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1 A bill to be entitled
2 An act relating to infant cribs; creating s. 501.144,
3 F.S., providing a popular name ; providing definitions;
4 prohibiting commercial users from manufacturing,
5 remanufacturing, retrofitting, selling, contracting to
6 sell or resell, leasing, or subletting specified cribs
7 determined to be unsafe for use by infants; prohibiting
8 transient public lodging establishments from offering or
9 providing for use specified cribs determined to be unsafe
10 for use by infants; providing criteria for determining
11 safety of infant cribs; providing exemptions; providing
12 specified immunity from civil liability; providing
13 penalties; providing that violation of the act constitutes
14 an unfair and deceptive trade practice; authorizing the
15 Department of Agriculture and Consumer Services, the
16 Department of Business and Professional Regulation, and
17 the Department of Children and Family Services to
18 collaborate with public agencies and private-sector
19 entities to prepare specified public education materials
20 and programs; authorizing the Department of Agriculture
21 and Consumer Services to adopt rules and prescribe forms;
22 amending s. 509.221, F.S.; prohibiting the use of certain
23 cribs in public lodging establishments; reenacting s.
24 509.032, F.S.; providing for regulation and rulemaking by
25 the Division of Hotels and Restaurants of the Department
26 of Business and Professional Regulation; creating s.
27 402.3031, F.S.; prohibiting unsafe cribs in certain
28 facilities; providing for enforcement and rulemaking
29 powers of the Department of Children and Family Services;
30 creating an infant crib safety enforcement demonstration



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31 program; providing that crib inspections are not required
 32 in certain counties for a specified time; requiring crib
 33 inspections in certain counties for a specified time;
 34 providing requirements for crib inspections by the
 35 Department of Business and Professional Regulation;
 36 requiring transient public lodging establishments to
 37 provide for inspection of cribs; requiring a report;
 38 providing for rulemaking by the Department of Business and
 39 Professional Regulation; providing for expiration of the
 40 demonstration program; providing effective dates.

41
 42 WHEREAS, the disability and death of infants resulting from
 43 injuries sustained in crib accidents are a serious threat to the
 44 public health, safety, and welfare of the people of the state,
 45 and

46 WHEREAS, the design and construction of an infant crib must
 47 ensure that it is safe, and a parent or caregiver has a right to
 48 believe that an infant crib in use is a safe containment in
 49 which to place an infant, and

50 WHEREAS, more than 13,000 infants are injured in unsafe
 51 cribs every year, and

52 WHEREAS, prohibiting the manufacture, remanufacture,
 53 retrofitting, sale, contracting to sell or resell, leasing, or
 54 subletting of unsafe infant cribs, particularly unsafe
 55 secondhand, hand-me-down, or heirloom cribs, will reduce
 56 injuries and deaths caused by cribs, and

57 WHEREAS, it is the intent of the Legislature to reduce the
 58 occurrence of injuries and deaths to infants as a result of
 59 unsafe cribs that do not conform to modern safety standards by
 60 making it illegal to manufacture, remanufacture, retrofit, sell,



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61 contract to sell or resell, lease, or sublet, any full-size or
 62 non-full-size crib that is unsafe, and

63 WHEREAS, it is the intent of the Legislature to encourage
 64 public and private collaboration in disseminating materials
 65 relative to the safety of infant cribs to parents, child care
 66 providers, and those individuals who would be likely to sell,
 67 donate, or otherwise provide to others unsafe infant cribs, NOW,
 68 THEREFORE,

69

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

71

72 Section 1. Section 501.144, Florida Statutes, is created
 73 to read:

74 501.144 Florida Infant Crib Safety Act.--

75 (1) POPULAR NAME.--This section shall be known as the
 76 "Florida Infant Crib Safety Act."

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

78 (a) "Commercial user" means a dealer under s. 212.06(2),
 79 or any person who is in the business of manufacturing,
 80 remanufacturing, retrofitting, selling, leasing, or subletting
 81 full-size or non-full-size cribs. The term includes a child care
 82 facility, family day care home, large family child care home,
 83 and specialized child care facility for the care of mildly ill
 84 children, licensed by the Department of Children and Family
 85 Services or local licensing agencies.

