

**94TH GENERAL ASSEMBLY****State of Illinois****2005 and 2006****SB0526**

Introduced 2/17/2005, by Sen. Carol Ronen

**SYNOPSIS AS INTRODUCED:**

30 ILCS 105/5.640 new  
430 ILCS 125/10  
430 ILCS 125/15  
430 ILCS 125/17 new  
430 ILCS 125/20  
430 ILCS 125/25  
430 ILCS 125/27 new  
430 ILCS 125/30

Amends the State Finance Act and the Children's Product Safety Act. Provides that a "children's product" is one designed or intended for children under age 12 (instead of 6); changes and adds other definitions. Provides that a children's product is deemed to be unsafe "only" if it meets certain specified criteria. Adds requirements concerning the Department of Public Health's list of unsafe children's products. Makes changes concerning safety standards for baby cribs. Imposes duties on manufacturers, importers, wholesalers, and distributors in connection with recalls of children's products. Provides for civil penalties for violations of the Children's Product Safety Act, and removes a provision making a violation a Class C misdemeanor. Provides that nothing in the Act relieves a commercial dealer from compliance with stricter requirements that may be imposed by an agency of the federal government. Adds enforcement powers of the Attorney General. Creates the Attorney General Court Ordered and Voluntary Compliance Payment Projects Fund; provides for the deposit of civil penalties into the fund and for the use of moneys in the fund by the Attorney General. Effective immediately.

LRB094 08995 DRJ 39216 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The State Finance Act is amended by adding  
5 Section 5.640 as follows:

6 (30 ILCS 105/5.640 new)

7 Sec. 5.640. The Attorney General Court Ordered and  
8 Voluntary Compliance Payment Projects Fund.

9 Section 10. The Children's Product Safety Act is amended by  
10 changing Sections 10, 15, 20, 25, and 30 and by adding Sections  
11 17 and 27 as follows:

12 (430 ILCS 125/10)

13 Sec. 10. Definitions. In this Act:

14 (a) "Children's product" means a product, including but not  
15 limited to a full-size crib, non-full-size crib, toddler bed,  
16 bed, car seat, chair, high chair, booster chair, hook-on chair,  
17 bath seat, gate or other enclosure for confining a child, play  
18 yard, stationary activity center, carrier, stroller, walker,  
19 swing, or toy or play equipment, that meets the following  
20 criteria:

21 (i) the product is designed or intended for the care  
22 of, or use by, any child under age 12 ~~children under 6~~  
23 ~~years of age or is designed or intended for the care of, or~~  
24 ~~use by, both children under 6 years of age and children 6~~  
25 ~~years of age or older;~~ and

26 (ii) the product is designed or intended to come into  
27 contact with the child while the product is used.

28 Notwithstanding any other provision of this Section, a  
29 product is not a "children's product" for purposes of this Act  
30 if:

1 (I) it may be used by or for the care of a child under  
2 age 12 ~~6 years of age~~, but it is designed or intended for  
3 use by the general population or segments of the general  
4 population and not solely or primarily for use by or the  
5 care of a child; or

6 (II) it is a medication, drug, or food or is intended  
7 to be ingested.

8 (b) "Commercial dealer user" means any person who deals in  
9 children's products or who otherwise by one's occupation holds  
10 oneself out as having knowledge or skill peculiar to children's  
11 products, or any person who is in the business of  
12 remanufacturing, retrofitting, selling, leasing, subletting,  
13 or otherwise placing in the stream of commerce children's  
14 products.

15 (b-5) "Manufacturer" means any person who makes and places  
16 into the stream of commerce a children's product as defined by  
17 this Act.

18 (b-10) "Importer" means any person who brings into this  
19 country and places into the stream of commerce a children's  
20 product.

21 (b-15) "Distributor" and "wholesaler" means any person,  
22 other than a manufacturer or retailer, who sells or resells or  
23 otherwise places into the stream of commerce a children's  
24 product.

