



House of Representatives

General Assembly

File No. 238

February Session, 2008

Substitute House Bill No. 5650

House of Representatives, March 27, 2008

The Committee on General Law reported through REP. STONE of the 9th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CHILD PRODUCT SAFETY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-335 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 For the purposes of this section, [and] sections 21a-336 to 21a-346,
4 inclusive, and sections 4 to 6, inclusive, of this act unless specifically
5 otherwise provided:

6 (a) "Agency" means the Department of Consumer Protection;

7 (b) "Administrator" means the Commissioner of Consumer
8 Protection or his legally authorized representative or agent;

9 (c) "Person" includes an individual, partnership, corporation,
10 limited liability company or association, or his or its legal
11 representative or agent;

12 (d) "Commerce" means any and all commerce within the state of

13 Connecticut and subject to the jurisdiction thereof; and includes the
14 operation of any business or service establishment;

15 (e) "Hazardous substance" means: (1) (A) Any substance or mixture
16 of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is
17 a strong sensitizer, (v) is flammable or combustible, or (vi) generates
18 pressure through decomposition, heat or other means, if such
19 substance or mixture of substances may cause substantial personal
20 injury or substantial illness during or as a proximate result of any
21 customary or reasonably foreseeable handling or use, including
22 reasonably foreseeable ingestion by children; (B) any substances which
23 the administrator by regulation finds meet the requirements of
24 subdivision (1) (A) of this subsection pursuant to the provisions of
25 subsections (b) and (c) of section 21a-336; (C) any substance classified
26 as a hazardous substance pursuant to federal regulations adopted
27 under the authority of the federal Hazardous Substances Act (15 USC
28 1261 et seq.); (D) any radioactive substance, if, with respect to such
29 substance as used in a particular class of article or as packaged, the
30 administrator determines by regulation that the substance is
31 sufficiently hazardous to require labeling in accordance with this
32 section and sections 21a-336 to 21a-346, inclusive, in order to protect
33 the public health; (E) any toy or other article intended for use by
34 children which the administrator by regulation determines in
35 accordance with subsection (a) or (b) of section 21a-336 presents an
36 electrical, mechanical or thermal hazard; (2) "hazardous substance"
37 shall not apply to economic poisons subject to the federal Insecticide,
38 Fungicide and Rodenticide Act or chapter 441 nor to foods, drugs and
39 cosmetics subject to chapter 418, nor to substances intended for use as
40 fuels when stored in containers and used in the heating, cooking or
41 refrigeration system of a house, but such term shall apply to any article
42 which is not itself an economic poison within the meaning of the
43 federal Insecticide, Fungicide and Rodenticide Act or said chapter 441
44 but which is a hazardous substance within the meaning of subdivision
45 (1) of this subsection by reason of bearing or containing such an
46 economic poison; (3) "hazardous substance" shall not include any
47 source material, special nuclear material or by-product material as

48 defined in the Atomic Energy Act of 1954, as amended, and
49 regulations issued pursuant thereto by the Atomic Energy
50 Commission;

51 (f) "Toxic" shall apply to any substance, other than a radioactive
52 substance, which has the capacity to produce personal injury or illness
53 to man through ingestion, inhalation or absorption through any body
54 surface;

55 (g) (1) "Highly toxic" means any substance which falls within any of
56 the following categories: (A) Produces death within fourteen days in
57 half or more than half of a group of ten or more laboratory white rats
58 each weighing between two hundred and three hundred grams, at a
59 single dose of fifty milligrams or less per kilogram of body weight,
60 when orally administered; or (B) produces death within fourteen days
61 in half or more than half of a group of ten or more laboratory white
62 rats each weighing between two hundred and three hundred grams,
63 when inhaled continuously for a period of one hour or less at an
64 atmosphere concentration of two hundred parts per million by volume
65 or less of gas or vapor or two milligrams per liter by volume or less of
66 mist or dust, provided such concentration is likely to be encountered
67 by man when the substance is used in any reasonably foreseeable
68 manner; or (C) produces death within fourteen days in half or more
69 than half of a group of ten or more rabbits tested in a dosage of two
70 hundred milligrams or less per kilogram of body weight, when
71 administered by continuous contact with the bare skin for twenty-four
72 hours or less; (2) if the administrator finds that available data on
73 human experience with any substance indicate results different from
74 those obtained on animals in the above-named dosages or
75 concentrations, the human data shall take precedence;

76 (h) "Corrosive" means any substance which in contact with living
77 tissue will cause destruction of tissue by chemical action; but shall not
78 refer to action on inanimate surfaces;

