

STORAGE NAME: h0085.frc.doc
DATE: April 19, 2001

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: CS/HB 85
RELATING TO: Florida Infant Crib Safety Act
SPONSOR(S): Council for Healthy Communities, Representatives Meadows and others
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CHILD & FAMILY SECURITY YEAS 9 NAYS 0
- (2) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
- (4) FISCAL RESPONSIBILITY COUNCIL
- (5)

I. SUMMARY:

Current Federal regulations promulgated by the Consumer Product Safety Commission provide manufacturing standards mandated for new cribs. There is no current state or federal regulation regarding the commercial use or sale of cribs; thus, cribs that do not meet the current design and manufacturing regulations may be sold or used.

CS/HB 85 creates the Florida Infant Crib Safety Act. The bill prohibits a commercial user from manufacturing, retrofitting, selling, contracting to sell or resell, leasing, or subletting a full-size or non-full-size crib that has not met certain standards and regulations. These standards are delineated in the bill and track Consumer Product Safety Commission and American Society for Testing and Materials standards for infant cribs. The bill prohibits transient public lodging establishments and child care providers from providing, or offering for use, cribs that have not met these standards and regulations.

The bill provides the following penalties for a violation of the act:

- A violation of the Florida Infant Crib Safety Act is a misdemeanor of the first degree, punishable by a fine of not more than \$10,000 and imprisonment for a term of not more than 1 year.
- Any public lodging establishment or public food service establishment that violates the provisions of this act is subject to fines not to exceed \$1,000 per offense; mandatory attendance, at personal expense, at an educational program sponsored by the Hospitality Education Program; and the suspension, revocation, or refusal of a license issued pursuant to chapter 509, F.S.
- A child care facility, family day care home, large family child care home, specialized child care facility for mildly ill children shall be subject to denial, suspension, or revocation of a license or an administrative fine not to exceed \$100 per violation, per day.

The bill allows the Department of Agriculture and Consumer Services, Department of Business and Professional Regulations and the Department of Children and Family Services the authority to prepare public education materials to inform the public, child care providers and commercial users regarding the dangers of unsafe cribs.

The bill provides rule-making authority to the Department of Agriculture and Consumer Services and to the Department of Children and Family Services.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|----------------------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill creates new regulations affecting the use and sale of infant cribs. It also creates new responsibilities for the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation and the Department of Children and Family Services.

B. PRESENT SITUATION:

According to the DANNY foundation (a non-profit organization that has dedicated itself to educating the public about crib dangers), over 9,000 children annually are injured in a crib-related accident seriously enough to require hospital treatment. In addition, there are approximately 50 crib-related infant deaths nationally every year in baby cribs, usually in previously used or owned cribs.

Federal regulations promulgated by the Consumer Product Safety Commission (the CPSC) govern safety hazards associated with the manufacture of new cribs, but not safety hazards associated with cribs that are older or previously used. According to DANNY, approximately 10 million cribs in use, and 20 million in storage, do not conform to federal regulations prescribed in the Code of Federal Regulations (CFR) under the Federal Hazardous Substances Act of 1982.

Since 1973, the CPSC has set standards for safer cribs that, according to the CPSC, have reduced crib-related infant deaths from 150 to 200 a year to approximately 50. All new cribs on the market must meet CPSC standards.

According to the CPSC, cribs account for more infant deaths than any other nursery item, and in most cases occurred when an infant became trapped in a crib side or end that had separated due to loose or missing hardware. In other cases, infants have become trapped between an undersized mattress and the side of the crib or been caught in areas between broken or improperly spaced slats. As stated earlier, the majority of cribs involved in these incidents were previously owned or used. Parents and caregivers reported obtaining these used cribs as "hand-me-downs" gifts from friends and relatives or by purchasing them at yard sales, flea markets, and used furniture stores.

The CPSC enforces two baby crib regulations: one applies to full size cribs, 16 CFR part 1508, and the other to non-full-size cribs, 16 CFR part 1509. Both regulations contain requirements regarding the spacing of components. The CPSC regulations require that all new cribs manufactured meet the following safety guidelines:

- No missing, loose, broken, or improperly installed screws, brackets, or other loose hardware on the crib or the mattress support.