25 (b-20) "Retailer" means any person other than a  
26 manufacturer, distributor, or wholesaler who sells, leases, or  
27 sublets children's products.

28 (b-25) "First seller" means any retailer selling a  
29 children's product that has not been used or has not previously  
30 been owned. A first seller does not include an entity such as a  
31 second-hand or resale store.

32 (c) "Person" means a natural person, firm, corporation,  
33 limited liability company, or association, or an employee or  
34 agent of a natural person or an entity included in this  
35 definition.

36 (d) "Infant" means any person less than 35 inches tall and

1 less than 3 years of age.

2 (e) "Crib" means a bed or containment designed to  
3 accommodate an infant.

4 (f) "Full-size crib" means a full-size crib as defined in  
5 Section 1508.3 of Title 16 of the Code of Federal Regulations  
6 regarding the requirements for full-size cribs.

7 (g) "Non-full-size crib" means a non-full-size crib as  
8 defined in Section 1509.2 of Title 16 of the Code of Federal  
9 Regulations regarding the requirements for non-full-size  
10 cribs.

11 (h) "End consumer" means a person who purchases a  
12 children's product for any purpose other than resale.

13 (Source: P.A. 91-413, eff. 1-1-00.)

14 (430 ILCS 125/15)

15 Sec. 15. Unsafe children's products; prohibition.

16 (a) On and after the effective date of this amendatory Act  
17 of the 94th General Assembly, no ~~no~~ commercial dealer,  
18 manufacturer, importer, distributor, wholesaler, or retailer  
19 user may manufacture, remanufacture, retrofit, distribute,  
20 sell at wholesale or retail, contract to sell or resell, lease,  
21 or sublet, or otherwise place in the stream of commerce, ~~on or~~  
22 after January 1, 2000, a children's product that is unsafe.

23 (b) A children's product is deemed to be unsafe for  
24 purposes of this Act only if it meets any of the following  
25 criteria:

26 (1) It does not conform to all applicable federal laws  
27 and regulations setting forth standards for the children's  
28 product.

29 (2) It has been recalled for any reason by or in  
30 cooperation with an agency of the federal government or the  
31 product's manufacturer, wholesaler, distributor, or  
32 importer and the recall has not been rescinded.

33 (3) An agency of the federal government or the  
34 product's manufacturer, wholesaler, distributor, or  
35 importer has issued a warning that a specific product's

1 intended use constitutes a safety hazard and the warning  
2 has not been rescinded.

3 (b-5) The Department of Public Health shall do the  
4 following:

5 (1) Maintain ~~create, maintain,~~ and update a  
6 comprehensive list of children's products that have been  
7 identified as meeting any of the criteria set forth in  
8 subdivisions (1) through (3) of ~~this~~ subsection (b).

9 (2) Update the comprehensive list within 24 hours after  
10 a children's product has been identified as meeting any of  
11 the criteria set forth in subsection (b).

12 (3) Make ~~The Department of Public Health shall make~~ the  
13 comprehensive list available to the public at no cost and  
14 ~~shall~~ post it on the Internet, ~~and encourage links.~~ The  
15 Internet posting shall provide a link to [www.recalls.gov](http://www.recalls.gov) or  
16 its successor and shall otherwise make available a link to  
17 the specific recall notice or warning concerning the  
18 children's product that has been recalled or for which a  
19 warning has been issued. The Department must review and  
20 update these links on a regular basis.

21 (4) Include information regarding the comprehensive  
22 list of unsafe children's products maintained under this  
23 Section in regular publications or mailings such as those  
24 sent to persons including, but not limited to:  
25 pediatricians; Special Supplemental Nutrition Program for  
26 Women, Infants, and Children (WIC) clinics; and local  
27 health departments.

28 (c) A crib is presumed to be unsafe for purposes of this  
29 Act if it does not conform to the standards endorsed or  
30 established by the Consumer Product Safety Commission,  
31 including but not limited to Title 16 of the Code of Federal  
32 Regulations and the standards endorsed or established by ASTM  
33 International ~~American Society for Testing and Materials~~, as  
34 follows:

35 (1) Part 1508 of Title 16 of the Code of Federal  
36 Regulations and any regulations adopted to amend or

1 supplement the regulations.

