

By Senator Wasserman Schultz

32-59-02

1 A bill to be entitled
 2 An act relating to infant cribs; creating s.
 3 501.144, F.S., the Florida Infant Crib Safety
 4 Act; providing definitions; prohibiting
 5 commercial users from manufacturing,
 6 remanufacturing, retrofitting, selling,
 7 contracting to sell or resell, leasing, or
 8 subletting specified cribs determined to be
 9 unsafe for use by infants; prohibiting
 10 transient public lodging establishments from
 11 offering or providing for use specified cribs
 12 determined to be unsafe for use by infants;
 13 providing criteria for determining safety of
 14 infant cribs; providing exemptions; providing
 15 specified immunity from civil liability;
 16 providing penalties; providing that violation
 17 of the act constitutes an unfair and deceptive
 18 trade practice; authorizing the Department of
 19 Agriculture and Consumer Services, the
 20 Department of Business and Professional
 21 Regulation, and the Department of Children and
 22 Family Services to collaborate with public
 23 agencies and private-sector entities to prepare
 24 specified public education materials and
 25 programs; authorizing the Department of
 26 Agriculture and Consumer Services to adopt
 27 rules and prescribe forms; amending s. 509.221,
 28 F.S.; prohibiting the use of certain cribs in
 29 public lodging establishments; reenacting s.
 30 509.032, F.S.; providing for regulation and
 31 rulemaking by the Division of Hotels and

1 Restaurants of the Department of Business and
2 Professional Regulation; creating s. 402.3031,
3 F.S.; prohibiting unsafe cribs in certain
4 facilities; providing for enforcement and
5 rulemaking powers of the Department of Children
6 and Family Services; providing an effective
7 date.

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9 WHEREAS, the disability and death of infants resulting
10 from injuries sustained in crib accidents are a serious threat
11 to the public health, safety, and welfare of the people of the
12 state, and

13 WHEREAS, the design and construction of an infant crib
14 must ensure that it is safe, and a parent or caregiver has a
15 right to believe that an infant crib in use is a safe
16 containment in which to place an infant, and

17 WHEREAS, more than 13,000 infants are injured in unsafe
18 cribs every year, and

19 WHEREAS, prohibiting the manufacture, remanufacture,
20 retrofitting, sale, contracting to sell or resell, leasing, or
21 subletting of unsafe infant cribs, particularly unsafe
22 secondhand, hand-me-down, or heirloom cribs, will reduce
23 injuries and deaths caused by cribs, and

24 WHEREAS, it is the intent of the Legislature to reduce
25 the occurrence of injuries and deaths to infants as a result
26 of unsafe cribs that do not conform to modern safety standards
27 by making it illegal to manufacture, remanufacture, retrofit,
28 sell, contract to sell or resell, lease, or sublet, any
29 full-size or non-full-size crib that is unsafe, and

30 WHEREAS, it is the intent of the Legislature to
31 encourage public and private collaboration in disseminating

1 materials relative to the safety of infant cribs to parents,
2 child care providers, and those individuals who would be
3 likely to sell, donate, or otherwise provide to others unsafe
4 infant cribs, NOW, THEREFORE,

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6 Be It Enacted by the Legislature of the State of Florida:

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8 Section 1. Section 501.144, Florida Statutes, is
9 created to read:

10 501.144 Florida Infant Crib Safety Act.--

11 (1) SHORT TITLE.--This section may be cited as the
12 "Florida Infant Crib Safety Act."

13 (2) DEFINITIONS.--As used in this section, the term:

14 (a) "Commercial user" means a dealer under s.
15 212.06(2), or any person who is in the business of
16 manufacturing, remanufacturing, retrofitting, selling,
17 leasing, or subletting full-size or non-full-size cribs. The
18 term includes a child care facility, family day care home,
19 large family child care home, and specialized child care
20 facility for the care of mildly ill children, licensed by the
21 Department of Children and Family Services or local licensing
22 agencies.

23 (b) "Crib" means a bed or containment designed to
24 accommodate an infant.

25 (c) "Department" means the Department of Agriculture
26 and Consumer Services.

