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§§1-4, 6 -
C.56:8-53.1 to
56:8-53.5
§5 - C.30:5B-15.1
§6 - Note to §5
§7 - Note to §§1-6

P.L. 2007, CHAPTER 124, *approved August 6, 2007*
Senate, No. 265 (*Second Reprint*)

1 AN ACT concerning child product safety and supplementing
2 P.L.1960, c.39 (C.56:8-1 et seq.) and P.L.1983, c.492 (C.30:5B-1
3 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. As used in this act:

9 ²“Child” means a person less than 14 years of age.²

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

16 a. the product is designed or intended for the care of, or use by,
17 ¹[children under six years of age, or is designed or intended for the
18 care of, or use by, both children under six years of age and children
19 six years of age or older] a child¹; or

20 b. the product is designed or intended to come into contact with
21 ¹[the] a¹ child while the product is used.

22 Notwithstanding any other provision of this section to the
23 contrary, a product is not a "children's product" for the purposes of
24 this act if it may be used by or for the care of a child ¹[under six
25 years of age]¹, but it is designed or intended for use by the general
26 population or segments of the general population and not solely or
27 primarily for use by or for the care of a child, or it is a balloon,
28 medication, drug, or food or is intended to be ingested.

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

35 ¹["Infant" means any person less than 35 inches tall and less
36 than three years of age.]¹

37 "Crib" means a bed or containment designed to accommodate an

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted January 30, 2006.

²Assembly ACO committee amendments adopted November 9, 2006.

1 infant.

2 "Full-size crib" means a full-size crib as defined in Sections
3 1508.1 and 1508.3 of '[Title] title' 16 '[of the] ,'¹ Code of Federal
4 Regulations regarding the requirements for full-size cribs.

5 ²'"Infant" means any person less than 35 inches tall and less
6 than three years of age.'²

7 "Non-full-size crib" means a non-full-size crib as defined in
8 Section 1509.2 of '[Title] title' 16 '[of the] ,'¹ Code of Federal
9 Regulations regarding the requirements of non-full-sized cribs.

10 "Place in the stream of commerce" means to sell, offer for sale,
11 give away, offer to give away, or allow the use of.

12

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

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

19 (1) '[It does not conform to all federal laws and regulations
20 setting forth standards for the children's product; or

21 (2) It] it¹ has been recalled for any reason by a federal agency
22 or the product's manufacturer, distributor, or importer and the recall
23 has not been rescinded; or

24 ¹[(3) A] (2) a¹ federal agency has issued a warning that a
25 specific product's intended use constitutes a safety hazard and the
26 warning has not been rescinded.

27 ¹[c. In addition to the criteria established pursuant to subsection
28 b. of this section, a crib is deemed unsafe for the purposes of this
29 section if it does not conform to the standards endorsed or
30 established by the federal Consumer Product Safety Commission,
31 including, but not limited to, Title 16 of the Code of Federal
32 Regulations and ASTM International, as follows:

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

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

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

40 (4) The following standards and specifications of ASTM
41 International for corner posts of baby cribs and structural integrity
42 of baby cribs:

43 (a) ASTM F 966 (corner post standard);

44 (b) ASTM F 1169 (structural integrity of full-size baby cribs);

45 (c) ASTM F 1822 (non-full-size cribs); and

46 (d) ASTM F 406 (non-full size baby cribs/play yards).]¹

1 3. a. The Division of Consumer Affairs in the Department of
2 Law and Public Safety shall:

3 (1) create, maintain, and update a comprehensive list of
4 children's products that have been identified as meeting any of the
5 criteria set forth in section 2 of P.L. , c. (C.) (pending
6 before the Legislature as this bill); and

7 (2) make the comprehensive list available to the public at no
8 cost, including, but not limited to, posting the list on the Internet.

9 b. The Division of Consumer Affairs shall not be liable for any
10 civil damages as a result of any acts or omissions undertaken in
11 good faith in the creation, maintenance or updating of the list of
12 children's products in accordance with subsection a. of this section.