2 (2) Part 1509 of Title 16 of the Code of Federal  
3 Regulations and any regulations adopted to amend or  
4 supplement the regulations.

5 (3) Part 1303 of Title 16 of the Code of Federal  
6 Regulations and any regulations adopted to amend or  
7 supplement the regulations.

8 (4) The following standards and specifications of ASTM  
9 International ~~the American Society for Testing Materials~~  
10 for corner posts of baby cribs and structural integrity of  
11 baby cribs:

12 (A) ASTM F 966 ~~966-90~~ (corner post standard).

13 (B) ASTM F 1169 ~~1169-88~~ (structural integrity of  
14 full-size baby cribs).

15 (C) ASTM F 406 ~~1822-97~~ (non-full-size cribs).

16 The Department of Public Health shall make the requirements  
17 set forth in this subsection (c) available to the public.

18 (d) (Blank.) ~~Cribs that are unsafe shall include, but not~~  
19 ~~be limited to, cribs that have any of the following dangerous~~  
20 ~~features or characteristics:~~

21 ~~(1) Corner posts that extend more than one sixteenth of~~  
22 ~~an inch.~~

23 ~~(2) Spaces between side slats more than 2.375 inches.~~

24 ~~(3) Mattress support that can be easily dislodged from~~  
25 ~~any point of the crib. A mattress segment can be easily~~  
26 ~~dislodged if it cannot withstand at least a 25 pound upward~~  
27 ~~force from underneath the crib.~~

28 ~~(4) Cutout designs on the end panels.~~

29 ~~(5) Rail height dimensions that do not conform to both~~  
30 ~~of the following:~~

31 ~~(A) The height of the rail and end panel as~~  
32 ~~measured from the top of the rail or panel in its~~  
33 ~~lowest position to the top of the mattress support in~~  
34 ~~its highest position is at least 9 inches.~~

35 ~~(B) The height of the rail and end panel as~~  
36 ~~measured from the top of the rail or panel in its~~

1 ~~highest position to the top of the mattress support in~~  
2 ~~its lowest position is at least 26 inches.~~

3 ~~(6) Any screws, bolts, or hardware that are loose and~~  
4 ~~not secured.~~

5 ~~(7) Sharp edges, points, or rough surfaces, or any wood~~  
6 ~~surfaces that are not smooth and free from splinters,~~  
7 ~~splits, or cracks.~~

8 ~~(8) Tears in mesh or fabric sides in a non full size~~  
9 ~~crib.~~

10 ~~(9) A non full size crib that folds in a "V" shape~~  
11 ~~design does not have top rails that automatically lock into~~  
12 ~~place when the crib is fully set up.~~

13 ~~(10) The mattress pad in a non full size mesh/fabric~~  
14 ~~crib exceeds one inch.~~

15 (e) An unsafe children's product, as determined pursuant to  
16 subdivisions (1), (2), and (3) of subsection (b) of this  
17 Section 15, may be retrofitted if the retrofit has been  
18 approved by the agency of the federal government issuing the  
19 recall or warning or the agency responsible for approving the  
20 retrofit is different from the agency issuing the recall or  
21 warning. A retrofitted children's product may be sold if it is  
22 accompanied at the time of sale by a notice declaring that it  
23 is safe to use for a child under age 12 ~~6 years of age~~. The  
24 notice shall include: (1) a description of the original problem  
25 which made the recalled product unsafe; (2) a description of  
26 the retrofit which explains how the original problem was  
27 eliminated and declaring that it is now safe to use for a child  
28 under age 12 ~~6 years of age~~; and (3) the name and address of the  
29 commercial dealer, manufacturer, importer, distributor, or  
30 wholesaler ~~user~~ who accomplished the retrofit certifying that  
31 the work was done along with the name and model number of the  
32 product retrofitted. The commercial dealer, manufacturer,  
33 importer, distributor, or wholesaler ~~user~~ is responsible for  
34 ensuring that the notice is present with the retrofitted  
35 product at the time of sale. A retrofit is exempt from this Act  
36 if:

