

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 198

SPONSOR: Senator Wasserman Schultz

SUBJECT: Infant Cribs

DATE: March 1, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RI</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	<u>RC</u>	_____

I. Summary:

Senate Bill 198 prohibits the manufacture and sale of infant cribs determined to be unsafe and prohibits transient public lodging establishments and child care facilities from using unsafe cribs. Violations constitute deceptive and unfair trade practices, which are thereby subject to increased civil liability. In addition, transient public lodging establishments and child care facilities are subject to penalties governed by their respective regulatory statutes. Further, a willful-and-knowing violation by a commercial user (other than by a transient public lodging establishment or by a child care facility or home) is subject to criminal penalties.

The bill creates a demonstration program in five counties until June 30, 2007, limiting inspection for unsafe cribs in transient public lodging establishments to cribs in establishments located within the affected counties. The demonstration program allows selective inspection techniques (e.g., random sampling), but requires each lodging establishment in the five counties to certify annually that its cribs have been inspected and meet the safety requirements. The bill requires a report to the Governor and the Legislature, evaluating the demonstration program. Upon the expiration of the demonstration program, inspections are required statewide and revert to standard inspection requirements.

This bill substantially amends section 509.221, Florida Statutes. The bill also creates ss. 402.3031 and 501.144, F.S., reenacts s. 509.032, F.S., and creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Infant Cribs

A report issued by the United States Consumer Product Safety Commission cites that, during the period from 1995 to 1997, 106 deaths were recorded involving cribs.¹ The preamble to the bill states that more than 13,000 infants are injured in crib accidents each year. In 2001, the commission cited that, since 1984, it had received reports of the deaths of 17 babies, most of them younger than 12 months old, who were suffocated or strangled primarily when they became entangled in sheets in their cribs or beds.² Two of these deaths related to fitted crib sheets. The commission also warned that a strangulation hazard may exist with some cribs that have projections on the corner posts.³ According to the commission, decorative knobs or corner posts extending above the crib end or side may catch clothing, necklaces, and pacifier cords as the child moves about in the corner areas of the crib. The commission reported these knobs or posts were implicated in two cases of brain damage and 48 deaths due to strangulation.

In a recent study, staff at the Consumer Product Safety Commission analyzed current crib-related deaths, with an emphasis on hardware and structural problems that could be addressed through safety standards or other means. The analysis included fatal crib-related incidents occurring between January 1, 1997, and July 15, 2002.⁴ During this period, the commission cited that a total of 156 crib-related deaths were reported. About 80 percent of the victims were younger than 1 year, and about 60 percent of the victims were male. Of the 156 deaths, 62 involved full-size cribs, 17 involved non-full-size or portable cribs, and 77 involved cribs of unknown type. Overall, the greatest number of deaths (54) involved positional asphyxia/suffocation, a broad category that included a number of cases for which extensive detail about the circumstances was not available (see Figure 1 on page 3 of this staff analysis).

The remaining cases involved hardware problems (29 deaths); entrapment between the crib and another object (13 deaths); entanglement in window covering cords near the crib (12 deaths); entrapment between the mattress and side rail, with further detail unknown (11 deaths); structural failure (10 deaths); improper mattress (9 deaths); bedding entanglement (8 deaths); and other or unknown circumstances (10 deaths).

Almost all the cases from the commission's study involving hardware problems involved missing or loose screws, brackets, or other attachment devices that fastened the sides of the cribs to the end panels. Generally, a side of the crib would loosen, creating a space that the child would slip through and become entrapped by the head or chest. Structural failures of cribs most often involved broken or missing crib rails or slats.

¹ U.S. Consumer Product Safety Comm'n, *Keeping Children Safe, Consumer Product Safety Review 2* (Winter 2001), available at http://www.cpsc.gov/cpscpub/pubs/cpsr_nws19.pdf (last modified Mar. 20, 2001).

