

Amendment No. 807

Assembly Amendment to Assembly Bill No. 430 First Reprint (BDR 52-464)

Proposed by: Assembly Committee on Ways and Means**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

RBL



Date: 5/20/2009

A.B. No. 430—Prohibits certain activity regarding unsafe cribs and other children's products. (BDR 52-464)



ASSEMBLY BILL NO. 430—ASSEMBLYMEN PIERCE, KOIVISTO; ARBERRY, ATKINSON, HOGAN, HORNE, KIHUEN, KIRKPATRICK, LESLIE, MCCLAIN, MORTENSON, MUNFORD, OCEGUERA, OHRENSCHALL AND SEGERBLOM

MARCH 16, 2009

JOINT SPONSOR: SENATOR PARKS

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits certain activity regarding unsafe cribs and other children's products. (BDR 52-464)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to children's products; prohibiting the advertisement, sale, lease, sublet or distribution of children's products under certain circumstances; prohibiting certain commercial activity regarding unsafe cribs; providing that a violation of provisions relating to unsafe cribs or to children's products is a deceptive trade practice; ~~authorizing the Consumer's Advocate of the Bureau of Consumer Protection in the Office of the Attorney General to ban or designate as a health or safety hazard any children's product;~~ providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 7 of this bill provides that a retailer of a new or used product intended for children under 12 years of age may not advertise, sell or offer for sale, lease, sublet or otherwise distribute the product if the product is subject to a recall notice, is subject to a warning indicating that the use of the product constitutes a health or safety hazard or has been banned or designated as a health or safety hazard by the United States Consumer Product Safety Commission, ~~the Consumer's Advocate of the Bureau of Consumer Protection in the Office of the Attorney General,~~ or the manufacturer of the product. **Section 7** also requires a retailer to subscribe to or arrange to receive recall notices and warnings issued by the United States Consumer Product Safety Commission and manufacturers from whom the retailer receives children's products. **Section 7** further requires a retailer to comply with all instructions issued for the disposal, return, repair, retrofitting, labeling or remediation of children's products which are the subject of a recall notice or other warning. **Section 18** of this bill makes it a deceptive trade practice for a person to knowingly and willfully violate any provision relating to unsafe cribs or to children's products that are subject to a recall notice or a warning, which therefore puts such violations within the purview of the provisions in

chapter 598 of NRS that impose civil and criminal penalties. (NRS 598.092) ~~[Section 19 of this bill authorizes the Consumer's Advocate to ban or designate as a health or safety hazard any children's product. (NRS 228.380)]~~

Sections 9-17 of this bill establish the Infant Crib Safety Act. **Section 14** prohibits persons from remanufacturing, retrofitting, selling, contracting to sell or resell, subletting or otherwise placing in the stream of commerce a crib that is unsafe for use by an infant. **Section 14** also describes the types of cribs that are presumed unsafe. **Section 15** establishes civil penalties for persons who violate any provision relating to unsafe cribs. **Section 16** exempts antique or vintage cribs from the provisions relating to unsafe cribs if such a crib is accompanied with a written notice provided by a commercial user stating that it is not intended for use by an infant. **Section 16** further releases from liability any commercial user who complies with the notice requirement. **Section 17** authorizes any person to maintain an action against a commercial user who violates any provision relating to unsafe cribs.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this act.

Sec. 2. *As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Children's product" means a consumer product that is designed or intended:*

1. For the care of or use by a child under 12 years of age; or

2. To come into physical contact with a child under 12 years of age at the time the product is used.

For the purposes of this subsection, "children's product" does not include any medication, drug, food or other product that is intended to be ingested.

Sec. 4. ~~["Consumer's Advocate" means the Consumer's Advocate of the Bureau of Consumer Protection in the Office of the Attorney General.] (Deleted by amendment.)~~

Sec. 5. *"Retailer" means a person who, in the ordinary course of his business, advertises, sells or offers for sale, leases, sublets or otherwise distributes a new or used children's product to consumers in this State, including, without limitation, thrift stores, second-hand stores and consignment stores.*

Sec. 6. *"Warning" means a communication which is about a health or safety hazard that a children's product poses to consumers and which is:*

1. Directed to a retailer; and

2. Intended to inform the retailer about the health or safety hazard, instruct the retailer to remove the children's product from the retailer's inventory or provide the retailer with a method to eliminate the health or safety hazard from the children's product.

For the purposes of this section, "warning" does not include a communication which is directed to consumers and affixed to the children's product or any packaging material for the children's product or provided by the retailer to the consumer as part of a transaction relating to the children's product.

