



**Written Testimony of William Wallace
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Before the U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce**

**Legislative hearing on “Keeping Kids and Consumers Safe from Dangerous Products”
Thursday, June 13, 2019**

SUMMARY

- **Congress should pass the STURDY Act to require a new safety standard for dressers and similar units, to help make sure they resist tipping over onto a child**
 - *Tip-overs are a hidden hazard: they send thousands of people to the emergency room annually, yet people often do not know the danger; dressers are particularly deadly*
 - *CR's two-year investigation has found the industry stability standard inadequate to protect children; a far stronger, mandatory standard is feasible and necessary*
 - *Urgent action by Congress is critical to improve stability and protect children; a bipartisan majority of CPSC commissioners supports a strong legislative solution*
 - *STURDY would require dresser stability testing to simulate the weight of children under age 6 and to more closely but reasonably account for real-world circumstances*
- **Congress should pass the Safe Sleep Act to get inclined sleepers off the market; the inherently dangerous products remain for sale even after dozens of infant deaths**
 - *Two recalled inclined sleeper models are tied to at least 37 infant deaths; the product category conflicts with American Academy of Pediatrics safe sleep recommendations*
 - *CPSC steps to protect infants have repeatedly fallen far short; only an erroneous data release to CR allowed the public to know the breadth and severity of the danger*
 - *Law should reflect that an infant product can be safe for sleep or inclined—not both at once; Congress must prohibit inclined sleepers since CPSC and industry have not*
- **Congress should pass the Safe Cribs Act to prohibit crib bumpers, because they contribute to unsafe infant sleep and are not necessary to prevent head entrapment**
 - *Crib bumpers are unnecessary and contribute to an unsafe sleep environment for infants, according to American Academy of Pediatrics expert recommendations*
 - *Several states and major retailers have stopped the sale of crib bumper pads, while the CPSC recognizes the danger but has failed to prohibit the product category*
 - *Crib bumpers remaining for sale at stores and online means that parents and caregivers unwittingly put infants at risk; the products should not be for sale*
- **Congress should pass the Portable Fuel Container Safety Act to help prevent flame-jetting incidents with a binding, enforceable standard applying across the market**
- **Congress should pass the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act to promote detector installation and protect vulnerable populations**
- **Congress should align SOFFA with state preemption under the Flammable Fabrics Act; while CPSC adoption of the California standard would bring practical enforcement benefits, states should retain the ability to exceed its level of protection**
- **Congress should reject the FASTER Act; it would let companies set their own terms and barrel through any CPSC attempt to ensure high-quality recalls for consumers**

TESTIMONY

Consumer Reports (CR), the independent, non-profit member organization,¹ welcomes the opportunity to testify at the legislative hearing of the U.S. House Committee on Energy and Commerce, Subcommittee on Consumer Protection and Commerce, on “Keeping Kids and Consumers Safe from Dangerous Products.” We look forward to helping inform the Subcommittee’s critical work to improve child and household safety for consumers nationwide.

It is a core part of CR’s purpose to identify marketplace hazards and seek to improve product safety. We assess safety risks, investigate their impact on consumers, and inform the public and the Consumer Product Safety Commission (CPSC) about them—all on a data-driven basis. We push for safety standards to protect consumers from the risk of injury, including both mandatory standards and voluntary industry standards that should be reached through an open, balanced, and consensus-based process. We support the crucial role of a strong and active CPSC, both for consumer safety and for the sake of a fairer marketplace, where cutting corners on safety does not pay.

The CPSC is a critical agency with an indispensable public health and safety mission. It plays a significant role in protecting U.S. consumers despite lacking the appropriations, staff, and authorities it would need to carry out all that it is capable of doing. It is essential for the agency to make effective use of the tools and resources it does have, and for Congress to wield oversight to ensure it is properly carrying out its mission. The Commission and agency staff should always:

- Put consumer safety first—even in the face of industry’s reputation, liability, or cost concerns—and defend the CPSC’s role as an independent regulatory agency;
- Act immediately in the face of data showing products that pose a risk of death or injury to consumers; the threshold for an unreasonable risk should not be a body count, or even countless emergency room trips—even one product-related death or injury is too many.
- Set a high bar for safety culture, proactive safety measures, and responses to safety issues, and require companies and industries to meet it;
- Advocate vocally for stronger safety measures, including by urging companies and industries—both publicly and privately—to take steps they may not want to take;
- Push for voluntary standards to address known hazards and gaps in protection that leave people at risk, and when voluntary standards are inadequate, set mandatory requirements;
- Ensure that companies’ recalls happen quickly, with straightforward consumer participation and strong remedies, and hold companies accountable when they do not live up to their recall obligations or fail to address the hazard facing consumers; and
- Retain the credible use of legal action to force compliance, as well as the issuance of civil penalties at a level that serves as a substantial deterrent to wrongdoing.

¹ Founded in 1936, Consumer Reports uses its dozens of labs, auto test center, and survey research center to rate thousands of products and services annually. CR works together with its more than 6 million members for a fairer, safer, and healthier world, and reaches nearly 20 million people each month across our print and digital media properties. The former name of CR’s advocacy division, Consumers Union, was retired in November 2018.

The Subcommittee’s legislative hearing addresses seven consumer product safety-related bills. As detailed below, Consumer Reports strongly supports the STURDY Act, the Safe Sleep Act of 2019, and the Safe Cribs Act of 2019. Consumer Reports also supports the Portable Fuel Container Safety Act of 2019 and the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act of 2019. With respect to the Safer Occupancy Furniture Flammability Act, or SOFFA, Consumer Reports recognizes the practical enforcement benefits that would come from the CPSC formally and nationally adopting the California upholstered furniture flammability standard—though it is already a de facto nationwide standard—but we urge members to amend the bill so that other states retain the ability to exceed its level of protection if they so choose. CR has strong concerns with the FASTER Act; we oppose the bill and urge Congress to reject it.

