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PLAYGROUND EQUIPMENT SAFETY ACT

House Bills 4101 and 4102 as introduced First Analysis (3-18-97)

Sponsor: Rep. Beverly Hammerstrom
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

The mother of Nancy Sibley, an Ann Arbor child who died when the drawstring of her coat snagged in a gap at the top of a school playground slide, has waged a safety campaign since her child's death to promote safer clothing and safer playground equipment for children. Mrs. Sibley first conducted a letter-writing crusade that galvanized the U.S. Consumer Product Safety Commission (CPSC) to persuade manufacturers to remove drawstrings from children's clothes. She then directed her campaign toward companies that manufacture children's playground equipment. As a result of her efforts, drawstrings have virtually disappeared from children's clothing, and some states have enacted laws requiring safety standards for playground equipment. Mrs. Sibley's campaign has spurred legislation to improve the safety of playground equipment in Michigan. Legislation is proposed that would require the manufacturers of playground equipment to comply with CPSC and American Society for Testing and Materials (ASTM) safety guidelines. The CPSC standards are published in its "Public Playground Handbook for Safety". Appropriately, the bills have been named the "Nancy Bills," in memory of Nancy Sibley, and fines collected from violations of the bills' provisions would be deposited into the Children's Trust Fund.

THE CONTENT OF THE BILLS:

The bills would create the Playground Equipment Safety Act and would designate fines collected for violations of the act to the Children's Trust Fund.

House Bill 4102 would create the Playground Equipment Safety Act to require that a person engaged in the manufacture or assembly of public playground equipment in the state comply with standards set forth in the "Handbook for Public Playground Safety" published for the U.S. Consumer Products Safety Commission, and in the "Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, ASTM F1487-93" published by the American Society for Testing and Materials. Both publications would be incorporated by reference.

Violations of the bill would be subject to a civil fine of \$1,000 or less. Nonpayment of any fine or installment of a fine or costs could be remedied by means authorized under the Revised Judicature Act of 1961 (MCL 600.101 et al). Money collected under the bill would be deposited in the Children's Trust Fund within the state treasury.

"Person" would be defined as an individual, partnership, corporation, association, governmental entity, or other legal entity. "Public playground equipment" would include but not be limited to slides, climbers, seesaws, and swings that were designed for the recreational use of children and were located on public grounds.

House Bill 4101 would amend Public Act 249 of 1982 (MCL 21.171) to specify that any amounts received from civil fines imposed under the Playground Equipment Safety Act would be credited to the Children's Trust Fund. This would be in addition to amounts currently specified in the act appropriated under provisions of the Income Tax Act of 1967 (MCL 206.475) and the Child Abuse and Neglect Prevention Act (MCL 722.608).

The bills are tie-barred to each other.

BACKGROUND INFORMATION:

House Bills 4101 and 4102 are identical to legislation introduced in the 1995-96 legislative session (House Bills 5868 and 5869), which passed the House in an amended form.

FISCAL IMPLICATIONS:

The House Fiscal Agency estimates House Bill 4101 would have no impact on state funds, and that the civil fines imposed by House Bill 4102 would result in an indeterminate increase in state funds. House Bill 4102 may also increase administrative costs somewhat, but the bill does not identify who will be responsible for administering the act. (3-17-97)

House Bills 4101 and 4102 (3-18-97)

ARGUMENTS:

For:

House Bills 4101 and 4102 would signify that Michigan aspires to a higher level of safety in its playgrounds. A nationwide survey of 443 playgrounds, conducted by the Consumer Federation of America and the U.S. Public Interest Research Group, and reported in an August 14, 1995, *Wall Street Journal* news article, indicated that more than 90 percent of playgrounds pose serious health and safety risks. In fact, the U.S. Consumer Product Safety Commission (CPSC) reports that more than 240,000 children required emergency care for injuries received in playground accidents in 1995. In addition, 19 children died between 1985 and 1996 from playground injuries. However, as the *Journal* news article indicates, there are no national safety standards in the U.S. for playground equipment, and only a handful of states have passed -- or are contemplating -- legislation requiring safety standards for them. (In contrast, European countries have adopted strict safety standards.)