13

14 4. A children's product deemed unsafe in accordance with
15 '[this act] P.L. , c. (C.) (pending before the Legislature as
16 this bill)' as a result of a recall or warning issued by a federal
17 agency, may be retrofitted by the manufacturer if the retrofit has
18 been approved by the federal agency issuing the recall or warning
19 or another federal agency with the authority to approve the retrofit.
20 A retrofitted children's product may be placed in the stream of
21 commerce '[if it is accompanied at the time of delivery by a notice
22 stating that the retrofit has been approved by the federal agency
23 issuing the recall or warning or another federal agency with the
24 authority to approve the retrofit]'. '[The] A' commercial user is
25 responsible for maintaining a record of any notice provided by the
26 manufacturer 'concerning a retrofitted children's product' stating
27 that the retrofit has been approved by the federal agency issuing the
28 recall or warning or another federal agency with the authority to
29 approve the retrofit. '[The commercial user is required to make the
30 notice available to customers upon purchase of the retrofitted
31 children's product.]'

32

33 5. a. A child care '[facility] center' licensed pursuant to
34 P.L.1983 '[.] ,' c.492 (C.30:5B-1 et seq.) may not use or have on
35 its premises a children's product deemed unsafe in accordance with
36 section 2 of P.L. , c. (C.) (pending before the Legislature
37 as this bill). This subsection does not apply to an antique or
38 collectible children's product if it is not used by, or accessible to,
39 any child in the child care '[facility] center'.

40 b. The '[Division of Youth and Family Services in the]'
41 Department of '[Human Services] Children and Families' shall
42 '[notify child care facilities of the provisions of this section and of]
43 make the list created by the Division of Consumer Affairs regarding
44 unsafe' children's products '[deemed unsafe in accordance with]
45 pursuant to' section '[2] 3' of P.L. , c. (C.) (pending before
46 the Legislature as this bill), '[in plain, non-technical language that

1 will enable each available to¹ child care facility to¹ centers by
 2 posting the list on the department's website or providing electronic
 3 access to the list through its website to the list's posting on the
 4 Internet by the Division of Consumer Affairs, so that child care
 5 centers may more¹ effectively inspect children's products and
 6 identify unsafe children's products.

7 c. (1) The division department¹ shall prepare a certification
 8 form and require each facility center¹ to complete the
 9 certification form in during¹ the process of licensing, renewal,
 10 or periodic update updating¹.

11 (2) The division department¹ shall retain the certification
 12 form completed by each facility center¹ in each respective
 13 facility's center's¹ licensing file.

14 d.¹ Each child care facility center¹ shall:

15 (1) as part of the licensing, licensing renewal, or periodic
 16 inspection process conducted by the Division of Youth and
 17 Family Services department¹, certify in writing that it has
 18 reviewed the list created by the Division of Consumer Affairs in
 19 the Department of Law and Public Safety¹ regarding unsafe
 20 children's products pursuant to section 3 of P.L. , c. (C.)
 21 (pending before the Legislature as this bill) ¹, ¹ and that there are no
 22 unsafe products in the facility center¹; and

23 (2) maintain review¹ the list in its licensing file
 24 periodically¹ and make the list accessible to the facility center¹
 25 staff members and to parents of the children who attend the
 26 facility center¹.

27 d. e.¹ The Division of Youth and Family Services
 28 department¹ may revoke or refuse to renew the license of any child
 29 care facility center¹ or refuse to issue a license to a facility
 30 center¹ should the facility center¹ not comply with any section
 31 of P.L. , c. C.) (pending before the Legislature as this
 32 bill).

33
 34 6. a. Pursuant to the "Administrative Procedure Act," P.L.1968,
 35 c.410 (C.52:14B-1 et seq.), the Director of the Division of
 36 Consumer Affairs in the Department of Law and Public Safety, may
 37 adopt rules and regulations to effectuate the purposes of sections 1
 38 through 4 of this act.