27 (d) "Full-size crib" means a full-size baby crib as
28 defined in 16 C.F.R. part 1508, relating to requirements for
29 full-size baby cribs.

30 (e) "Infant" means a person less than 35 inches tall
31 and less than 3 years of age.

1 (f) "Non-full-size crib" means a non-full-size baby
2 crib as defined in 16 C.F.R. part 1509, relating to
3 requirements for non-full-size baby cribs.

4 (g) "Transient public lodging establishment" means any
5 hotel, motel, resort condominium, transient apartment,
6 roominghouse, bed and breakfast inn, or resort dwelling, as
7 defined in s. 509.242.

8 (3) PROHIBITED PRACTICES.--

9 (a) A commercial user may not manufacture,
10 remanufacture, retrofit, sell, contract to sell or resell,
11 lease, or sublet a full-size or non-full-size crib that is
12 unsafe for an infant because the crib does not conform to the
13 standards set forth in paragraph (4)(a) or because the crib
14 has any of the dangerous features or characteristics set forth
15 in paragraph (4)(b).

16 (b) A transient public lodging establishment may not
17 offer or provide for use a full-size or non-full-size crib
18 that is unsafe for an infant because the crib does not conform
19 to the standards set forth in paragraph (4)(a) or because the
20 crib has any of the dangerous features or characteristics set
21 forth in paragraph (4)(b). Further, violation of this section
22 by a transient public lodging establishment is a violation of
23 chapter 509 and is subject to the penalties set forth in s.
24 509.261.

25 (c) A violation of this section is a deceptive and
26 unfair trade practice and constitutes a violation of part II
27 of chapter 501, the Florida Deceptive and Unfair Trade
28 Practices Act.

29 (4) PRESUMPTION AS UNSAFE; CRITERIA.--

30 (a) A crib is presumed to be unsafe under this section
31 if it does not conform to all of the following:

1 1. 16 C.F.R. part 1303, relating to ban of
2 lead-containing paint and certain consumer products bearing
3 lead-containing paint; 16 C.F.R. part 1508, relating to
4 requirements for full-size baby cribs; and 16 C.F.R. part
5 1509, relating to requirements for non-full-size baby cribs.

6 2. American Society for Testing and Materials
7 Voluntary Standards F966-96, F1169-99, and F1822-97.

8 3. Rules adopted by the department which implement the
9 provisions of this subsection.

10 (b) A crib is unsafe if it has any of the following
11 dangerous features or characteristics:

12 1. Corner posts that extend more than 1/16 of an inch.

13 2. Spaces between side slats which are more than 2 3/8
14 inches wide.

15 3. A mattress support that can be easily dislodged
16 from any point of the crib. A mattress segment can be easily
17 dislodged if it cannot withstand at least a 25-pound upward
18 force from underneath the crib. For portable folding cribs,
19 this subparagraph does not apply to mattress supports or
20 mattress segments that are designed to allow the crib to be
21 folded, provided that the crib is equipped with latches that
22 work automatically to prevent the unintentional collapse of
23 the crib.

24 4. Cutout designs on the end panels.

25 5. Rail-height dimensions that do not conform to the
26 following:

27 a. The height of the rail and end panel as measured
28 from the top of the rail or panel in its lowest position to
29 the top of the mattress support in its highest position is at
30 least 9 inches.

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1 b. The height of the rail and end panel as measured
2 from the top of the rail or panel in its highest position to
3 the top of the mattress support in its lowest position is at
4 least 26 inches.

5 6. Upon completion of assembly, any screw, bolt, or
6 hardware that is loose and not secured.

7 7. Any sharp edge, point, or rough surface or any wood
8 surface that is not smooth and free from splinters, splits, or
9 cracks.

10 8. A tear in mesh or fabric sides of a non-full-size
11 crib.

12 9. With respect to portable folding cribs, latches
13 that do not work automatically to prevent the unintentional
14 collapse of the crib.

15 10. Crib sheets used on mattresses which are not sized
16 to match the mattress size.

