

A.C.A. T. 20, Subt. 2, Ch. 27, Subch. 16, Refs & Annos

A.C.A. § 20-27-1601

§ 20-27-1601. Title

This subchapter shall be known as the "Children's Product Safety Act of Arkansas".

A.C.A. § 20-27-1602

§ 20-27-1602. Definition

As used in this subchapter:

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

(i) The product is designed or intended for the care of or use by children under six (6) years of age or is designed or intended for the care of or use by both children under six (6) years of age and children six (6) years of age or older; and

(ii) The product is designed or intended to come into contact with the child while the product is used.

(B) "Children's product" does not mean a product that:

(i) May be used by or for the care of a child under six (6) years of age but is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by or for the care of a child; or

(ii) Is a medication, drug, or food that is intended to be ingested;

(2) "Commercial user" means any person who deals in children's products or who otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to children's products, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce children's products;

(3) "Crib" means a bed or containment designed to accommodate an infant;

(4) "Full-size crib" means a full-size crib as defined in 16 C.F.R. § 1508.3, as it exists on January 1, 2001, regarding the requirements for full-size cribs;

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(5) "Infant" means any person less than thirty-five inches (35") tall and less than three (3) years of age;

(6) "Non-full-size crib" means a non-full-size crib as defined in 16 C.F.R. § 1509.3, as it exists on January 1, 2001, regarding the requirements for non-full-size cribs; and

(7) "Person" means a natural person, firm, corporation, limited liability company, or association or an employee or agent of a natural person or an entity.

A.C.A. § 20-27-1603

§ 20-27-1603. Unsafe children's products--Prohibition

Effective: July 31, 2007

(a) No commercial user shall remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce a children's product that is unsafe.

(b) A children's product is unsafe for purposes of this subchapter if it meets any of the following criteria:

(1) It does not conform to federal law and regulatory standards for the children's product;

(2) It has been recalled for any reason by an agency of the federal government or by the product's manufacturer, distributor, or importer, and the recall has not been rescinded; or

(3) An agency of the federal government has issued a warning that a specific product's intended use constitutes a safety hazard, and the warning has not been rescinded.

(c)(1) The Attorney General shall create, maintain, and update quarterly a comprehensive list of children's products that have been identified as recalled children's products as determined by the United States Consumer Product Safety Commission.

(2) The Attorney General shall make the comprehensive list available to the public at no cost by posting it on the Internet and encouraging links from the Internet site.

(d) A crib is unsafe if it does not conform to the standards existing on January 1, 2001, endorsed or established by the Consumer Product Safety Commission, including, but not limited to, Title 16 of the Code of Federal Regulations and the American Society for Testing and Materials, as follows:

(1) 16 C.F.R. § 1508 and any regulations adopted to amend or supplement the regulations;

(2) 16 C.F.R. § 1509 and any regulations adopted to amend or supplement the regulations;

(3) 16 C.F.R. § 1303 and any regulations adopted to amend or supplement the regulations; and

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(4) The following standards and specifications as exist on January 1, 2001, of the American Society for Testing and Materials for corner posts of baby cribs and structural integrity of baby cribs:

(A) American Society for Testing and Materials F 966-90, concerning corner post standard;

(B) American Society for Testing and Materials F 1169-88, concerning structural integrity of full-size baby cribs; and

(C) American Society for Testing and Materials F 1822-97, concerning non-full-size cribs.

(e) Cribs that are unsafe shall include, but not be limited to, cribs that have any of the following dangerous features or characteristics:

(1) Corner posts that extend more than one-sixteenth inch (1/16");

(2) Spaces between side slats more than two and three hundred seventy-five hundredths inch (2.37");¹

(3)(A) Mattress support that can be easily dislodged from any point of the crib.

