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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2823 Session of  
2002

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INTRODUCED BY RUBLEY, BARD, BASTIAN, BEBKO-JONES, BROWNE, BUNT,  
L. I. COHEN, CORRIGAN, CREIGHTON, CRUZ, CURRY, DeLUCA,  
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HARPER, HENNESSEY, HORSEY, JOSEPHS, KENNEY, MANN, MELIO,  
MICOZZIE, PISTELLA, STABACK, STEELMAN, STURLA, TANGRETTI,  
E. Z. TAYLOR, THOMAS, TURZAI, WASHINGTON, WATSON, G. WRIGHT  
AND YOUNGBLOOD, AUGUST 26, 2002

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REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, AUGUST 26, 2002

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AN ACT

1 Prohibiting the use of unsafe children's products and child-care  
2 facilities from using or having on facility premises unsafe  
3 children's products; prescribing powers and duties of the  
4 Department of Health; providing for the enforcement of this  
5 act and for the promulgation of rules to carry out the  
6 provisions of this act; and prescribing penalties for  
7 violations of the provisions of this act.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Children's  
12 Product Safety Act.

13 Section 2. Definitions.

14 The following words and phrases when used in this act shall  
15 have the meanings given to them in this section unless the  
16 context clearly indicates otherwise:

17 "Children's product." A product, including, but not limited  
18 to, a full-size crib, non-full-size crib, toddler bed, bed, car

1 seat, chair, high chair, booster chair, hook-on chair, bath  
2 seat, gate or other enclosure for confining a child, play yard,  
3 stationary activity center, carrier, stroller, walker, swing or  
4 toy or play equipment, that meets the following criteria:

5 (1) the product is designed or intended for the care of  
6 or use by children under six years of age or is designed or  
7 intended for the care of or use by both children under six  
8 years of age and children six years of age or older; and

9 (2) the product is designed or intended to come into  
10 contact with the child while the product is used.

11 (3) Notwithstanding any other provision of this  
12 definition, a product is not a "children's product" for  
13 purposes of this act if:

14 (i) it may be used by or for the care of a child  
15 under six years of age, but it is designed or intended  
16 for use by the general population or segments of the  
17 general population and not solely or primarily for use by  
18 or for the care of a child; or

19 (ii) it is a medication, drug or food or is intended  
20 to be ingested.

21 "Commercial user." Any person who deals in children's  
22 products or who otherwise by one's occupation holds oneself out  
23 as having knowledge or skill peculiar to children's products or  
24 any person who is in the business of remanufacturing,  
25 retrofitting, selling, leasing, subletting or otherwise placing  
26 in the stream or commerce children's products.

27 "Crib." A bed or containment designed to accommodate an  
28 infant.

29 "Department." The Department of Health of the Commonwealth.

30 "Full-size crib." As defined in 16 CFR section 1508.3

1 regarding the requirements for full-size cribs.

2 "Infant." Any person less than 35 inches tall and less than  
3 three years of age.

4 "Non-full-size crib." As defined in 16 CFR section 1509.2  
5 regarding the requirements for non-full-size cribs.

6 "Person." A natural person, firm, corporation, limited  
7 liability company or association or an employee or agent of a  
8 natural person or an entity included in this definition.

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

11 Section 3. Unsafe children's products - prohibition.

12 (a) Prohibition.--No commercial user may remanufacture,  
13 retrofit, sell, contract to sell or resell, lease, sublet or  
14 otherwise place in the stream of commerce, on or after ,  
15 a children's product that is unsafe.

16 (b) Unsafe products.--A children's product is deemed to be  
17 unsafe for purposes of this act if it meets any of the following  
18 criteria:

19 (1) It does not conform to all Federal laws and  
20 regulations setting forth standards for the children's  
21 product.

22 (2) It has been recalled for any reason by an agency of  
23 the Federal Government or the product's manufacturer,  
24 distributor or importer and the recall has not been  
25 rescinded.

26 (3) An agency of the Federal Government has issued a  
27 warning that a specific product's intended use constitutes a  
28 safety hazard and the warning has not been rescinded.

29 Section 4. List of unsafe children's products.

30 (a) Department of Health.--The department shall establish,

1 maintain and update a comprehensive list of children's products  
2 that have been identified as meeting any of the criteria set  
3 forth in section 3.