17 (5) EXEMPTIONS; CIVIL IMMUNITY.--

18 (a) A crib that is clearly not intended for use by an
19 infant, including, but not limited to, a toy or display item,
20 is exempt from this section if the crib is accompanied, at the
21 time of manufacturing, remanufacturing, retrofitting, selling,
22 leasing, or subletting, by a notice to be furnished by the
23 commercial user on forms prescribed by the department
24 declaring that the crib is not intended to be used for an
25 infant and is dangerous to use for an infant.

26 (b) A commercial user, other than a child care
27 facility, family day care home, large family child care home,
28 or specialized child care facility for the care of mildly ill
29 children, that has complied with the notice requirements set
30 forth under paragraph (a) is immune from civil liability
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1 resulting from the use of a crib, notwithstanding the
2 provisions of this section.

3 (6) PENALTY.--

4 (a) A commercial user, other than a commercial user
5 subject to the penalties provided in paragraph (b) or
6 paragraph (c), that willfully and knowingly violates
7 subsection (3) commits a misdemeanor of the first degree,
8 punishable by a fine of not more than \$10,000 and imprisonment
9 for a term of not more than 1 year.

10 (b) A transient public lodging establishment that
11 violates subsection (3) is subject to the penalties set forth
12 in s. 509.261.

13 (c) A child care facility, family day care home, large
14 family child care home, or specialized child care facility for
15 the care of mildly ill children which violates subsection (3)
16 is subject to the penalties set forth in ss. 402.301-402.319.

17 (7) PUBLIC EDUCATION MATERIALS AND PROGRAMS.--The
18 Department of Agriculture and Consumer Services, the
19 Department of Business and Professional Regulation, and the
20 Department of Children and Family Services may collaborate
21 with any public agency or private-sector entity to prepare
22 public education materials or programs designed to inform
23 parents, child care providers, commercial users, and any other
24 person or entity that is likely to place unsafe cribs in the
25 stream of commerce of the dangers posed by secondhand,
26 hand-me-down, or heirloom cribs that do not conform to the
27 standards set forth in this section or that have any of the
28 dangerous features or characteristics set forth in this
29 section.

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1 (8) RULEMAKING AUTHORITY.--The department may adopt
2 rules under ss. 120.536(1) and 120.54 for the administration
3 of this section.

4 Section 2. Subsection (10) is added to section
5 509.221, Florida Statutes, to read:

6 509.221 Sanitary regulations.--

7 (10) A transient public lodging establishment may not
8 offer or provide for use a full-size or non-full-size crib
9 that is unsafe for an infant because it is not in conformity
10 with the requirements of s. 501.144.

11 Section 3. Section 509.032, Florida Statutes, is
12 reenacted to read:

13 509.032 Duties.--

14 (1) GENERAL.--The division shall carry out all of the
15 provisions of this chapter and all other applicable laws and
16 rules relating to the inspection or regulation of public
17 lodging establishments and public food service establishments
18 for the purpose of safeguarding the public health, safety, and
19 welfare. The division shall be responsible for ascertaining
20 that an operator licensed under this chapter does not engage
21 in any misleading advertising or unethical practices.

22 (2) INSPECTION OF PREMISES.--

23 (a) The division has responsibility and jurisdiction
24 for all inspections required by this chapter. The division
25 has responsibility for quality assurance. Each licensed
26 establishment shall be inspected at least biannually and at
27 such other times as the division determines is necessary to
28 ensure the public's health, safety, and welfare. The division
29 shall establish a system to determine inspection frequency.
30 Public lodging units classified as resort condominiums or
31 resort dwellings are not subject to this requirement, but

1 shall be made available to the division upon request. If,
2 during the inspection of a public lodging establishment
3 classified for renting to transient or nontransient tenants,
4 an inspector identifies vulnerable adults who appear to be
5 victims of neglect, as defined in s. 415.102, or, in the case
6 of a building that is not equipped with automatic sprinkler
7 systems, tenants or clients who may be unable to self-preserve
8 in an emergency, the division shall convene meetings with the
9 following agencies as appropriate to the individual situation:
10 the Department of Health, the Department of Elderly Affairs,
11 the area agency on aging, the local fire marshal, the landlord
12 and affected tenants and clients, and other relevant
13 organizations, to develop a plan which improves the prospects
14 for safety of affected residents and, if necessary, identifies
15 alternative living arrangements such as facilities licensed
16 under part II or part III of chapter 400.