(B) A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five-pound upward force from underneath the crib;

(4) Cutout designs on the end panels;

(5) Rail height dimensions that do not conform to both of the following:

(A) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches (9"); and

(B) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches (26");

(6) Any screws, bolts, or hardware that are loose and not secured;

(7) Sharp edges, points, or rough surfaces or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(8) Tears in mesh or fabric sides in a non-full-size crib;

(9) A non-full-size crib that folds in a "V" shape design that does not have top rails that automatically lock into place when the crib is fully set up; or

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(10) The mattress pad in a non-full-size mesh or fabric crib exceeds one inch (1").

(f)(1) An unsafe children's product may be retrofitted if the retrofit has been approved by the agency of the federal government issuing the recall or warning or the agency responsible for approving the warning.

(2) A retrofitted children's product may be sold if it is accompanied at the time of sale by a notice declaring that it is safe to use for a child under six (6) years of age.

(3) The notice shall include:

(A) A description of the original problem which made the recalled product unsafe;

(B) A description of the retrofit which explains how the original problem was eliminated and declaring that it is now safe to use for a child under six (6) years of age; and

(C)(i) The name and address of the commercial user who accomplished the retrofit certifying that the work was done, along with the name and model number of the product retrofitted.

(ii) The commercial user is responsible for ensuring that the notice is present with the retrofitted product at the time of sale.

(g) A retrofit is exempt from this subchapter if:

(1) The retrofit is for a children's product that requires assembly by the consumer;

(2) The approved retrofit is provided with the product by the commercial user;

(3) The retrofit is accompanied at the time of sale by instructions explaining how to apply the retrofit; or

(4) The seller of a previously unsold product accomplishes prior to sale the repair approved or recommended by an agency of the federal government.

A.C.A. § 20-27-1604

§ 20-27-1604. Remedies and enforcement

(a) Any act or practice which is a violation of this subchapter shall constitute an unfair and deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(b) All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be available to the Attorney General for the enforcement of this subchapter.

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(c) Nothing in this section limits the rights or remedies which are otherwise available to any person under any law.

A.C.A. § 20-27-1605

§ 20-27-1605. Unsafe children's products--Child care facilities

(a)(1) A child care facility may not use or have on the premises an unsafe children's product as described in this subchapter.

(2) This subsection does not apply to an antique or collectible children's product if it is not used by or accessible to any child in the child care facility.

(b)(1) Within sixty (60) calendar days after August 13, 2001, the Attorney General shall send a letter to all licensed child care facilities informing them of the provisions of this subchapter.

(2)(A) The Attorney General shall notify licensed child care facilities of the provisions of this subchapter and of recalled children's products as identified by the United States Consumer Product Safety Commission by maintaining a list of those products on its website.

(B) The list shall be updated quarterly.

(c) The Department of Health and Human Services may promulgate rules to carry out this section.

(d)(1) Each child care facility shall maintain a file containing the list of recalled children's products maintained on the Attorney General's or the commission's website and any updates to the list and shall make the file accessible to the facility staff members and to parents of the children who attend the facility.

(2) A child care facility may request the Attorney General's office to assist it in obtaining the list by providing its name and mailing address to the commission for the purpose of receiving the list of recalled children's products and quarterly updates through a mailing sent directly from the commission or by providing the commission with the facility's electronic mail address so it may receive the list and updates by electronic mail notification.

(e)(1) As part of the licensing, licensing renewal, or periodic update process conducted by the department, each child care facility shall certify in writing on forms provided by the department, that it has reviewed the list of recalled children's products maintained by the office of the Attorney General or the commission and any updates to the list, and that after a thorough inspection, to the best of its knowledge, there are no unsafe children's toys, furniture, or equipment in the facility.

(2) The office of the Attorney General shall prepare a certification form, and the department shall require each facility to complete the certification form in the process of licensing, licensing renewal, or periodic update.

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(3) The department shall retain the certification form completed by each facility in each respective facility's licensing file.

A.C.A. § 20-27-1606

§ 20-27-1606. Revocation of child care facility licenses

The Department of Health and Human Services may revoke or refuse to renew the license of any child care facility or refuse to issue a full license to the permit holder if the licensee or permit holder fails to comply with § 20-27-1605(d) and (e).