4 (b) Distribution of list.--The department shall make the  
5 comprehensive list available to the public at no cost and shall  
6 post it on the Internet and encourage links.

7 Section 5. Unsafe children's products - child care.

8 (a) Child-care facility.--A child-care facility may not use  
9 or have on the premises an unsafe children's product as  
10 described in section 3. This subsection shall not apply to an  
11 antique or collectible children's product if it is not used by  
12 or accessible to any child in the child-care facility.

13 (b) Notifications.--The department shall notify child-care  
14 facilities on an ongoing basis of the provisions of this act and  
15 of unsafe children's products, as determined in accordance with  
16 this act, in plain, nontechnical language that will enable each  
17 child-care facility to effectively inspect children's products  
18 and identify unsafe children's products.

19 (c) Rules and regulations.--The department shall adopt rules  
20 and regulations to carry out this section.

21 (d) Written certifications.--Each child-care facility shall  
22 as part of the licensing, licensing renewal or periodic update  
23 process conducted by the department certify in writing that it  
24 has reviewed each of the bulletins and notices issued by the  
25 department regarding unsafe children's products and that there  
26 are no unsafe products in the facility. The department shall  
27 prepare a certification form and shall require each facility to  
28 complete the certification form in the process of licensing,  
29 renewal or periodic update. The department shall retain the  
30 certification form completed by each facility in each respective

1 facility's licensing file.

2 (e) Maintain file.--Each child-care facility shall maintain  
3 a file containing all bulletins, notices, or both, issued by the  
4 department regarding unsafe children's products and shall make  
5 the file accessible to the facility staff members and to parents  
6 of the children who attend the facility.

7 (f) Revocation and refusal to renew license.--The department  
8 may revoke or refuse to renew the license of any child-care  
9 facility or refuse to issue full license to the holder of a  
10 permit should the licensee or holder of a permit not comply with  
11 any section of this act.

12 Section 6. Retrofits.

13 (a) Products.--An unsafe children's product as determined  
14 pursuant to section 3 may be retrofitted if the retrofit has  
15 been approved by the agency of the Federal Government issuing  
16 the recall or warning or the agency responsible for approving  
17 the retrofit is different from the agency issuing the recall or  
18 warning. A retrofitted children's product may be sold if it is  
19 accompanied at the time of sale by a notice declaring that it is  
20 safe to use for a child under six years of age. The commercial  
21 user is responsible for ensuring that the notice is present with  
22 the retrofitted product at the time of sale. The notice shall  
23 include:

24 (1) A description of the original problem which made the  
25 recalled product unsafe.

26 (2) A description of the retrofit which explains how the  
27 original problem was eliminated and declaring that it is now  
28 safe to use for a child under six years of age.

29 (3) The name and address of the commercial user who  
30 accomplished the retrofit certifying that the work was done

1 along with the name and model number of the product  
2 retrofitted.

3 (b) Exemptions.--A retrofit is exempt from this act if:

4 (1) the retrofit is for a children's product that  
5 requires assembly by the consumer, the approved retrofit is  
6 provided with the product by the commercial user and the  
7 retrofit is accompanied at the time of sale by instructions  
8 explaining how to apply the retrofit; or

9 (2) the seller of a previously unsold product  
10 accomplishes the repair, approved or recommended by an agency  
11 of the Federal Government, prior to sale.

12 Section 7. Exception.

13 The commercial user shall not be found noncompliant if the  
14 specific recalled product sold was not included on the  
15 department's list on the day before the sale.

16 Section 8. Penalty.

17 A commercial user who willfully and knowingly violates  
18 section 3 commits a misdemeanor of the second degree.

19 Section 9. Enforcement.

20 Any person, including, but not limited to, the Attorney  
21 General or a district attorney, in the county in which a  
22 violation of this act occurred, may bring an action in the name  
23 of the Commonwealth to enforce the provisions of this act.

24 Section 10. Remedies.

25 Remedies available under this act are in addition to any  
26 other remedies or procedures under any other provision of law  
27 that may be available to an aggrieved party.

28 Section 11. Effective date.

29 This act shall take effect in 180 days.