

SAFE CRIBS ACT OF 2019

SEPTEMBER 13, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3170]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3170) to prohibit the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any crib bumper, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Safe Cribs Act of 2019”.

SEC. 2. PROHIBITION ON SALE OF CRIB BUMPERS.

(a) PROHIBITION ON THE SALE OF CRIB BUMPERS.—Beginning on the date that is 180 days after the date of enactment of this Act, it shall be unlawful for any person

to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any crib bumper.

(b) TREATMENT OF VIOLATION.—A violation of subsection (a) shall be treated as a violation of section 19(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(1)).

(c) CRIB BUMPER DEFINED.—In this section, the term “crib bumper”—

(1) means any material that is intended to cover the sides of a crib to prevent injury to any crib occupant from impacts against the side of a crib or to prevent partial or complete access to any openings in the sides of a crib to prevent a crib occupant from getting any part of the body entrapped in any opening;

(2) includes a padded crib bumper, a supported and unsupported vinyl bumper guard, and vertical crib slat covers; and

(3) does not include a non-padded mesh crib liner.

I. PURPOSE AND SUMMARY

H.R. 3170, the “Safe Cribs Act of 2019”, was introduced on June 10, 2019, by Reps. Schakowsky (D–IL), Kelly (D–IL), and Rush (D–IL) and referred to the Committee on Energy and Commerce. H.R. 3170 prohibits the manufacture for sale, offer for sale, distribution in commerce, or import of non-mesh crib bumpers. A crib bumper is defined to include any non-mesh material that is intended to cover the sides of a crib to prevent injury to a crib occupant from impacts or to prevent a crib occupant from getting any body part entrapped in any opening, such as a padded crib bumper, a supported and unsupported vinyl bumper guard, and vertical slat covers.

II. BACKGROUND AND NEED FOR LEGISLATION

Crib bumpers were originally invented to prevent children from falling out of a crib between widely spaced crib slats. Since 1973, a mandatory crib slat spacing standard has obviated the original need for crib bumpers.¹ Nowadays, however, crib bumpers are primarily intended to prevent babies from bumping their heads or getting their arms or legs caught in the rails of cribs. Parents or caregivers may also use them because of their decorative value. However, some pediatricians and medical experts believe that the minor injuries they are intended to prevent are not worth the serious suffocation, strangulation, and entrapment risk that these products pose.² Since 2007, the American Academy of Pediatrics has recommended that crib bumpers not be used.³ The National Institutes of Health also warns against the use of crib bumpers.⁴ Despite this clear guidance, crib bumpers remain widely sold by leading retailers and may even be bundled as part of infant bedding sets.

According to data provided by the Consumer Product Safety Commission (CPSC), 23 babies reportedly died from 2006 to 2012 from suffocation attributed to a crib bumper.⁵ A study published in the *Journal of Pediatrics* in February 2016 found that “there appears to be a substantial CPSC undercounting of [crib bumper]

¹ Consumer Product Safety Commission, *Hazard Analysis: Crib-Related Deaths* (Aug. 2002) (www.cpsc.gov/s3fs-public/pdfs/EpiCrib.PDF).

² American Academy of Pediatrics, *Choosing a Crib* (May 12, 2014) (www.healthychildren.org/english/ages-stages/prenatal/decisions-to-make/Pages/Choosing-a-Crib.aspx).

³ American Academy of Pediatrics, *Crib Bumpers in the Night: A Hazard to Infants* (Dec. 31, 2007) (www.aappublications.org/content/29/1/28.2).

⁴ National Institutes of Health, *NIH statement on the new crib safety standards* (June 27, 2011) (www.nih.gov/news-events/news-releases/nih-statement-new-crib-safety-standards).

⁵ NJ Scheers et al., *Crib Bumpers Continue to Cause Infant Deaths: A Need for a New Preventive Approach*, *The Journal of Pediatrics* (Feb. 2016).

deaths.”⁶ This study identified a total of 48 infant deaths attributed to crib bumpers between 1985 and 2012.⁷ The most recent CPSC staff briefing package on crib bumpers, published in September 2016, found a total of 107 fatal and 282 non-fatal incidents reported to the agency from January 1, 1990, to March 31, 2016.⁸

Several states and localities across the United States have taken steps to remove non-mesh crib bumpers from their respective markets. In 2011, Chicago, Illinois became the first city in the country to ban the sale of non-mesh crib bumpers.⁹ In 2013, the State of Maryland banned the sale of all crib bumpers, except mesh bumpers and vertical crib slat covers.¹⁰ Ohio’s statewide ban on non-mesh crib bumpers took effect in April 2017. Ohio’s law will still allow mesh crib bumpers to be sold for three years—after which the Ohio legislature will review current research and any regulations at the CPSC to determine whether the renewed ban will include mesh crib bumpers. The borough of Watchung, New Jersey, adopted an ordinance in December 2016 that bans the sale of non-mesh crib bumpers.¹¹ Most recently, New York’s governor signed into law a bill prohibiting the sale of non-mesh crib bumpers.¹²

Current evidence does not show that mesh crib liners pose the same risks of suffocation as padded crib bumpers.¹³ As a result, H.R. 3170 specifically does not include mesh crib liners and is intended to remove the risks of death or injuries related to non-mesh crib bumpers.