79 (i) "Irritant" means any substance not corrosive within the meaning
80 of subsection (h) which on immediate, prolonged or repeated contact

81 with normal living tissue will induce a local inflammatory reaction;

82 (j) "Strong sensitizer" means a substance which will cause on normal
83 living tissue, through an allergic or photodynamic process, a
84 hypersensitivity which becomes evident on reapplication of the same
85 substances and which is designated as such by the administrator.
86 Before designating any substance as a strong sensitizer, the
87 administrator, upon consideration of the frequency of occurrence and
88 severity of the reaction, shall find that the substance has a significant
89 potential for causing hypersensitivity;

90 (k) "Extremely flammable" shall apply to any substance which has a
91 flash point at or below twenty degrees Fahrenheit as determined by
92 the Tagliabue Open Cup Tester, "flammable" shall apply to any
93 substance which has a flash point of above twenty degrees to and
94 including eighty degrees Fahrenheit, as determined by the Tagliabue
95 Open Cup Tester and "combustible" shall apply to any substance
96 which has a flash point above eighty degrees to and including one
97 hundred and fifty degrees Fahrenheit, as determined by the Tagliabue
98 Open Cup Tester, except that the flammability or combustibility of
99 solids and of the contents of self-pressurized containers shall be
100 determined by methods found by the administrator to be generally
101 applicable to such materials or containers, respectively, and
102 established by regulations issued by him, which regulations shall also
103 define the terms "flammable" and "combustible" and "extremely
104 flammable" in accord with such methods;

105 (l) "Radioactive substance" means a substance which emits ionizing
106 radiation;

107 (m) "Label" means a display of written, printed or graphic matter
108 upon the immediate container of any substance or, in the case of an
109 article which is unpackaged or is not packaged in an immediate
110 container intended or suitable for delivery to the ultimate consumer, a
111 display of such matter directly upon the article involved or upon a tag
112 or other suitable material affixed thereto, and a requirement made by
113 or under authority of this section and sections 21a-336 to 21a-346,

114 inclusive, that any word, statement or other information appear on the
115 label shall not be considered to be complied with unless such word,
116 statement or other information also appears (1) on the outside
117 container or wrapper, if any there be, unless it is easily legible through
118 the outside container or wrapper and (2) on all accompanying
119 literature where there are directions for use, written or otherwise;

120 (n) "Immediate container" does not include package liners;

121 (o) "Misbranded hazardous substance" means a hazardous
122 substance, including a toy, or other article intended for use by
123 children, which is a hazardous substance, or which bears or contains a
124 hazardous substance in such manner as to be susceptible of access by a
125 child to whom such toy or other article is entrusted, intended, or
126 packaged in a form suitable, for use in the household or by children,
127 which substance, except as otherwise provided by or pursuant to
128 section 21a-336, fails to bear a label (1) which states conspicuously (A)
129 the name and place of business of the manufacturer, packer,
130 distributor or seller; (B) the common or usual name or the chemical
131 name, if there is no common or usual name, of the hazardous
132 substance or of each component which contributes substantially to its
133 hazard, unless the administrator by regulation permits or requires the
134 use of a recognized generic name; (C) the signal word "danger" on
135 substances which are extremely flammable, corrosive or highly toxic;
136 (D) the signal word "warning" or "caution" on all other hazardous
137 substances; (E) an affirmative statement of the principal hazard or
138 hazards, such as "Flammable", "Combustible", "Vapor Harmful",
139 "Causes Burns", "Absorbed Through Skin" or similar wording
140 descriptive of the hazard; (F) precautionary measures describing the
141 action to be followed or avoided, except when modified by regulation
142 of the administrator pursuant to section 21a-336; (G) instruction, when
143 necessary or appropriate, for first-aid treatment; (H) the word "poison"
144 for any hazardous substance which is defined as "highly toxic" by
145 subsection (g); (I) instructions for handling and storage of packages
146 which require special care in handling or storage; and (J) the statement
147 (i) "Keep out of the reach of children" or its practical equivalent or, (ii)

148 if the article is intended for use by children and is not a banned
149 hazardous substance, adequate directions for the protection of children
150 from the hazard, and (2) on which any statements required under
151 subdivision (1) of this subsection are located prominently and are in
152 the English language in conspicuous and legible type in contrast by
153 typography, layout or color with other printed matter on the label;

