



# House of Representatives

**File No. 765**

General Assembly

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February Session, 2008 **(Reprint of File No. 238)**

Substitute House Bill No. 5650  
As Amended by House Amendment Schedule  
"A"

Approved by the Legislative Commissioner  
May 1, 2008

**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 Section 21a-335 of the general statutes is repealed and the  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) (i) for the period commencing July 1, 2009, and ending  
159 June 30, 2011, any children's product with greater than three hundred  
160 parts per million total lead content by weight for any part of the  
161 product; and (ii) on and after July 1, 2011, any children's product with  
162 greater than one hundred parts per million total lead content by  
163 weight for any part of the product, or such stricter standard  
164 established in regulation adopted pursuant to section 21a-342; (C) on  
165 and after July 1, 2009, any children's product with lead-containing  
166 paint greater than ninety parts per million total lead content; (D) on  
167 and after July 1, 2009, any children's product with lead-containing  
168 paint greater than .009 milligrams of lead per centimeter squared; (E)  
169 any hazardous substance intended, or packaged in a form suitable, for  
170 use in a household, classified, pursuant to section 21a-336 or pursuant  
171 to federal regulations adopted under authority of the federal  
172 Hazardous Substances Act (15 USC 1261 et seq.), as a "banned  
173 hazardous substance" that, notwithstanding such cautionary labeling  
174 as is or may be required under this section and sections 21a-336 to 21a-  
175 346, inclusive, for that substance, the degree or nature of the hazard  
176 involved in the presence or use of such substance in households is  
177 such that the objective of the protection of the public health and safety  
178 can be adequately served only by keeping such substance, when so  
179 intended or packaged, out of the channels of commerce; provided the

180 administrator, by regulations adopted in accordance with chapter 54,  
181 shall exempt from subparagraph (A) of this subdivision articles, such  
182 as chemical sets, which by reason of their functional purpose require  
183 the inclusion of the hazardous substance involved or necessarily  
184 present in electrical, mechanical or thermal hazard and which bear  
185 labeling giving adequate directions and warnings for safe use and are  
186 intended for use by children who have attained sufficient maturity,  
187 and may reasonably be expected, to read and heed such directions and  
188 warnings; [(C)] (E) any new wood-burning stove, coal-burning stove,  
189 solid fuel add-on units or combination of such stoves and units, which  
190 is offered for sale or installed in any building, dwelling or structure in  
191 this state on or after July 1, 1985, and which has not been tested in  
192 accordance with Underwriter's Laboratory Standard Number 1482;  
193 [(D)] (G) any new unvented fuel-burning room heater offered for sale  
194 or use in any building, dwelling or structure in this state on or after  
195 July 1, 1985, which has not been tested in accordance with  
196 Underwriter's Laboratory Standard Number 647 for unvented  
197 kerosene heaters and American National Standards Institute Standard  
198 Number Z21.11.2 for unvented gas heaters;

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

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

214 manufacture;

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

220 (t) "Drying oil" means linseed oil, tung oil, perilla oil or other oils  
221 which are found to contain a substantial proportion of fatty acids with  
222 three double molecular bonds;

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

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

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

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

240 (y) "Lead-containing paint" means paint or other similar surface  
241 coating materials containing any detectable amount of lead or lead  
242 compounds.

243 Sec. 2. Section 21a-337 of the general statutes is repealed and the



244 following is substituted in lieu thereof (*Effective October 1, 2008*):