39 b. Pursuant to the "Administrative Procedure Act," P.L.1968,
 40 c.410 (C.52:14B-1 et seq.), the Commissioner of ²Human
 41 Services Children and Families² shall adopt rules and regulations
 42 to effectuate the purposes of section 5 of this bill.

43
 44 7. This act shall take effect on the ²180th first² day ²of the
 45 seventh month² after enactment.

1

2

3

Concerns sale or lease of unsafe or recalled children's products.

SENATE, No. 265

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Prohibits sale or lease of unsafe or recalled children's products and their use by licensed child care facilities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 1/27/2006)

1 AN ACT concerning child product safety and supplementing
2 P.L.1960, c.39 (C.56:8-1 et seq.) and P.L.1983, c.492 (C.30:5B-1
3 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. As used in this act:

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

15 a. the product is designed or intended for the care of, or use by,
16 children under six years of age, or is designed or intended for the
17 care of, or use by, both children under six years of age and children
18 six years of age or older; or

19 b. the product is designed or intended to come into contact with
20 the 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 under six years
24 of age, but it is designed or intended for use by the general
25 population or segments of the general population and not solely or
26 primarily for use by or for the care of a child, or it is a balloon,
27 medication, drug, or food 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 "Infant" means any person less than 35 inches tall and less than
35 three years of age.

36 "Crib" means a bed or containment designed to accommodate an
37 infant.

38 "Full-size crib" means a full-size crib as defined in Sections
39 1508.1 and 1508.3 of Title 16 of the Code of Federal Regulations
40 regarding the requirements for full-size cribs.

41 "Non-full-size crib" means a non-full-size crib as defined in
42 Section 1509.2 of Title 16 of the Code of Federal Regulations
43 regarding the requirements of non-full-sized cribs.

44 "Place in the stream of commerce" means to sell, offer for sale,
45 give away, offer to give away, or allow the use of.
46

47 2. a. It shall be an unlawful practice for any commercial user to
48 knowingly remanufacture, retrofit, sell, contract to sell or resell,

1 lease, sublet, or otherwise place in the stream of commerce a
2 children's product deemed unsafe in accordance with this section.

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

5 (1) It does not conform to all federal laws and regulations
6 setting forth standards for the children's product; or

7 (2) It has been recalled for any reason by a federal agency or the
8 product's manufacturer, distributor, or importer and the recall has
9 not been rescinded; or

10 (3) A federal agency has issued a warning that a specific
11 product's intended use constitutes a safety hazard and the warning
12 has not been rescinded.

13 c. In addition to the criteria established pursuant to subsection b.
14 of this section, a crib is deemed unsafe for the purposes of this
15 section if it does not conform to the standards endorsed or
16 established by the federal Consumer Product Safety Commission,
17 including, but not limited to, Title 16 of the Code of Federal
18 Regulations and ASTM International, as follows:

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

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

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

26 (4) The following standards and specifications of ASTM
27 International for corner posts of baby cribs and structural integrity
28 of baby cribs:

29 (a) ASTM F 966 (corner post standard);

30 (b) ASTM F 1169 (structural integrity of full-size baby cribs);

31 (c) ASTM F 1822 (non-full-size cribs); and

32 (d) ASTM F 406 (non-full size baby cribs/play yards).

33

34 3. a. The Division of Consumer Affairs in the Department of
35 Law and Public Safety shall:

36 (1) create, maintain, and update a comprehensive list of
37 children's products that have been identified as meeting any of the
38 criteria set forth in section 2 of P.L. , c. (C.) (pending
39 before the Legislature as this bill); and

40 (2) make the comprehensive list available to the public at no
41 cost, including, but not limited to, posting the list on the Internet.

42 b. The Division of Consumer Affairs shall not be liable for any
43 civil damages as a result of any acts or omissions undertaken in
44 good faith in the creation, maintenance or updating of the list of
45 children's products in accordance with subsection a. of this section.