154 (p) "Banned hazardous substance" means (A) any toy, or other
155 article intended for use by children, which is a hazardous substance, or
156 which bears or contains a hazardous substance in such manner as to be
157 susceptible of access by a child to whom such toy or other article is
158 entrusted; (B) any children's product with greater than forty parts per
159 million total lead content by weight for any part of the product; (C)
160 any children's product with lead-containing paint greater than forty
161 parts per million total lead content; (D) any children's product with
162 greater than .004 milligrams of lead per centimeter squared; (E) any
163 hazardous substance intended, or packaged in a form suitable, for use
164 in a household, classified, pursuant to section 21a-336 or pursuant to
165 federal regulations adopted under authority of the federal Hazardous
166 Substances Act (15 USC 1261 et seq.), as a "banned hazardous
167 substance" that, notwithstanding such cautionary labeling as is or may
168 be required under this section and sections 21a-336 to 21a-346,
169 inclusive, for that substance, the degree or nature of the hazard
170 involved in the presence or use of such substance in households is
171 such that the objective of the protection of the public health and safety
172 can be adequately served only by keeping such substance, when so
173 intended or packaged, out of the channels of commerce; provided the
174 administrator, by regulations adopted in accordance with chapter 54,
175 shall exempt from subparagraph (A) of this subdivision articles, such
176 as chemical sets, which by reason of their functional purpose require
177 the inclusion of the hazardous substance involved or necessarily
178 present in electrical, mechanical or thermal hazard and which bear
179 labeling giving adequate directions and warnings for safe use and are
180 intended for use by children who have attained sufficient maturity,
181 and may reasonably be expected, to read and heed such directions and
182 warnings; [(C)] (F) any new wood-burning stove, coal-burning stove,

183 solid fuel add-on units or combination of such stoves and units, which
184 is offered for sale or installed in any building, dwelling or structure in
185 this state on or after July 1, 1985, and which has not been tested in
186 accordance with Underwriter's Laboratory Standard Number 1482;
187 [(D)] (G) any new unvented fuel-burning room heater offered for sale
188 or use in any building, dwelling or structure in this state on or after
189 July 1, 1985, which has not been tested in accordance with
190 Underwriter's Laboratory Standard Number 647 for unvented
191 kerosene heaters and American National Standards Institute Standard
192 Number Z21.11.2 for unvented gas heaters;

193 (q) An article may be determined to present an electrical hazard if,
194 in normal use or when subjected to reasonably foreseeable damage or
195 abuse, its design or manufacture may cause personal injury or illness
196 by electric shock;

197 (r) An article may be determined to present a mechanical hazard if,
198 in normal use or when subjected to reasonably foreseeable damage or
199 abuse, its design or manufacture presents an unreasonable risk of
200 personal injury or illness (1) from fracture, fragmentation or
201 disassembly of the article, (2) from propulsion of the article, or any
202 part or accessory thereof, (3) from points or other protrusions, surfaces,
203 edges, openings or closures, (4) from moving parts, (5) from lack or
204 insufficiency of controls to reduce or stop motion, (6) as a result of self-
205 adhering characteristics of the article, (7) because the article, or any
206 part or accessory thereof, may be aspirated or ingested, (8) because of
207 instability, or (9) because of any other aspect of the article's design or
208 manufacture;

209 (s) An article may be determined to present a thermal hazard if, in
210 normal use or when subjected to reasonably foreseeable damage or
211 abuse, its design or manufacture presents an unreasonable risk of
212 personal injury or illness because of heat as from heated parts,
213 substances or surfaces;

214 (t) "Drying oil" means linseed oil, tung oil, perilla oil or other oils
215 which are found to contain a substantial proportion of fatty acids with

216 three double molecular bonds;

217 (u) "Drying oil product" means a wood treatment or wood finish
218 product containing a drying oil;

219 (v) "Children's product" means a consumer product designed or
220 intended primarily for children under age twelve, including, but not
221 limited to, clothing, accessories, jewelry, decorative object, candy, food,
222 dietary supplements or other edible or chewable items, toys, furniture
223 or other articles used by or intended to be used by children;

224 (w) "Consumer product" means any article used primarily for
225 personal, family or household purposes;

226 (x) "Paint and other similar surface-coating materials" means a fluid,
227 semi-fluid or other material, with or without a suspension of finely
228 divided coloring matter, which changes to a solid film when a thin
229 layer is applied to a metal, wood, stone, paper, leather, cloth, plastic or
230 other surface. The term does not include printing inks or those
231 materials that actually become a part of the substrate, such as the
232 pigment in a plastic article or those materials that are actually bonded
233 to the substrate, such as by electroplating or ceramic glazing;

234 (y) "Lead-containing paint" means paint or other similar surface
235 coating materials containing any detectable amount of lead or lead
236 compounds.