245     (a) The following acts and the causing thereof are prohibited: (1)  
246     The introduction or delivery for introduction into commerce of any  
247     misbranded hazardous substance or banned hazardous substance; (2)  
248     the manufacturing, distributing, selling at wholesale or retail,  
249     contracting to sell or resell, lease, sublet or otherwise place in the  
250     stream of commerce: (A) Any children's product that has been  
251     designated a banned hazardous substance under this chapter or the  
252     Federal Hazardous Substances Act; (B) any children's product that is  
253     the subject of voluntary or mandatory corrective action taken under  
254     the direction of or in cooperation with an agency of the federal  
255     government but the defect in such children's product has not been so  
256     corrected; or (C) any children's product that is not otherwise in  
257     conformity with applicable consumer safety product standards under  
258     this chapter, or any similar rule under another chapter of the general  
259     statutes or any federal laws or regulations; (3) the alteration,  
260     mutilation, destruction, obliteration or removal of the whole or any  
261     part of the label of, or the doing of any other act with respect to, a  
262     hazardous substance if such act is done while the substance is in  
263     commerce, or while the substance is held for sale, whether or not the  
264     first sale, after shipment in commerce, and results in the hazardous  
265     substance being a misbranded hazardous substance or a banned  
266     hazardous substance; [(3)] (4) the receipt in commerce of any  
267     misbranded hazardous substance or banned hazardous substance and  
268     the delivery or proffered delivery thereof for pay or otherwise; [(4)] (5)  
269     the giving of a guarantee or undertaking referred to in subdivision (2)  
270     of subsection (b) of section 21a-338 which guarantee or undertaking is  
271     false, except by a person who relied upon a guarantee or undertaking  
272     to the same effect signed by, and containing the name and address of,  
273     the person residing in the United States from whom he received in  
274     good faith the hazardous substance; [(5)] (6) the failure to permit entry  
275     or inspection as authorized by subsection (a) of section 21a-343 or to  
276     permit access to and copying of any record as authorized by section  
277     21a-344; [(6)] (7) the introduction or delivery for introduction into

278 commerce, or the receipt in commerce and subsequent delivery or  
279 proffered delivery for pay or otherwise, of a hazardous substance in a  
280 reused food, drug or cosmetic container or in a container which,  
281 though not a reused container, is identifiable as a food, drug or  
282 cosmetic container by its labeling or by other identification. The reuse  
283 of a food, drug or cosmetic container as a container for a hazardous  
284 substance shall be deemed to be an act which results in the hazardous  
285 substance being a misbranded hazardous substance. As used in this  
286 subdivision, the terms "food", "drug" and "cosmetic" shall have the  
287 same meanings as in the Connecticut Food, Drug and Cosmetic Act;  
288 [(7)] (8) the use by any person to his own advantage, or revealing other  
289 than to the administrator or officers or employees of the agency, or to  
290 the courts when relevant in any judicial proceeding under sections 21a-  
291 335 to 21a-346, inclusive, of any information acquired under authority  
292 of section 21a-343 concerning any method of process which as a trade  
293 secret is entitled to protection; [(8)] (9) the introduction or delivery for  
294 introduction into commerce of any item containing asbestos which  
295 reasonably may be expected to be used in the construction or repair of  
296 structures, without clearly indicating by labeling thereon that the item  
297 contains asbestos and that asbestos may cause cancer when inhaled, or  
298 the introduction or delivery for introduction into commerce of any toy  
299 or other article for sale in this state marketed for the use of children  
300 under the age of sixteen containing asbestos; [(9)] (10) the alteration or  
301 removal of any item upon which the commissioner or his authorized  
302 agent has placed an embargo prior to the time the commissioner, such  
303 agent or a court permits the alteration or removal of such item; [(10)]  
304 (11) the introduction or delivery for introduction into commerce, after  
305 December 31, 1992, of any toy or other article for sale in this state and  
306 marketed for the use of children between the ages of three and seven,  
307 or determined to be for the use of children between the ages of three  
308 and seven by the federal Consumer Product Safety Commission  
309 pursuant to 16 CFR Part 1500 et seq., as published in the Code of  
310 Federal Regulations Revised to January 1, 1991, and as from time to  
311 time amended, or the Commissioner of Consumer Protection pursuant  
312 to sections 21a-335 to 21a-346, inclusive, which would be classified as a