17 (b) For purposes of performing required inspections
18 and the enforcement of this chapter, the division has the
19 right of entry and access to public lodging establishments and
20 public food service establishments at any reasonable time.

21 (c) Public food service establishment inspections
22 shall be conducted to enforce provisions of this part and to
23 educate, inform, and promote cooperation between the division
24 and the establishment.

25 (d) The division shall adopt and enforce sanitation
26 rules consistent with law to ensure the protection of the
27 public from food-borne illness in those establishments
28 licensed under this chapter. These rules shall provide the
29 standards and requirements for obtaining, storing, preparing,
30 processing, serving, or displaying food in public food service
31 establishments, approving public food service establishment

1 facility plans, conducting necessary public food service
2 establishment inspections for compliance with sanitation
3 regulations, cooperating and coordinating with the Department
4 of Health in epidemiological investigations, and initiating
5 enforcement actions, and for other such responsibilities
6 deemed necessary by the division. The division may not
7 establish by rule any regulation governing the design,
8 construction, erection, alteration, modification, repair, or
9 demolition of any public lodging or public food service
10 establishment. It is the intent of the Legislature to preempt
11 that function to the Florida Building Commission and the State
12 Fire Marshal through adoption and maintenance of the Florida
13 Building Code and the Florida Fire Prevention Code. The
14 division shall provide technical assistance to the commission
15 and the State Fire Marshal in updating the construction
16 standards of the Florida Building Code and the Florida Fire
17 Prevention Code which govern public lodging and public food
18 service establishments. Further, the division shall enforce
19 the provisions of the Florida Building Code and the Florida
20 Fire Prevention Code which apply to public lodging and public
21 food service establishments in conducting any inspections
22 authorized by this part.

23 (e)1. Relating to facility plan approvals, the
24 division may establish, by rule, fees for conducting plan
25 reviews and may grant variances from construction standards in
26 hardship cases, which variances may be less restrictive than
27 the provisions specified in this section or the rules adopted
28 under this section. A variance may not be granted pursuant to
29 this section until the division is satisfied that:

30 a. The variance shall not adversely affect the health
31 of the public.

1 b. No reasonable alternative to the required
2 construction exists.

3 c. The hardship was not caused intentionally by the
4 action of the applicant.

5 2. The division's advisory council shall review
6 applications for variances and recommend agency action. The
7 division shall make arrangements to expedite emergency
8 requests for variances, to ensure that such requests are acted
9 upon within 30 days of receipt.

10 3. The division shall establish, by rule, a fee for
11 the cost of the variance process. Such fee shall not exceed
12 \$150 for routine variance requests and \$300 for emergency
13 variance requests.

14 (f) In conducting inspections of establishments
15 licensed under this chapter, the division shall determine if
16 each coin-operated amusement machine that is operated on the
17 premises of a licensed establishment is properly registered
18 with the Department of Revenue. Each month the division shall
19 report to the Department of Revenue the sales tax registration
20 number of the operator of any licensed establishment that has
21 on location a coin-operated amusement machine and that does
22 not have an identifying certificate conspicuously displayed as
23 required by s. 212.05(1)(i).

24 (g) In inspecting public food service establishments,
25 the department shall provide each inspected establishment with
26 the food-recovery brochure developed under s. 570.0725.

27 (3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD
28 SERVICE EVENTS.--The division shall:

29 (a) Prescribe sanitary standards which shall be
30 enforced in public food service establishments.

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1 (b) Inspect public lodging establishments and public
2 food service establishments whenever necessary to respond to
3 an emergency or epidemiological condition.

4 (c) Administer a public notification process for
5 temporary food service events and distribute educational
6 materials that address safe food storage, preparation, and
7 service procedures.

