

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S3/1/01

A Bill

Act 1313 of 2001
SENATE BILL 524

5 By: Senator Gullett
6 By: Representative Creekmore
7

For An Act To Be Entitled

10 THE CHILDREN'S PRODUCT SAFETY ACT OF ARKANSAS; AND FOR
11 OTHER PURPOSES.

Subtitle

14 THE CHILDREN'S PRODUCT SAFETY ACT OF
15 ARKANSAS.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20 SECTION 1. Title.

21 This act shall be known as "The Children's Product Safety Act of
22 Arkansas.

24 SECTION 2. Definition.

25 For purposes of this act:

26 (1)(A) "Children's product" means a product, including, but not limited
27 to a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair,
28 high chair, booster chair, hook-on chair, bath seat, gate, or other enclosure
29 for confining a child in a play yard, stationary activity center, carrier,
30 stroller, walker, swing, toy, or play equipment, that meets the following
31 criteria:

32 (i) The product is designed or intended for the care of, or
33 use by, children under six (6) years of age or is designed or intended for the
34 care of or use by both children under six (6) years of age and children six
35 (6) years of age or older; and

36 (ii) The product is designed or intended to come into

1 contact with the child while the product is used.

2 (B) "Children's product" does not mean a product that:

3 (i) May be used by or for the care of a child under six (6)
4 years of age, but is designed or intended for use by the general population or
5 segments of the general population and not solely or primarily for use by or
6 for the care of a child; or

7 (ii) Is a medication, drug, or food that is intended to be
8 ingested;

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

14 (3) "Crib" means a bed or containment designed to accommodate an
15 infant;

16 (4) "Full-size crib" means a full-size crib as defined in Section
17 1508.3 of Title 16 of the Code of Federal Regulations, as exists on January 1,
18 2001, regarding the requirements for full-size cribs;

19 (5) "Infant" means any person less than thirty-five inches (35") inches
20 tall and less than three (3) years of age;

21 (6) "Non-full-size crib" means a non-full-size crib as defined in
22 Section 1509.2 of Title 16 of the Code of Federal Regulations, as exists on
23 January 1, 2001, regarding the requirements for non-full-size cribs; and

24 (7) "Person" means a natural person, firm, corporation, limited
25 liability company, or association, or an employee or agent of a natural person
26 or an entity.

27
28 SECTION 3. Unsafe children's products – Prohibition.

29 (a) On or after January 1, 2002, no commercial user shall
30 remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or
31 otherwise place in the stream of commerce a children's product that is unsafe.

32 (b) A children's product is unsafe for purposes of this act if it meets
33 any of the following criteria:

34 (1) It does not conform to federal law and regulatory standards
35 for the children's product;

36 (2) It has been recalled for any reason by an agency of the

1 federal government or the product's manufacturer, distributor, or importer and
2 the recall has not been rescinded;

3 (3) An agency of the federal government has issued a warning that
4 a specific product's intended use constitutes a safety hazard and the warning
5 has not been rescinded;

6 (c)(1) No later than January 1, 2002, the Attorney General shall
7 create, maintain, and update a comprehensive list of children's products that
8 have been identified as meeting any of the criteria set forth in subsection
9 (b).

10 (2) The Attorney General shall make the comprehensive list
11 available to the public at no cost and shall post it on the internet, and
12 encourage links from the internet site.

13 (d) A crib is unsafe if it does not conform to the standards, existing
14 on January 1, 2001, endorsed or established by the Consumer Product Safety
15 Commission, including but not limited to Title 16 of the Code of Federal
16 Regulations and the American Society for Testing and Materials, as follows:

17 (1) Part 1508 of Title 16 of the Code of Federal Regulations and
18 any regulations adopted to amend or supplement the regulations;

19 (2) Part 1509 of Title 16 of the Code of Federal Regulations and
20 any regulations adopted to amend or supplement the regulations;

21 (3) Part 1303 of Title 16 of the Code of Federal Regulations and
22 any regulations adopted to amend or supplement the regulations; and

23 (4) The following standards and specifications, as exist on
24 January 1, 2001, of the American Society for Testing Materials for corner
25 posts of baby cribs and structural integrity of baby cribs:

26 (A) ASTM F 966-90, concerning corner post standard;

27 (B) ASTM F 1169-88, concerning structural integrity of
28 full-size baby cribs; and

29 (C) ASTM F 1822-97, concerning non-full-size cribs;

30 (e) Cribs that are unsafe shall include, but not be limited to, cribs
31 that have any of the following dangerous features or characteristics:

32 (1) Corner posts that extend more than one-sixteenth of one inch
33 (1/16");

34 (2) Spaces between side slats more than two and three hundred and
35 seventy-five hundredths of one inch (2.375");

36 (3)(A) Mattress support that can be easily dislodged from any

1 point of the crib.