² U.S. Consumer Product Safety Comm'n, *Consumer Product Safety Alert: Crib Sheets*, available at <http://www.cpsc.gov/cpscpub/pubs/5137.pdf> (last modified May 16, 2001).

³ U.S. Consumer Product Safety Comm'n, *Consumer Product Safety Alert: Some Crib Cornerposts May Be Dangerous*, available at <http://www.cpsc.gov/cpscpub/pubs/5027.pdf> (last modified Jan. 23, 2001).

⁴ U.S. Consumer Product Safety Comm'n, *Crib Safety, Consumer Product Safety Review 5 & 7* (Winter 2003), available at http://www.cpsc.gov/cpscpub/pubs/cpsr_nws27.pdf (last modified Feb. 20, 2003).

Figure 1 – CRIB-RELATED DEATHS: HAZARD PATTERN BY AGE OF VICTIM						
Hazard Pattern	Age of Victim (in months)					
	Total	<6	6-11	12-17	18+	Unk.
Positional Asphyxia/ Suffocation	54	43	8	1	1	1
Hardware Problems	29	2	24	2	1	0
Entrapment, Crib, and Other Object	13	4	3	4	2	0
Window Cord Entanglement	12	0	1	10	1	0
Entrapment, Mattress, and Side Rail	11	1	9	1	0	0
Structural Failure	10	3	6	1	0	0
Improper Mattress	9	4	5	0	0	0
Bedding Entanglement	8	0	7	1	0	0
Other/Unknown	10	2	3	4	1	0
TOTAL	156	59	66	24	6	1

SOURCE: U.S. Consumer Product Safety Commission

According to the commission, few of the cribs from its study, portable or non-full-size, appeared to be new. The commission reports that many of these cribs were older models in poor condition. In some cases, repairs had been attempted with various items, including shoelaces, string, dishtowels, wire, coat hangers, tape, and inappropriate hardware. In other instances, the commission found that caregivers had pushed the crib against the wall or another object to stabilize a loose side.

Federal regulations (16 C.F.R. parts 1508 and 1509) imposing requirements for baby cribs were adopted in 1973 for full-size cribs and in 1976 for non-full-size cribs. Since the adoption of the federal regulations, the commission estimates the annual number of deaths involving cribs has declined from between 150 and 200 deaths per year to about 30 deaths per year. These federal regulations address side height, slat spacing, mattress fit, and other factors, as well as requirements that must be followed in the manufacture of new cribs; however, these standards do not apply to cribs that are older or previously used before the federal regulations were adopted. The standards were amended in 1982 to prohibit hazardous cutouts in crib end panels.

In 1986 and 1988, the American Society for Testing and Materials, in consultation with staff of the Consumer Product Safety Commission, published voluntary safety standards for cribs, which included provisions to address entanglement on corner posts on full-size and non-full-size cribs and to address structural and mechanical failures of full-size cribs. A voluntary standard for the performance of non-full-size cribs was published in 1997. In 1999, the voluntary standard for full-size cribs was revised to address the integrity of crib slats.

Transient Public Lodging Establishments

Under current law, a public lodging establishment is a dwelling rented or leased to guests. If the operator of a public lodging establishment intends the occupancy of guests to be temporary, the establishment is known as a “transient establishment.” These establishments generally include

hotels, motels, resort condominiums, transient apartments, rooming houses, bed and breakfast inns, and resort dwellings (s. 509.242, F.S.). Each public lodging establishment must be licensed by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation and must annually renew its license (s. 509.241, F.S.). At least twice each year, the division is required to inspect each public lodging establishment to ensure the public's health, safety, and welfare (s. 509.032(2)(a), F.S.). Among other criteria, inspections focus on adherence to safety, fire safety, and sanitary regulations. The division's rules require that bedding, including baby cribs, be covered by clean linens sized appropriately to the bed to completely cover the sleeping areas of the mattress (rules 61C-1.001(6) and 61C-3.001(2), F.A.C.); however, these rules do not contain safety regulations specifically related to cribs.