313 banned hazardous substance under 16 CFR Part 1501.4(b)(1) of said  
314 code and does not bear a conspicuous warning label that clearly and  
315 specifically communicates that the contents include small parts which  
316 pose a hazard for children under the age of three, except that any toy  
317 or other article that contains, as of December 31, 1992, a safety warning  
318 label in substantial compliance with the requirements of this  
319 subdivision shall be determined by the commissioner to be in  
320 compliance with this subdivision until October 1, 1993. As used in this  
321 subdivision, "conspicuous" has the same meaning and characteristics  
322 regarding type size as in 16 CFR Part 1500.121(c)(2) of said code; and  
323 [(11)] (12) the introduction or delivery for introduction into commerce,  
324 or the distribution or sale, of a drying oil or drying oil product,  
325 manufactured after December 31, 1994, which does not bear a  
326 conspicuous warning label on a side or back panel of such product  
327 stating: "DANGER - RAGS, STEEL WOOL OR WASTE SOAKED  
328 WITH .... (INSERT PRODUCT NAME) MAY SPONTANEOUSLY  
329 CATCH FIRE IF IMPROPERLY DISCARDED. IMMEDIATELY AFTER  
330 USE, PLACE RAGS, STEEL WOOL OR WASTE IN A SEALED  
331 WATER-FILLED METAL CONTAINER." As used in this subdivision,  
332 "conspicuous" has the same meaning and characteristics regarding  
333 type size as in 16 CFR Part 1500.121 (c)(2) of said code.

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

345 (c) If the administrator determines that it is not feasible for certain  
346 children's products that are electronic devices, including batteries, to

347 meet the standards pursuant to subparagraph (B) of subsection (p) of  
348 section 21a-335, as amended by this act, by July 1, 2009, the  
349 administrator shall adopt regulations, in accordance with chapter 54,  
350 to (1) set standards to reduce the exposure of and accessibility to lead  
351 in such devices, and (2) establish a schedule by which such electronic  
352 devices shall be in full compliance with the standards established in  
353 said subparagraph (B). Such devices shall not be considered banned  
354 hazardous substances pursuant to said subsection (p) if they comply  
355 with the provisions of such regulations.

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

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

365 (b) The administrator may, in addition to regulations adopted under  
366 subsection (a) of this section, [~~promulgate~~] adopt regulations  
367 establishing safety requirements, safety standards, banned hazardous  
368 substances, labeling requirements and testing procedures for articles  
369 subject to sections 21a-335 to 21a-346, inclusive.

370 (c) If the administrator finds that the hazard of an article subject to  
371 sections 21a-335 to 21a-346, inclusive, is such that labeling adequate to  
372 protect the public health and safety cannot be devised, or the article  
373 presents an imminent danger to the public health and safety, the  
374 administrator may by regulation declare such article to be a banned  
375 hazardous substance and require its removal from commerce. The  
376 administrator [~~may~~] shall compile, and from time to time amend, a list  
377 of toys and other articles which are intended for use by children and  
378 which are classified as banned hazardous substances, and shall post

379 such list in a conspicuous place on the department's web site. Such list  
380 shall be publicly accessible and searchable.

381 Sec. 4. (NEW) (*Effective October 1, 2008*) In addition to the list  
382 compiled pursuant to section 21a-336 of the general statutes, as  
383 amended by this act, the administrator, in consultation with the  
384 Commissioners of Public Health and Environmental Protection, shall  
385 compile, and from time to time amend, a list of other toxic substances  
386 and the recommended maximum amount of such toxic substances that  
387 may exist in children's products. In addition, the administrator shall  
388 compile, and from time to time amend, a list of safer alternatives to  
389 using said toxic substances.

390 Sec. 5. (NEW) (*Effective from passage*) (a) Not later than October 1,  
391 2008, the administrator, as defined in section 21a-335 of the general  
392 statutes, as amended by this act, shall develop a certificate of  
393 disposition for retailers and wholesalers prohibited from selling or  
394 otherwise placing any children's product subject to a recall or  
395 voluntary corrective action into the stream of commerce pursuant to  
396 section 21a-337 of the general statutes, as amended by this act. Such  
397 certificate of disposition shall (1) require such retailers and wholesalers  
398 to specify the make, model, type, quantity and final disposition of such  
399 children's products, (2) contain any other information required by the  
400 administrator, and (3) require such retailers and wholesalers to sign an  
401 affidavit verifying the authenticity of the information provided in the  
402 certificate.