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

88 (c) "Department" means the Department of Agriculture and
 89 Consumer Services.



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

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

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

98 (g) "Transient public lodging establishment" means any
99 hotel, motel, resort condominium, transient apartment,
100 roominghouse, bed and breakfast inn, or resort dwelling, as
101 defined in s. 509.242.

102 (3) PROHIBITED PRACTICES.--

103 (a) A commercial user may not manufacture, remanufacture,
104 retrofit, sell, contract to sell or resell, lease, or sublet a
105 full-size or non-full-size crib that is unsafe for an infant
106 because the crib does not conform to the standards set forth in
107 paragraph (4) (a) or because the crib has any of the dangerous
108 features or characteristics set forth in paragraph (4) (b).

109 (b) A transient public lodging establishment may not offer
110 or provide for use a full-size or non-full-size crib that is
111 unsafe for an infant because the crib does not conform to the
112 standards set forth in paragraph (4) (a) or because the crib has
113 any of the dangerous features or characteristics set forth in
114 paragraph (4) (b). Further, violation of this section by a
115 transient public lodging establishment is a violation of chapter
116 509 and is subject to the penalties set forth in s. 509.261.

117 (c) A violation of this section is a deceptive and unfair
118 trade practice and constitutes a violation of part II of chapter
119 501, the Florida Deceptive and Unfair Trade Practices Act.



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

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

123 1. 16 C.F.R. part 1303, relating to ban of lead-containing
124 paint and certain consumer products bearing lead-containing
125 paint; 16 C.F.R. part 1508, relating to requirements for full-
126 size baby cribs; and 16 C.F.R. part 1509, relating to
127 requirements for non-full-size baby cribs.

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

130 3. Rules adopted by the department which implement the
131 provisions of this subsection.

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

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

135 2. Spaces between side slats which are more than 2-3/8
136 inches wide.

137 3. A mattress support that can be easily dislodged from
138 any point of the crib. A mattress segment can be easily
139 dislodged if it cannot withstand at least a 25-pound upward
140 force from underneath the crib. For portable folding cribs, this
141 subparagraph does not apply to mattress supports or mattress
142 segments that are designed to allow the crib to be folded, if
143 the crib is equipped with latches that work to prevent the
144 unintentional collapse of the crib.

145 4. Cutout designs on the end panels.

146 5. Rail-height dimensions that do not conform to the
147 following:

148 a. The height of the rail and end panel as measured from
149 the top of the rail or panel in its lowest position to the top



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150 of the mattress support in its highest position is at least 9
151 inches.

152 b. The height of the rail and end panel as measured from
153 the top of the rail or panel in its highest position to the top
154 of the mattress support in its lowest position is at least 26
155 inches.

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

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

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

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

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

168 (5) EXEMPTIONS; CIVIL IMMUNITY.--

169 (a) A crib that is clearly not intended for use by an
170 infant, including, but not limited to, a toy or display item, is
171 exempt from this section if the crib is accompanied, at the time
172 of manufacturing, remanufacturing, retrofitting, selling,
173 leasing, or subletting, by a notice to be furnished by the
174 commercial user on forms prescribed by the department declaring
175 that the crib is not intended to be used for an infant and is
176 dangerous to use for an infant.

177 (b) A commercial user, other than a child care facility,
178 family day care home, large family child care home, or
179 specialized child care facility for the care of mildly ill



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180 children, that has complied with the notice requirements set
 181 forth under paragraph (a) is immune from civil liability
 182 resulting from the use of a crib, notwithstanding the provisions
 183 of this section.

184 (c) When a commercial user leases a crib for use away from
 185 the premises of the commercial user, the commercial user is
 186 immune from civil liability created by this section resulting
 187 from the assembly of the crib by a person other than the
 188 commercial user or its agent or resulting from the use of crib
 189 sheets that were not provided by the commercial user or its
 190 agent.

