

Assembly Bill No. 1860

CHAPTER 569

An act to add Chapter 2 (commencing with Section 108040) to Part 3 of Division 104 of, and to repeal the heading of Chapter 2 of Part 3 of Division 104 of, the Health and Safety Code, relating to product safety.

[Approved by Governor September 29, 2008. Filed with
Secretary of State September 29, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1860, Huffman. Unsafe products: recall or warning.

Existing federal law authorizes the United States Consumer Product Safety Commission to establish and enforce product safety standards that it finds necessary to protect against unreasonable risk of injury. Once the commission staff determines a product violates a specific statute or regulation, the staff notifies the responsible manufacturer, importer, distributor, or retailer, and assists the responsible firm with the development and implementation of a remedial repair, replacement, or refund program, also known as a recall.

Existing state law provides for the establishment and enforcement of various product safety standards for consumer products, including, among others, requiring specified warning labels for water heaters, and prohibiting the sale of contaminated toys and lead-tainted tableware.

Existing state law prohibits the manufacture, production, preparation, compounding, packing, selling, offering for sale, or keeping for sale within the State of California, or the introduction into this state, of a misbranded hazardous substance or banned hazardous substance. Existing law requires the manufacturer, distributor, or retailer of any banned hazardous substance to repurchase the article or substance from the person to whom it was sold, and to refund the purchase price paid.

This bill would prohibit a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer from manufacturing, remanufacturing, distributing, selling at wholesale or retail, contracting to sell or resell, leasing, or subletting, or otherwise placing into the stream of commerce, a product that is unsafe knowing that the product is unsafe, as specified. The bill would provide for an unsafe product to be retrofitted, and would permit the sale of the retrofitted product if accompanied by a specified notice.

The bill would require a commercial dealer, manufacturer, importer, distributor, or wholesaler that has placed into the stream of commerce a product for which a recall or warning has subsequently been issued to initiate specified steps within 24 hours after issuing or receiving the recall notice or warning, including contacting all of its customers, other than end consumers, to whom it sold, leased, sublet, or transferred that particular product, and posting prominently on its Internet Web site a link to recall or

warning information that contains the specific recall notice or warning that was issued for the product in question and other specified information.

The bill would require the manufacturer of the product to provide for the safe return of the product to the manufacturer at no cost to the end consumer or retailer, and would require the manufacturer to properly dispose of the product and not export the product, or permit it to be exported, for disposal in a manner that poses a significant risk to the public health or the environment. The bill would impose additional requirements upon retailers of products determined to be unsafe, including removing the product from the shelves of its stores or programming its registers to ensure that the item cannot be sold, within 3 days after receiving the recall notice or warning of the unsafe product.

This bill would subject a person who violates these provisions to a civil penalty of up to \$1,000 for each occurrence, up to a maximum of \$20,000.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 2 of Part 3 of Division 104 of the Health and Safety Code is repealed.

SEC. 2. Chapter 2 (commencing with Section 108040) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 2. PRODUCT RECALL SAFETY AND PROTECTION ACT

108040. This chapter shall be known, and may be cited, as the Product Recall Safety and Protection Act.

108042. As used in this chapter, the following terms have the following meanings:

(a) "Commercial dealer" means any person who deals in products or who otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to products, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing into the stream of commerce, a product.

(b) "Distributor" and "wholesaler" means any person, other than a manufacturer or retailer, who sells or resells, or otherwise places into the stream of commerce, a product.

(c) "End consumer" means a person who purchases a product for any purpose other than resale.

(d) "First seller" means any retailer selling a product that has not been used or has not previously been owned. A first seller does not include an entity such as a secondhand retail dealer, thrift shop, resale store, or any other establishment or individual, agent, or employee thereof that sells, distributes, rents, or leases products of any kind.

(e) "Importer" means any person who brings into this country, and places into the stream of commerce, a product.

(f) “Manufacturer” means any person who makes, and places into the stream of commerce, a product.

(g) “Person” means a natural person, firm, corporation, limited liability company, or association, or an employee or agent thereof.

(h) “Product” means any article, or component part thereof, produced or distributed (1) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (2) for personal use, consumption, or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. “Product” does not include food, drugs, cosmetics, pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.)), medical devices, firearms and ammunition, boats, motor vehicles, motor vehicle equipment, aircraft, or tobacco and tobacco products.

(i) “Recall” means any repair, replacement, or refund program implemented in accordance with the federal Consumer Product Safety Act (15 U.S.C. Sec. 2051 et seq.) upon the determination of commission staff that a consumer product violates a commission statute or regulation, and notification to the product manufacturer, importer, distributor, or retailer that corrective action to address the violation is warranted. “Recall” includes a voluntary recall where a product is returned to the manufacturer for repair or replacement, usually due to defects or safety concerns, or public notice that a product is defective and must be returned to the manufacturer or retailer.

(j) “Retailer” means any person other than a manufacturer, distributor, or wholesaler who sells, distributes, sublets, or leases consumer goods of any kind.

(k) “Sell” or “sale” means a transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means.

108044. (a) No commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer shall manufacture, remanufacture, distribute, sell at wholesale or retail, contract to sell or resell, lease, or sublet, or otherwise place into the stream of commerce, a product that is unsafe, as defined in subdivision (b), knowing that the product is unsafe.

