
18 protection shall submit in proposed form the rules required under section 100.375  
19 (6) of the statutes, as created by this act, and the department of health and family  
20 services and the department of workforce development shall submit in proposed form  
21 the rules required under section 48.687 (3) of the statutes, as created by this act, to  
22 the legislative council staff under section 227.15 (1) of the statutes no later than the  
23 first day of the 7th month beginning after the effective date of this subsection.  
24 Notwithstanding section 227.137 (2) of the statutes, the secretary of administration  
25 may not require the department of agriculture, trade and consumer protection, the

1 department of health and family services, or the department of workforce  
2 development to prepare an economic impact report for the rules required under  
3 sections 100.375 (6) and 48.687 (3) of the statutes, as created by this act.

4 (b) *Emergency rules.* Using the procedure under section 227.24 of the statutes,  
5 the department of agriculture, trade and consumer protection shall promulgate the  
6 rules required under section 100.375 (6) of the statutes, as created by this act, and  
7 the department of health and family services and the department of workforce  
8 development shall promulgate the rules required under section 48.687 (3) of the  
9 statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the  
10 statutes, emergency rules promulgated under this paragraph remain in effect until  
11 the first day of the 19th month after the effective date of this subsection or the date  
12 on which permanent rules take effect, whichever is sooner. Notwithstanding section  
13 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of agriculture, trade and  
14 consumer protection, the department of health and family services, and the  
15 department of workforce development are not required to provide evidence that  
16 promulgating a rule under this subsection as an emergency rule is necessary for the  
17 preservation of the public peace, health, safety, or welfare and are not required to  
18 provide a finding of emergency for a rule promulgated under this paragraph.

19 **SECTION 22. Effective dates.** This act takes effect on the first day of the 12th  
20 month beginning after publication, except as follows:

21 (1) **RULES.** SECTION 21 (1) of this act takes effect on the day after publication.

22 (END)

D-Note

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

DNOTE

Date

LRB-0599/ldm  
Gmm:kjf

Jessica:

With respect to item <sup>5</sup> of your redraft instructions,  
= change (a)

in which you inquire whether we can change s. 48.687 (2)(a) 3,

to require the certification <sup>form</sup> to be filed on the date of

relicensure, s. 48.687 (2)(a) 3. deals with <sup>(2)</sup> initial <sup>(I)</sup>

license, <sup>so</sup> in that provision the certification form must be

filed before the initial license is granted. Relicensure is

dealt with in s. 48.687 (2)(b), which already requires the

form to be filed before relicensure and whenever the <sup>premises</sup>

are  
are visited or inspected.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0599/1dn  
CTS&GMM:kjf:pg

January 12, 2007

Jessica:

With respect to item 5 of your redraft instructions, in which you inquire whether we can change s. 48.687 (2) (a) 3. to require the certification form to be filed on the date of relicensure, s. 48.687 (2) (a) 3. deal with *initial* licensure, so in that provision the certification form must be filed before the initial license is granted. Relicensure is dealt with in s. 48.687 (2) (b), which already requires the form to be filed before relicensure and whenever the premises are visited or inspected.

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**Duerst, Christina**

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**From:** Kelly, Jessica  
**Sent:** Tuesday, January 23, 2007 4:33 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-0599/1 Topic: Children's product safety

Please Jacket LRB 07-0599/1 for the SENATE.