237 Sec. 2. Section 21a-337 of the general statutes is repealed and the
238 following is substituted in lieu thereof (*Effective October 1, 2008*):

239 (a) The following acts and the causing thereof are prohibited: (1)
240 The introduction or delivery for introduction into commerce of any
241 misbranded hazardous substance or banned hazardous substance; (2)
242 the manufacturing, remanufacturing, retrofitting, distributing, selling
243 at wholesale or retail, contracting to sell or resell, lease, sublet or
244 otherwise place in the stream of commerce: (A) Any children's product
245 that has been designated a banned hazardous substance under this
246 chapter or the Federal Hazardous Substances Act; (B) any children's

247 product that has been subject to voluntary corrective action taken by
248 the manufacturer, wholesaler, distributor or importer, or has been
249 recalled by the manufacturer, wholesaler, distributor or importer in
250 cooperation with an agency of the federal government and the recall
251 has not been rescinded and the defect in the product has not been
252 corrected; or (C) any children's product that is not otherwise in
253 conformity with applicable consumer safety product standards under
254 this chapter, or any similar rule under another chapter of the general
255 statutes or any federal laws or regulations; (3) the alteration,
256 mutilation, destruction, obliteration or removal of the whole or any
257 part of the label of, or the doing of any other act with respect to, a
258 hazardous substance if such act is done while the substance is in
259 commerce, or while the substance is held for sale, whether or not the
260 first sale, after shipment in commerce, and results in the hazardous
261 substance being a misbranded hazardous substance or a banned
262 hazardous substance; [(3)] (4) the receipt in commerce of any
263 misbranded hazardous substance or banned hazardous substance and
264 the delivery or proffered delivery thereof for pay or otherwise; [(4)] (5)
265 the giving of a guarantee or undertaking referred to in subdivision (2)
266 of subsection (b) of section 21a-338 which guarantee or undertaking is
267 false, except by a person who relied upon a guarantee or undertaking
268 to the same effect signed by, and containing the name and address of,
269 the person residing in the United States from whom he received in
270 good faith the hazardous substance; [(5)] (6) the failure to permit entry
271 or inspection as authorized by subsection (a) of section 21a-343 or to
272 permit access to and copying of any record as authorized by section
273 21a-344; [(6)] (7) the introduction or delivery for introduction into
274 commerce, or the receipt in commerce and subsequent delivery or
275 proffered delivery for pay or otherwise, of a hazardous substance in a
276 reused food, drug or cosmetic container or in a container which,
277 though not a reused container, is identifiable as a food, drug or
278 cosmetic container by its labeling or by other identification. The reuse
279 of a food, drug or cosmetic container as a container for a hazardous
280 substance shall be deemed to be an act which results in the hazardous
281 substance being a misbranded hazardous substance. As used in this

282 subdivision, the terms "food", "drug" and "cosmetic" shall have the
283 same meanings as in the Connecticut Food, Drug and Cosmetic Act;
284 [(7)] (8) the use by any person to his own advantage, or revealing other
285 than to the administrator or officers or employees of the agency, or to
286 the courts when relevant in any judicial proceeding under sections 21a-
287 335 to 21a-346, inclusive, of any information acquired under authority
288 of section 21a-343 concerning any method of process which as a trade
289 secret is entitled to protection; [(8)] (9) the introduction or delivery for
290 introduction into commerce of any item containing asbestos which
291 reasonably may be expected to be used in the construction or repair of
292 structures, without clearly indicating by labeling thereon that the item
293 contains asbestos and that asbestos may cause cancer when inhaled;
294 [(9)] (10) the alteration or removal of any item upon which the
295 commissioner or his authorized agent has placed an embargo prior to
296 the time the commissioner, such agent or a court permits the alteration
297 or removal of such item; [(10)] (11) the introduction or delivery for
298 introduction into commerce, after December 31, 1992, of any toy or
299 other article for sale in this state and marketed for the use of children
300 between the ages of three and seven, or determined to be for the use of
301 children between the ages of three and seven by the federal Consumer
302 Product Safety Commission pursuant to 16 CFR Part 1500 et seq., as
303 published in the Code of Federal Regulations Revised to January 1,
304 1991, and as from time to time amended, or the Commissioner of
305 Consumer Protection pursuant to sections 21a-335 to 21a-346,
306 inclusive, which would be classified as a banned hazardous substance
307 under 16 CFR Part 1501.4(b)(1) of said code and does not bear a
308 conspicuous warning label that clearly and specifically communicates
309 that the contents include small parts which pose a hazard for children
310 under the age of three, except that any toy or other article that
311 contains, as of December 31, 1992, a safety warning label in substantial
312 compliance with the requirements of this subdivision shall be
313 determined by the commissioner to be in compliance with this
314 subdivision until October 1, 1993. As used in this subdivision,
315 "conspicuous" has the same meaning and characteristics regarding
316 type size as in 16 CFR Part 1500.121(c)(2) of said code; and [(11)] (12)