I. Congress should pass the STURDY Act to require a new safety standard for dressers and similar units, to help make sure they resist tipping over onto a child

Consumer Reports strongly supports H.R. 2211, the “Stop Tip-overs of Unstable, Risky Dressers on Youth Act,” or the STURDY Act, and urges its swift passage by Congress. The bill would help prevent deaths and injuries from dressers and similar clothing storage furniture tipping over onto children. Long a hidden hazard in the home,² tip-overs have been brought to greater prominence today only through the painstaking work of parents to turn their tragedies into progress toward safer furniture. We stand with them—and with members of Congress, CPSC commissioners, pediatricians, other safety experts, and many others—in advocating for a strong mandatory standard to help save children’s lives.

A. Tip-overs are a hidden hazard: they send thousands of people to the emergency room annually, yet people often do not know the danger; dressers are particularly deadly

According to the most recent CPSC report on the subject, there were an estimated 28,300 emergency department-treated injuries per year, on average, in the 2015-2017 period that were associated with television, appliance, or furniture tip-over incidents. About half of these injuries involved children under age 18, and more than two-thirds of those injuries involved only furniture.³ CR research into the CPSC data has identified that dressers and other clothing storage units are particularly lethal, accounting for at least 206 reported deaths since the year 2000, with most of the victims being children younger than age 6.⁴ More broadly, children under age 6 are

² CR, “Furniture Tip-Over: A Hidden Hazard in Your Home” (Mar. 22, 2018) (online at: www.consumerreports.org/furniture/furniture-tip-overs-hidden-hazard-in-your-home).

³ Adam Suchy, Directorate for Epidemiology, Division of Hazard Analysis, CPSC, “Product Instability or Tip-Over Injuries and Fatalities Associated with Televisions, Furniture, and Appliances: 2018 Report” (Oct. 2018) (online at: www.cpsc.gov/s3fs-public/Product%20Instability%20or%20Tip%20Over%20Report%20Oct%202018_STAMPED.pdf).

⁴ CR, “Dressers Exempt from Industry Safety Standard Fail Consumer Reports’ Tests” (Nov. 1, 2018; last updated Nov. 16, 2018) (online at: www.consumerreports.org/furniture/furniture-dressers-exempt-from-industry-safety-standard-fail-consumer-reports-tests).

those most commonly involved in clothing storage unit tip-over incidents, comprising 95% of deaths and 83% of injuries involving children of all ages.⁵

CR has found that the most effective and most widely touted tip-over prevention strategy available today—anchoring a dresser to the wall using brackets and straps—is not an easy fix for the majority of consumers. Our nationally representative survey last year of 1,502 U.S. adults found that only 27% of Americans had anchored furniture in their homes, and among Americans with kids under age 6 at home, 40% anchored their furniture.⁶ Accordingly, CR has recommended that the furniture industry devote its primary focus to consistently producing dressers and other clothing storage units that are designed to be more stable and that better resist tipping over onto children, regardless of whether or not the furniture is anchored to the wall. Fundamentally, a child’s life should not rely on consumer skill at anchoring a dresser to a wall.

B. CR’s two-year investigation has found the industry stability standard inadequate to protect children; a far stronger, mandatory standard is feasible and necessary

The terrible toll of furniture tip-overs on children became a call to action for Consumer Reports, and over the past two years, CR has conducted extensive research, analysis of incident and injury data, and comparative testing of a cross-section of the marketplace to determine whether a given model is more or less likely to tip over relative to other models. Based on our investigation, we found that the industry’s voluntary standard, ASTM F2057-17, is inadequate, and leaves too many children at risk. In particular, the standard does not adequately account for the weight of children under age 6—those developmentally expected to exhibit behaviors associated with tip-over incidents⁷—and excludes dressers 30 inches in height and smaller despite injuries and fatalities associated with these shorter units.⁸

Building off our analysis of the injury and fatality data, which showed that furniture tip-overs were a leading cause of harm to young kids, CR undertook comparative testing of a cross-section of dressers to see how they would perform and what was achievable in the marketplace. Our results demonstrated that it is feasible for dressers at all price points to pass a more rigorous test.⁹ CR bought 42 dressers for evaluation, and put them through a series of three progressively

⁵ CPSC, “Clothing Storage Unit Tip Overs; Request for Comments and Information,” advance notice of proposed rulemaking, 82 Fed. Reg. 56752 *et seq.* (Nov. 30, 2017) at 56754.

⁶ CR, “Furniture Anchors Not an Easy Fix, as Child Tip-Over Deaths Persist” (Nov. 5, 2018) (online at: www.consumerreports.org/furniture/furniture-anchors-not-an-easy-fix-as-child-tip-over-deaths-persist). Nearly half of adults with children in their home said they did not anchor furniture because their children are not left unattended around furniture. Incident data, however, show that many dresser tip-overs happen shortly after children wake up from a night’s sleep or a nap, when they are often alone in their rooms. Other reasons Americans said they do not anchor varied: 41% thought the furniture was stable enough; 25% did not want to put holes in their walls; 16% did not want to put holes in their furniture; 7% were not sure what hardware to buy; and 7% have never heard of anchoring furniture. *Id.*

⁷ *Supra* note 5 at 56755.

⁸ The ASTM International F15 Committee and its Subcommittee on Furniture Safety likely will soon approve an amendment to the standard to include dressers and other clothing storage units 27 inches in height and taller within the standard’s scope. Numerous members of the Committee have voted in opposition to a pending measure to increase the test weight to 60 pounds, which requires a consensus to move forward.