46

47 4. A children's product deemed unsafe in accordance with this
48 act as a result of a recall or warning issued by a federal agency, may

1 be retrofitted by the manufacturer if the retrofit has been approved
2 by the federal agency issuing the recall or warning or another
3 federal agency with the authority to approve the retrofit. A
4 retrofitted children's product may be placed in the stream of
5 commerce if it is accompanied at the time of delivery by a notice
6 stating that the retrofit has been approved by the federal agency
7 issuing the recall or warning or another federal agency with the
8 authority to approve the retrofit. The commercial user is
9 responsible for maintaining a record of any notice provided by the
10 manufacturer stating that the retrofit has been approved by the
11 federal agency issuing the recall or warning or another federal
12 agency with the authority to approve the retrofit. The commercial
13 user is required to make the notice available to customers upon
14 purchase of the retrofitted children's product.

15

16 5. a. A child care facility licensed pursuant to P.L.1983. c.492
17 (C.30:5B-1 et seq.) may not use or have on its premises a children's
18 product deemed unsafe in accordance with section 2 of P.L. , c.
19 (C.) (pending before the Legislature as this bill). This
20 subsection does not apply to an antique or collectible children's
21 product if it is not used by, or accessible to, any child in the child
22 care facility.

23 b. The Division of Youth and Family Services in the Department
24 of Human Services shall notify child care facilities of the provisions
25 of this section and of children's products deemed unsafe in
26 accordance with section 2 of P.L. , c. (C.) (pending before
27 the Legislature as this bill), in plain, non-technical language that
28 will enable each child care facility to effectively inspect children's
29 products and identify unsafe children's products.

30 c. (1) The division shall prepare a certification form and require
31 each facility to complete the certification form in the process of
32 licensing, renewal, or periodic update.

33 (2) The division shall retain the certification form completed by
34 each facility in each respective facility's licensing file.

35 Each child care facility shall: (1) as part of the licensing,
36 licensing renewal, or periodic inspection process conducted by the
37 Division of Youth and Family Services, certify in writing that it has
38 reviewed the list created by the Division of Consumer Affairs in the
39 Department of Law and Public Safety regarding unsafe children's
40 products pursuant to section 3 of P.L. , c. (C.) (pending
41 before the Legislature as this bill) and that there are no unsafe
42 products in the facility; and (2) maintain the list in its licensing file
43 and make the list accessible to the facility staff members and to
44 parents of the children who attend the facility.

45 d. The Division of Youth and Family Services may revoke or
46 refuse to renew the license of any child care facility or refuse to
47 issue a license to a facility should the facility not comply with any
48 section of P.L. , c. (C.) (pending before the Legislature

1 as this bill).

2

3 6. a. Pursuant to the "Administrative Procedure Act," P.L.1968,
4 c.410 (C.52:14B-1 et seq.), the Director of the Division of
5 Consumer Affairs in the Department of Law and Public Safety, may
6 adopt rules and regulations to effectuate the purposes of sections 1
7 through 4 of this act.

8 b. Pursuant to the "Administrative Procedure Act," P.L.1968,
9 c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services
10 shall adopt rules and regulations to effectuate the purposes of
11 section 5 of this bill.

12

13 7. This act shall take effect on the 180th day after enactment.

14

15

16

STATEMENT

17

18 This bill stipulates that it shall be an unlawful practice for any
19 commercial user to knowingly remanufacture, retrofit, sell, contract
20 to sell or resell, lease or otherwise place in the stream of commerce
21 a children's product deemed unsafe in accordance with the
22 provisions of the bill. The bill specifies that products that do not
23 conform to federal standards, that have been recalled, or that have
24 been deemed a safety hazard by the federal government, are unsafe.

25 The bill directs the Division of Consumer Affairs in the
26 Department of Law and Public Safety to create and maintain a list
27 of unsafe children's products and to make the list available to the
28 public at no cost, including, but not limited to, posting the list on
29 the Internet. The bill also stipulates that the Division of Consumer
30 Affairs shall not be liable for any civil damages as a result of any
31 acts or omissions undertaken in good faith in the creation,
32 maintenance or updating of the list.