317 the introduction or delivery for introduction into commerce, or the
318 distribution or sale, of a drying oil or drying oil product, manufactured
319 after December 31, 1994, which does not bear a conspicuous warning
320 label on a side or back panel of such product stating: "DANGER -
321 RAGS, STEEL WOOL OR WASTE SOAKED WITH (INSERT
322 PRODUCT NAME) MAY SPONTANEOUSLY CATCH FIRE IF
323 IMPROPERLY DISCARDED. IMMEDIATELY AFTER USE, PLACE
324 RAGS, STEEL WOOL OR WASTE IN A SEALED WATER-FILLED
325 METAL CONTAINER." As used in this subdivision, "conspicuous" has
326 the same meaning and characteristics regarding type size as in 16 CFR
327 Part 1500.121 (c)(2) of said code.

328 (b) A children's product shall not be a banned hazardous substance,
329 as defined in subsection (p) of section 21a-335, as amended by this act,
330 solely on the basis of containing a component that exceeds the
331 standards pursuant to subparagraph (B) of said subsection (p) if such
332 component is not accessible to a child because it is not physically
333 exposed by reason of a sealed covering or casing and if it will not
334 become physically exposed through normal and reasonably
335 foreseeable use and abuse of the product. For purposes of this
336 subsection, paint, coatings or electroplating shall not be considered
337 barriers that would render lead in the substrate inaccessible to a child
338 through normal and reasonably foreseeable use and abuse of the
339 product.

340 (c) If the administrator determines that it is not feasible for certain
341 children's products that are electronic devices, including batteries, to
342 meet the standards pursuant to subparagraph (B) of subsection (p) of
343 section 21a-335, as amended by this act, by October 1, 2008, the
344 administrator shall adopt regulations, in accordance with chapter 54,
345 to (1) set standards to reduce the exposure of and accessibility to lead
346 in such devices, and (2) establish a schedule by which such electronic
347 devices shall be in full compliance with the standards established in
348 said subparagraph (B). Such devices shall not be considered banned
349 hazardous substances pursuant to said subsection (p) if they comply
350 with the provisions of such regulations.

351 Sec. 3. Section 21a-336 of the general statutes is repealed and the
352 following is substituted in lieu thereof (*Effective October 1, 2008*):

353 (a) Whenever in the judgment of the administrator such action will
354 promote the objectives of sections 21a-335 to 21a-346, inclusive, by
355 avoiding or resolving uncertainty as to application, the administrator
356 may, by regulation, declare to be a hazardous substance, for the
357 purposes of said sections, any substance or mixture of substances
358 which he finds meets the requirements of subdivision (1) of subsection
359 (e) of section 21a-335.

360 (b) The administrator may, in addition to regulations adopted under
361 subsection (a) of this section, [promulgate] adopt regulations
362 establishing safety requirements, safety standards, banned hazardous
363 substances, labeling requirements and testing procedures for articles
364 subject to sections 21a-335 to 21a-346, inclusive.

365 (c) If the administrator finds that the hazard of an article subject to
366 sections 21a-335 to 21a-346, inclusive, is such that labeling adequate to
367 protect the public health and safety cannot be devised, or the article
368 presents an imminent danger to the public health and safety, the
369 administrator may by regulation declare such article to be a banned
370 hazardous substance and require its removal from commerce. The
371 administrator [may] shall compile, and from time to time amend, a list
372 of toys and other articles which are intended for use by children and
373 which are classified as banned hazardous substances, and shall post
374 such list in a conspicuous place on the department's web site. Such list
375 shall be publicly accessible and searchable.

376 Sec. 4. (NEW) (*Effective October 1, 2008*) In addition to the list
377 compiled pursuant to section 21a-336 of the general statutes, as
378 amended by this act, the administrator, in consultation with the
379 Commissioner of Public Health, shall compile, and from time to time
380 amend, a list of other toxic substances and the recommended
381 maximum amount in parts per million total content of such toxic
382 substances that should not be used in children's products. In addition,
383 the administrator shall compile, and from time to time amend, a list of

384 safer alternatives to using said toxic substances.