⁹ *Supra* notes 2 and 4.

tougher stability tests with drawers empty and the dresser placed on a hard, level, flat surface to see how they would perform. In the first test, all drawers were open. In the second, the top drawer was open to its final stop and a 50-pound weight was hung from the drawer front. In the third, the top drawer was open to its final stop and the 50-pound weight was increased in one-pound increments to a maximum of 60 pounds. While 13 dressers failed all but the first of the tests, 20 dressers passed all the testing, underscoring that manufacturers are capable of successfully designing more stable dressers. The failures reinforce why a stronger standard is necessary to protect consumers. The 20 dressers that passed all our tests cost various amounts, and were representative of all price points in the market.¹⁰

In light of the unreasonable risk of death or injury to children and the findings of our investigation, CR and others have been advocating for the CPSC to develop and implement a strong mandatory safety standard with performance requirements for the stability of dressers and other clothing storage units, but the CPSC has failed to act. To account for the weight of children under age 6 and the feasibility demonstrated by CR's test results, CR has said the standard should, at a minimum, include a loaded stability test of 60 pounds and extend coverage to dressers 30 inches in height and shorter. We also have said that it is critical for the standard to be mandatory, not voluntary, for several reasons, including because:

- Under the current system of safety oversight, consumers essentially must place their trust in manufacturers that they will produce a reasonably stable dresser;
- Wall anchors and other tip-over restraint devices, while important, are no substitute for adequate stability performance testing;
- A mandatory standard is justified under the Consumer Product Safety Act—with the Commission able to find that such a rule is reasonably necessary and in the public interest since ASTM F2057-17 and any other existing voluntary standard is inadequate to “eliminate or adequately reduce the risk of injury addressed;”¹¹
- CR's testing shows that manufacturers are capable of incorporating appropriate design changes to their products that yield adequate stability, and of offering units for sale to consumers that are affordable and do not sacrifice utility; and
- Such a standard would allow the agency to enforce requirements, including performance standards, and more easily gain industry cooperation for recalls; historically, companies have refused to carry out tip-over-related dresser recalls unless they face overwhelming CPSC and public pressure, or their product is linked to a death or failed stability test administered by the CPSC.¹²

¹⁰ *Id.*

¹¹ 15 U.S.C. 2056(b).

¹² See, e.g., CPSC, “Memorandum: 2016 Tipover Briefing Package Test Results Update” (Aug. 16, 2017) (online at: www.cpsc.gov/s3fs-public/2016-Tipover-Briefing-Package-Test-Results-Update-August-16-2017.pdf?yMCHvzY_YtOZmBAAj0GJih11XE7vvu9K); CPSC, “IKEA Reannounces Recall of MALM and Other Models of Chests and Dressers Due to Serious Tip-over Hazard; 8th Child Fatality Reported; Consumers Urged to Choose Between Refund or Repair,” press release (Nov. 21, 2017) (online at: cpsc.gov/Recalls/2018/IKEA-Reannounces-Recall-of-MALM-and-Other-Models-of-Chests-and-Dressers-Due-to-Serious-Tip-over-Hazard); CPSC, “South Shore Furniture Recalls Chest of Drawers Due to Serious Tip-Over and Entrapment Hazards; One Fatality Reported,” press release (May 9, 2019) (online at: www.cpsc.gov/Recalls/2019/south-shore-furniture-recalls-chest-of-drawers-due-to-serious-tip-over-and-entrapment).

While the CPSC has not yet proposed a rule, important technical research by staff is underway, and the agency’s top officials have expressed support for measures to strengthen the current safety framework around furniture tip-overs. On February 27, Acting Chairman Buerkle—with an expression of gratitude and appreciation to the members of Parents Against Tip-Overs (PAT) for their engagement and their courage—announced her support for increasing the ASTM F2057-17 test weight to 60 pounds and expanding the scope of the standard to include clothing storage units between 27 inches and 30 inches in height.¹³ CPSC data show that a dresser as short as 27.5 inches in height has been involved in a fatal incident, and at even lower heights where a TV also was involved. At a March 13 public meeting, the full Commission voted to include in the agency’s FY 2020 budget request its plans for CPSC staff to complete a notice of proposed rulemaking briefing package addressing furniture tip-overs during that fiscal year.¹⁴ Commissioners at the public meeting made several comments regarding the seriousness of the clothing storage unit tip-over hazard, and the Commission broadly recognized that much of the furniture industry is not taking fast enough or strong enough action to improve its voluntary standard.¹⁵

C. Urgent action by Congress is critical to improve stability and protect children; a bipartisan majority of CPSC commissioners supports a strong legislative solution

CR commends the leadership of the Commission and the hard work of CPSC staff to move forward on measures to reduce the risk of death or injury from tip-overs, but also recognizes that CPSC rulemaking under its Consumer Product Safety Act Section 7 and 9 authority is likely to take several years, if not a full decade, to complete. While we continue to urge the furniture industry to strengthen ASTM F2057-17 immediately, CR also is advocating for passage of the STURDY Act to help ensure the fastest possible implementation of a strong standard. Enactment of STURDY could yield a new stability standard that is stronger and takes effect years earlier than it would otherwise, and the reduced delay could save children’s lives.

In addition to CR, the STURDY Act has the support of Parents Against Tip-Overs as well as the American Academy of Pediatrics, Consumer Federation of America, Kids In Danger, and Public Citizen. A bipartisan majority of CPSC commissioners also has expressed support for the STURDY Act and enactment of a legislative solution that would permit the CPSC to take faster action to help prevent tip-overs than the promulgation of a rule under its traditional rulemaking authority and procedures.¹⁶

¹³ CPSC, “Acting Chairman Ann Marie Buerkle Prepared Remarks for the 2019 International Consumer Product Health and Safety Organization Annual Symposium” (Feb. 27, 2019) (online at: [cpsc.gov/About-CPSC/ann-marie-buerkle/Speeches/acting-chairman-ann-marie-buerkle-prepared-remarks-for-the](https://www.cpsc.gov/About-CPSC/ann-marie-buerkle/Speeches/acting-chairman-ann-marie-buerkle-prepared-remarks-for-the)).