403 (b) Upon notification or receipt of information that a children's  
404 product has been recalled, a retailer or wholesaler shall inspect its  
405 premises and immediately dispose of all such products in possession  
406 of such retailer or wholesaler. Upon notification or receipt of  
407 information that a children's product has been subject to voluntary  
408 corrective action, a retailer or wholesaler shall inspect its premises and  
409 immediately return to the manufacturer or distributor all such  
410 products in possession of such retailer or wholesaler. Retailers and  
411 wholesalers shall complete the certificate of disposition form

412 developed pursuant to subsection (a) of this section no later than seven  
413 calendar days after the date of notification or receipt of information of  
414 a recall or voluntary corrective action. Signed and dated certificate of  
415 disposition forms shall be maintained by the retailer or wholesaler and  
416 shall be subject to inspection by the administrator or the  
417 administrator's designated agent for a period of not less than three  
418 years.

419 (c) A retailer or wholesaler who violates subsection (b) of this  
420 section shall be subject to the penalties of section 21a-338 of the general  
421 statutes, as amended by this act.

422 Sec. 6. (NEW) (*Effective October 1, 2008*) (a) Subject to the provisions  
423 of subsection (b) of this section, the administrator, as defined in section  
424 21a-335 of the general statutes, as amended by this act, may adopt  
425 regulations, in accordance with chapter 54 of the general statutes, to  
426 require certain consumer products determined by the administrator  
427 that bear lead-containing paint or that have lead in any part of the  
428 product and that a child may reasonably or foreseeably come into  
429 contact with, to carry a warning label described in this section. If the  
430 administrator adopts such regulations, no person, firm or corporation  
431 engaged in commerce shall have, offer for sale, sell or give away any  
432 consumer product, identified in such regulations, that may be used by  
433 the general public unless it bears a warning statement prescribed by  
434 federal regulations or, if no warning statement is prescribed by federal  
435 regulations, bears a warning statement that meets the requirements of  
436 subdivision (1) or (2) of this section, as appropriate. (1) The warning  
437 statement shall be as follows when the consumer product bears lead-  
438 containing paint: "WARNING--CONTAINS LEAD. DRIED FILM OF  
439 THIS SUBSTANCE MAY BE HARMFUL IF EATEN OR CHEWED. See  
440 Other Cautions on (Side or Back) Panel. Do not apply on toys, or other  
441 children's articles, furniture, or interior or exterior exposed surfaces of  
442 any residential building or facility that may be occupied or used by  
443 children. KEEP OUT OF THE REACH OF CHILDREN.". (2) The  
444 warning statement shall be as follows when the consumer product  
445 bears a form of lead other than lead-containing paint: "WARNING

446 CONTAINS LEAD. MAY BE HARMFUL IF EATEN OR CHEWED.  
447 MAY GENERATE DUST CONTAINING LEAD. KEEP OUT OF THE  
448 REACH OF CHILDREN.". The placement, conspicuousness and  
449 contrast of such labeling shall be in accordance with 16 CFR 1500.121.

450 (b) The provisions of this section shall not apply to children's  
451 products, and those consumer products with lead-containing  
452 components, but whose lead-containing components are not accessible  
453 to a child because they are not physically exposed by reason of a  
454 covering or casing and they will not become physically exposed  
455 through normal and reasonably foreseeable use and abuse of the  
456 product.

457 Sec. 7. Section 21a-338 of the general statutes is repealed and the  
458 following is substituted in lieu thereof (*Effective October 1, 2008*):

459 (a) Any person who violates any of the provisions of section 21a-  
460 337, as amended by this act, shall be guilty of a class [C] B  
461 misdemeanor but an offense committed with intent to defraud or  
462 mislead, or a second or subsequent offense, shall be an unclassified  
463 misdemeanor for which the penalty shall be imprisonment for not  
464 more than one year, or a fine of not more than [three] five thousand  
465 dollars or both such imprisonment and fine.

466 (b) No person shall be subject to the penalties of subsection (a) of  
467 this section, (1) for having violated subdivision [(3)] (4) of section 21a-  
468 337, as amended by this act, if the receipt, delivery or proffered  
469 delivery of the hazardous substance was made in good faith, unless  
470 [he] such person refuses to furnish, on request of an officer or  
471 employee duly designated by the administrator, the name and address  
472 of the [person] individual or entity from whom [he] such person  
473 purchased or received such hazardous substance, and copies of all  
474 documents, if any there be, pertaining to the delivery of the hazardous  
475 substance to [him] such person; or (2) for having violated subdivision  
476 (1) of said section 21a-337, if [he] such person establishes a guarantee  
477 or undertaking signed by, and containing the name and address of, the

478 person residing in the United States from whom [he] such person  
479 received in good faith the hazardous substance, to the effect that the  
480 hazardous substance is not a misbranded hazardous substance or a  
481 banned hazardous substance within the meaning of those terms in  
482 sections 21a-335 to 21a-346, inclusive, as amended by this act.