1 (i) the retrofit is for a children's product that  
2 requires assembly by the consumer, the approved retrofit is  
3 provided with the product by the commercial dealer,  
4 manufacturer, importer, distributor, or wholesaler ~~user,~~  
5 and the retrofit is accompanied at the time of sale by  
6 instructions explaining how to apply the retrofit; or

7 (ii) the seller of a previously unsold product  
8 accomplishes the repair, approved or recommended by an  
9 agency of the federal government, prior to sale.

10 (Source: P.A. 91-413, eff. 1-1-00.)

11 (430 ILCS 125/17 new)

12 Sec. 17. Product recalls.

13 (a) If a manufacturer, importer, wholesaler, or  
14 distributor of children's products has placed into the stream  
15 of commerce in Illinois a children's product for which a recall  
16 or warning has subsequently been issued by one of those  
17 entities or by an agency of the federal government, then the  
18 manufacturer, importer, wholesaler, or distributor must  
19 initiate the following steps within 24 hours after issuing or  
20 receiving the recall or warning:

21 (1) Contact all of its commercial customers, other than  
22 end consumers, to whom it sold, leased, sublet, or  
23 transferred that particular children's product in  
24 Illinois. This contact must include providing the recall  
25 notice or warning and must be made to the person designated  
26 by the retailer for that product.

27 (2) If the manufacturer, importer, wholesaler, or  
28 distributor maintains a web site, the entity must place on  
29 the home page (or the first entry point) of its web site a  
30 link to [www.recalls.gov](http://www.recalls.gov) or its successor and must otherwise  
31 make available a link to the specific recall notice or  
32 warning that has been issued for the children's product.  
33 The recall or warning information must include a  
34 description of the product, the reason for the recall or  
35 warning, a picture of the product, and instructions on how



1 to participate in the recall or warning. The information  
2 may include only the product recall information and may not  
3 include sales or marketing information on that product or  
4 any other product, excluding return and exchange policies.  
5 The recall or warning information must allow persons to  
6 participate in the recall through the web site of the  
7 manufacturer, importer, wholesaler or distributor.

8 (3) If the manufacturer, importer, wholesaler, or  
9 distributor sold directly to a non-commercial consumer,  
10 and the consumer provided either a mailing address or  
11 e-mail address at the time of sale, then the manufacturer,  
12 importer, wholesaler, or distributor must send a notice of  
13 the recall or warning to the consumer at either address  
14 provided. The notice must include a description of the  
15 product, the reason for the recall or warning, and  
16 instructions on how to participate in the recall or  
17 warning. The notice may include only the product recall  
18 information and may not include sales or marketing  
19 information on that product or any other product, excluding  
20 return and exchange policies.

21 (b) If a retailer receives notice of a recall or warning  
22 regarding a children's product from a manufacturer, importer,  
23 wholesaler, or distributor, or, in the case of an involuntary  
24 recall, from a federal agency, and if the retailer at any time  
25 offered the product for sale in Illinois, then the retailer  
26 must do the following:

27 (1) Within 3 business days after receiving the recall  
28 or warning from the manufacturer, importer, wholesaler, or  
29 distributor by a person designated by the retailer, the  
30 retailer must remove the children's product from the  
31 shelves of its stores or program its registers to ensure  
32 that the item cannot be sold.

33 (2) If the product was sold through the retailer's web  
34 site, then within 3 business days after receipt of the  
35 recall or warning by the person designated by the retailer,  
36 the retailer must remove the children's product from the

1 web site or remove the ability of a consumer to purchase  
2 the children's product through the web site.