¹⁴ CPSC, “Minutes of Commission Meeting: Decisional Matter – CPSC FY 2020 Performance Budget Request to Congress” (Mar. 13, 2019) (online at: www.cpsc.gov/s3fs-public/2020%20Performance%20Budget%20-%20Comm.%20Meeting%20Minutes.pdf?dFRVaoE_tlxvibk4RKK6apwMI_ME5gL9).

¹⁵ CPSC, “Commission Meeting: FY2020 Performance Budget Request to Congress,” video (Mar. 13, 2019) (online at: www.cpsc.gov/Newsroom/Video/commission-meeting-fy2020-performance-budget-request-to-congress).

¹⁶ See, e.g., U.S. House Committee on Energy and Commerce, Subcommittee on Consumer Protection and Commerce, “Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission

D. STURDY would require dresser stability testing to simulate the weight of children under age 6 and to more closely but reasonably account for real-world circumstances

The STURDY Act appropriately follows the recommendations of CR, top officials at the CPSC, and numerous others by requiring the CPSC to implement a strong, mandatory rule for dressers and other clothing storage units to protect children from tip-over incidents. The bill would direct the CPSC's rule to be finalized within one year, to cover all clothing storage units including those under 30 inches in height, and to require tests that simulate the weight of children up to their sixth birthday. The bill also would require testing that more closely, but reasonably, accounts for real-world scenarios reflected in the CPSC's incident data. In the real world, a dresser tip-over incident involves dynamic forces, including those from the movement of drawers or of a child, as well as different flooring surfaces and drawer contents. The STURDY Act sensibly directs the CPSC to account for the impact these factors may have on clothing storage unit stability.

The hazard to children of furniture tip-overs has been insufficiently addressed by both the furniture industry and the CPSC for years. Congress, today, has the chance to finally force a more protective stability standard to take effect. We urge members to seize this opportunity for leadership on behalf of child safety and pass H.R. 2211, the STURDY Act, without delay.

II. Congress should pass the Safe Sleep Act to get inclined sleepers off the market; the inherently dangerous products remain for sale even after dozens of infant deaths

The U.S. has the highest rate of sudden unexpected infant death (SUID) among all developed nations, and CR is committed to helping prevent these tragedies.¹⁷ One way to address a portion of these deaths is through H.R. 3172, the Safe Sleep Act of 2019. We support this legislation because it would prohibit the manufacture, import, and sale of infant inclined sleep products, which pose significant risks to infants and have no place in a safe sleep environment.

According to the Centers for Disease Control and Prevention (CDC), SUID refers to “the sudden and unexpected death of a baby less than 1 year old in which the cause was not obvious before investigation,” with a wide range of types, which “often happen during sleep or in the baby’s sleep area.”¹⁸ One type of SUID is sudden infant death syndrome (SIDS), which refers to accidental suffocation in a sleeping environment. The CDC estimates that there were 3,600 sudden unexpected infant deaths in the U.S. in 2017, with about 1,400 of the deaths due to SIDS, about 1,300 of the deaths due to unknown causes, and about 900 of the deaths due to accidental suffocation and strangulation in bed.¹⁹

Fulfilling Its Mission?” (Apr. 9, 2019); CPSC, “Public Hearing on Commission Agenda and Priorities for Fiscal Years 2020 and 2021” (May 1, 2019) (online at: www.youtube.com/watch?v=hu8j7f5UNAI).

¹⁷ Carlin R and Moon RY. Learning From National and State Trends in Sudden Unexpected Infant Death. *Pediatrics*. 2018;141(3):e20174083 (online at: pediatrics.aappublications.org/content/pediatrics/141/3/e20174083.full.pdf).

¹⁸ CDC, “About SUID and SIDS” (Dec. 31, 2018) (online at: www.cdc.gov/sids/about/index.htm).

¹⁹ CDC, “Sudden Unexpected Infant Death and Sudden Infant Death Syndrome” (Apr. 10, 2019) (online at: www.cdc.gov/sids/data.htm).

In 2016, in a formal policy statement, the American Academy of Pediatrics (AAP) published updated recommendations for a safe infant sleeping environment, following a thorough, multi-year process by pediatricians to evaluate the state of the medical evidence. According to the AAP, the organization “recommends a safe sleep environment that can reduce the risk of all sleep-related infant deaths.”²⁰ The safe sleep recommendations include that babies should be placed alone to bed on a firm, flat surface in their own space, with no extra bedding.²¹

A. Two recalled inclined sleeper models are tied to at least 37 infant deaths; the product category conflicts with American Academy of Pediatrics safe sleep recommendations

In recent months, Consumer Reports has been investigating the safety of infant inclined sleep products. The entire category of inclined sleepers conflicts with AAP safe sleep recommendations, since these products contain a surface for infant sleep that is not flat. Some products also contain additional padding that can put infants at risk. Additionally, while manufacturers of inclined sleepers often include restraints, the AAP does not recommend products for routine sleep that require restraining a baby, especially if that product also rocks.²²

CR’s investigation has been based in part on our analysis of previously undisclosed, manufacturer-specific data that the CPSC released in error to CR, as well as reviews of lawsuits and interviews with numerous medical experts, product engineers, government and industry officials, and parents.²³ The investigation yielded CR stories in early April reporting that there were dozens of infant deaths that had not been publicly known but were associated with two models of inclined sleepers.²⁴ Shortly thereafter, Fisher-Price recalled all 4.7 million Rock ‘n Play Sleepers in the U.S. and Kids II recalled nearly 700,000 rocking sleepers, with the Rock ‘n Play linked to at least 32 infant deaths and Kids II rocking sleepers linked to at least five.²⁵

B. CPSC steps to protect infants have repeatedly fallen far short; only an erroneous data release to CR allowed the public to know the breadth and severity of the danger

²⁰ AAP Task Force on Sudden Infant Death Syndrome, SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment, *Pediatrics*, 2016;138(5):e20162938, October 24, 2016 (online at: pediatrics.aappublications.org/content/pediatrics/early/2016/10/20/peds.2016-2938.full.pdf).