Sec. 7. *1. A retailer shall not advertise, sell or offer for sale, lease, sublet or otherwise distribute a children's product to consumers in this State if the children's product is:*

(a) Subject to a recall notice issued by or in cooperation with the United States Consumer Product Safety Commission or its successor agency; or

(b) The subject of a warning issued by the manufacturer of the children's product or the United States Consumer Product Safety Commission or its successor agency indicating that the intended use of the children's product constitutes a health or safety hazard, unless the retailer has eliminated the hazard in strict compliance with any standards and instructions that are provided in or related to the warning. ~~For~~

~~(c) Banned or designated as a health or safety hazard by the Consumer's Advocate pursuant to NRS 228.380.~~

2. A retailer shall:

(a) Subscribe to or arrange to receive recall notices and warnings issued by the United States Consumer Product Safety Commission or its successor agency and manufacturers from whom the retailer receives children's products;

(b) Dispose of any children's product identified in a recall notice or a warning issued by or in cooperation with the United States Consumer Product Safety Commission or its successor agency ~~by the Consumer's Advocate~~ or the manufacturer of the children's product in strict compliance with disposal instructions included with or related to the recall notice or the warning; and

(c) Comply strictly with instructions issued with or related to a recall notice or a warning issued by the United States Consumer Product Safety Commission or its successor agency ~~by the Consumer's Advocate~~ or the manufacturer of the children's product for the return, repair, retrofitting, labeling or remediation of any children's product.

Sec. 8. (Deleted by amendment.)

Sec. 9. Sections 9 to 17, inclusive, of this act may be referred to as the Infant Crib Safety Act.

Sec. 10. As used in sections 9 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 11, 12 and 13 of this act have the meanings ascribed to them in those sections.

Sec. 11. "Commercial user" means any person, firm, corporation, association or nonprofit corporation, or any agent or employee thereof, including, without limitation, a child care facility licensed and in good standing pursuant to chapter 432A of NRS, who:

1. Deals in cribs of the kind governed by sections 9 to 17, inclusive, of this act;

2. By virtue of the person's occupation, purports to have knowledge or skill peculiar to cribs of the kind governed by sections 9 to 17, inclusive, of this act; or

3. Is in the business of remanufacturing, retrofitting, selling, leasing, subletting or otherwise placing cribs in the stream of commerce.

Sec. 12. "Crib" means:

1. Any full-size baby crib as described in 16 C.F.R. § 1508.3; or

2. Any non-full-size baby crib as that term is defined in 16 C.F.R. § 1509.2(b).

Sec. 13. "Infant" means a child who is under 3 years of age.

Sec. 14. 1. A person, including, without limitation, a commercial user, shall not remanufacture, retrofit, sell, contract to sell or resell, lease, sublet or otherwise place in the stream of commerce a crib that is unsafe for use by an infant.

2. A crib is presumed to be unsafe if it does not conform to the standards set forth in:

(a) 16 C.F.R. Part 1303;

(b) 16 C.F.R. Part 1508;

(c) 16 C.F.R. Part 1509; and

(d) *The American Society for Testing and Materials voluntary standards F966-90, F1169.88 and F406.*

3. *Cribs that are presumed to be unsafe pursuant to subsection 2 also include, without limitation, cribs with one or more of the following features or characteristics:*

(a) *Corner posts that extend more than 1/16 of an inch;*

(b) *Spaces between side slats more than 2 3/8 inches;*

(c) *Mattress supports that can be easily dislodged from any point of the crib;*

(d) *Cutout designs on the end panels;*

(e) *Rail height dimensions that do not conform to the following:*

(1) *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 9 inches; or*

(2) *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 26 inches;*

(f) *Any screw, bolt or hardware that is loose or not secured;*

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

(h) *Tears in mesh or fabric sides.*

4. *For the purposes of paragraph (c) of subsection 3, a mattress support is deemed to be easily dislodged if it cannot withstand a 25-pound upward force from beneath the crib.*

Sec. 15. 1. *A commercial user who willfully and knowingly sells, leases or otherwise places in the stream of commerce an unsafe crib as described in section 14 of this act commits an offense punishable by a fine not to exceed \$1,000.*

2. *A person other than a commercial user who willfully and knowingly sells, leases or otherwise places in the stream of commerce an unsafe crib as described in section 14 of this act commits an offense punishable by a fine not to exceed \$200.*

Sec. 16. 1. *The provisions of sections 9 to 15, inclusive, of this act do not apply to any antique or vintage crib if the antique or vintage crib is:*

(a) *Not intended for use by an infant; and*

(b) *At the time of remanufacturing, retrofitting, selling, leasing, subletting or otherwise placing in the stream of commerce, is accompanied with a written notice provided by the commercial user stating that the crib is not intended for use by an infant and that the crib is dangerous for use by an infant.*

2. *A commercial user who complies with the notice requirement in subsection 1 shall not be held liable for any death or injury as a result of the use of an antique or vintage crib in a manner inconsistent with the warning provided in the written notice.*

3. *As used in this section, "antique or vintage crib" means a crib that is:*

(a) *Fifty years or older, as measured from the current year;*

(b) *Maintained as a collector's item; and*

(c) *Not intended for use by an infant.*

Sec. 17. *In addition to any other remedy provided by law, any person may maintain an action against a commercial user who violates the provisions of section 14 of this act, seek to enjoin the remanufacture, retrofitting, sale, contract to sell or resell, lease or subletting of a crib that is unsafe for an infant and seek reasonable attorney's fees and costs.*

Sec. 18. *NRS 598.092 is hereby amended to read as follows:*

598.092 *A person engages in a "deceptive trade practice" when in the course of his business or occupation he:*

1 1. Knowingly fails to identify goods for sale or lease as being damaged by
2 water.