33 The provisions of the bill specify that a:

34 * children's product deemed unsafe as a result of a recall or
35 warning issued by a federal agency, may be retrofitted by the
36 manufacturer if the retrofit has been approved by the federal
37 agency issuing the recall or warning or another federal
38 agency with the authority to approve the retrofit;

39 * retrofitted product may be placed in the stream of commerce
40 if it is accompanied at the time of delivery by a notice
41 stating that the retrofit has been approved by the federal
42 agency issuing the recall or warning or another federal
43 agency with the authority to approve the retrofit; and

44 * commercial user is responsible for maintaining a record of
45 any notice provided by the manufacturer that states the
46 retrofit has been approved by the federal agency issuing the
47 recall or warning or another federal agency with the
48 authority to approve the retrofit, and is required to make the

- 1 notice available to customers upon purchase of the
2 retrofitted children's product.
- 3 Finally, the bill directs:
- 4 * child care facilities, as part of their licensure process, to
5 review the list developed by the Division of Consumer
6 Affairs and certify that there are no unsafe children's
7 products in the child care facility; and
 - 8 * the Division of Youth and Family Services in the
9 Department of Human Services to prepare the certification
10 form which shall be completed by child care facilities during
11 the licensure process.

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 265

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2006

The Assembly Consumer Affairs Committee reports favorably and with committee amendments Senate Bill No. 265 [1R].

As amended, Senate Bill No. 265 [1R] makes it an unlawful practice for any commercial user to knowingly remanufacture, retrofit, sell, lease, or otherwise place in the stream of commerce children's products, including cribs, high chairs, gates, and play equipment, which are deemed unsafe under the provisions of the bill. The bill specifies that a product is deemed unsafe if:

- it has been recalled for any reason by a federal agency or the product's manufacturer, distributor, or importer; or
- a federal agency has issued, and not rescinded, a warning that the product's intended use constitutes a safety hazard.

Under the bill, a children's product deemed unsafe may be retrofitted by the manufacturer and placed in the stream of commerce if the retrofit has been approved by the federal agency issuing the recall or warning or by another federal agency with the authority to approve the retrofit. The bill requires commercial users to maintain records of any notice provided by manufacturers concerning retrofitted children's products, stating that the retrofits have been approved by the appropriate federal agencies.

In addition, the bill directs the Division of Consumer Affairs to create and maintain, and make available, a list of unsafe children's products. The bill specifies that the division may not be held liable for any civil damages resulting from any acts or omissions undertaken in good faith in the list's creation, maintenance, or updating.

The bill also prohibits child care centers from using or having unsafe children's products on their premises. Under the bill, the Department of Children and Families is directed to make the list of unsafe children's products, along with a certification form, available to child care centers so that the centers may identify any unsafe children's products and indicate their compliance with the provisions of this bill.

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. In addition, a violation 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.

COMMITTEE AMENDMENTS

At the sponsor's request, the committee amended the bill to:

- include a definition of “child” to mean a person less than 14 years of age;
- remove the definition of “infant,” since the term is not used in the bill;
- replace references to the Department of Human Services with the new, more appropriate, Department of Children and Families; and
- update the effective date language.

As reported by the committee, this bill is identical to Assembly Bill No. 2554, as amended and reported by the committee on this same date.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 265

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 30, 2006

This bill, as amended, stipulates that it shall be an unlawful practice under the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), for any commercial user, to knowingly remanufacture, retrofit, sell, contract to sell or resell, lease or otherwise place in the stream of commerce a children's product, including cribs, high chairs, gates, and play equipment, deemed unsafe in accordance with the provisions of the amended bill, because the product is recalled for any reason by a federal agency or the product's manufacturer, distributor, or importer, or a federal agency issues a warning that the product's intended use constitutes a safety hazard.

Under the consumer fraud act, an unlawful practice is punishable by a monetary penalty of not more than \$10,000 for the first offense and not more than \$20,000 for any subsequent offense. In addition, a violation 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 an injured party.