- No more than 2 3/8 inches between crib slats so a baby's body cannot fit through the slats. If a soda can fits easily through the slats on a crib, the spaces between the slats are too wide.
- A firm snug-fitting mattress so a baby cannot get trapped between the mattress and the side of the crib.
- No corner posts over 1/16 of an inch above the end panels (unless they are over 16 inches high for a canopy) so baby cannot catch clothing and strangle.
- No cutout areas on the headboard or footboard so a baby's head cannot get trapped.
- A mattress support that does not easily pull apart from the corner posts so a baby cannot get trapped between the mattress and crib.
- No cracked or peeling paint to prevent lead poisoning.
- No splinters or rough edges.
- Hardware in a non-full-size baby crib must eliminate pinching, bruising, lacerating, crushing, amputating or other injury.

In 16 CFR part 1303, the Consumer Product Safety Commission declares that paint and similar surface-coating materials for consumer use that contain lead or lead compounds, and in which the lead content (calculated as lead metal) is in excess of 0.06 percent, are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2057, 2058. Lead-based paints cannot be used on infant cribs.

The American Society for Testing and Materials (ASTM) publishes engineering and technical standards for product manufacturing. ASTM has three standards that apply to the manufacturing of infant cribs.

- ASTM standard F966-96 establishes design requirements for corner posts of full-size and non-full-size baby cribs to minimize the potential for strangulation of infants and young children who may attempt to climb out of the crib. It also provides information in the instructions furnished with cribs of the potential hazard to children wearing pacifiers, necklaces, or any other items around their necks.
- ASTM standard F1169-99 establishes testing requirements for the structural integrity of cribs. It also provides requirements for labeling and instructional material.
- ASTM standard F1822-97 establishes testing requirements for the structural integrity and design requirements for non-full-size cribs, both rigid sided and mesh/fabric assemblies. It also provides requirements for labeling and instructional material.

According to CPSC, estimates show that children under age 2 spend more than 7 million nights per year in hotels, motels and resorts. The CPSC estimates that there are about 65,000 hotels and motels in the U.S. The SAFE KIDS campaign (a non-profit organization dedicated to child safety) recently visited 90 hotels and motels in 27 states and the District of Columbia. Of the cribs inspected, 82 percent had at least one safety hazard, including loose hardware or lack of secured mattress supports that could entrap a baby; soft bedding, including quilts, comforters or pillows that could cause suffocation; and adult- sized sheets that pose a strangulation and suffocation hazard.

Of the play yards and mesh cribs inspected, 52 percent had at least one safety hazard, including tears or holes in the meshing, which pose an entrapment risk to babies, and soft bedding. The CPSC found that thrift stores nationwide, including those run by national organizations and local and independent stores, sell cribs – 12 percent of which do not meet current federal and voluntary safety standards, presenting risks including entrapment and strangulation.

Arizona, California, Colorado, Illinois and Washington State have enacted Infant Crib Safety Acts to prohibit commercial users from manufacturing, retrofitting, selling, contracting to sell or resell, or leasing, a full-size or non-full-size crib that is unsafe for any infant using the crib.

Florida law does not currently specifically regulate the sale or use of cribs.

C. EFFECT OF PROPOSED CHANGES:

The bill provides measures to remove unsafe infant cribs from public use. It prohibits unsafe infant cribs from being sold to the public by a commercial user and prohibits a transient public lodging establishment and a licensed child care provider from using unsafe infant cribs.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 501.144, F.S., the Florida Infant Crib Safety Act.