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearings were used to develop or consider H.R. 3170:

The Subcommittee on Consumer Protection and Commerce held an oversight hearing on June 9, 2019. The hearing was entitled, “Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?” The Subcommittee received testimony from the CPSC commissioners and others:

- The Honorable Ann Marie Buerkle, Acting Chairman, Consumer Product Safety Commission;
- The Honorable Elliot F. Kaye, Commissioner, Consumer Product Safety Commission;
- The Honorable Robert S. Adler, Commissioner, Consumer Product Safety Commission;

⁶*Id.*

⁷*Id.*

⁸ Consumer Product Safety Commission, *Briefing Package: CPSC Staff Response to the Record of Commission Action on Crib Bumpers* (Sept. 9, 2016) (www.cpsc.gov/s3fs-public/StaffResponseToTheRecordOfCommissionActionOnCribBumper.pdf).

⁹ *Council Bans Sale of Crib Bumper Pads in Chicago*, Chicago Tribune (Sept. 9, 2011).

¹⁰ Maryland Department of Health, *New Regulations Will Ban Crib Bumpers in Maryland* (Jan. 2013) (pha.health.maryland.gov/mch/Pages/crib-bumpers.aspx).

¹¹ Borough of Watchung, N.J., Ordinance No. 16/15 (Dec. 15, 2016).

¹² New York State, *Governor Cuomo Signs Legislation Expanding Infant Safety Measures* (Aug. 13, 2019) (www.governor.ny.gov/news/governor-cuomo-signs-legislation-expanding-infant-safety-measures).

¹³ Letter from Jennifer Loesch, Chief Executive Officer, BreathableBaby, LLC, to Rep. Jan Schakowsky, Chairwoman, Subcommittee on Consumer Protection and Commerce, House Committee on Energy and Commerce and Rep. Cathy McMorris Rodgers, Ranking Member, Subcommittee on Consumer Protection and Commerce, House Committee on Energy and Commerce (June 13, 2015).

- The Honorable Dana Baiocco, Commissioner, Consumer Product Safety Commission;
- The Honorable Peter A. Feldman, Commissioner, Consumer Product Safety Commission;
- Rachel Weintraub, Legislative Director and General Counsel, Consumer Federation of America;
- Nancy Cowles, Executive Director, Kids in Danger; and
- Remington A. Gregg, Counsel for Civil Justice and Consumer Rights, Public Citizen.

The Subcommittee on Consumer Protection and Commerce held a legislative hearing on June 13, 2019, on H.R. 3170, the “Safe Cribs Act of 2019” and six other bills. The hearing was entitled, “Keeping Kids and Consumers Safe from Dangerous Products.” The Subcommittee received testimony from:

- Will Wallace, Manager, Home & Products Policy, Consumer Reports;
- Crystal Ellis, Founding Member, Parents Against Tip-Overs;
- Chris Parsons, President, Minnesota Professional Fire Fighters; and
- Charles A. Samuels, Member, Mintz.

IV. COMMITTEE CONSIDERATION

H.R. 3170, the “Safe Cribs Act of 2019”, was introduced in the House on June 10, 2019, by Reps. Schakowsky (D–IL), Kelly (D–IL), and Rush (D–IL), and referred to the Committee on Energy and Commerce. Subsequently, the bill was referred to the Subcommittee on Consumer Protection and Commerce on June 11, 2019. Following hearings, the Subcommittee met in open markup session, pursuant to notice, on July 10, 2019, for consideration of H.R. 3170. An amendment offered by Mrs. Rodgers (R–WA) was agreed to by a voice vote. Subsequently, the Subcommittee on Consumer Protection and Commerce agreed to a motion by Ms. Schakowsky, Chairwoman of the Subcommittee, to forward favorably H.R. 3170, amended, to the full Committee on Energy and Commerce by a voice vote.

On July 17, 2019, the full Committee met in open markup session, pursuant to notice, to consider H.R. 3170, as amended by the subcommittee. During consideration there were no amendments offered. Whereupon, the full Committee on Energy and Commerce agreed to a motion by Mr. Pallone, Chairman of the Committee, to order the bill H.R. 3170 reported favorably to the House, as amended, by a voice vote, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with consideration of H.R. 3170 or reporting the bill thereto.

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight find-

ings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to prohibit the manufacture for sale, offer for sale, distribution in commerce, or import of all non-mesh crib bumpers.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 3170 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 3170 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Safe Cribs Act of 2019”.

Sec. 2. Prohibition on sale of crib bumpers

Section 2 establishes that 180 days after the date of enactment of this Act, it shall be unlawful to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any crib bumper. It also establishes that a violation of this prohibition shall be treated as a violation of section 19(a)(1) of the Consumer Product Safety Act (CPSA). Accordingly, any violations will be subject to criminal and civil penalties under CPSA. It also defines “crib bumper” as any non-mesh material that is intended to cover the sides of a crib to prevent injury to a crib occupant from impacts or to prevent a crib occupant from getting any body part entrapped in any opening, such as a padded crib bumper, a supported and unsupported vinyl bumper guard, and vertical slat covers.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes to existing law made by the bill H.R. 3170.