

HB 4092 -2 STAFF MEASURE SUMMARY

House Committee On Commerce and Consumer Protection

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Meeting Dates: 2/10, 2/12

WHAT THE MEASURE DOES:

The measure restricts the sale of car seats that do not meet federal or state safety standards. the restriction is both for retailers and online and other marketplaces. it creates a disclosure requirement and makes a failure to comply with the measure a violation of the Unfair Trade Practices Act.

Detailed Summary:

- The measure restricts sales of any device or system for restraining, seating, or positioning a child who weights 80 pounds or less within a motor vehicle (device) that does not meet the National Highway Traffic Safety Administration standard for child restraint systems (federal standard) or Department of Transportation standards
- It also restricts a person that provides an online or other marketplace or facilitates a retailer's sale or offer for sale to a purchaser of the same device if it does not meet federal or Department of Transportation standards
- A retailer must make a clear and conspicuous disclosure in any advertisement or as part of any offer whether the device meets the federal standard or Department of Transportation standard
- a person that provides an online or other marketplace or facilitates a retailer's sale or offer for sale to a purchaser may not permit a retailer to advertise or to offer for sale a device without getting a written disclosure form the retailer that the device complies with the federal standard and the Department of Transportation standard
- The measure makes a failure to comply with these provisions an unlawful trade practice under Oregon's unlawful trade practices act

ISSUES DISCUSSED:

- Difference between fake and real safety devices
- Injuries from accidents involving safety devices not meeting standards
- Responsibilities of retailers
- How to enforce the measure

EFFECT OF AMENDMENT:

-2 The amendment clarifies definitions, establishes a knowingly standard for retailers and retail platform operators, and creates a new separate right of action with a 30-day cure opportunity for violators and a minimum \$500 damages, equitable relief, and attorney's fees for a prevailing plaintiff.

Detailed Summary:

- Removes the weight of the child requirement
- clarifies the definition of retail platform operator to include operators of centralized fulfillment, distribution, or warehouse networks and form inventory that the person owns, leases, or otherwise controls
- Excludes delivery services from the definition of retail platform operator
- Creates a knowingly standard for retailers and retail platform operators selling or making available sale a child safety system that does not meet the standards set forth in the measure
- Removes the disclosure requirements for advertising or making offers to sell
- Creates a separate right of action not under the UTPA
 - A purchaser's written demand gives the retailer or retail platform operator 30 days to cure a violation

- If a cure has not taken place within 30 days the purchaser who made the demand may bring an action in an Oregon court
- The purchaser may obtain their actual damages or \$500 whichever is higher and equitable relief
- A court may award attorney fees and cost at trial and appeal to a prevailing plaintiff

BACKGROUND:

the National Highway Traffic Safety Administration standard is referenced as 49 C.F.R. 571.213 in the measure. The regulation is extensive and considers the requirements to be met, the performance of a child restraint system, force distribution, installation, the belt buckle and webbing, the labeling, the printed instructions, flammability, information requirements, and attachment of the restraint to an anchorage system. It also considers the process of testing, appropriate conditions for testing, and even the selection and positioning of dummies.

Department of Transportation standards can be found under ORS 815.055. The Department of Transportation shall adopt and enforce rules establishing minimum standards and specifications for the construction and installation of safety belts, safety harnesses or child safety systems and anchors or other devices to which safety belts, safety harnesses or child safety systems may be attached and secured.

The Unlawful Trade Practices Act (UTPA) is one tool consumers may use to recover damages that occur because of deceptive sales or business practices. The UTPA was enacted in 1971. The UTPA provides individuals with a right of private action for deceptive practices in the sale of real estate, goods, or services. Consumers may bring a civil action for violations of the specific acts prohibited by the UTPA and may recover associated monetary damages, reasonable attorney fees, punitive damages, and equitable relief. Prevailing defendants may recover reasonable attorney fees where the action was brought without an objectively reasonable basis. As an alternative enforcement mechanism, District Attorneys or the Attorney General may issue investigative demands into suspected UTPA violations or, bring suit on behalf of the State of Oregon to restrain persons or entities from engaging in unlawful trade practices. The statute of limitations is one year from the date of discovery of the violation.