The following word and phrases are defined to mean:

- "Commercial user" means a dealer pursuant to s. 212.06(2), F.S., or any person who is in the business of remanufacturing, retrofitting, selling, leasing, or subletting full size or non-full-size cribs. The term includes a child care facility, family day care home, large family child care home, specialized child care facility for mildly ill children licensed by the Department of Children and Family Services or local licensing agencies.
- "Crib" means a bed or containment designed to accommodate an infant.
- "Department" means the Department of Agriculture and Consumer Services.
- "Full size crib" means a full size baby crib as defined in 16 C.F.R. part 1508, relating to requirements for full size baby cribs.
- "Infant" means a person less than 35 inches tall and less than 3 years of age.
- "Non-full-size crib" means a non-full-size baby crib as defined in 16 C.F.R. part 1509, relating to requirements for non-full-size baby cribs.
- "Transient Public lodging establishment" means any hotel, motel, resort condominium, transient apartment, roominghouse, bed and breakfast inn, or resort dwelling, as defined in s. 509.242, F.S.

Subsection (3) prohibits the following activities:

- Prohibits a commercial user from remanufacture, retrofit, sell, contract to sell or resell, lease, or sublet a full size or non-full-size crib that is unsafe for any infant using the crib because it

does not conform to the conditions set forth in paragraph (4)(a) or because the crib has any of the dangerous features or characteristics set forth in paragraph (4)(b).

- Prohibits a transient public lodging establishment from offering, or providing for use on or after the effective date of this act a full size or non-full-size crib that is unsafe for any infant using the crib because it does not conform to the conditions set forth in paragraph (4)(a) or because it has any of the dangerous features or characteristics set forth in paragraph (4)(b). A violation of this provision by a transient public lodging establishment is a violation of chapter 509, F.S., and is subject to the penalties set forth in s. 509.261, F.S.
- Provides that a violation of the Florida Infant Crib Safety Act is a deceptive and unfair trade practice and constitutes a violation of part II of chapter 501, F.S. (the Florida Deceptive and Unfair Trade Practices Act).

Subsection (4) delineates the criteria that set forth a presumption that a crib is unsafe. If a crib does not conform to all of the following standards it is presumed to be unsafe:

- 16 C.F.R. part 1303, relating to ban of lead-containing paint and certain consumer products bearing lead-containing paint.
- 16 C.F.R. part 1508, relating to requirements for full size baby cribs; or 16 C.F.R. part 1509, relating to requirements for non-full-size baby cribs.
- American Society for Testing and Materials Voluntary Standard F966-96, F1169-99, and F1822-97.
- Rules adopted by the Department of Agriculture and Consumer Services which incorporate amendments or supplements to the regulations or standards in the code of federal regulation or American Society for Testing and Materials Voluntary Standards.
- In addition, a crib will be deemed unsafe if it has any of the following dangerous features or characteristics:
 - Corner posts that extend more than 1/16 of an inch.
 - Spaces between side slats more than 2 3/8 inches.
 - Mattress support that can be easily dislodged from any point of the crib. A mattress segment shall be deemed easily dislodged if it cannot withstand at least a 25-pound upward force from underneath the crib.
 - Cutout designs on the end panels.
 - Rail height dimensions that do not conform to 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 9 inches. 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 26 inches.
 - Any screw, bolt, or hardware that is loose and not secured.

- Any sharp edge, point, or rough surface or any wood surface that is not smooth and free from splinters, splits, or cracks.
- A tear in mesh or fabric sides for a non-full-size crib.
- With respect to portable folding cribs, latches that do not work automatically to prevent the unintentional collapse of the crib.

Subsection (5) provides that a crib that is clearly not intended for use by an infant, including, but not limited to, a toy or display item, is exempt from the Florida Infant Crib Safety Act, provided that the crib is accompanied at the time of remanufacturing, retrofitting, selling, leasing, or subletting by a notice to be furnished by the commercial user declaring that the crib is not intended to be used for an infant and is dangerous to use for an infant. A commercial user, other than a child care facility, family day care home, large family child care home, specialized child care facility for mildly ill children who has complied with the notice requirement is immune from civil liability resulting from the use of a crib.

