

Window Safety Regulation: selected history

1. Problem: Brain injury, death and other injuries to children.

- \$2.25 million settlement did not fix my client's injury.
- American Academy of Pediatrics: Falls are second to motor vehicle collisions as cause of death from unintentional injury.¹
- Analysis of calendar year 2000 Kids Inpatient Database (1) identified highest risk for children aged 0 – 4 and (2) concluded that window guards (New York) are associated with reduced injury resulting from falls from buildings “and should be mandated in multifamily dwellings where small children reside.”²

2. HB 2726 (2001) effort by Jeff Merrick, d/b/a Pediatric Law Group™:

- 7 co-sponsors, Bi-partisan³
- Minority leader Dan Gardner was champion
- Main supporters / testifiers: (a) Jeff Merrick, (b) family members of children who'd fallen, and (c) OHSU.
- Hearing occurred
- Committee chair (Republican) demanded agreement with landlords before moving bill.
- Landlords refused to support even a simple notice bill (which would have served their legal interests). Consequently, the bill died.

3. Two items to build on from the 2001 effort:

- State Fire Marshall Garrison supported the concept and offered to work with the Building Codes Division (or any other agency) to implement.
- Guards are tax deductible to owners. Oregon Dept. of Revenue stated that the cost of “safety bars” may be claimed as a current expense, a depreciable expense, or an increase to the basis of the property.

¹ *Pediatrics* 2001; 107:1188-91 (2001), *reaffirmed, Pediatrics* 2005; 115:1438 & 2007; 120:683-4.

² *Injury Prevention* 2005; 11:267-273.

³ Reps: Gardner, Backlund, Ringo, Tomei & Senators: Burdick, Courtney, Deckert

4. Regulatory and other historic landmarks:

- **1970s New York City Ordinance:**

- The city Health Department mandated that by 1979, all owners of multiple dwelling in the city had to provide window guards in apartments where children under 11 years old resided. Harlem Hospital records showed a 96% decline in accidental falls from windows by children in 1979-1981, compared to 1970-1978--from average of 16 every three years, to one every three years.
- Prescribed notice to tenants upon leasing and annually

- **1992 Window Safety Study Committee⁴ formed:**

- Findings included identifying age 1-4 as highest risk for death
- Current message is balance: Windows key for home fire escape but open windows pose potential hazards.

- **1995 New Jersey Statute:**

- Landlords must provide guards upon request when child age 10 or younger
- Notice to tenants of this right
- Exempts windows providing access to fire escapes
- Exempted owner-occupied units, condos, etc.

- **1999 development of window guard standards through American Society of Testing and Materials (ASTM).** ASTM has since updated standards. (Lesson: do not define standard in law, delegate to administrative agency.)

- **2006 New Jersey state law amendments:**

- Clarifies that cities can have more protective standards
- Now covers condos, co-ops or mutual housing corporations
- Requires instruction in safe use initially and annually
- Requires inspection 2 times per year and keep a record
- Tenant may complain to agency, which may investigate and penalize
- Requires verbal notice of right to request guards in addition to written notice
- Annual education on safe use required if 4 or more stories and built with public funds (in part) or tenant gets public rent assistance

⁴ Committee consisted of: American Architectural Manufacturers Assn., National Safety Council, Screen Mfgs Assn, Window and Door Mfgs Assn.

- **2007 Minnesota Statute:**

- Directed Commissioner of Labor and Industry to adopt rules for window fall prevention devices **as part of the State Building Code.**
- “Window fall prevention devices” include:
 - Safety screens [What are those?]
 - Hardware
 - Guards
 - Other devices that comply with standards set by Commissioner
 - Must comply with ASTM standards
- Rules to define which buildings and occupancies will require devices

- **2009 Minnesota Rules:**

- Occupancies: Apartments, Condos, hotels & motels.
- Exceptions:
 - Fixed, nonoperable windows
 - Basements and below the first story
 - Windows that cannot open more than 4 inches
 - Bottom sill higher than 24 inches above finished floor
[HUGE LOOPHOLE]
- Rule applies when: (1) building additions occur & (2) windows added or replaced requiring a permit
- Guard Standards:
 - ASTM F 2006 for non-emergency escape (egress) and rescue windows (Ingress)
 - ASTM F 2090 -01A for guards with release mechanisms for emergency escape (egress) windows
 - Updated standards that equal or exceed the above, including ASTM F 2006-08 or ASTM F 2090-08 [per inquiry #2009-04 issued Sept., 2009]

5. Conclusion.

Every summer, I fear heat waves. When windows open and I hear reports of kids falling out of windows, I feel sick and guilty that we failed in 2001 to enact a law protecting children.

I am hopeful that we can develop a strategy to reduce the number of falls as a cause of child injury and death.