3 (3) If an e-mail or shipping address was provided at  
4 the time a children's product, for which a recall or  
5 warning was subsequently issued, was purchased on the  
6 retailer's web site, the retailer must attempt to contact  
7 the purchaser at the address provided with the recall or  
8 warning information. The recall or warning information  
9 must include a description of the product, the reason for  
10 the recall or warning, and instructions on how to  
11 participate in the recall or warning. The information may  
12 include only the product recall information and may not  
13 include sales or marketing information on that product or  
14 any other product, excluding return and exchange policies.  
15 The retailer must comply with this paragraph (3) within 30  
16 days after receiving the notice of the recall or warning  
17 from a manufacturer, importer, wholesaler, or distributor.

18 (4) Within 5 business days after receipt of the recall  
19 or warning by the person designated by the retailer from a  
20 manufacturer, importer, wholesaler, distributor, or from a  
21 federal agency in the case of an involuntary recall, the  
22 retailer must post in a prominent location the recall or  
23 warning notice. This notice must remain posted for 120  
24 days.

25 (5) If the children's product for which a recall or  
26 warning was issued was sold on the retailer's web site, the  
27 retailer must within 5 business days post on the home page  
28 (or the first entry point) of its web site a link to  
29 www.recalls.gov or its successor, and must otherwise make  
30 available a link to information pertaining to the  
31 children's product that has been recalled or for which a  
32 warning has been issued. The recall or warning information  
33 must include a description of the product, the reason for  
34 the recall or warning, a picture of the product (if one was  
35 provided), and instructions on how to participate in the  
36 recall or warning. The information may include only the

1 product recall information and may not include sales or  
2 marketing information on that product or any other product,  
3 excluding return and exchange policies. The recall or  
4 warning information must be interactive to allow persons to  
5 participate in the recall through the retailer's web site  
6 or by linking to the manufacturer, importer, wholesaler, or  
7 distributor's recall page.

8 (c) Within 5 business days after a recalled children's  
9 product is placed on the Department of Public Health's  
10 comprehensive list maintained under Section 15, a retailer who  
11 is not a first seller must comply with subsection (b) of  
12 Section 17, except that such a retailer has 5 business days to  
13 comply with both subdivision (b)(1) and subdivision (b)(2) of  
14 Section 17.

15 (d) A manufacturer, importer, wholesaler, or distributor  
16 who is also a retailer must comply with both subsection (a) and  
17 subsection (b) of Section 17, except that a manufacturer,  
18 importer, wholesaler, or distributor who is also a retailer  
19 must, within 24 hours after issuing or receiving the recall or  
20 warning, post on the home page (or the first entry point) of  
21 its web site a link to [www.recalls.gov](http://www.recalls.gov) or its successor and  
22 must otherwise make available a link to any specific  
23 information pertaining to the children's product that has been  
24 recalled or for which a warning has been issued.

25 (430 ILCS 125/20)

26 Sec. 20. Exception. A commercial dealer, manufacturer,  
27 importer, distributor, wholesaler, or retailer, other than a  
28 retailer who is not a first-seller, who exercises reasonable  
29 care in acting pursuant to this Act is not in violation of any  
30 Section of this Act. ~~The commercial user shall not be found~~  
31 ~~noncompliant if the specific recalled product sold was not~~  
32 ~~included on the Department of Public Health's list on the day~~  
33 ~~before the sale.~~

34 (Source: P.A. 91-413, eff. 1-1-00.)

1 (430 ILCS 125/25)

2 Sec. 25. Penalty. Except as provided in Section 20, a ~~A~~  
3 commercial dealer ~~user~~ who ~~willfully and knowingly~~ violates  
4 Section 15 by failing to exercise reasonable care is subject to  
5 a civil penalty in an amount not to exceed \$500 for each day  
6 that the violation continues. A manufacturer, importer,  
7 wholesaler, or distributor who violates Section 17 by failing  
8 to exercise reasonable care is subject to a civil penalty of an  
9 amount not to exceed \$500 for each day that the violation  
10 continues. A retailer who violates subsection (b) of Section 17  
11 by failing to exercise reasonable care is subject to a civil  
12 penalty in an amount not to exceed \$500 for each day that the  
13 violation continues. Anyone who is not a first seller of a  
14 children's product who violates subsection (c) of Section 17 is  
15 subject to a civil penalty not to exceed \$1,000. ~~is guilty of a~~  
16 ~~Class C misdemeanor.~~

17 (Source: P.A. 91-413, eff. 1-1-00.)

