

By the Committee on Commerce and Economic Opportunities; and
Senator Wasserman Schultz

310-1749-02

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.

8
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,

5
6 Be It Enacted by the Legislature of the State of Florida:

7
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, if the crib is equipped with latches that work to
22 prevent the unintentional collapse of the crib.

23 4. Cutout designs on the end panels.

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

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

30 b. The height of the rail and end panel as measured
31 from the top of the rail or panel in its highest position to

1 the top of the mattress support in its lowest position is at
2 least 26 inches.

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

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

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

10 9. With respect to portable folding cribs having
11 central hinges and rail assemblies that move downward when
12 folded, latches that do not automatically engage when placed
13 in the position recommended by the manufacturer for use.

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

16 (5) EXEMPTIONS; CIVIL IMMUNITY.--

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

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

1 (c) When a commercial user leases a crib for use away
2 from the premises of the commercial user, the commercial user
3 is immune from civil liability created by this section
4 resulting from the assembly of the crib by a person other than
5 the commercial user or its agent or resulting from the use of
6 crib sheets that were not provided by the commercial user or
7 its agent.

8 (6) PENALTY.--

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

15 (b) A transient public lodging establishment that
16 violates subsection (3) is subject to the penalties set forth
17 in s. 509.261.

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

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

1 standards set forth in this section or that have any of the
2 dangerous features or characteristics set forth in this
3 section.

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

7 Section 2. Subsection (10) is added to section
8 509.221, Florida Statutes, to read:

9 509.221 Sanitary regulations.--

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

14 Section 3. Section 509.032, Florida Statutes, is
15 reenacted to read:

16 509.032 Duties.--

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

25 (2) INSPECTION OF PREMISES.--

26 (a) The division has responsibility and jurisdiction
27 for all inspections required by this chapter. The division
28 has responsibility for quality assurance. Each licensed
29 establishment shall be inspected at least biannually and at
30 such other times as the division determines is necessary to
31 ensure the public's health, safety, and welfare. The division

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

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

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

28 (d) The division shall adopt and enforce sanitation
29 rules consistent with law to ensure the protection of the
30 public from food-borne illness in those establishments
31 licensed under this chapter. These rules shall provide the

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

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

3 a. The variance shall not adversely affect the health
4 of the public.

5 b. No reasonable alternative to the required
6 construction exists.

7 c. The hardship was not caused intentionally by the
8 action of the applicant.

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

14 3. The division shall establish, by rule, a fee for
15 the cost of the variance process. Such fee shall not exceed
16 \$150 for routine variance requests and \$300 for emergency
17 variance requests.

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

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

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

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

5 (b) Inspect public lodging establishments and public
6 food service establishments whenever necessary to respond to
7 an emergency or epidemiological condition.

8 (c) Administer a public notification process for
9 temporary food service events and distribute educational
10 materials that address safe food storage, preparation, and
11 service procedures.

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

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

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

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

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

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

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

4 (7) PREEMPTION AUTHORITY.--The regulation of public
5 lodging establishments and public food service establishments,
6 the inspection of public lodging establishments and public
7 food service establishments for compliance with the sanitation
8 standards adopted under this section, and the regulation of
9 food safety protection standards for required training and
10 testing of food service establishment personnel are preempted
11 to the state. This subsection does not preempt the authority
12 of a local government or local enforcement district to conduct
13 inspections of public lodging and public food service
14 establishments for compliance with the Florida Building Code
15 and the Florida Fire Prevention Code, pursuant to ss. 553.80
16 and 633.022.

17 Section 4. Section 402.3031, Florida Statutes, is
18 created to read:

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

27 Section 5. This act shall take effect October 1, 2002.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 158

The committee substitute clarifies that a portable folding crib is not unsafe if its latches do not engage automatically unless the crib is of a type having central hinges and rail assemblies that move downward when folded. The committee substitute also provides qualified immunity from civil liability for commercial users that lease cribs for use away from the premises of the commercial user. This immunity applies to liability created by the act resulting from the assembly of a crib by a person other than the commercial user or its agents or resulting from the use of crib sheets that were not provided by the commercial user or its agents.