8 1. Sponsors of temporary food service events shall
9 notify the division not less than 3 days prior to the
10 scheduled event of the type of food service proposed, the time
11 and location of the event, a complete list of food service
12 vendor owners and operators participating in each event, and
13 the current license numbers of all public food service
14 establishments participating in each event. Notification may
15 be completed orally, by telephone, in person, or in writing.
16 A public food service establishment or food service vendor may
17 not use this notification process to circumvent the license
18 requirements of this chapter.

19 2. The division shall keep a record of all
20 notifications received for proposed temporary food service
21 events and shall provide appropriate educational materials to
22 the event sponsors, including the food-recovery brochure
23 developed under s. 570.0725.

24 3.a. A public food service establishment or other food
25 vendor must obtain a license from the division for each
26 temporary food service event in which it participates.

27 b. Public food service establishments holding current
28 licenses from the division may operate under the regulations
29 of such a license at temporary food service events of 3 days
30 or less in duration.

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1 (4) STOP-SALE ORDERS.--The division may stop the sale,
2 and supervise the proper destruction, of any food or food
3 product when the director or the director's designee
4 determines that such food or food product represents a threat
5 to the public safety or welfare. If the operator of a public
6 food service establishment licensed under this chapter has
7 received official notification from a health authority that a
8 food or food product from that establishment has potentially
9 contributed to any instance or outbreak of food-borne illness,
10 the food or food product must be maintained in safe storage in
11 the establishment until the responsible health authority has
12 examined, sampled, seized, or requested destruction of the
13 food or food product.

14 (5) REPORTS REQUIRED.--The division shall send the
15 Governor a written report, which shall state, but not be
16 limited to, the total number of inspections conducted by the
17 division to ensure the enforcement of sanitary standards, the
18 total number of inspections conducted in response to emergency
19 or epidemiological conditions, the number of violations of
20 each sanitary standard, and any recommendations for improved
21 inspection procedures. The division shall also keep accurate
22 account of all expenses arising out of the performance of its
23 duties and all fees collected under this chapter. The report
24 shall be submitted by September 30 following the end of the
25 fiscal year.

26 (6) RULEMAKING AUTHORITY.--The division shall adopt
27 such rules as are necessary to carry out the provisions of
28 this chapter.

29 (7) PREEMPTION AUTHORITY.--The regulation of public
30 lodging establishments and public food service establishments,
31 the inspection of public lodging establishments and public

1 food service establishments for compliance with the sanitation
2 standards adopted under this section, and the regulation of
3 food safety protection standards for required training and
4 testing of food service establishment personnel are preempted
5 to the state. This subsection does not preempt the authority
6 of a local government or local enforcement district to conduct
7 inspections of public lodging and public food service
8 establishments for compliance with the Florida Building Code
9 and the Florida Fire Prevention Code, pursuant to ss. 553.80
10 and 633.022.

11 Section 4. Section 402.3031, Florida Statutes, is
12 created to read:

13 402.3031 Infant crib safety.--A child care facility,
14 family day care home, large family child care home, or
15 specialized child care facility for the care of mildly ill
16 children may not offer or provide for use a full-size or
17 non-full-size crib that is not in conformity with the
18 requirements of s. 501.144. The department shall enforce this
19 section and may adopt rules under ss. 120.536(1) and 120.54
20 necessary for the administration of this section.

21 Section 5. This act shall take effect October 1, 2002.
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SENATE SUMMARY

Creates the Florida Infant Crib Safety Act. Provides definitions. Prohibits commercial users from manufacturing, remanufacturing, retrofitting, selling, contracting to sell or resell, leasing, or subletting specified cribs determined to be unsafe for use by infants. Prohibits transient public lodging establishments from offering or providing for use specified cribs determined to be unsafe for use by infants. Provides criteria for determining the safety of infant cribs. Provides exemptions. Provides specified immunity from civil liability. Provides penalties. Provides that violation of the act constitutes an unfair and deceptive trade practice. Authorizes 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 public agencies and private-sector entities to prepare specified public education materials and programs. Authorizes the Department of Agriculture and Consumer Services to adopt rules and prescribe forms. Prohibits the use of certain cribs in public lodging establishments. Prohibits unsafe cribs in certain facilities. Provides for enforcement and rulemaking powers.

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