18 (430 ILCS 125/27 new)

19 Sec. 27. Federal requirements. Nothing in this Act relieves  
20 a commercial dealer from compliance with stricter requirements  
21 that may be imposed by an agency of the federal government.

22 (430 ILCS 125/30)

23 Sec. 30. Enforcement.

24 (a) The Attorney General, or a State's Attorney in the  
25 county in which a violation of this Act occurred, may bring an  
26 action in the name of the People of the State of Illinois to  
27 enforce the provisions of this Act.

28 (b) When (i) it appears to the Attorney General that a  
29 person has engaged in, is engaging in, or is about to engage in  
30 any practice declared to be unlawful by this Act, or (ii) the  
31 Attorney General receives a written complaint from a consumer  
32 or borrower of the commission of a practice declared to be  
33 unlawful under this Act, or (iii) the Attorney General believes  
34 it to be in the public interest that an investigation should be

1 made to ascertain whether a person in fact has engaged in, is  
2 engaging in, or is about to engage in any practice declared to  
3 be unlawful by this Act, the Attorney General may:

4 (1) Require that person to file, on terms that the  
5 Attorney General prescribes, a statement or report in  
6 writing under oath or otherwise, as to all information the  
7 Attorney General considers necessary.

8 (2) Examine under oath any person in connection with  
9 the conduct of any trade or commerce.

10 (3) Examine any merchandise or sample thereof, record,  
11 book, document, account, or paper the Attorney General  
12 considers necessary.

13 (4) Pursuant to an order of the circuit court, impound  
14 any record, book, document, account, paper, or sample of  
15 merchandise that is produced in accordance with this Act,  
16 and retain it in the Attorney General's possession until  
17 the completion of all proceedings in connection with which  
18 it is produced.

19 (c) In the administration of this Act, the Attorney General  
20 may accept an assurance of voluntary compliance with respect to  
21 any method, act, or practice deemed to be violative of this Act  
22 from any person who has engaged in, is engaging in, or was  
23 about to engage in that method, act, or practice. Evidence of a  
24 violation of an assurance of voluntary compliance shall be  
25 prima facie evidence of a violation of this Act in any  
26 subsequent proceeding brought by the Attorney General against  
27 the alleged violator.

28 (d) Whenever the Attorney General or a State's Attorney has  
29 reason to believe that any person is using, has used, or is  
30 about to use any method, act, or practice declared by this Act  
31 to be unlawful, and that proceedings would be in the public  
32 interest, he or she may bring an action in the name of the  
33 People of the State against that person to restrain by  
34 preliminary or permanent injunction the use of that method,  
35 act, or practice. The court, in its discretion, may exercise  
36 all powers necessary, including but not limited to: injunction;

1 revocation, forfeiture or suspension of any license, charter,  
2 franchise, certificate, or other evidence of authority of any  
3 person to do business in this State; appointment of a receiver;  
4 dissolution of a domestic corporation or association;  
5 suspension or termination of the right of a foreign corporation  
6 or association to do business in this State; and restitution.

7 (e) Civil penalties paid under any of the conditions  
8 described in Section 25 shall be deposited into the Attorney  
9 General Court Ordered and Voluntary Compliance Payment  
10 Projects Fund, which is created as a special fund in the State  
11 treasury. Moneys in the Fund shall be used, subject to  
12 appropriation, for the performance of any function pertaining  
13 to the exercise of the duties of the Attorney General,  
14 including, but not limited to, enforcement of any law of this  
15 State and conducting public education programs. Any moneys in  
16 the Fund that are required by the court or by an agreement to  
17 be used for a particular purpose must be used for that purpose,  
18 however.

19 (Source: P.A. 91-413, eff. 1-1-00.)

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.