

STORAGE NAME: h0085.jo.doc
DATE: March 19, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 85
RELATING TO: Florida Infant Crib Safety Act
SPONSOR(S): 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
 - (3) HEALTHY COMMUNITIES
 - (4)
 - (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.

This bill creates the Florida Infant Crib Safety Act. The act prohibits a commercial user, as defined in the bill, from manufacturing, retrofitting, selling, contracting to sell or resell, leasing, or subletting or placing in the stream of commerce 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 act also prohibits a public lodging establishment from offering for use by its customers a crib that has not met the same standards and regulations.

This bill provides two avenues for civil relief. Any person may seek injunctive relief against a commercial user or seller; the prevailing party in any action will be entitled to costs and attorneys fees. An aggrieved person may also file suit under the Florida Deceptive and Unfair Trade Practices Act.

In addition to civil relief, a violation of this act is a first degree misdemeanor, punishable by a fine of not more than \$1,000.

This bill provides certain exceptions for cribs not intended for infant use, together with a limited immunity from civil liability.

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

This bill does not appear to have a fiscal impact on local government. This bill appears to have a minimal and indeterminate fiscal impact on state government.

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 a new regulations effecting the use, selling and other transaction involving infant cribs. It also creates new responsibilities for the Department of Agriculture and Consumer 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.

The Florida Deceptive and Unfair Trade Practices Act is at part II of ch. 501, F.S. It provides legal remedies to the consumer and business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

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:

This bill creates the Florida Infant Crib Safety Act.

The following word and phrases are defined to mean:

- "Commercial user" means a person who deals in full size or non-full-size cribs or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to full size or non-full-size cribs, including child care facilities licensed by the Department of Children and Family Services and local government agencies, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce full size or non-full-size cribs.
- "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.
- "Person" means a natural person, firm, partnership, corporation, association, agent, or employee thereof.
- "Public lodging establishment" means any hotel, motel, resort condominium, nontransient apartment, transient apartment, roominghouse, bed and breakfast inn, or resort dwelling, as defined in s. 509.242, F.S.

This bill provides the following prohibited activities:

- A commercial user may not remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce 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 public lodging establishment may not offer, provide for use, or otherwise place in the stream of commerce 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).

This bill provides at subsection (4) for 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, including any regulations that are adopted in order to amend or supplement the regulations;
- 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, including any regulations that are adopted in order to amend or supplement the regulations;
- American Society for Testing and Materials Voluntary Standard F966-96, including any regulations that are adopted in order to amend or supplement the regulations;
- American Society for Testing and Materials Voluntary Standard ASTM standard F1169-99, including any regulations that are adopted in order to amend or supplement the regulations;
- American Society for Testing and Materials Voluntary Standard ASTM standard F1822-97, including any regulations that are adopted in order to amend or supplement the regulations;
- 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.

This bill also 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, subletting, or placement in the stream of commerce 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 who has complied with the notice requirement is immune from civil liability resulting from the use of a crib.

This bill provides penalties and remedies as follows:

- 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).
- A violation of the Florida Infant Crib Safety Act is a misdemeanor of the first degree, punishable by a fine of not more than \$1,000.
- Any person may sue a commercial user who violates the Florida Infant Crib Safety Act to enjoin the manufacture, remanufacture, retrofit, sale, contract to sell or resell, lease, or subletting of a full size or non-full-size crib that is unsafe for any infant using the crib and may recover reasonable attorney fees and costs in the action.
- Any person may maintain an action against a public lodging establishment that violates the Florida Infant Crib Safety Act to enjoin the use of a full size or non-full-size crib that is unsafe for any infant using the crib and may recover reasonable attorney fees and costs in the action.

The remedies provided for by this bill are not exclusive.

This bill provides that the Department of Agriculture and Consumer Services may 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. Additionally, the department has the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of the Florida Infant Crib Safety Act.

This bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Agriculture and Consumer Services this bill should have a minimal cost impact.