A children's product deemed unsafe as a result of a recall or warning issued by a federal agency may be retrofitted by the manufacturer, if the retrofit has been approved by the federal agency issuing the recall or warning or by another federal agency with the authority to approve the retrofit. The retrofitted product may subsequently be placed in the stream of commerce. A commercial user is responsible for maintaining a record of any notice provided by the manufacturer concerning a retrofitted children's product stating that the retrofit has been approved by the federal agency issuing the recall or warning, or another federal agency with the authority to approve the retrofit.

Additionally, the amended bill directs the Division of Consumer Affairs in the Department of Law and Public Safety to create and maintain a list of unsafe children's products and to make the list available to the public at no cost, including, but not limited to, posting the list on the Internet. In doing so, the amended bill stipulates that the division shall not be liable for any civil damages as a result of any acts or omissions undertaken in good faith in its creation, maintenance, or updating of the list.

The amended bill further directs that child care centers licensed pursuant to the “Child Care Center Licensing Act,” P.L.1983, c.492 (C.30:5B-1 et seq.), may not use or have on premises a children’s product deemed unsafe in accordance with the amended bill’s provisions. The Department of Human Services shall make the list of unsafe children’s products created by the Division of Consumer Affairs available to child care centers by posting the list on the department’s website or providing electronic access to the list through its website to the list’s posting on the Internet by the Division of Consumer Affairs. Such department action is intended to allow child care centers to more effectively inspect and remove any unsafe children’s products. The department shall also prepare and utilize a certification form indicating each child care center’s compliance with the amended bill’s requirements.

The committee amendments to the bill:

- eliminate restrictions concerning a child’s age in the definition section in order to make the amended bill’s scope more consistent with applicable federal consumer affairs regulations, as these federal regulations do not specifically reference any children’s age or age groups;
- remove the responsibility of the Division of Consumer Affairs for evaluating products to determine conformity with respect to all applicable federal laws and regulations, or standards established by the American Society for Testing and Materials, as the division does not possess the expertise or facilities for such responsibility;
- eliminate the requirement that a notice separate from any currently applicable federal notice accompany a retrofitted children’s product when placed back in the stream of commerce, and the requirement that any notice be provided to customers upon the purchase of a retrofitted children’s product;
- replace references to the Division of Youth and Family Services throughout the bill with references to the Department of Human Services, as the division is no longer responsible for the licensing and oversight of child care centers;
- require the Department of Human Services to post the list of unsafe children’s products created by the Division of Consumer Affairs on its website, or provide an electronic link to the division’s Internet posting of the list, instead of providing individual notifications to each child care center; and
- replace references to “child care facility” with “child care center,” in order to more appropriately reference those child care centers licensed pursuant to the “Child Care Center Licensing Act.”

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY, No. 2554

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED FEBRUARY 23, 2006

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

SYNOPSIS

Concerns sale or lease of unsafe or recalled children's products.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/2/2006)

1 AN ACT concerning child product safety and supplementing
2 P.L.1960, c.39 (C.56:8-1 et seq.) and P.L.1983, c.492 (C.30:5B-1
3 et seq.).

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

7
8 1. As used in this act:

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

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

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

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

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

32 "Crib" means a bed or containment designed to accommodate an
33 infant.

34 "Full-size crib" means a full-size crib as defined in Sections
35 1508.1 and 1508.3 of title 16, Code of Federal Regulations
36 regarding the requirements for full-size cribs.

37 "Infant" means any person less than 35 inches tall and less than
38 three years of age.

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

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

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

6 (2) a federal agency has issued a warning that a specific
7 product's intended use constitutes a safety hazard and the warning
8 has not been rescinded.

9

10 3. a. The Division of Consumer Affairs in the Department of
11 Law and Public Safety shall:

12 (1) create, maintain, and update a comprehensive list of
13 children's products that have been identified as meeting any of the
14 criteria set forth in section 2 of P.L. , c. (C.) (pending
15 before the Legislature as this bill); and

16 (2) make the comprehensive list available to the public at no
17 cost, including, but not limited to, posting the list on the Internet.

