

SAFE SLEEP FOR BABIES 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. 3172]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3172) to prohibit the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any inclined sleeper for infants, 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 Sleep for Babies Act of 2019”.

**SEC. 2. PROHIBITION ON SALE OF INCLINED SLEEPERS FOR INFANTS.**

(a) PROHIBITION ON THE SALE OF INCLINED SLEEPERS FOR INFANTS.—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 inclined sleeper for infants.

(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) INCLINED SLEEPER FOR INFANTS DEFINED.—In this section, the term “inclined sleeper for infants” means a product with an inclined sleep surface greater than ten degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to one year old.

## I. PURPOSE AND SUMMARY

H.R. 3172, the “Safe Sleep for Babies Act of 2019”, was introduced in the House on June 10, 2019, by Rep. Tony Cárdenas (D-CA) and referred to the Committee on Energy and Commerce. H.R. 3172 would prohibit the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any inclined sleeper for infants. Inclined sleepers are defined as any product with an inclined sleep surface greater than 10 degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to one year of age. The bill would make violations of this prohibition subject to civil and criminal penalties under the Consumer Product Safety Act (CPSA).

## II. BACKGROUND AND NEED FOR LEGISLATION

Infant inclined sleep products have grown in popularity in recent years. These products position babies at an incline greater than 10 degrees and are primarily intended and marketed to provide sleeping accommodations for infants up to one year of age.<sup>1</sup> There is, however, consensus among pediatricians and medical experts that infant inclined sleep products are inherently unsafe and create an unreasonable risk of airway compression and suffocation, which can result in injury or death.<sup>2</sup>

The inclined design of these sleep products conflict with longstanding safe sleep recommendations by the American Academy of Pediatrics<sup>3</sup>, the National Institutes of Health<sup>4</sup>, the Centers for Disease Control and Prevention<sup>5</sup>, and the Federal Maternal and Child Health Bureau<sup>6</sup>, which state that babies should only sleep on their backs on a firm, flat surface free of any extra soft bedding. Infant inclined sleep products may require the use of restraints, which create additional hazard patterns, including strangulation and entrapment.<sup>7</sup>

Many parents and caregivers of babies with gastroesophageal reflux or gastroesophageal reflux disease (GERD) use inclined sleep products based on the incorrect notion that the inclined sleep posi-

<sup>1</sup> Consumer Product Safety Commission, *Safety Standard for Infant Inclined Sleep Products*, 82 Fed. Reg. 16963 (Apr. 7, 2017) (Notice of Proposed Rulemaking).

<sup>2</sup> Consumer Reports, *Inclined Sleeper Deaths Rise to 50 as Industry Continues to Sell the Products* (Aug. 8, 2019) ([www.consumerreports.org/child-safety/inclined-sleeper-deaths-rise-to-50-as-industry-continues-to-sell-the-products/](http://www.consumerreports.org/child-safety/inclined-sleeper-deaths-rise-to-50-as-industry-continues-to-sell-the-products/)) (accessed Aug. 14, 2019).

<sup>3</sup> American Academy of Pediatrics, *Sleep Position: Why Back is Best* (Feb. 28, 2012) ([www.healthychildren.org/English/ages-stages/baby/sleep/Pages/Sleep-Position-Why-Back-is-Best.aspx](http://www.healthychildren.org/English/ages-stages/baby/sleep/Pages/Sleep-Position-Why-Back-is-Best.aspx)) (accessed Aug. 14, 2019).

<sup>4</sup> National Institutes of Health, *About SIDS and Safe Infant Sleep* ([safesleepbasics.nih.gov/safesleepbasics/about](http://safesleepbasics.nih.gov/safesleepbasics/about)) (accessed Aug. 14, 2019).

<sup>5</sup> National Institutes of Health, *Federal agencies express support for updated safe infant sleep recommendations* (Oct. 24, 2016) ([www.nih.gov/news-events/news-releases/federal-agencies-express-support-updated-safe-infant-sleep-recommendations](http://www.nih.gov/news-events/news-releases/federal-agencies-express-support-updated-safe-infant-sleep-recommendations)) (accessed Aug. 14, 2019).

<sup>6</sup> *Id.*

<sup>7</sup> Consumer Product Safety Commission, *Safety Standard for Infant Inclined Sleep Products*, 82 Fed. Reg. 16963 (Apr. 7, 2017) (Notice of Proposed Rulemaking); See note 2.

tion alleviates the spitting up that accompanies these conditions. However, joint international guidelines issued by the North American Society of Pediatric Gastroenterology, Hepatology, and Nutrition, and the European Society for Pediatric Gastroenterology, Hepatology, and Nutrition are clear that the use of positional therapy to treat symptoms of GERD in sleeping infants is not recommended and may worsen gastric reflux.<sup>8</sup>

To date, at least 50 babies have reportedly died in infant inclined sleep products.<sup>9</sup> Since April 2019, the Consumer Product Safety Commission (CPSC) has recalled over five million infant inclined sleep products, including products manufactured by Fisher-Price,<sup>10</sup> Kids II, Inc.,<sup>11</sup> and Dorel Juvenile Group USA,<sup>12</sup> due to reports of deaths or safety concerns. CPSC has also issued nine recalls involving infant inclined sleep products between May 10, 2000, and March 1, 2016; these recalls were conducted to resolve issues involving mold, structural stability, entrapment, suffocation, falls, and strangulation.<sup>13</sup>

Despite these recalls, many infant inclined sleep products by other manufacturers remain on the market.<sup>14</sup> H.R. 3172 is needed to remove this deadly category of products from the market—especially since parents and caregivers may not know that these products are not safe for babies and that the grave risk of death or injury outweighs any perceived benefit. This legislation would prohibit the manufacture for sale, offer for sale, distribution in commerce, or import of inclined sleepers for infants, to prevent further death or catastrophic injury of newborns and infants.