²¹ *Id.*

²² CR, “Fisher-Price Rock ‘n Play Sleeper Should Be Recalled, Consumer Reports Says” (Apr. 8, 2019; last updated May 16, 2019) (online at www.consumerreports.org/recalls/fisher-price-rock-n-play-sleeper-should-be-recalled-consumer-reports-says).

²³ *Id.*; CR, “Four More Deaths Linked to Infant Sleepers Like the Fisher-Price Rock ‘n Play Sleeper” (Apr. 11, 2019; last updated May 16, 2019) (online at: www.consumerreports.org/child-safety/more-deaths-linked-to-infant-sleepers-like-fisher-price-rock-n-play-sleeper).

²⁴ *Id.*

²⁵ CR, “Fisher-Price Recalls the Rock ‘n Play Sleeper After It Was Tied to Infant Deaths” (Apr. 12, 2019; last updated May 16, 2019) (online at: www.consumerreports.org/recalls/fisher-price-recalls-rock-n-play-sleeper); CR, “Kids II Recalls Inclined Sleepers Linked to Infant Deaths” (Apr. 26, 2019) (online at: www.consumerreports.org/recalls/kids-ii-inclined-sleeper-recall-rocking-sleepers-linked-with-infant-deaths).

The recalls of more than five million inclined sleepers tied to infant deaths occurred only after the products were sold to the public for years. Initially marketed alongside traditional bassinets, the popular Rock ‘n Play Sleeper prompted Fisher-Price to successfully seek a carve-out from the CPSC’s mandatory standard for bassinets and cradles at the time the agency was developing the rule for those flat-surfaced products in the 2011-2013 period.²⁶ Juvenile product manufacturers, under the leadership of Fisher-Price and despite opposition from safety advocates, instead crafted a voluntary ASTM International standard specifically for infant inclined sleep products.²⁷

The CPSC would go on to help legitimize the ASTM standard and the dangerous sleep products within its scope. In 2017, the CPSC issued a notice of proposed rulemaking to adopt the ASTM standard as mandatory pursuant to Section 104 of the Consumer Product Safety Improvement Act.²⁸ In May 2018, the CPSC issued a general alert not tied to any specific product, which warned that the agency “is aware of infant deaths” and urged caregivers to use restraints with inclined sleep products and stop use as soon as an infant can roll over.²⁹ After CR contacted the CPSC on April 1, 2019, to seek comment from the agency about our investigation, the CPSC and Fisher-Price issued a new warning on April 5, 2019. That alert generally echoed the messages of the May 2018 alert but stated that “[t]he CPSC is aware of 10 infant deaths in the Rock ‘n Play that have occurred since 2015, after the infants rolled from their back to their stomach or side, while unrestrained.”³⁰ Three days later, CR published its story reporting that at least 32 infant deaths were tied to the Rock ‘n Play. Three days after that, CR published its story reporting that additional deaths were tied to Kids II rocking sleepers. By the end of the week, Fisher-Price had announced its recall, with Kids II following two weeks later.

In the case of these two dangerous products, CR’s investigation found that the CPSC knew that each product was linked to fatalities for years before recalls were issued, and then recalls happened only after CR alerted the public that the sleepers were clearly linked to infant deaths.³¹ Section 6(b) of the Consumer Product Safety Act—which sharply restricts and sometimes entirely prevents the CPSC from publicly releasing manufacturer-specific information—kept consumers from learning about the number of deaths associated with the Rock ‘n Play Sleeper and the Kids II sleepers.³² Section 6(b) put people at deadly risk, and not

²⁶ *Supra* note 22.

²⁷ *Id.*

²⁸ CPSC, *Safety Standard for Infant Inclined Sleep Products*, notice of proposed rulemaking, 82 Fed. Reg. 16963 *et seq.* (Apr. 7, 2017).

²⁹ CPSC, “CPSC Consumer Alert: Caregivers Urged To Use Restraints With Inclined Sleep Products” (May 31, 2018) (online at: www.cpsc.gov/content/cpsc-consumer-alert-caregivers-urged-to-use-restraints-with-inclined-sleep-products).

³⁰ CPSC, “CPSC ALERT: CPSC and Fisher-Price Warn Consumers About Fisher-Price Rock ‘N Play Due to Reports of Death When Infants Roll Over in the Product” (Apr. 5, 2019) (online at: www.cpsc.gov/content/cpsc-alert-cpsc-and-fisher-price-warn-consumers-about-fisher-price-rock-%E2%80%98n-play-due-to).

³¹ CR, “Decades-Old Law Hides Dangerous Products and Impedes Recalls” (Apr. 30, 2019) (online at: www.consumerreports.org/product-safety/decades-old-law-hides-dangerous-products-and-impedes-recalls).

³² *Id.*; “What Is the Future of the Inclined Sleeper?” (May 8, 2019) (online at: www.consumerreports.org/product-safety/what-is-the-future-of-inclined-sleeper).

for the first time.³³ It is possible, even probable, that the dangerous Rock ‘n Play Sleepers and Kids II rocking sleepers would still be for sale if the CPSC had not sent manufacturer-specific information to CR in error. This investigation and the recalls show clearly how Section 6(b) keeps consumers in the dark about product-related hazards, injuries, and even deaths, and why it is critical for Congress to repeal it.