2 (B) A mattress segment can be easily dislodged if it cannot
3 withstand at least a twenty-five (25) pound upward force from underneath the
4 crib;

5 (4) Cutout designs on the end panels;

6 (5) Rail height dimensions that do not conform to both of the
7 following:

8 (A) The height of the rail and end panel as measured from
9 the top of the rail or panel in its lowest position to the top of the mattress
10 support in its highest position is at least nine (9) inches; and

11 (B) The height of the rail and end panel as measured from
12 the top of the rail or panel in its highest position to the top of the
13 mattress support in its highest position to the top of the mattress support in
14 its lowest position is at least twenty-six (26) inches;

15 (6) Any screws, bolts, or hardware that are loose and not
16 secured;

17 (7) Sharp edges, points, or rough surfaces, or any wood surfaces
18 that are not smooth and free from splinters, splits, or cracks;

19 (8) Tears in mesh or fabric sides in a non-full-size crib;

20 (9) A non-full-size crib that folds in a "V" shape design that
21 does not have top rails that automatically lock into place when the crib is
22 fully set up; or

23 (10) The mattress pad in a non-full-size mesh or fabric crib
24 exceeds one (1) inch.

25 (f)(1) An unsafe children's product may be retrofitted if the retrofit
26 has been approved by the agency of the federal government issuing the recall
27 or warning or the agency responsible for approving the warning.

28 (2) A retrofitted children's product may be sold if it is
29 accompanied at the time of sale by a notice declaring that it is safe to use
30 for a child under six (6) years of age.

31 (3) The notice shall include:

32 (A) A description of the original problem which made the
33 recalled product unsafe;

34 (B) A description of the retrofit which explains how the
35 original problem was eliminated and declaring that it is now safe to use for a
36 child under six (6) years of age; and

1 (C)(i) The name and address of the commercial user who
2 accomplished the retrofit certifying that the work was done along with the
3 name and model number of the product retrofitted.

4 (ii) The commercial user is responsible for ensuring
5 that the notice is present with the retrofitted product at the time of sale.

6 (g) A retrofit is exempt from this act if:

7 (1) The retrofit is for a children's product that requires
8 assembly by the consumer;

9 (2) The approved retrofit is provided with the product by the
10 commercial user;

11 (3) The retrofit is accompanied at the time of sale by
12 instructions explaining how to apply the retrofit; or

13 (4) The seller of a previously unsold product accomplishes the
14 repair, approved or recommended by an agency of the federal government, prior
15 to sale.

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17 SECTION 4. Remedies and Enforcement.

18 (a) Any act or practice which is a violation of this act shall
19 constitute an unfair and deceptive act or practice as defined by the Deceptive
20 Trade Practices Act.

21 (b) All remedies, penalties and authority granted to the Attorney
22 General under the Deceptive Trade Practices Act shall be available to the
23 Attorney General for the enforcement of this act.

24 (c) Nothing in this section limits the rights or remedies which are
25 otherwise available to any person under any law.

26
27 SECTION 5. Unsafe children's products.

28 (a)(1) Beginning January 1, 2002, a child care facility may not use or
29 have on the premises an unsafe children's product as described in this act.

30 (2) This subsection (a) does not apply to an antique or
31 collectible children's product if it is not used by, or accessible to, any
32 child in the child care facility.

33 (b)(1) The Attorney General shall, within sixty (60) calendar days
34 after the effective date of this act, send a letter to all licensed child care
35 facilities informing them of the provisions of this act and of their
36 responsibilities under the provisions of this act.

1 (2) The Attorney General shall notify child care facilities of
2 the provisions of this act and of unsafe children's products, as determined in
3 accordance with this act, in plain, non-technical language that will enable
4 each child care facility to effectively inspect children's products and
5 identify unsafe children's products.

6 (c) The Department of Human Services may promulgate rules to carry out
7 the provisions of this section.

8 (d) Each child care facility shall maintain a file containing all
9 bulletins, notices, or both issued by the Office of the Attorney General
10 regarding unsafe children's products, and shall make the file accessible to
11 the facility staff members and to parents of the children who attend the
12 facility.

13 (e)(1) Each child care facility shall, as part of the licensing,
14 licensing renewal, or periodic update process conducted by the Department of
15 Human Services, certify in writing that it has reviewed each of the bulletins
16 and notices issued by the Office of the Attorney General regarding unsafe
17 children's products, and that there are no unsafe children's products in the
18 facility.

19 (2) The Office of the Attorney General shall prepare a
20 certification form, and the Department of Human Services shall require each
21 facility to complete the certification form in the process of licensing,
22 licensing renewal or periodic update.

23 (3) The Department of Human Services shall retain the
24 certification form completed by each facility in each respective facility's
25 licensing file.

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27 SECTION 6. Revocation of child care facility licenses.

28 The Department of Human Services may revoke or refuse to renew the
29 license of any child care facility or refuse to issue a full license to the
30 permit holder if the licensee or permit holder fails to comply with
31 subsections (d) and (e) of section 5.

32 /s/ Gullett

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35 APPROVED: 4/5/2001