### 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. 3172:

The Subcommittee on Consumer Protection and Commerce held a general hearing on April 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 members of the CPSC and other consumer organizations:

- The Honorable Ann Marie Buerkle, Acting Chairman, Consumer Product Safety Commission;

<sup>8</sup>Rachel Rosen et al., *Pediatric Gastroesophageal Reflux Clinical Practice Guidelines: Joint Recommendations of the North American Society for Pediatric Gastroenterology, Hepatology, and Nutrition and the European Society for Pediatric Gastroenterology, Hepatology, and Nutrition*, *Journal of Pediatric Gastroenterology and Nutrition* (Mar. 2018).

<sup>9</sup>See note 2.

<sup>10</sup>Consumer Product Safety Commission, *Fisher-Price Recalls Rock-n-Play Sleepers Due to Reports of Deaths* (Apr. 12, 2019) ([www.cpsc.gov/Recalls/2019/fisher-price-recalls-rock-n-play-sleepers-due-to-reports-of-deaths](http://www.cpsc.gov/Recalls/2019/fisher-price-recalls-rock-n-play-sleepers-due-to-reports-of-deaths)) (accessed Aug. 14, 2019); Consumer Product Safety Commission, *Fisher-Price Recalls Inclined Sleeper Accessory Included with Ultra-Lite Day & Night Play Yards Due to Safety Concerns About Inclined Sleep Products* (Jun. 27, 2019) ([cpsc.gov/Recalls/2019/Fisher-Price-Recalls-Inclined-Sleeper-Accessory-Included-with-Ultra-Lite-Day-Night-Play-Yards-Due-to-Safety-Concerns-About-Inclined-Sleep-Products](http://cpsc.gov/Recalls/2019/Fisher-Price-Recalls-Inclined-Sleeper-Accessory-Included-with-Ultra-Lite-Day-Night-Play-Yards-Due-to-Safety-Concerns-About-Inclined-Sleep-Products)) (accessed Aug. 14, 2019).

<sup>11</sup>Consumer Product Safety Commission, *Kids II Recalls All Rocking Sleepers Due to Reports of Deaths* (Apr. 26, 2019) ([www.cpsc.gov/Recalls/2019/Kids-II-Recalls-All-Rocking-Sleepers-Due-to-Reports-of-Deaths](http://www.cpsc.gov/Recalls/2019/Kids-II-Recalls-All-Rocking-Sleepers-Due-to-Reports-of-Deaths)) (accessed Aug. 14, 2019).

<sup>12</sup>Consumer Product Safety Commission, *Dorel Juvenile Group USA Recalls Inclined Sleepers Due to Safety Concerns About Inclined Sleep Products* (Jul. 31, 2019) ([www.cpsc.gov/Recalls/2019/Dorel-Juvenile-Group-USA-Recalls-Inclined-Sleepers-Due-to-Safety-Concerns-About-Inclined-Sleep-Products](http://www.cpsc.gov/Recalls/2019/Dorel-Juvenile-Group-USA-Recalls-Inclined-Sleepers-Due-to-Safety-Concerns-About-Inclined-Sleep-Products)) (accessed Aug. 14, 2019).

<sup>13</sup>See note 1.

<sup>14</sup>See note 2.

- The Honorable Elliot F. Kaye, Commissioner, Consumer Product Safety Commission;
- The Honorable Robert S. Adler, Commissioner, Consumer Product Safety Commission;
- 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. 3172, the “Safe Sleep for Babies 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. 3172, the “Safe Sleep for Babies Act of 2019”, was introduced in the House on June 10, 2019, by Rep. Cárdenas (D–CA) 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. 3172. An amendment by Mr. Pallone on behalf of Mr. Cárdenas, # 1, 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. 3172, 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. 3172, as amended by the subcommittee (Subcommittee Print of H.R. 3172). During markup of the bill, no amendments were offered. At the conclusion of consideration of the bill, the full Committee on Energy and Commerce agreed to a motion by Mr. Pallone, Chairman of the Committee, to order the bill H.R. 3172 reported favorably to the House, as amended, by a voice vote, a quorum being present.

#### V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 3172 reported or on any amendments to the bill.

## 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 findings 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 importation into the United States of any inclined sleeper for infants.

## X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 3172 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. 3172 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 Sleep for Babies Act”.

*Sec. 2. Prohibition on sale of inclined sleepers for infants*

Section 2 establishes that 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 inclined sleeper for infants. 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. Accordingly, any violations will be subject to criminal and civil penalties under CPSA. It also defines “inclined sleeper for infants” as a product with an inclined sleep surface greater than 10 degrees that is intended, marketed, or designed to provide sleeping accommodations for an infant up to one year of age.

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

There are no changes to existing law made by the bill H.R. 3172.