C. Law should reflect that an infant product can be safe for sleep or inclined—not both at once; Congress must prohibit inclined sleepers since CPSC and industry have not

Congress should demonstrate that it can respond meaningfully to this spring’s inclined sleeper investigation and recalls, and pass the Safe Sleep Act of 2019 to lock in policy change. Appropriately, the bill would prohibit the manufacture, import, or sale of infant inclined sleep products, since these products are inherently dangerous and have no place in a safe sleep environment. This step is particularly important because there are still several inclined sleep products available for sale, such as the SwaddleMe By Your Bed Sleeper and the hiccapop DayDreamer Sleeper Baby Lounger Seat and Travel Bed for Infants, among others.³⁴

Either an infant product can be flat and safe for sleep, or it can have an inclined surface and be used for activities such as swinging or bouncing when an infant is awake and the caregiver is present—not both at once. Congress should ensure federal law reflects this reality by passing the Safe Sleep Act of 2019, especially since both industry and the CPSC have been reluctant to get the full product category off the market. Industry representatives argued vehemently against eliminating the inclined sleeper category at a recent ASTM meeting when consumer groups and the AAP raised the question, citing a lack of data. Having at least 32 deaths tied to the largest-selling inclined sleeper, and an almost identical fatality rate in another model, should be more than enough, especially when combined with the expertise of our nation's pediatricians.

III. Congress should pass the Safe Cribs Act to prohibit crib bumpers, because they contribute to unsafe infant sleep and are not necessary to prevent head entrapment

The risks to infants from crib bumper pads and similar products are serious.³⁵ We support H.R. 3170, the Safe Cribs Act of 2019, to prohibit these products’ manufacture, import, and sale nationwide.

A. Crib bumpers are unnecessary and contribute to an unsafe sleep environment for infants, according to American Academy of Pediatrics expert recommendations

The AAP’s thorough, evidence-based policy statement on a safe sleeping environment makes clear that bumper pads are not recommended for infants.³⁶ According to the organization, the products “have been implicated as a factor contributing to deaths from suffocation,

³³ *Id.*

³⁴ *Id.*

³⁵ *Supra* note 20.

³⁶ *Id.*

entrapment, and strangulation,” and while they originally were intended to prevent infants from getting their heads trapped between the slats in older cribs, “cribs manufactured to newer standards have a narrower distance between slats” and bumper pads “are not necessary to prevent head entrapment.”³⁷ The products do not serve any safety purpose; they only present safety risks.

B. Several states and major retailers have stopped the sale of crib bumper pads, while the CPSC recognizes the danger but has failed to prohibit the product category

CR, along with partner organizations AAP, Consumer Federation of America, and Kids In Danger, has warned parents and caregivers for almost a decade against using crib bumper pads. We also have supported state and local actions to prohibit their sale. Today, Maryland, Ohio, and Chicago, Illinois, all have banned crib bumper pads, and New York State is poised to join them after recently passing a bill through its legislature to prohibit the products.

We agree with the November 2016 joint policy statement by several CPSC commissioners that there is a “clear risk of injury or death associated with padded crib bumpers” and that parents and caregivers should not use them.³⁸ These commissioners recognize the danger of the products, as do most major retailers including Walmart and Target, which have removed bumper pads from their shelves, according to Kids In Danger.³⁹ At the same time, the CPSC as an agency has failed to prohibit bumper pads and similar products. Congress should take action since the CPSC has not.⁴⁰

C. Crib bumpers remaining for sale at stores and online means that parents and caregivers unwittingly put infants at risk; the products should not be for sale

In short, crib bumpers are dangerous, and should not be for sale. The fact that they remain on store shelves and online means that well-meaning parents and caregivers are unwittingly putting infants at risk, and will continue to do so as long as the products are available. New parents or grandparents may be particularly vulnerable to assuming bumper pads are safe because they are available for purchase. We urge Congress to pass the Safe Cribs Act of 2019 to help reduce any confusion in the marketplace that could put infants’ lives at risk.

IV. Congress should pass the Portable Fuel Container Safety Act to help prevent flame-jetting incidents with a binding, enforceable standard applying across the market

³⁷ *Id.*

³⁸ Joint statement of CPSC Chairman Kaye and Commissioners Adler, Robinson, and Mohorovic recommending parents and caregivers not use padded crib bumpers (Nov. 3, 2016) (online at: www.cpsc.gov/s3fs-public/Joint%20Statement%20on%20Padded%20Crib%20Bumpers%20FINAL%2011.3.16.pdf).

³⁹ Testimony of Nancy Cowles, Executive Director, Kids In Danger to the House Subcommittee on Consumer Protection and Commerce, on “Protecting Americans From Dangerous Products: Is The Consumer Product Safety Commission Fulfilling Its Mission?” (Apr. 9, 2019) (online at docs.house.gov/meetings/IF/IF17/20190409/109316/HHRG-116-IF17-Wstate-CowlesN-20190409.pdf).

⁴⁰ See American Academy of Pediatrics, “CPSC Fails to Ban Crib Bumpers Dangerous to Infants” (Nov. 4, 2016) (online at: www.aap.org/en-us/about-the-aap/aap-press-room/pages/CPSC-Fails-to-Ban-Crib-Bumpers-Dangerous-to-Infants.aspx).

Consumer Reports supports H.R. 806, the Portable Fuel Container Safety Act of 2019. According to National Fire Protection Association estimates, fire departments responded to an average of 160,910 fires per year in the 2007-2011 period that started with ignition of a flammable or combustible liquid, resulting in an estimated 454 civilian deaths, 3,910 civilian injuries, and \$1.5 billion in direct property damage per year.⁴¹ Manufacturers and safety experts have identified a portion of the death and injury toll to address through product design: incidents involving flame jetting from portable fuel containers intended for reuse by consumers.