385 Sec. 5. (NEW) (*Effective October 1, 2008*) All retailers or other
386 businesses in this state that have a banned hazardous substance for
387 sale at the time such product has been designated a banned hazardous
388 substance by the administrator shall submit a banned hazardous
389 substance final disposition report to the Department of Consumer
390 Protection no later than thirty days after such designation, and every
391 thirty days thereafter until the product has been disposed. The report
392 shall include, but not be limited to: (1) The type, make and model,
393 quantity and disposition of any article declared a banned hazardous
394 substance by the administrator; (2) information related to how such
395 items have been disposed, including where the products were sent or
396 returned to be destroyed; and (3) a sworn statement indicating that the
397 banned hazardous substances have not been sold or distributed to any
398 other business entity for resale or distribution to the consumer market.

399 Sec. 6. (NEW) (*Effective October 1, 2008*) The administrator shall
400 adopt regulations, pursuant to chapter 54 of the general statutes,
401 identifying consumer products that a child may reasonably or
402 foreseeably come into contact with. No person, firm or corporation
403 engaged in commerce shall have, offer for sale, sell or give away any
404 consumer product, identified in such regulations, bearing lead-
405 containing paint that may be used by the general public unless it bears
406 the warning statement prescribed by federal regulation. (1) If no such
407 federal regulation is prescribed, the warning statement shall be as
408 follows when the consumer product bears lead-containing paint:
409 "WARNING--CONTAINS LEAD. DRIED FILM OF THIS SUBSTANCE
410 MAY BE HARMFUL IF EATEN OR CHEWED. See Other Cautions on
411 (Side or Back) Panel. Do not apply on toys, or other children's articles,
412 furniture, or interior or exterior exposed surfaces of any residential
413 building or facility that may be occupied or used by children. KEEP
414 OUT OF THE REACH OF CHILDREN.". (2) If no such federal
415 regulation is prescribed, the warning statement shall be as follows
416 when the consumer product bears a form of lead other than lead-
417 containing paint: "WARNING CONTAINS LEAD. MAY BE

418 HARMFUL IF EATEN OR CHEWED. MAY GENERATE DUST
 419 CONTAINING LEAD. KEEP OUT OF THE REACH OF CHILDREN."
 420 The placement, conspicuousness and contrast of such labeling shall be
 421 in accordance with 16 CFR 1500.121.

422 Sec. 7. Subsection (b) of section 21a-338 of the general statutes is
 423 repealed and the following is substituted in lieu thereof (*Effective*
 424 *October 1, 2008*):

425 (b) No person shall be subject to the penalties of subsection (a) of
 426 this section, (1) for having violated subdivision [(3)] (4) of section 21a-
 427 337, as amended by this act, if the receipt, delivery or proffered
 428 delivery of the hazardous substance was made in good faith, unless he
 429 refuses to furnish, on request of an officer or employee duly
 430 designated by the administrator, the name and address of the person
 431 from whom he purchased or received such hazardous substance, and
 432 copies of all documents, if any there be, pertaining to the delivery of
 433 the hazardous substance to him; or (2) for having violated subdivision
 434 (1) of said section 21a-337, as amended by this act, if he establishes a
 435 guarantee or undertaking signed by, and containing the name and
 436 address of, the person residing in the United States from whom he
 437 received in good faith the hazardous substance, to the effect that the
 438 hazardous substance is not a misbranded hazardous substance or a
 439 banned hazardous substance within the meaning of those terms in
 440 sections 21a-335 to 21a-346, inclusive, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	21a-335
Sec. 2	<i>October 1, 2008</i>	21a-337
Sec. 3	<i>October 1, 2008</i>	21a-336
Sec. 4	<i>October 1, 2008</i>	New section
Sec. 5	<i>October 1, 2008</i>	New section
Sec. 6	<i>October 1, 2008</i>	New section
Sec. 7	<i>October 1, 2008</i>	21a-338(b)

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Consumer Protection, Dept.	GF - Cost	160,000	123,000
Public Health, Dept.	GF - Cost	Potential	Potential
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost to the Department of Consumer Protection of approximately \$160,000 in FY 09 and \$123,000 in FY 10. The cost in FY 09 includes two Consumer Protection Inspectors (\$109,000) plus other expenses (\$14,000) and one-time equipment (\$37,000). The cost of personnel and other expenses will continue into FY 10 and beyond. The additional personnel and related equipment is necessary due to the increased standards for lead safety contained within the bill. Additional fringe benefit costs of approximately \$63,000 per year are associated with the two positions.

Under law (Section 22a-1i CGS), the Department of Public Health (DPH) is designated as the lead state agency responsible for the risk assessment of human health regarding toxic substances. Should the Department of Consumer Protection seek significant and/or frequent consultative services from the DPH when compiling the list of toxic

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

substances required within Section 4, the department would require at most one Toxicologist to research chemicals in children's products that may be toxic. The partial year cost associated with a full-time position would be \$57,444 in FY 09 (including other expenses and equipment), plus fringe benefits of \$14,247; the annualized cost would be \$75,876, plus fringe benefits of \$43,917, in FY 10.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 5650

AN ACT CONCERNING CHILD PRODUCT SAFETY.