The importance of requiring specific safety standards was demonstrated by the issue of drawstrings on children's clothing. When the problem was brought to the attention of the CPSC after the death of a child who died when the drawstring on her coat snagged in a gap at the top of a playground slide, tests were conducted on playground equipment to devise safety standards to prevent this from recurring. After two years, it was decided that no test could be devised to assure that drawstrings wouldn't catch in small gaps, and the CPSC persuaded clothing manufacturers to voluntarily remove drawstrings from children's clothes. Since then, there have been no accidents involving drawstrings, except for situations involving clothing manufactured prior to their removal.

Against:

As passed by the House last session, the fines for violations were set at \$10,000. Some people believe that a fine of up to \$1,000 is not sufficient to deter violations by large manufacturing companies.

Response:

Though for a large manufacturing company a fine of \$10,000 for failure to comply with standards specified in House Bill 4102 seems reasonable, many playground sets are assembled and installed by volunteer groups and school districts. Proponents of the bills are concerned that too large of a fine would deter civic groups from raising funds and building playground sets. They stress that passage of the bills would go far in educating both manufacturers and those who assemble or maintain playground equipment. In fact, according to Mrs. Sibley, all ten of the major manufacturers of playground

equipment have indicated that they will comply with the national standards. However, problems can still arise from improper assembly or maintenance, which is mostly due to ignorance of what types of things could cause injury or how to rectify the problem. Reportedly, the school authorities of the school playground where Nancy Sibley was fatally injured did not know that a repair kit was available for about \$15.00 that would have sealed the gap in the top of the slide. In fact, many people still do not know that gaps in certain equipment can pose serious health risks. The bills would bring an awareness of the national standards that do exist, and compliance with those standards would significantly reduce the risk of injuries and death on the state's playgrounds.

Against:

House Bill 4102 would require that manufacturers of public playground equipment comply with both the standards described in the "Public Playground Handbook for Safety" published by the U.S. Consumer Product Safety Commission (CPSC), and those contained in the "Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, ASTM F1487-93," published by the American Society for Testing and Materials (ASTM). However, the CPSC's safety guideline publication is outdated. It is based on recommendations provided to the CPSC in March, 1990, by a private contractor that tests playground equipment. According to CPSC, the commission at one time published safety standards for public playground equipment, and safety standards for home playground equipment were published by ASTM.

However, due to budget cutbacks, the CPSC no longer publishes these guidelines. Instead, the responsibility for publishing safety guidelines for both public and home playground equipment was given to ASTM. House Bill 5868 should be amended to refer solely to ASTM safety performance specifications.

Against:

As written, House Bill 4102 does not specify who will be responsible for the inspection and review of the design and safety standards of playground equipment, and does not provide for penalties for not maintaining the equipment -- only for manufacturing and assembling. In addition, the bill does not specify which agency will enforce the safety standards specified in the bill, and how the costs of enforcement will be paid. The bill should be amended to address these concerns.

Response:

The bill would define "public playground equipment" to include apparatus designed for the children's

recreational use that was "located on grounds open to the public." Therefore, the provisions of the bill would apply to playground equipment in each public park and public school playground maintained by the state, local community, or school district. While the bill does not require that these entities enforce the proposed safety standards, it would be in a community's best interest to do so, both to protect its children and to avoid possible litigation in situations involving faulty equipment.

POSITIONS:

The Michigan PTA (Parent Teacher Association) adopted a position statement in 1995 supporting efforts to promote safety guidelines for public playground fall zones, which -- according to the CPSC -- is where 80 percent of playground accidents occur. The PTA does support the bills. (3-17-97)

The Michigan Association for the Education of Young Children supports the bills. (3-17-97)

The Michigan Townships Association supports the bills. (3-17-97)

The Michigan Association of School Boards has no position at this time. (3-17-97)

The Family Independence Agency has no formal position on House Bill 4101 at this time. (3-17-97)

The Department of Consumer and Industry Services has not taken a position on House Bill 4102 as the department would have no regulatory involvement with the bill's provisions. (3-17-97)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.