191 (6) PENALTY.--

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

198 (b) A transient public lodging establishment that violates
 199 subsection (3) is subject to the penalties set forth in s.
 200 509.261.

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

205 (7) PUBLIC EDUCATION MATERIALS AND PROGRAMS.--The
 206 Department of Agriculture and Consumer Services, the Department
 207 of Business and Professional Regulation, and the Department of
 208 Children and Family Services may collaborate with any public
 209 agency or private-sector entity to prepare public education



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210 materials or programs designed to inform parents, child care
 211 providers, commercial users, and any other person or entity that
 212 is likely to place unsafe cribs in the stream of commerce of the
 213 dangers posed by secondhand, hand-me-down, or heirloom cribs
 214 that do not conform to the standards set forth in this section
 215 or that have any of the dangerous features or characteristics
 216 set forth in this section.

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

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

222 509.221 Sanitary regulations.--

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

227 Section 3. Section 509.032, Florida Statutes, is reenacted
 228 to read:

229 509.032 Duties.--

230 (1) GENERAL.--The division shall carry out all of the
 231 provisions of this chapter and all other applicable laws and
 232 rules relating to the inspection or regulation of public lodging
 233 establishments and public food service establishments for the
 234 purpose of safeguarding the public health, safety, and welfare.
 235 The division shall be responsible for ascertaining that an
 236 operator licensed under this chapter does not engage in any
 237 misleading advertising or unethical practices.

238 (2) INSPECTION OF PREMISES.--



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239 (a) The division has responsibility and jurisdiction for
240 all inspections required by this chapter. The division has
241 responsibility for quality assurance. Each licensed
242 establishment shall be inspected at least biannually, except for
243 transient and nontransient apartments, which shall be inspected
244 at least annually, and shall be inspected at such other times as
245 the division determines is necessary to ensure the public's
246 health, safety, and welfare. The division shall establish a
247 system to determine inspection frequency. Public lodging units
248 classified as resort condominiums or resort dwellings are not
249 subject to this requirement, but shall be made available to the
250 division upon request. If, during the inspection of a public
251 lodging establishment classified for renting to transient or
252 nontransient tenants, an inspector identifies vulnerable adults
253 who appear to be victims of neglect, as defined in s. 415.102,
254 or, in the case of a building that is not equipped with
255 automatic sprinkler systems, tenants or clients who may be
256 unable to self-preserve in an emergency, the division shall
257 convene meetings with the following agencies as appropriate to
258 the individual situation: the Department of Health, the
259 Department of Elderly Affairs, the area agency on aging, the
260 local fire marshal, the landlord and affected tenants and
261 clients, and other relevant organizations, to develop a plan
262 which improves the prospects for safety of affected residents
263 and, if necessary, identifies alternative living arrangements
264 such as facilities licensed under part II or part III of
265 chapter400.

266 (b) For purposes of performing required inspections and
267 the enforcement of this chapter, the division has the right of



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268 entry and access to public lodging establishments and public
269 food service establishments at any reasonable time.

270 (c) Public food service establishment inspections shall be
271 conducted to enforce provisions of this part and to educate,
272 inform, and promote cooperation between the division and the
273 establishment.

274 (d) The division shall adopt and enforce sanitation rules
275 consistent with law to ensure the protection of the public from
276 food-borne illness in those establishments licensed under this
277 chapter. These rules shall provide the standards and
278 requirements for obtaining, storing, preparing, processing,
279 serving, or displaying food in public food service
280 establishments, approving public food service establishment
281 facility plans, conducting necessary public food service
282 establishment inspections for compliance with sanitation
283 regulations, cooperating and coordinating with the Department of
284 Health in epidemiological investigations, and initiating
285 enforcement actions, and for other such responsibilities deemed
286 necessary by the division. The division may not establish by
287 rule any regulation governing the design, construction,
288 erection, alteration, modification, repair, or demolition of any
289 public lodging or public food service establishment. It is the
290 intent of the Legislature to preempt that function to the
291 Florida Building Commission and the State Fire Marshal through
292 adoption and maintenance of the Florida Building Code and the
293 Florida Fire Prevention Code. The division shall provide
294 technical assistance to the commission and the State Fire
295 Marshal in updating the construction standards of the Florida
296 Building Code and the Florida Fire Prevention Code which govern
297 public lodging and public food service establishments. Further,



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298 the division shall enforce the provisions of the Florida
 299 Building Code and the Florida Fire Prevention Code which apply
 300 to public lodging and public food service establishments in
 301 conducting any inspections authorized by this part.