SUMMARY:

This bill establishes limits for lead in children's products by amending the State Child Protection Act, the state's counterpart to the Federal Hazardous Substances Act (FHSA) (see BACKGROUND). With certain exceptions, it makes children's products that fail to comply with the limits banned hazardous substances. It prohibits placing children's products in the stream of commerce under certain conditions, including when they have been subject to voluntary corrective action and the defect has not been corrected.

The bill requires retailers and other businesses in the state selling a banned hazardous substance to submit to the Department of Consumer Protection (DCP) a report accounting for its disposal. It requires the DCP commissioner, who administers the State Child Protection Act, to post on the department's website a list of toys and other articles intended for use by children that are banned hazardous substances. The commissioner must also consult with the Department of Public Health (DPH) to compile a list of other toxic substances, the recommended maximum amount for their use in children's products, and safer alternatives. The bill requires consumer products with which a child may reasonably or foreseeably come into contact to have warning labels if they bear lead-containing paint.

Finally, the bill makes technical changes.

EFFECTIVE DATE: October 1, 2008

BANNED HAZARDOUS SUBSTANCES

The State Child Protection Act prohibits placing a banned hazardous substance in the stream of commerce. The bill establishes limits for lead in children's products. Products that fail to comply with these limits are banned hazardous substances and thus subject to the prohibition. The bill defines "children's product" as a consumer product designed or intended primarily for children under age 12, including toys, jewelry, decorative objects, clothing, candy, food, dietary supplements or other chewable items, furniture, or other articles used by or intended to be used by children.

Under the bill, a children's product is considered a banned hazardous substance if (1) any part of the product contains more than 40 parts per million (ppm) lead content by weight, (2) it bears lead-containing paint and that the paint has more than 40 ppm lead content by weight; or (3) it contains more than .004 milligrams of lead per centimeter squared (see BACKGROUND).

Current law does not establish limits for lead in children's products. However, the DCP commissioner has, by regulation, declared lead-containing paints with 0.06% lead by weight or more (600 ppm) to be banned hazardous substances (Conn. Agencies Regs. § 21a-336-1).

The bill defines "lead-containing paint" as paint or other similar surface coating materials containing detectable lead or lead compounds. "Paint and other similar surface-coating materials" means a fluid, semi-fluid, or other material applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. It does not include printing inks, materials that become part of the substrate (e.g., pigment in a plastic article), or materials that are bonded to the substrate (e.g., through electroplating or ceramic glazing).

Exceptions

Inaccessible Components. The bill creates an exception for a children's product containing a component that exceeds the bill's limits if the component (1) is not accessible to a child because it is enclosed by a sealed covering or casing and (2) it will not become

physically exposed through normal and reasonably foreseeable use and abuse of the product (see BACKGROUND). Under the bill, paint, coatings, or electroplating cannot be considered barriers that would render the substrate inaccessible to a child through normal and reasonably foreseeable use and abuse.

Electronic Devices. The bill creates a temporary exception for children's products that are electronic devices, including batteries, if the DCP commissioner determines that it is not feasible for such products to meet the bill's standards. It requires the commissioner, through regulation, to (1) set interim standards to reduce the exposure of, and accessibility to, lead in these electronic devices and (2) establish a schedule for the devices to comply fully with the bill's stricter standards applicable to all other children's products.

PROHIBITED ACTS

The bill prohibits manufacturing; remanufacturing; retrofitting; distributing; selling at wholesale or retail; contracting to sell or resell, lease, sublet, or otherwise place in the stream of commerce any children's product that:

1. is a banned hazardous substance under state law or FHSA;
2. is subject to voluntary corrective action by the manufacturer, wholesaler, distributor, or importer, or is recalled by the manufacturer, wholesaler, distributor, or importer in cooperation with the federal government, and the recall has not been rescinded and the defect in the product has not been corrected; or
3. does not otherwise conform to applicable consumer product safety standards under the State Child Protection Act, any similar state law, or any similar federal laws or regulations.

FINAL DISPOSITION REPORT

By law, manufacturers, distributors, and retailers must repurchase an article they sell that is a banned hazardous substance, whether or

not the article was banned at the time of sale. The bill requires retailers and other businesses in the state selling a banned hazardous substance to account for its disposal. Specifically, it requires these retailers and businesses to submit a final disposition report to DCP within 30 days of the commissioner banning a hazardous substance that they are selling. The report must include:

1. the type, make and model, quantity, and disposition of any articles declared a banned hazardous substance;
2. information concerning how the article has been disposed of, including where it was sent or returned to for destruction; and
3. a sworn statement indicating that the article that is the banned hazardous substance has not been sold or distributed to any other business entity for resale or distribution in the consumer market.