Despite the fact that people should never pour fuel such as gasoline, kerosene, diesel, ethanol, methanol, denatured alcohol, or biofuels over a flame or use such fuel for fire-starting purposes, people do—creating a foreseeable scenario that this Act would help address. The Portable Fuel Container Safety Act would require flame mitigation devices, or flame arrestors, to prevent flame from entering these containers and igniting the gases inside. This requirement is consistent with a new voluntary standard recently finalized by ASTM International, ASTM F3326-19,⁴² which the CPSC could decide to treat as a mandatory standard under the bill if the agency were to determine that it meets the bill’s minimum conditions. The bill also includes: text accounting for future revisions; direction for the CPSC to undertake an education campaign about the proper use and storage of portable fuel containers; and an expansion of existing requirements for child-resistant closures on portable gasoline containers so that they apply to gasoline, kerosene, and diesel fuel receptacles and their components.

The new ASTM standard represents a step forward for safety, and all portable fuel containers intended for reuse by consumers should conform to its provisions. Congress should pass the Portable Fuel Container Safety Act to ensure this standard or a similar standard becomes mandatory. Consumers should have assurance that any new portable fuel container they may buy—which they or someone else may use or misuse—will contain an effective flame mitigation device, and that the CPSC can readily take compliance or enforcement action if a manufacturer fails to follow the law.

V. Congress should pass the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act to promote detector installation and protect vulnerable populations

Consumer Reports supports H.R. 1618, the Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act of 2019. According to the CDC, during 2010–2015, a total of 2,244 deaths resulted from unintentional carbon monoxide (CO) poisoning, with 393 of those deaths occurring in 2015.⁴³ CR often stresses the importance of installing and maintaining CO detectors, and offers a buying guide and ratings on these products to give consumers comparative

⁴¹ National Fire Protection Association, “Fires Starting with Flammable Gas or Flammable or Combustible Liquid” (Feb. 2014) (online at: www.nfpa.org/News-and-Research/Data-research-and-tools/Hazardous-Materials/Fires-Starting-with-Flammable-Gas-or-Flammable-or-Combustible-Liquid).

⁴² ASTM International, “New ASTM International Standard Will Help Make Portable Fuel Containers Safer,” press release (Feb. 21, 2019) (online at: www.astm.org/newsroom/new-astm-international-standard-will-help-make-portable-fuel-containers-safer).

⁴³ CDC, Quick Stats: Number of Deaths Resulting from Unintentional Carbon Monoxide Poisoning (online at: www.cdc.gov/mmwr/volumes/66/wr/mm6608a9.htm).

information about different products that CR has tested.⁴⁴ To help keep consumers safe, CR also has published stories about how to ensure that smoke and carbon monoxide detectors function properly.⁴⁵

The Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act would establish a grant program for CO poisoning prevention, administered by the CPSC. The grants would encourage states to require that up-to-date carbon monoxide detectors be installed in all dwelling units and numerous other facilities with the capacity to hold a large number of people, such as educational, childcare, health care, and adult dependent care facilities, government buildings, restaurants, theaters, and lodging establishments. The grants also would encourage states to develop a strategy to protect vulnerable populations such as children, the elderly, or low-income households, and support states in training fire code enforcement officials and educating the public about the risk associated with carbon monoxide.

With hundreds of people dying each year from carbon monoxide poisoning, it is appropriate to establish a modest CPSC-administered grant program to promote the installation of CO detectors, especially for vulnerable populations. This grant program can be an important part of a broader, multi-pronged strategy to significantly reduce injuries and deaths associated with carbon monoxide poisoning, and Congress should pass the bill.

VI. Congress should align SOFFA with state preemption under the Flammable Fabrics Act; while CPSC adoption of the California standard would bring practical enforcement benefits, states should retain the ability to exceed its level of protection

Flammability standards can help assure consumers that the products in their homes will resist igniting or increasing the severity of a fire. At the same time, exposure to certain flame-retardant chemicals is associated with known adverse health effects, especially for vulnerable populations such as young children and those who are pregnant.⁴⁶ H.R. 2647, the Safer Occupancy Furniture Flammability Act, or SOFFA, pertains to flammability standards for upholstered furniture. Consumer Reports does not test upholstered furniture, but has followed recent developments around flammability standards for this product category with interest.

California's upholstered furniture flammability standard has been a de facto national standard for more than four decades, in the absence of a federal flammability standard for the product category. For years, the California standard contributed to the use of flame-retardant chemicals in furniture despite the risks of exposure to the chemicals and their questionable

⁴⁴ Consumer Reports, "Smoke & Carbon Monoxide Detector Buying Guide" (June 8, 2018) (online at: www.consumerreports.org/cro/smoke-carbon-monoxide-detectors.htm).

⁴⁵ Consumer Reports, "How to Spot and Stop Carbon Monoxide Poisoning" (Oct. 31, 2017) (online at: www.consumerreports.org/home-safety/how-to-spot-and-stop-carbon-monoxide-poisoning); Consumer Reports, "Check Smoke and Carbon Monoxide Detectors When Moving Into a New Home" (March 9, 2018) (online at: www.consumerreports.org/smoke-carbon-monoxide-detectors/check-smoke-and-carbon-monoxide-detectors).

⁴⁶ CPSC, "Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products," 82 Fed. Reg. 45268-69 (Sept. 28, 2017) (online at: www.govinfo.gov/content/pkg/FR-2017-09-28/pdf/2017-20733.pdf).

effectiveness at preventing or mitigating a fire.⁴⁷ CR was pleased several years ago when California decided to replace the standard with a new version, reliant on a smolder test, which sought to reduce the risk of ignition on upholstered furniture without driving manufacturers to use flame-retardant chemicals in the products. Today's standard, TB 117-2013, is currently the strongest measure U.S. consumers have to keep them protected from purchasing upholstered furniture that is either highly flammable or loaded with flame-retardant chemicals.