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

309 a. The variance shall not adversely affect the health of
 310 the public.

311 b. No reasonable alternative to the required construction
 312 exists.

313 c. The hardship was not caused intentionally by the action
 314 of the applicant.

315 2. The division's advisory council shall review
 316 applications for variances and recommend agency action. The
 317 division shall make arrangements to expedite emergency requests
 318 for variances, to ensure that such requests are acted upon
 319 within 30 days of receipt.

320 3. The division shall establish, by rule, a fee for the
 321 cost of the variance process. Such fee shall not exceed \$150 for
 322 routine variance requests and \$300 for emergency variance
 323 requests.

324 (f) In conducting inspections of establishments licensed
 325 under this chapter, the division shall determine if each coin-
 326 operated amusement machine that is operated on the premises of a
 327 licensed establishment is properly registered with the



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328 Department of Revenue. Each month the division shall report to
 329 the Department of Revenue the sales tax registration number of
 330 the operator of any licensed establishment that has on location
 331 a coin-operated amusement machine and that does not have an
 332 identifying certificate conspicuously displayed as required by
 333 s. 212.05(1)(h).

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

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

339 (a) Prescribe sanitary standards which shall be enforced
 340 in public foodservice establishments.

341 (b) Inspect public lodging establishments and public food
 342 service establishments whenever necessary to respond to an
 343 emergency or epidemiological condition.

344 (c) Administer a public notification process for temporary
 345 food service events and distribute educational materials that
 346 address safe food storage, preparation, and service procedures.

347 1. Sponsors of temporary food service events shall notify
 348 the division not less than 3 days prior to the scheduled event
 349 of the type of food service proposed, the time and location of
 350 the event, a complete list of food service vendors participating
 351 in the event, the number of individual food service facilities
 352 each vendor will operate at the event, and the identification
 353 number of each food service vendor's current license as a public
 354 food service establishment or temporary food service event
 355 licensee. Notification may be completed orally, by telephone, in
 356 person, or in writing. A public food service establishment or



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357 food service vendor may not use this notification process to
358 circumvent the license requirements of this chapter.

359 2. The division shall keep a record of all notifications
360 received for proposed temporary food service events and shall
361 provide appropriate educational materials to the event sponsors,
362 including the food-recovery brochure developed under s.
363 570.0725.

364 3.a. A public food service establishment or other food
365 service vendor must obtain one of the following classes of
366 license from the division: an individual license, for a fee of
367 no more than \$105, for each temporary foodservice event in which
368 it participates; or an annual license, for a fee of no more than
369 \$1,000, that entitles the licensee to participate in an
370 unlimited number of food service events during the license
371 period. The division shall establish license fees, by rule, and
372 may limit the number of food service facilities a licensee may
373 operate at a particular temporary food service event under a
374 single license.

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

379 (4) STOP-SALE ORDERS.--The division may stop the sale, and
380 supervise the proper destruction, of any food or food product
381 when the director or the director's designee determines that
382 such food or food product represents a threat to the public
383 safety or welfare. If the operator of a public food service
384 establishment licensed under this chapter has received official
385 notification from a health authority that a food or food product
386 from that establishment has potentially contributed to any



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387 instance or outbreak of food-borne illness, the food or food
388 product must be maintained in safe storage in the establishment
389 until the responsible health authority has examined, sampled,
390 seized, or requested destruction of the food or food product.