Subsection (6) provides the following penalties for a violation of the act:

- A violation of the Florida Infant Crib Safety Act is a misdemeanor of the first degree, punishable by a fine of not more than \$10,000 and imprisonment for a term of not more than 1 year.
- Any public lodging establishment or public food service establishment that violates the provisions of this act is subject to fines not to exceed \$1,000 per offense; mandatory attendance, at personal expense, at an educational program sponsored by the Hospitality Education Program; and the suspension, revocation, or refusal of a license issued pursuant to chapter 509, F.S.
- A child care facility, family day care home, large family child care home, specialized child care facility for mildly ill children shall be subject to denial, suspension, or revocation of a license or an administrative fine not to exceed \$100 per violation, per day

Subsection (7) allows the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation and the Department of Children and Family Services to collaborate with any public agency or private sector entity to prepare public education materials or programs designed to inform parents, child care providers, commercial users, and any other person or entity which is likely to place unsafe cribs in the stream of commerce of the dangers posed by secondhand, hand-me-down, or heirloom cribs which do not conform to the conditions set forth in the Florida Infant Crib Safety Act or which have any of the dangerous features or characteristics set forth in the Florida Infant Crib Safety Act.

Subsection (8) gives authority to the Department of Agriculture and Consumer Services to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of the Florida Infant Crib Safety Act.

Section 2. Creates subsection (10) of s. 509.221, F.S., under the section addressing sanitary regulations of public lodging establishment and each public food service a new subsection to prohibit a transient public establishment from offering for use to the public a full size or non-full-size crib that does not conform to the standards set forth in s. 501.144, F.S.

Section 3. Reenacts s. 509.032, F.S., to incorporate changes in penalties for violations of the act.

Section 4. Creates s. 402.3031, F.S., to prohibit child care facility, family day care home, large family child care home, specialized child care facility for mildly ill children from offering or provide for use a full-size or non-full-size crib that does not conform to the requirements of s. 501.144, F.S., and to require the Department of Children and Family Services to enforce these requirements. This new section also allows the Department of Children and Family Services to adopt rules to administer this section.

Section 5. This bill takes effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill should have a minimal impact on state agencies to implement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Public lodging establishments and day care centers may be required by this bill to incur expenses necessary to inspect and possibly replace infant cribs in their possession. Furniture retailers who sell used cribs may be required by this bill to incur expenses necessary to inspect their inventory, destroy non-conforming cribs in inventory, and train buyers on how to inspect and reject used cribs offered to such retailers.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Agriculture and Consumer Services and Department of Children and Family Services authority to adopt rules to implement the provisions of the Florida Infant Crib Safety Act.

C. OTHER COMMENTS:

The requirements and penalties in this bill would not apply to the general public not considered a commercial user. Cribs received as "hand-me-down" gifts from friends and relatives, or cribs purchased in yard sales would not be covered under the provisions of this act.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 2001 the Council for Healthy Communities adopted a strike-everything amendment to HB 85 and adopted the bill, as amended, as a council substitute.

The strike-everything amendment incorporated a number of changes recommended by the Committee on Judicial Oversight (see analysis h0085a.jo.doc), the Department of Business and Professional Regulation and the Department of Children and Family Services. The phrase "stream of commerce" which appeared in eight locations in HB 85 was removed. The definition of "person" was removed from the bill since it is already defined in s. 1.01(3), F.S. Also, the definition of "commercial user" was clarified.

One of the criteria for unsafe cribs, under section (4)(b) 3, was modified with respect to portable folding cribs. Also, in section (4)(b), the earlier language provided that "Cribs that are unsafe include, but are not limited to, cribs that have any of the following dangerous features or unsafe characteristics": (the bill then provided 10 separate criteria making cribs unsafe). This left open the criteria used to determine whether a crib is unsafe, potentially subjecting a person to criminal liability based on criteria not specifically set forth in the bill. Accordingly, the strike-all amendment made the unsafe criteria more specific and clearly defined.

The penalties found in subsection (6) were modified so that administrative remedies would apply to child care facilities and public lodging establishments, but criminal penalties would not be imposed. Finally, the Department of Business and Professional Regulation and the Department of Children and Family Services were authorized to collaborate in public education materials, and to promulgate rules.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Bob Barrios

Staff Director:

Bob Barrios

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

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AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

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AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

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David Coburn