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:

Comments by the Committee on Children & Family Security:

N/A

Comments by the Committee on Judicial Oversight:

There is a concern that this bill may perhaps give rise to a constitutional concern regarding due process. This bill refers to five separate outside standards for crib design and construction, and then sets forth an additional set of guidelines for inclusion in the statutes. The outside standards are to be incorporated on an "as amended in the future" basis. A violation of any of these seven standards places a violator at risk of a criminal conviction and civil penalty. It is unclear how the statute would be interpreted should one of those standards conflict with another. "[A criminal] statute is void for vagueness if it fails to give persons of common intelligence adequate warning of the proscribed conduct. A [criminal] statute is also unconstitutionally vague if its wording would encourage arbitrary and erratic enforcement." *Brake v. State*, 746 So.2d 527, 528 (Fla. 3rd DCA 1999) (internal citations omitted).

There is a concern that this bill may perhaps give rise to a constitutional concern regarding delegation of legislative powers. In general, the legislature may adopt current standards promulgated by an outside body, but may not adopt such standards on an "as amended" basis, as this bill would do. See, *State v. Welch*, 279 So.2d 11, 13 (Fla. 1973) (finding a Florida drug control law that incorporated future additions to federal drug control laws unconstitutional); *Florida Industrial Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945) ("we might observe that it is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.").

B. RULE-MAKING AUTHORITY:

Comments by the Committee on Children & Family Security:

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

Comments by the Committee on Judicial Oversight:

It is unclear why only the Department of Agriculture and Consumer Services is granted rulemaking authority. The Department of Business and Professional Regulation regulates hotels, motels, and other public lodging establishments. The Department of Children and Families regulates day care centers.

C. OTHER COMMENTS:

Comments by the Committee on Children & Family Security:

1. In the bill commercial user is defined as a “person who deals in full-size or non-full-size cribs or who otherwise by one’s occupation holds oneself out as having knowledge or skill peculiar to full-size or non-full-size cribs...”

This definition may present enforcement difficulties due to vagueness of the term “person who deals.” Staff suggests a more specific definition that corresponds to the current regulatory framework governing the collection of sales tax from dealers in s. 212.06(2), F.S. The definition provided below would track current law.

"Commercial user" means a dealer pursuant to s. 212.06(2), including child care facilities licensed by the Department of Children and Family Services and local government agencies, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce full size or non-full-size cribs.

2. 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.

Comments by the Committee on Judicial Oversight:

It is unclear why the bill refers to the “stream of commerce.” This clause is required in federal enactments to meet the Commerce Clause requirement, but is unnecessary in state law enactments.

It is unclear why this bill provides a definition of “person”, when there is a definition of “person” applicable to all of the Florida Statutes found at s. 1.01(3), F.S.

It is unclear why this bill defines “commercial user” to include a commercial seller of cribs. Perhaps clarification by providing a definition of commercial seller would be possible.

It is lawful under current law to own or use or sell a crib that does not meet the safety standards set forth in subsection (4). The effective date of this bill is upon becoming law. It is unclear why a law imposing criminal penalties for possession and use of an item that is currently lawful would be made effective without a longer warning (especially in light of the statistic quoted by the bill proponents that 82% of all hotels and motels would currently violate this law).

There is a concern that certain persons are given a blanket immunity from all civil liability related to toy and display cribs based solely upon those persons giving an undefined notice to an undefined person, and without a requirement that the notice have been received by the injured party.

It is unclear why this bill gives any person standing to sue for injunctive relief, apparently regardless of whether the person can show an injury.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 6, 2001, the Committee on Child & Family Security adopted the following amendments to HB 85.

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Amendment #1 [Section 1, page 3, lines 5-13]

Defines "commercial user" to correspond to the current regulatory framework governing the collection of sales tax from dealers in s. 212.06(2), F.S.

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.

Staff Director:

Lynne Overton, J.D.