391 (5) REPORTS REQUIRED.--The division shall send the
392 Governor a written report, which shall state, but not be limited
393 to, the total number of inspections conducted by the division to
394 ensure the enforcement of sanitary standards, the total number
395 of inspections conducted in response to emergency or
396 epidemiological conditions, the number of violations of each
397 sanitary standard, and any recommendations for improved
398 inspection procedures. The division shall also keep accurate
399 account of all expenses arising out of the performance of its
400 duties and all fees collected under this chapter. The report
401 shall be submitted by September 30 following the end of the
402 fiscal year.

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

406 (7) PREEMPTION AUTHORITY.--The regulation of public
407 lodging establishments and public food service establishments,
408 the inspection of public lodging establishments and public food
409 service establishments for compliance with the sanitation
410 standards adopted under this section, and the regulation of food
411 safety protection standards for required training and testing of
412 food service establishment personnel are preempted to the state.
413 This subsection does not preempt the authority of a local
414 government or local enforcement district to conduct inspections
415 of public lodging and public foodservice establishments for



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416 compliance with the Florida Building Code and the Florida Fire
417 Prevention Code, pursuant to ss. 553.80 and 633.022.

418 Section 4. Section 402.3031, Florida Statutes, is created
419 to read:

420 402.3031 Infant crib safety.--A child care facility,
421 family daycare home, large family child care home, or
422 specialized child care facility for the care of mildly ill
423 children may not offer or provide for use a full-size or non-
424 full-size crib that is not in conformity with the requirements
425 of s. 501.144. The department shall enforce this section and may
426 adopt rules under ss. 120.536(1) and 120.54 necessary for the
427 administration of this section.

428 Section 5. Infant crib safety enforcement demonstration
429 program.--

430 (1) As used in this section, the term:

431 (a) "Division" means the Division of Hotels and
432 Restaurants of the Department of Business and Professional
433 Regulation.

434 (b) "Transient public lodging establishment" has the
435 meaning ascribed in section 501.144, Florida Statutes.

436 (2) Effective October 1, 2003, through June 30, 2006, the
437 division shall implement an infant crib safety enforcement
438 demonstration program consistent with this section in Broward,
439 Franklin, Miami-Dade, Orange, and Osceola Counties. During the
440 period of the demonstration program, the division is not
441 required to inspect infant cribs for enforcement of section
442 501.144, section 509.032, or section 509.221(10), Florida
443 Statutes, in a county that is not included in the demonstration
444 program.

445 (3) During the period of the demonstration program:



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446 (a) Each transient public lodging establishment located in
447 a county included in the demonstration program shall annually
448 file with the division a certificate attesting that each full-
449 size and non-full-size crib offered or provided for use in the
450 establishment has been inspected by a person who is competent,
451 based upon criteria established by the division, to conduct the
452 inspection, and that each crib is in conformity with the
453 requirements of section 501.144, Florida Statutes. The division
454 shall prescribe the forms, timetables, and procedures for filing
455 the certificate.

456 (b) The division shall inspect the full-size and non-full-
457 size cribs offered or provided for use in each transient public
458 lodging establishment located in a county included in the
459 demonstration program. The division shall perform these crib
460 inspections during its routine inspections conducted under
461 section 509.032, Florida Statutes. When performing these crib
462 inspections, the division is not required to inspect every crib
463 at each establishment, but may use selective inspection
464 techniques, including, but not limited to, random sampling.

465 (4) The division shall conduct an evaluation of the
466 effectiveness of the demonstration program. By January 1, 2006,
467 the division shall submit a report on the evaluation to the
468 Governor, the President of the Senate, the Speaker of the House
469 of Representatives, and the majority and minority leaders of the
470 Senate and the House of Representatives. The report must include
471 an evaluation of compliance by transient public lodging
472 establishments, the time and costs associated with conducting
473 crib inspections, and the barriers to enforcing the Florida
474 Infant Crib Safety Act. The report must also include
475 recommendations as to whether the demonstration program should



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476 be continued, expanded, or revised to enhance its administration
 477 or effectiveness.

478 (5) The Department of Business and Professional Regulation
 479 may adopt rules under sections 120.536(1) and 120.54, Florida
 480 Statutes, for the administration of this section.

481 (6) This section expires June 30, 2006.

482 Section 6. This act shall take effect October 1, 2003.