483 Sec. 8. Section 21a-336 of the general statutes is amended by adding  
484 subsection (d) as follows (*Effective October 1, 2008*):

485 (NEW) (d) On and after July 1, 2011, if the administrator determines  
486 that a standard stricter than one hundred parts per million total lead  
487 content by weight for any part of a children's product is feasible, the  
488 administrator may adopt regulations, in accordance with chapter 54 to  
489 establish such stricter standard pursuant to subparagraph (B) of  
490 subsection (p) of section 21a-335, as amended by this act, that is as low  
491 as forty parts per million total lead content by weight for any part of  
492 such product.

493 Sec. 9. Section 21a-340 of the general statutes is repealed and the  
494 following is substituted in lieu thereof (*Effective October 1, 2008*):

495 (a) Whenever a duly authorized agent of the administrator finds or  
496 has probable cause to believe that any hazardous household substance  
497 is misbranded, or is a banned hazardous substance, within the  
498 meaning of sections 21a-335 to 21a-346, inclusive, [he] as amended by  
499 this act, such agent shall affix to such article a tag or other appropriate  
500 marking, giving notice that such article is, or is suspected of being,  
501 misbranded or is a banned hazardous substance and has been detained  
502 or embargoed, and warning all persons not to remove or dispose of  
503 such article by sale or otherwise until permission for removal or  
504 disposal is given by such agent or the court. No person shall remove or  
505 dispose of such detained or embargoed article by sale or otherwise  
506 without such permission. The administrator may, after notice and  
507 hearing, impose a civil penalty of not more than five hundred dollars  
508 for each separate offense on any person who removes, without such  
509 permission, any tag or other appropriate marking affixed to any article



510 which has been detained or embargoed in accordance with the  
511 provisions of this subsection. Such penalty shall be deposited into the  
512 consumer protection enforcement account established pursuant to  
513 section 21a-8a.

514 (b) When an article detained or embargoed under subsection (a) has  
515 been found by such agent to be misbranded or a banned hazardous  
516 substance, [he] such agent shall petition the superior court in whose  
517 jurisdiction the article is detained or embargoed or any judge thereof  
518 for a libel of condemnation of such article. When such agent has found  
519 that an article so detained or embargoed is not misbranded or a  
520 banned hazardous substance, [he] such agent shall remove the tag or  
521 other marking.

522 (c) If the court finds that a detained or embargoed article is  
523 misbranded or a banned hazardous substance, such article shall, after  
524 entry of the decree, be destroyed at the expense of the claimant thereof,  
525 under supervision of such agent, and all court costs and fees, and  
526 storage and other proper expenses, shall be taxed against the claimant  
527 of such article or his agent; except that, if the misbranding can be  
528 corrected by proper labeling of the article, the court, after entry of the  
529 decree and after such costs, fees and expenses have been paid and a  
530 good and sufficient bond, conditioned that such article shall be so  
531 labeled, has been executed, may by order direct that such article be  
532 delivered to the claimant thereof for such labeling under the  
533 supervision of an agent of the administrator. The expense of such  
534 supervision shall be paid by the claimant. The article shall be returned  
535 to the claimant on the representation to the court by the administrator  
536 that the article is no longer in violation of sections 21a-335 to 21a-346,  
537 inclusive, as amended by this act, and that the expenses of such  
538 supervision have been paid.

539 Sec. 10. (NEW) (*Effective October 1, 2008*) In addition to the criminal  
540 penalties and remedies set forth in chapter 420d of the general statutes,  
541 the administrator may, after notice and hearing pursuant to chapter 54  
542 of the general statutes, levy a civil penalty of not more than one

543 hundred dollars for a violation of any of the provisions of chapter 420d  
544 of the general statutes, except for section 21a-340 of the general  
545 statutes, as amended by this act. Each such violation of said chapter  
546 shall be a separate and distinct offense and each day's continuance  
547 thereof shall be deemed to be a separate and distinct offense. Such  
548 penalty shall be deposited into the consumer protection enforcement  
549 account established pursuant to section 21a-8a of the general statutes.