(b) A product shall be deemed unsafe for purposes of this chapter only if it meets one or both of the following criteria:

(1) The product has been recalled because it does not conform to state or federal laws and regulations setting forth standards for the product.

(2) The product has been recalled for any safety hazard reason in cooperation with the federal Consumer Product Safety Commission or its staff, or voluntarily recalled for any safety hazard reason by the product’s commercial dealer, manufacturer, importer, distributor, or wholesaler, and the recall has not been rescinded.

(c) (1) An unsafe product, as determined pursuant to subdivision (b), may be retrofitted if the retrofit has been approved by the agency issuing

the recall or warning, or the agency responsible for approving the retrofit if it is different from the agency issuing the recall or warning.

(2) A retrofitted product may be sold if it is accompanied at the time of sale by a notice declaring that it is safe to use. The notice shall include all of the following:

(A) A description of the original problem that made the recalled product unsafe.

(B) A description of the retrofit that explains how the original problem was eliminated and declaring that it is now safe to use.

(C) The name and address of the commercial dealer, manufacturer, importer, distributor, or wholesaler who accomplished the retrofit, certifying that the work was done, along with the name and model number of the product retrofitted.

(3) The commercial dealer, manufacturer, importer, distributor, or wholesaler is responsible for ensuring that the notice described in paragraph (2) is present with the retrofitted product at the time of sale. This paragraph and paragraph (2) shall not apply, and the product may be sold, if either subparagraph (A) or (B) applies:

(A) The retrofit meets all of the following:

(i) The product requires assembly by the consumer.

(ii) The retrofit kit is provided with the product by the commercial dealer, manufacturer, importer, distributor, or wholesaler.

(iii) The retrofit kit is accompanied at the time of sale by instructions explaining how to apply the retrofit.

(B) The seller of a previously unsold product or the entity to whom unsold products had been returned under the terms of the recall accomplishes the approved or recommended repair prior to sale.

108046. (a) A commercial dealer, manufacturer, importer, distributor, or wholesaler that has placed into the stream of commerce any unsafe product for which a recall or warning has subsequently been issued, shall initiate the following steps within 24 hours after issuing or receiving the recall notice or warning:

(1) Contact all of its customers, other than end consumers, to whom it sold, leased, sublet, or transferred that particular product. The contact shall be made to a person designated for that product by the customer and shall include a copy of the recall notice or warning.

(2) If the commercial dealer, manufacturer, importer, distributor, or wholesaler maintains an Internet Web site, the entity shall place prominently on the homepage or first point of entry of its Web site, a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question. The recall or warning information shall include a description of the product, the reason for the recall or warning, a picture of the product, and instructions on how to participate in the recall or warning. The information shall include only the product recall or warning information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies. The recall or warning information shall permit participation in the recall or

warning through the Web site of the commercial dealer, manufacturer, importer, distributor, or wholesaler.

(b) (1) The manufacturer of the product shall provide for the safe return of the product to the manufacturer or the appropriate disposal of the product in the manner required pursuant to paragraph (2) at no cost to the end consumer or retailer.

(2) The manufacturer shall properly dispose of the product in a manner that is in compliance with all applicable federal, state, and local laws, regulations, and ordinances, and shall not export the product, or permit it to be exported, for disposal in a manner that poses a significant risk to the public health or the environment.

(3) The manufacturer or retailer may provide a corrective action or retrofit onsite at the consumer's home or premises for any product for which a recall or warning has been issued.

(c) If a retailer receives notice of a recall or warning regarding a product from a commercial dealer, manufacturer, importer, distributor, wholesaler, or state or federal agency, and if the retailer during the previous 18 months offered the product for sale, then the retailer shall do the following:

(1) Within three days after receiving the notice or warning by the person designated by the retailer, the retailer shall remove the product from the shelves of its stores or program its registers to ensure that the item cannot be sold.

(2) If the product was sold through the retailer's Internet Web site, then within three days after receiving the notice or warning by the person designated by the retailer, the retailer shall remove the product from the Web site or remove the ability to purchase the product through the Web site.

(3) Within three days after receiving the recall notice or warning by the person designated by the retailer, the retailer shall post in paper form or electronically in a prominent location in each retail store the recall notice or warning. The notice or warning shall remain posted for at least 60 days.

(4) If the product for which a recall or warning was issued was sold on the retailer's Internet Web site, the retailer shall, within three days after receiving the recall notice or warning by the person designated by the retailer, post on the homepage or first point of entry of its Web site a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question. The recall or warning information shall include a description of the product, the reason for the recall or warning, a picture of the product, if one was provided, and instructions on how to participate in the recall or warning. The information shall include only the product recall or warning information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies.

(5) A retailer who is not a first seller shall comply with this subdivision, except that the retailer has five days to comply with paragraphs (1) and (2).

(6) A retailer who is a first seller shall accept any recalled product for the purpose of returning it to the manufacturer or distributor.

(d) A commercial dealer, manufacturer, importer, wholesaler, or distributor who is also a retailer shall comply with subdivisions (a), (b), and (c), as applicable.

108048. Nothing in this chapter relieves a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer from compliance with stricter requirements that may be imposed by an agency of the federal government.

108050. (a) Any violation of this chapter shall be subject to a civil penalty of up to one thousand dollars (\$1,000) for each occurrence, up to a maximum of twenty thousand dollars (\$20,000).

(b) The remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.