18 b. The Division of Consumer Affairs shall not be liable for any
19 civil damages as a result of any acts or omissions undertaken in
20 good faith in the creation, maintenance or updating of the list of
21 children's products in accordance with subsection a. of this section.

22

23 4. A children's product deemed unsafe in accordance with
24 P.L. , c. (C.) (pending before the Legislature as this bill) as
25 a result of a recall or warning issued by a federal agency, may be
26 retrofitted by the manufacturer if the retrofit has been approved by
27 the federal agency issuing the recall or warning or another federal
28 agency with the authority to approve the retrofit. A retrofitted
29 children's product may be placed in the stream of commerce. A
30 commercial user is responsible for maintaining a record of any
31 notice provided by the manufacturer concerning a retrofitted
32 children's product stating that the retrofit has been approved by the
33 federal agency issuing the recall or warning or another federal
34 agency with the authority to approve the retrofit.

35

36 5. a. A child care center licensed pursuant to P.L.1983, c.492
37 (C.30:5B-1 et seq.) may not use or have on its premises a children's
38 product deemed unsafe in accordance with section 2 of
39 P.L. , c. (C.) (pending before the Legislature as this bill).
40 This subsection does not apply to an antique or collectible
41 children's product if it is not used by, or accessible to, any child in
42 the child care center.

43 b. The Department of Human Services shall make the list
44 created by the Division of Consumer Affairs regarding unsafe
45 children's products pursuant to section 3 of P.L. , c. (C.)
46 (pending before the Legislature as this bill), available to child care
47 centers by posting the list on the department's website or providing
48 electronic access to the list through its website to the list's posting

1 on the Internet by the Division of Consumer Affairs, so that child
2 care centers may more effectively inspect children's products and
3 identify unsafe children's products.

4 c. (1) The department shall prepare a certification form and
5 require each center to complete the certification form during the
6 process of licensing, renewal, or periodic updating.

7 (2) The department shall retain the certification form completed
8 by each center in each respective center's licensing file.

9 d. Each child care center shall:

10 (1) as part of the licensing, licensing renewal, or periodic
11 inspection process conducted by the department, certify in writing
12 that it has reviewed the list created by the Division of Consumer
13 Affairs regarding unsafe children's products pursuant to section 3 of
14 P.L. , c. (C.) (pending before the Legislature as this bill),
15 and that there are no unsafe products in the center; and

16 (2) review the list periodically and make the list accessible to
17 the center staff members and to parents of the children who attend
18 the center.

19 e. The department may revoke or refuse to renew the license of
20 any child care center, or refuse to issue a license to a center, should
21 the center not comply with any section of P.L. , c. (C.)
22 (pending before the Legislature as this bill).

23

24 6. a. Pursuant to the "Administrative Procedure Act," P.L.1968,
25 c.410 (C.52:14B-1 et seq.), the Director of the Division of
26 Consumer Affairs in the Department of Law and Public Safety, may
27 adopt rules and regulations to effectuate the purposes of sections 1
28 through 4 of this act.

29 b. Pursuant to the "Administrative Procedure Act," P.L.1968,
30 c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services
31 shall adopt rules and regulations to effectuate the purposes of
32 section 5 of this bill.

33

34 7. This act shall take effect on the 180th day after enactment.

35

36

37

STATEMENT

38

39 This bill stipulates that it shall be an unlawful practice under the
40 consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), for any
41 commercial user, to knowingly remanufacture, retrofit, sell,
42 contract to sell or resell, lease or otherwise place in the stream of
43 commerce a children's product, including cribs, high chairs, gates,
44 and play equipment, deemed unsafe in accordance with the
45 provisions of the bill, because the product is recalled for any reason
46 by a federal agency or the product's manufacturer, distributor, or
47 importer, or a federal agency issues a warning that the product's
48 intended use constitutes a safety hazard.