550 Sec. 11. Section 21a-343 of the general statutes is repealed and the  
551 following is substituted in lieu thereof (*Effective October 1, 2008*):

552 (a) For the purposes of enforcement of sections 21a-335 to 21a-346,  
553 inclusive, as amended by this act officers or employees duly  
554 designated by the administrator, upon presenting appropriate  
555 credentials to the owner, operator or agent in charge, are authorized  
556 (1) to enter, at reasonable times, any factory, warehouse or  
557 establishment in which hazardous substances are manufactured,  
558 processed, packed or held for introduction into commerce or are held  
559 after such introduction, or to enter any vehicle being used to transport  
560 or hold such hazardous substances in commerce; (2) to inspect, at  
561 reasonable times and within reasonable limits and in a reasonable  
562 manner, such factory, warehouse, establishment or vehicle, and all  
563 pertinent equipment, finished and unfinished materials, and labeling  
564 therein; and (3) to obtain samples of such materials or packages  
565 thereof, or of such labeling.

566 (b) If the officer or employee obtains any sample, prior to leaving  
567 the premises, [he] such officer or employee shall pay or offer to pay the  
568 owner, operator or agent in charge for such sample and give a receipt  
569 describing the samples obtained.

570 (c) Failure to permit entry or inspection as authorized by subsection  
571 (a) of this section shall be deemed an unfair or deceptive trade practice  
572 pursuant to section 42-110b.

573 Sec. 12. Section 21a-345 of the general statutes is amended by adding  
574 subsection (c) as follows (*Effective October 1, 2008*):

575 (NEW) (c) The administrator may require that retail stores post a  
 576 notice making the general public aware of the administrator's decision  
 577 that an article has been designated a banned hazardous substance,  
 578 pursuant to regulations adopted under section 21a-336, as amended by  
 579 this act. Such notices shall be posted in a location visible to the general  
 580 public and shall be posted for a duration of a time specified by the  
 581 administrator. Violations of this subsection shall be deemed an unfair  
 582 or deceptive trade practice pursuant to section 42-110b.

583 Sec. 13. (NEW) (*Effective from passage*) The Commissioner of  
 584 Environmental Protection may, within available appropriations,  
 585 participate in an interstate clearinghouse to (1) classify chemicals  
 586 existing in commercial goods into one of the following four categories:  
 587 (A) High concern, (B) moderate concern, (C) low concern, or (D)  
 588 unknown concern; (2) organize and manage available data on  
 589 chemicals, including, but not limited to, information on uses, hazards  
 590 and environmental concerns associated with chemicals; (3) produce  
 591 and inventory information on safer alternatives for specific uses of  
 592 chemicals and model policies and programs related to such  
 593 alternatives; (4) provide technical assistance to businesses and  
 594 consumers relating to safer chemicals; and (5) other activities related to  
 595 this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	21a-335
Sec. 2	October 1, 2008	21a-337
Sec. 3	October 1, 2008	21a-336
Sec. 4	October 1, 2008	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	October 1, 2008	New section
Sec. 7	October 1, 2008	21a-338
Sec. 8	October 1, 2008	21a-336
Sec. 9	October 1, 2008	21a-340
Sec. 10	October 1, 2008	New section
Sec. 11	October 1, 2008	21a-343

Sec. 12	<i>October 1, 2008</i>	21a-345
Sec. 13	<i>from passage</i>	New section

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	None	160,000
Public Health, Dept.	GF - Cost	None	Potential
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	None	See Below
Department of Environmental Protection	GF - Cost	Minimal	Minimal

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 10. The cost in FY 10 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 11 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

<sup>1</sup> 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%.

Department of Consumer Protection seek significant and/or frequent consultative services from the DPH when compiling the list of toxic 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 10 (including other expenses and equipment), plus fringe benefits of \$14,247.