INTERNET LISTS

The bill requires, rather than allows, the DCP commissioner to compile a list of toys and other articles that are intended for use by children and that are banned hazardous substances. It additionally requires the commissioner to post the list in a conspicuous place on DCP's website. The list must be publicly accessible and searchable.

The bill also requires the DCP commissioner, in consultation with the DPH commissioner, to compile a list of other toxic substances and the recommended maximum amount for use in children's products as measured by ppm total content. (Presumably, a substance commonly measured in a unit other than ppm would be listed in that manner). They must amend the list from time to time. The DCP commissioner must establish and update a corresponding list of safer alternatives to the toxic substances.

WARNING LABELS FOR CERTAIN CONSUMER PRODUCTS

The bill defines "consumer product" as any article that is used primarily for personal, family, or household purposes. The bill

requires the DCP commissioner to adopt regulations identifying consumer products with which a child may reasonably or foreseeably come into contact. It prohibits anyone engaged in commerce, including individuals, firms, and businesses, from having, offering for sale, selling, or giving away any consumer product identified in the regulations that bears lead-containing paint unless the product has the warning label required by federal regulation.

If federal regulations do not prescribe a warning label, the bill specifies how the statement must read. For products with lead-containing paint, the statement must read:

“WARNING—CONTAINS LEAD. DRIED FILM OF THIS SURFACE MAY BE HARMFUL IF EATEN OR CHEWED. See Other Cautions on (Side or Back) Panel. Do not apply on toys, or other children’s articles, furniture, or interior or exterior exposed surfaces or any residential building or facility that may be occupied or used by children. KEEP OUT OF THE REACH OF CHILDREN.”

For products with a form of lead other than lead-containing paint, the statement must read:

“WARNING CONTAINS LEAD. MAY BE HARMFUL IF EATEN OR CHEWED. MAY GENERATE DUST CONTAINING LEAD. KEEP OUT OF THE REACH OF CHILDREN.”

BACKGROUND

Federal Hazardous Substances Act

FHSA is one of five laws that the Consumer Product Safety Commission administers (CPSC). It authorizes the CPSC to identify hazardous and potentially hazardous substances, ban certain toys and articles marketed for use by children, require certain substances and toys to bear cautionary labeling, and set conditions and standards for that labeling. It authorizes states to adopt identical requirements, thereby gaining enforcement authority, and supplement federal law in areas the CPSC does not regulate. States are prohibited from adopting

different requirements protecting against the same risk of illness or injury already regulated by CPSC action.

Parts per Million and Milligrams of Lead per Centimeter Squared

There are two methods for measuring lead in paint. One is called “total lead” and involves traditional laboratory testing. The paint is weighed and dissolved in acid to determine how much lead is present. The result is rendered in milligrams of lead per milligram of paint, expressed as ppm. The current CPSC paint standard is 600 ppm.

The alternative is an X-Ray Fluorescence (XRF) analyzer. XRF analyzers emit X-rays through a small window and measure the amount reflected back, identifying how much lead is present immediately below the window. The result is rendered in milligrams or micrograms per square centimeter.

Normal and Reasonably Foreseeable Use and Abuse

The CPSC establishes by regulation test methods for simulating use and abuse of toys and other articles intended for use by children under age eight. The regulations describe specific tests for simulating normal use of toys and other articles intended for use by children, as well as the reasonably foreseeable damage or abuse to which the articles may be subjected. The tests are intended to expose potential hazards that would result from normal use or reasonably foreseeable damage or abuse of the articles (16 CFR §§ 1500.50 to 1500.53).

Related Bills

SB 524 (File 137) prohibits placing in the stream of commerce certain products, including those that have been the subject a voluntary recall, and requires DCP to adopt regulations setting reporting requirements for the final disposition of the recalled products.

HB 5025 prohibits the sale of asbestos-containing toys or other items marketed for children under age 16 and increases the State Child Protection Act’s criminal and civil penalties, among other things.

HB 5601 (File 110) bans toys and other articles intended for children

age 12 and younger containing more than 40 ppm of lead or certain other chemical compounds.

COMMITTEE ACTION

Select Committee on Children

Joint Favorable Substitute Change of Reference

Yea 8 Nay 2 (03/06/2008)

General Law Committee

Joint Favorable

Yea 18 Nay 0 (03/11/2008)