3 2. Solicits by telephone or door to door as a lessor or seller, unless the lessor
4 or seller identifies himself, whom he represents and the purpose of his call within
5 30 seconds after beginning the conversation.

6 3. Knowingly states that services, replacement parts or repairs are needed
7 when no such services, replacement parts or repairs are actually needed.

8 4. Fails to make delivery of goods or services for sale or lease within a
9 reasonable time or to make a refund for the goods or services, if he allows refunds.

10 5. Advertises or offers an opportunity for investment and:

11 (a) Represents that the investment is guaranteed, secured or protected in a
12 manner which he knows or has reason to know is false or misleading;

13 (b) Represents that the investment will earn a rate of return which he knows or
14 has reason to know is false or misleading;

15 (c) Makes any untrue statement of a material fact or omits to state a material
16 fact which is necessary to make another statement, considering the circumstances
17 under which it is made, not misleading;

18 (d) Fails to maintain adequate records so that an investor may determine how
19 his money is invested;

20 (e) Fails to provide information to an investor after a reasonable request for
21 information concerning his investment;

22 (f) Fails to comply with any law or regulation for the marketing of securities or
23 other investments; or

24 (g) Represents that he is licensed by an agency of the State to sell or offer for
25 sale investments or services for investments if he is not so licensed.

26 6. Charges a fee for advice with respect to investment of money and fails to
27 disclose:

28 (a) That he is selling or offering to lease goods or services and, if he is, their
29 identity; or

30 (b) That he is licensed by an agency of any state or of the United States to sell
31 or to offer for sale investments or services for investments ~~or~~ or holds any other
32 license related to the service he is providing.

33 7. Notifies any person, by any means, as a part of an advertising plan or
34 scheme, that he has won a prize and that as a condition of receiving the prize he
35 must purchase or lease goods or services.

36 8. Knowingly misrepresents the legal rights, obligations or remedies of a
37 party to a transaction.

38 9. Fails, in a consumer transaction that is rescinded, cancelled or otherwise
39 terminated in accordance with the terms of an agreement, advertisement,
40 representation or provision of law, to promptly restore to a person entitled to it a
41 deposit, down payment or other payment or, in the case of property traded in but
42 not available, the agreed value of the property ~~or~~ or fails to cancel within a
43 specified time or an otherwise reasonable time an acquired security interest. This
44 subsection does not apply to a person who is holding a deposit, down payment or
45 other payment on behalf of another if all parties to the transaction have not agreed
46 to the release of the deposit, down payment or other payment.

47 10. Fails to inform customers, if he does not allow refunds or exchanges, that
48 he does not allow refunds or exchanges by:

49 (a) Printing a statement on the face of the lease or sales receipt;

50 (b) Printing a statement on the face of the price tag; or

51 (c) Posting in an open and conspicuous place a sign at least 8 by 10 inches in
52 size with boldface letters,

53 ➤ specifying that no refunds or exchanges are allowed.

11. Knowingly and willfully violates section 7 or 14 of this act.

Sec. 19. ~~NRS 228.380 is hereby amended to read as follows:~~

~~1. Except as otherwise provided in this section, the Consumer's Advocate may exercise the power of the Attorney General in areas of consumer protection, including, but not limited to, enforcement of chapters 90, 597, 598, 598A, 598B, 598C, 599B and 711 of NRS.~~

~~2. The Consumer's Advocate may not exercise any powers to enforce any criminal statute set forth in:~~

~~(a) Chapter 90, 597, 598, 598A, 598B, 598C or 599B of NRS for any transaction or activity that involves a proceeding before the Public Utilities Commission of Nevada if the Consumer's Advocate is participating in that proceeding as a real party in interest on behalf of the customers or a class of customers of utilities; or~~

~~(b) Chapter 711 of NRS.~~

~~3. The Consumer's Advocate may expend revenues derived from NRS 704.033 only for activities directly related to the protection of customers of public utilities.~~

~~4. The powers of the Consumer's Advocate do not extend to proceedings before the Public Utilities Commission of Nevada directly relating to discretionary or competitive telecommunication services.~~

~~5. For the purposes of sections 2 to 8, inclusive, of this act, the Consumer's Advocate may ban or designate as a health or safety hazard any children's product. The Consumer's Advocate may adopt any regulations necessary to carry out the provisions of this subsection. As used in this subsection, "children's product" has the meaning ascribed to it in section 3 of this act.~~ ***(Deleted by amendment.)***