The bill also requires the Department of Environmental Protection (DEP) to participate in an interstate clearinghouse within available appropriations. Costs associated with the clearinghouse would be minimal. sHB 5021, the budget bill as favorably reported by the Appropriations Committee, includes \$250,000 in FY 09 for DEP to participate in the clearinghouse.

House "A" (LCO 5203) moved the effective date out one year thus delaying costs until FY 10 for the DCP and the DPH. Additionally House "A" added language concerning the interstate clearinghouse and results in the impact to the DEP as stated above.

### ***The Out Years***

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

**OLR Bill Analysis****sHB 5650 (as amended by House "A")\******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 also prohibits the sale of toys or other articles marketed for children under age 16 that contain asbestos.

The bill requires retailers and other businesses selling a banned hazardous substance to complete a certificate of disposition to account for its disposal. It requires the Department of Consumer Protection (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 departments of Public Health (DPH) and Environmental Protection (DEP) to compile a list of other toxic substances and safer alternatives. The commissioner may adopt regulations requiring certain consumer products to have warning labels if they bear lead-containing paint.

The bill also:

1. increases related criminal and civil penalties;
2. requires stores to post notices when DCP designates an article as a banned hazardous substance, making failure to do so an unfair trade practice; and

3. makes failure to allow a DCP inspector or investigator to inspect an establishment where hazardous substances are manufactured or obtain a sample an unfair trade practice.

The bill authorizes the DEP commissioner to take part in an interstate clearinghouse to classify chemicals according to the risks they pose.

Finally, the bill makes technical changes.

\*House Amendment "A" makes a number of changes to the underlying bill. Among other things, it changes the lead limits and their implementation dates. It adds the provisions concerning unfair trade practices, civil and criminal penalties, and the interstate clearinghouse. It deletes a provision requiring retailers to submit a final disposition report to DCP and replaces it with one requiring them to complete a certificate of disposition. It allows, rather than requires, the DCP commissioner to adopt regulations requiring warning labels for certain consumer products.

EFFECTIVE DATE: October 1, 2008, except the provisions concerning the certificate of disposition and the interstate clearinghouse, which are effective upon passage.

### **LEAD LIMITS FOR CHILDREN'S PRODUCTS**

The State Child Protection Act prohibits placing a banned hazardous substance in the stream of commerce. Beginning July 1, 2009, 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. (a) from July 1, 2009 to June 30, 2011, any part of the product contains more than 300 parts per million (ppm) total lead content by weight and (b) on and after July 1, 2011, any part of the product contains more than 100 ppm total lead content by weight;
2. on and after July 1, 2009, it bears lead-containing paint and the paint has more than 90 ppm total lead content by weight; or
3. on and after July 1, 2009, it bears lead-containing paint and the paint contains more than .009 milligrams of lead per centimeter squared (see BACKGROUND).

The bill authorizes the DCP commissioner to adopt regulations if he determines that it is feasible for a children's product to comply with a standard that is stricter than 100 ppm total lead content by weight for any part of the product. Under these regulations, the commissioner may require a children's product to comply with a limit as low as 40 ppm total lead content by weight.

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 covering or casing and (2) 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 by July 1, 2009. 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 introducing or delivering for introduction into commerce any toy or other article for sale in Connecticut containing asbestos and marketed for use by children under age 16.

The bill prohibits manufacturing; 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 the subject of voluntary or mandatory corrective action taken under the direction of, or in cooperation with, a federal agency but 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.

### **CERTIFICATE OF DISPOSITION**

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.

Under the bill, the DCP commissioner must develop a certificate of disposition by October 1, 2008 for retailers and wholesalers prohibited from selling or placing into the stream of commerce any children's product that is subject to a recall or voluntary corrective action. The certificate must require these retailers and wholesalers to (1) specify the make, model, type, quantity, and final disposition of the affected children's products and (2) sign an affidavit verifying the authenticity of the information. The certificate must contain any other information the commissioner requires.

If a retailer or wholesaler receives notification or information that a children's product has been recalled or subject to voluntary corrective action, the bill requires it to inspect its premises and immediately dispose of all such products in its possession. Retailers and wholesalers must complete the certificate of disposition within seven calendar days after receiving the notice or information concerning a recall or voluntary corrective action. They must maintain signed and dated certification forms, which are subject to inspection by the commissioner or his designated agents, for at least three years.