Consumer Reports recognizes the practical enforcement benefits that would come from the CPSC formally adopting the California upholstered furniture flammability standard nationally, but we urge members to amend the bill so that other states retain the ability to exceed its level of protection if they so choose. While new upholstered furniture offered for sale in the U.S. typically already complies with TB 117-2013, SOFFA would permit the CPSC to treat the standard as if it were promulgated under the Flammable Fabrics Act (FFA), enabling the agency to take enforcement action if it discovers noncompliance. However, unlike the FFA, SOFFA provides that California's TB 117-2013 as adopted by the CPSC would preempt any other state flammability law or requirement with respect to upholstered furniture, even in the case of a state standard that provides a higher degree of protection from a risk of occurrence of fire.⁴⁸ States should retain the ability to go beyond the California standard and afford people a higher level of protection if they so choose. This is especially important because materials science can change rapidly, and states in the future should be able to implement innovative flammability standards, much as California did in 2013. As SOFFA advances, we urge members to amend the bill so that its state preemption provision aligns with the existing preemption regime under the Flammable Fabrics Act.

VII. Congress should reject the FASTER Act; it would let companies set their own terms and barrel through any CPSC attempt to ensure high-quality recalls for consumers

Consumer Reports has strong concerns with H.R. 3169, the misleadingly named "Focusing Attention on Safety Transparency and Effective Recalls (FASTER) Act," and opposes the legislation. The bill's description indicates that its goal is "to protect consumers," yet almost every change it would make to the current Fast-Track recall program would weaken, not strengthen, the quality of product safety recalls as they pertain to affected consumers.

Under the FASTER Act, the CPSC would become merely the stenographer for companies as they set their own terms for recalls. The agency would have little to no ability to insist on a minimum quality of recall notices to ensure they are effective at reaching consumers and motivating them to action—rather than minimizing their reach and appeal, demotivating consumers from participating, and perhaps even misleading them. The CPSC also would have little to no ability to ensure a recall's scope is appropriate or that a recall remedy is fair given the circumstances confronting affected consumers. While working to speed up recalls is worthwhile, the FASTER Act has the wrong target in mind. Instead of reducing CPSC input in the recall process, a beneficial reform to the Fast-Track program would consider ways to incentivize

⁴⁷ "How safe are flame retardants?" Consumer Reports (Feb. 2013) (online at: www.consumerreports.org/cro/magazine/2013/02/how-safe-are-flame-retardants/index.htm).

⁴⁸ See SOFFA Sec. 2(c); FFA Sec. 16(b) codified at 15 U.S.C. 1203(b).

recalling companies to approach the CPSC more quickly and with robust recall plans. In light of these concerns, Consumer Reports opposes the FASTER Act and urges members to reject it.

VIII. Conclusion

Consumer Reports thanks the Subcommittee on Consumer Protection and Commerce for the opportunity to testify about child safety and consumer safety. Members of Congress have a critical role to play to help improve the safety of consumer products, especially to address persistent hazards such as those associated with furniture tip-overs and unsafe infant sleep environments. As members wield oversight of the CPSC and consider legislation to address these and other hazards, we look forward to working together to ensure that companies, the government, and consumers put safety first, always.

Enclosures (15):

- (1) “A Hidden Hazard in Your Home,” Consumer Reports, March 2018 (May 2018 issue of the print magazine)
- (2) Comments of Consumer Reports to the CPSC on the advance notice of proposed rulemaking relating to clothing storage unit tip-overs, April 14, 2018
- (3) “Dangerous Dressers in Our Homes,” Consumer Reports, November 2018 (March 2019 issue of the print magazine)
- (4) “Furniture Anchors Not an Easy Fix, as Child Tip-Over Deaths Persist,” with survey report, Consumer Reports, published online November 8, 2018
- (5) “Ikea Still Sells a Hemnes Dresser Linked to a Child’s Death,” with CR Advocacy press release, Consumer Reports, published online January 8, 2019
- (6) Letter from Consumer Federation of America, Consumer Reports, Kids In Danger, and Parents Against Tip-Overs to the American Home Furnishings Alliance, January 14, 2019
- (7) “Furniture manufacturers, government must act now to stop tip-overs, recall dangerous dressers,” Consumer Reports Advocacy press release, February 27, 2019
- (8) “South Shore Recalls Dresser Linked to Child’s Death,” with CR Advocacy press release, Consumer Reports, published online May 9, 2019
- (9) “New Ikea Dressers Are Designed to Reduce Tip-Over Injuries and Deaths,” Consumer Reports, published online June 5, 2019
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- (10) “Fisher-Price Rock ‘n Play Sleeper Should Be Recalled, Consumer Reports Says,” with CR Advocacy press releases, Consumer Reports, published online April 8, 2019
- (11) “Four More Deaths Linked to Infant Sleepers Like the Fisher-Price Rock ‘n Play Sleeper,” with CR Advocacy press release

- (12) “Decades-Old Law Hides Dangerous Products and Impedes Recalls,” Consumer Reports, published online April 30, 2019
- (13) “What Is the Future of the Inclined Sleeper?” Consumer Reports, published online May 7, 2019
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- (14) AAP Task Force on Sudden Infant Death Syndrome, SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment, *Pediatrics*, 2016;138(5):e20162938, October 24, 2016
- (15) “CPSC Fails to Ban Crib Bumpers Dangerous to Infants,” joint press release by the American Academy of Pediatrics, Consumer Federation of America, Consumers Union, and Kids In Danger, November 4, 2016