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BILL ANALYSIS

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Senate Bill 174 (as introduced 2-6-07)
Sponsor: Senator Roger Kahn, M.D.
First Committee: Natural Resources and Environmental Affairs
Second Committee: Health Policy

Date Completed: 10-8-07

CONTENT

The bill would add Part 54B (Toxic Substances in Children's Toys) to the Public Health Code to do the following:

- **Prohibit a person from manufacturing, selling, exchanging, or offering for sale to a retailer certain toys contaminated with toxic substances, and prescribe a misdemeanor penalty for a violation.**
- **Prohibit a person from manufacturing, selling, exchanging, or offering for sale to a retailer a toy without a label containing the name and place of business of the manufacturer, distributor, or importer.**
- **Require the Department of Community Health (DCH) and local health officers to enforce Part 54B, and authorize a DCH agent or local health officer to embargo a toy.**
- **Prohibit a person from knowingly removing, disposing, or selling an embargoed toy without permission from the DCH, a local health officer, or a court, and prescribe a misdemeanor penalty for a violation.**
- **Require the DCH or a local health officer to commence condemnation proceedings if a toy were alleged to be manufactured, sold, or exchanged in violation of Part 54B.**

For the purposes of Part 54B, "toy" would mean an article designed and made for the amusement of a minor or for the minor's use in play.

Under Part 54B, a person could not manufacture, sell, exchange, have in his or her possession with intent to sell or exchange, or expose or offer for sale or exchange to a retailer in Michigan a toy that was contaminated with a toxic substance and to which one or more of the following applied:

- The toy was coated with paint or lacquer containing lead compounds of which the lead content, calculated as Pb, exceeded that permitted by Federal regulations adopted under the Federal Hazardous Substances Act (16 CFR 1500.17, described below), or a soluble compound of antimony, arsenic, cadmium, mercury, selenium, or barium, introduced as such.
- The toy consisted in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance.
- The toy had been produced, prepared, packed, shipped, or held under unsanitary or other conditions as a result of which it might have become contaminated with filth or hazardous materials or otherwise rendered injurious to health.
- The toy was stuffed, padded, or lined with materials that were toxic or that otherwise would be hazardous if ingested, inhaled, or contacted.
- The toy was stuffed, padded, or lined and not securely wrapped or packaged.

A violation would be a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

(Under 16 CFR 1500.17, a toy or other article intended for use by children that bears any paint or other similar surface-coating material containing lead compounds of which the lead content exceeds 0.06% of the total weight of the contained solids or dried paint film is a banned hazardous substance.)

The bill specifies that for the purposes of Part 54B, a compound would be soluble if quantities in excess of 0.1% were dissolved by 5% hydrochloric acid after stirring for 10 minutes at room temperature.

Under Part 54B, a person could not manufacture, sell, exchange, have in his or her possession with intent to sell or exchange, or expose or offer for sale or exchange to a retailer in Michigan a toy that did not contain a label with the name and place of business of the manufacturer, distributor, or importer in the United States. A person would have to provide any of this information upon the DCH's request.

If an authorized representative of the DCH or a local health officer found or had probable cause to believe that the sale or exchange of a toy was or would be in violation of Part 54B, he or she would have to affix to the toy or a toy component a tag or other appropriate marking and give notice that the toy was suspected of being in violation of Part 54B and had been embargoed, and that a person could not remove the toy until permission for removal or disposal was given by an authorized DCH agent, the local health officer, or a court. A local health officer would have to notify the DCH within 48 hours of taking any action.

A person could not knowingly remove, sell, or dispose of a toy embargoed under the bill without the permission of an authorized DCH agent, the local health officer, or a court. A violation would be a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

If an authorized DCH agent or the local health officer found or had reasonable cause to believe that an embargo under the bill would be violated, he or she could remove the embargoed toy to a place of safekeeping.

If the manufacture, sale, or exchange of a toy were alleged to be in violation of Part 54B, the DCH or a local health officer would have to commence proceedings for the condemnation of the toy in the circuit court in the county where the toy was located.

Proposed MCL 333.5481-333.5493

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The Department of Community Health and local public health departments could see an increase in cost enforcing the standards established in Senate Bill 174.

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed offenses involving toys contaminated with toxic substances. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: David Fosdick
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.