The bill subjects retailers or wholesalers to the penalties of the State Child Protection Act, as amended by the bill, if they fail to (1) dispose of products properly, (2) complete the certificate of disposition, or (3) maintain certification forms (see below).

### **LISTS**

#### ***Banned Children's Products Internet List***

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.

### ***Other Toxic Substances List***

The bill also requires the DCP commissioner, in consultation with the commissioners of DPH and DEP, to compile a list of other toxic substances and the recommended maximum amount that may be present in children's products. 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 allows the DCP commissioner to adopt regulations requiring certain consumer products to carry warning labels.

Under the bill, the commissioner may identify consumer products with which a child may reasonably or foreseeably come into contact and that bear lead-containing paint and, on a case-by-case basis, require them to carry such a warning label. The bill 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 a 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."

The bill exempts from its warning label requirement (1) children's products and (2) consumer products with lead-containing components that are not accessible to children because they are not physically exposed due to a covering or casing and they will not become physically exposed through normal and reasonably foreseeable use and abuse.

## **UNFAIR TRADE PRACTICES**

### ***Notice Requirements***

The bill authorizes the DCP commissioner to require retail stores to post notices informing the general public when DCP adopts a regulation designating an article a banned hazardous substance. Notices must be posted in a location visible to the general public and remain up for a period of time the department specifies.

### ***Inspections and Obtaining Samples***

By law, DCP inspectors and investigators, upon presenting appropriate credentials, must be allowed to:

1. enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured or held for introduction into commerce, or held after introduction into commerce;
2. enter, at reasonable times any vehicle used to transport or hold hazardous substances;

3. inspect, at reasonable times, within reasonable limits, and in a reasonable manner any factory, warehouse, establishment, or vehicle, and all equipment, finished and unfinished materials, and labeling; and
4. obtain samples of such materials, packages, or labeling.

**Violations**

The bill makes it a violation of the Connecticut Unfair Trade Practices Act (CUTPA) to fail to (1) follow the posting requirement or (2) permit an inspector or investigator to carry out his or her duties as described above. CUTPA generally allows the DCP commissioner to investigate complaints, issue cease and desist orders, order restitution, enter into consent agreements, and ask the attorney general to initiate legal proceedings. It also allows individuals to file civil lawsuits. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for restraining order violations.

**STATE CHILD PROTECTION SAFETY ACT PENALTIES**

Under current law, violations of the State Child Protection Safety Act are either (1) class C misdemeanors, punishable by imprisonment for up to three months, fines of up to \$500, or both or (2) for repeat offenses or those committed with the intent to defraud or mislead, unclassified misdemeanors punishable by imprisonment for up to one year, fines of up to \$3,000, or both.

Under the bill, the former become class B misdemeanors, punishable by imprisonment for up to six months, fines of up to \$1,000, or both. And the maximum fine for the unclassified misdemeanor offense increases to \$5,000. The bill also authorizes the DCP commissioner to levy a civil penalty of up to \$100 for a violation, except for a violation that involves removing or disposing of tags affixed to embargoed items. Each violation, and each day it continues, constitutes a separate and distinct offense. The law already authorizes

DCP to levy civil penalties of up to \$500 per item for that type of violation. The bill requires the department to give alleged violators notice and a hearing and directs that these penalties be deposited into DCP's consumer protection enforcement account. It also requires that fines for tagging violations be deposited in that account.

### **INTERSTATE CLEARINGHOUSE**

The bill authorizes the DEP commissioner to participate in an interstate clearinghouse to (1) classify chemicals used in commercial products according to whether they are of high, moderate, low, or unknown concern and (2) organize and manage available data on chemicals. The data must include information on their use, hazards, and environmental concerns. The commissioner, through the clearinghouse, may also (1) produce and inventory information on (a) safe alternatives to specific chemical uses and (b) model policies and programs related to these alternatives and (2) provide technical assistance to businesses and consumers regarding safer chemical alternatives. She may participate in other related activities.

### **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 (File 204) 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 670) 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)

Appropriations Committee

Joint Favorable  
Yea 50 Nay 1 (04/11/2008)

Judiciary Committee

Joint Favorable  
Yea 37 Nay 0 (04/21/2008)