1 Under the consumer fraud act, an unlawful practice is punishable
2 by a monetary penalty of not more than \$10,000 for the first offense
3 and not more than \$20,000 for any subsequent offense. In addition,
4 a violation can result in cease and desist orders issued by the
5 Attorney General, the assessment of punitive damages, and the
6 awarding of treble damages and costs to an injured party.

7 A children's product deemed unsafe as a result of a recall or
8 warning issued by a federal agency may be retrofitted by the
9 manufacturer, if the retrofit has been approved by the federal
10 agency issuing the recall or warning or by another federal agency
11 with the authority to approve the retrofit. The retrofitted product
12 may subsequently be placed in the stream of commerce. A
13 commercial user is responsible for maintaining a record of any
14 notice provided by the manufacturer concerning a retrofitted
15 children's product stating that the retrofit has been approved by the
16 federal agency issuing the recall or warning, or another federal
17 agency with the authority to approve the retrofit.

18 Additionally, the bill directs the Division of Consumer Affairs in
19 the Department of Law and Public Safety to create and maintain a
20 list of unsafe children's products and to make the list available to
21 the public at no cost, including, but not limited to, posting the list
22 on the Internet. In doing so, the bill stipulates that the division shall
23 not be liable for any civil damages as a result of any acts or
24 omissions undertaken in good faith in its creation, maintenance, or
25 updating of the list.

26 The bill further directs that child care centers licensed pursuant
27 to the "Child Care Center Licensing Act," P.L.1983, c.492
28 (C.30:5B-1 et seq.), may not use or have on its premises a
29 children's product deemed unsafe in accordance with the bill's
30 provisions. The Department of Human Services shall make the list
31 of unsafe children's products created by the Division of Consumer
32 Affairs available to child care centers by posting the list on the
33 department's website or providing electronic access to the list
34 through its website to the list's posting on the Internet by the
35 Division of Consumer Affairs. Such department action is intended
36 to allow child care centers to more effectively inspect and identify
37 any unsafe children's products. The department shall also prepare
38 and utilize a certification form indicating each child care center's
39 compliance with the bill's requirements.

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2554

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2006

The Assembly Consumer Affairs Committee reports favorably and with committee amendments Assembly Bill No. 2554.

As amended, Assembly Bill No. 2554 makes it an unlawful practice for any commercial user to knowingly remanufacture, retrofit, sell, lease, or otherwise place in the stream of commerce children's products, including cribs, high chairs, gates, and play equipment, which are deemed unsafe under the provisions of the bill. The bill specifies that a product is deemed unsafe if:

- it has been recalled for any reason by a federal agency or the product's manufacturer, distributor, or importer; or
- a federal agency has issued, and not rescinded, a warning that the product's intended use constitutes a safety hazard.

Under the bill, a children's product deemed unsafe may be retrofitted by the manufacturer and placed in the stream of commerce if the retrofit has been approved by the federal agency issuing the recall or warning or by another federal agency with the authority to approve the retrofit. The bill requires commercial users to maintain records of any notice provided by manufacturers concerning retrofitted children's products, stating that the retrofits have been approved by the appropriate federal agencies.

In addition, the bill directs the Division of Consumer Affairs to create and maintain, and make available, a list of unsafe children's products. The bill specifies that the division may not be held liable for any civil damages resulting from any acts or omissions undertaken in good faith in the list's creation, maintenance, or updating.

The bill also prohibits child care centers from using or having unsafe children's products on their premises. Under the bill, the Department of Children and Families is directed to make the list of unsafe children's products, along with a certification form, available to child care centers so that the centers may identify any unsafe children's products and indicate their compliance with the provisions of this bill.

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. In addition, a

violation 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.

COMMITTEE AMENDMENTS

At the sponsor's request, the committee amended the bill to:

- include a definition of “child” to mean a person less than 14 years of age;
- remove the definition of “infant,” since the term is not used in the bill;
- replace references to the Department of Human Services with the new, more appropriate, Department of Children and Families; and
- update the effective date language.

As reported by the committee, this bill is identical to Senate Bill No. 265 [1R], as amended and reported by the committee on this same date.