

SENATE, No. 2616

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED SEPTEMBER 29, 2016

Sponsored by:
Senator M. TERESA RUIZ
District 29 (Essex)

SYNOPSIS

Prohibits sale of unsafe supplemental mattresses designed for children's products.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning children’s products and amending P.L.2007,
2 c.124 (C.56:8-53.1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2007, c.124 (C.56:8-53.1) is amended to
8 read as follows:

9 1. As used in this act:

10 “Child” means a person less than 14 years of age.

11 “Children's product” means a product, including, but not limited
12 to, a full-size crib, non-full-size crib, toddler bed, bed, supplemental
13 mattress, car seat, chair, high chair, booster chair, hook-on chair,
14 bath seat, gate or other enclosure for confining a child, play yard,
15 stationary activity center, carrier, stroller, walker, swing, or toy or
16 play equipment, that meets the following criteria:

17 a. the product is designed or intended for the care of, or use by,
18 a child; or

19 b. the product is designed or intended to come into contact with
20 a child while the product is used.

21 Notwithstanding any other provision of this section to the
22 contrary, a product is not a “children's product” for the purposes of
23 this act if it may be used by or for the care of a child, but it is
24 designed or intended for use by the general population or segments
25 of the general population and not solely or primarily for use by or
26 for the care of a child, or it is a balloon, medication, drug, or food
27 or is intended to be ingested.

28 “Commercial user” means any person who deals in children's
29 products or who otherwise by one's occupation holds oneself out as
30 having knowledge or skill peculiar to children's products, or any
31 person who is in the business of remanufacturing, retrofitting,
32 selling, leasing, subletting, or otherwise placing in the stream of
33 commerce children's products.

34 “Crib” means a bed or containment designed to accommodate an
35 infant.

36 “Full-size crib” means a full-size crib as defined in Sections
37 1508.1 and 1508.3 of title 16, Code of Federal Regulations
38 regarding the requirements for full-size cribs.

39 “Non-full-size crib” means a non-full-size crib as defined in
40 Section 1509.2 of title 16, Code of Federal Regulations regarding
41 the requirements of non-full-sized cribs.

42 “Place in the stream of commerce” means to sell, offer for sale,
43 give away, offer to give away, or allow the use of.

44 “Supplemental mattress” means a mattress sold separately from
45 any other children’s product and excludes a replacement mattress

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S2616 RUIZ

1 offered or sold by a manufacturer as a replacement part for the
2 mattress originally included with a crib, play pen, or play yard.

3 (cf: P.L.2007, c.124, s.1)

4

5 2. Section 2 of P.L.2007, c.124 (C.56:8-53.2) is amended to
6 read as follows:

7 2. a. It shall be an unlawful practice for any commercial user
8 to knowingly remanufacture, retrofit, sell, contract to sell or resell,
9 lease, sublet, or otherwise place in the stream of commerce a
10 children's product deemed unsafe in accordance with this section.

11 b. A children's product is deemed to be unsafe for purposes of
12 this section if it meets any of the following criteria:

13 (1) it has been recalled for any reason by a federal agency or the
14 product's manufacturer, distributor, or importer and the recall has
15 not been rescinded; or

16 (2) a federal agency has issued a warning or advisory that a
17 specific product's intended use constitutes a safety hazard and the
18 warning or advisory has not been rescinded.

19 c. Supplemental mattresses marketed for and intended to be
20 used with cribs, play pens, and play yards with non-rigid sides shall
21 be deemed to be unsafe for the purposes of this section unless the
22 United States Consumer Product Safety Commission determines
23 them to be safe for the care of, or use by, a child.

24 (cf: P.L.2007, c.124, s.2)

25

26 3. Section 4 of P.L.2007, c.124 (C.56:8-53.4) is amended to
27 read as follows:

28 4. A children's product deemed unsafe in accordance with
29 P.L.2007, c.124 (C.56:8-53.1 et al.) as a result of a recall or a
30 warning or advisory issued by a federal agency, may be retrofitted
31 by the manufacturer if the retrofit has been approved by the federal
32 agency issuing the recall or the warning or advisory or another
33 federal agency with the authority to approve the retrofit. A
34 retrofitted children's product may be placed in the stream of
35 commerce. A commercial user is responsible for maintaining a
36 record of any notice provided by the manufacturer concerning a
37 retrofitted children's product stating that the retrofit has been
38 approved by the federal agency issuing the recall or the warning or
39 advisory or another federal agency with the authority to approve the
40 retrofit.

41 (cf: P.L.2007, c.124, s.4)

42

43 4. This act shall take effect immediately.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

This bill prohibits the sale of unsafe supplemental mattresses intended to be used by children in products such as non-full size cribs, portable cribs, play pens, and play yards.

Pursuant to P.L.2007, c.124 (C.56:8-53.1 et seq.), it is an unlawful practice under the consumer fraud act for any commercial user to knowingly remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce a children’s product deemed unsafe if (1) it has been recalled and the recall has not been rescinded; or (2) a federal agency has issued a warning that a specific product's intended use constitutes a safety hazard and the warning has not been rescinded. An unlawful practice under the consumer fraud act is punishable by a monetary penalty of not more than \$10,000 for a first offense and not more than \$20,000 for any subsequent offense. Additionally, violations can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party.

This bill amends P.L.2007, c.124 to include a “supplemental mattress” in the definition of “children’s product,” and also provide that a product may be deemed unsafe if a federal agency has issued an advisory that a specific product's intended use constitutes a safety hazard and the advisory has not been rescinded.

Currently, the federal government requires that mattresses in children’s products meet certain standard consumer safety specifications (ASTM F406-13), such as setting forth the allowable thickness of a mattress, selling a product with the mattress included, only using a mattress provided by the manufacturer, and including a warning about the risk of infant suffocation. Despite these requirements and standards, supplemental mattresses continue to be marketed to consumers for use in certain cribs, play pens, and play yards and present a risk to babies of injury and death.

This bill specifically deems supplemental mattresses marketed for and intended to be used with cribs, play pens, and play yards with non-rigid sides to be unsafe unless the United States Consumer Product Safety Commission (CPSC) determines them to be safe for the care of, or use by, a child. According to the CPSC webpage, consumers of play yards are advised not to use supplemental mattresses because supplemental mattresses may create a gap and lead to an entrapment hazard for the child. The existing federal standard inadequately addresses the unreasonable risk of injury that supplemental mattresses pose to children, and supplemental mattresses continue to be sold to consumers. Therefore, the most effective action is to ban the sale of unsafe supplemental mattresses.