During the 2001 Regular Session, the Legislature enacted CS/CS/SB 856, which was subsequently vetoed by the Governor. Except for the creation of the infant crib safety enforcement demonstration program (see section 5 of SB 198), CS/CS/SB 856 was substantially similar to SB 198. In his veto message accompanying CS/CS/SB 856, the Governor wrote that he would direct the Department of Business and Professional Regulation to "immediately begin an aggressive educational campaign to provide hotel and motel licensees with infant crib safety information." The Governor wrote:

Commencing as soon as possible, with every hotel and motel inspection, [the department's] inspectors will provide each licensee with the Crib Safety Checklist that I have attached to this veto message. In addition, [the department] will request that licensees providing cribs to guests also display information in the guest rooms regarding infant crib safety. We also intend to provide hotel and motel licensees with information regarding placement of the crib in the guest rooms. Information regarding infant crib safety will be accessible on the Department's Hotel and Motel Web Page at <http://www.hospitalityeducation.org>.

In July 2001, the department issued a letter to licensed public lodging establishments urging voluntary compliance with crib safety standards and providing an information packet.⁵ The packet included the crib safety checklist for operators of public lodging establishments, a list of frequently asked questions about crib safety, and a list of crib safety tips for guests of public lodging establishments. The crib safety tips were provided in the English, Spanish, French, German, and Portuguese languages. The department reports that the Division of Hotels and Restaurants continues to provide these materials and that, during routine inspections of public lodging establishments, inspectors provide crib safety information to the operators of these establishments when crib safety hazards are observed.

Child Care Facilities and Homes

Under current law, each child care facility in this state must be licensed by a local licensing agency or by the state. A "child care facility" is a center that provides child care for more than five children unrelated to the operator for compensation; however, certain child care centers are

⁵ Florida Dep't of Bus. & Professional Reg., *Form HR 5027-011 (Crib Safety Letter)* (last modified July 26, 2001), *Form HR 5027-012 (Crib Safety Hotel and Motel Checklist)* (last modified July 31, 2001), *Form HR 5027-013 (Crib Safety Tips)* (last modified July 31, 2001), and *Form HR 5027-014 (Crib Safety Frequently Asked Questions)* (last modified July 26, 2001), available at <http://www.state.fl.us/dbpr/hr/programs/crib/index.shtml>.

exempt from licensure. For example, child care services provided by a transient public lodging establishment solely for its guests are exempt. Each county may designate a local licensing agency to license child care facilities if the county's licensing standards meet or exceed statewide minimum standards adopted by the Department of Children and Family Services, which include standards governing sanitary and safety conditions (s. 402.305, F.S.). If the county's standards do not meet the statewide standards, the department will conduct the licensure of the child care facilities in that county (s. 402.306, F.S.). A "specialized child care facility for the care of mildly ill children" must also be licensed by a local licensing agency or by the Department of Children and Family Services, unless otherwise exempted. Hospitals accredited by the Joint Commission for the Accreditation of Healthcare Organizations operating hospital-based child care for mildly ill children are exempt from licensure (rule 65C-25.003(2)(c), F.A.C.). Licensed facilities must meet minimum standards developed by the department in conjunction with the Department of Health (s. 402.305(17), F.S.).

The minimum statewide licensing standards for child care facilities are found in ch. 65C-22, F.A.C. Similar standards for licensing specialized child care facilities for the care of mildly ill children are found in ch. 65C-25, F.A.C. Among these standards, rules 65C-22.002(5)(f) and 65C-25.004(5)(f), F.A.C., require cribs in these facilities to meet the construction regulations adopted by the U.S. Consumer Product Safety Commission in 16 C.F.R. part 1508 (full-size cribs) and part 1509 (non-full-size cribs). These standards do not, however, require adherence to the federal regulations governing the ban on lead-containing paint products in 16 C.F.R. part 1303, nor do they include the American Society for Testing and Materials' voluntary standards for design and testing of infant cribs.

Similar to a child care facility, a "family day care home" is an occupied residence in which child care is provided for children of at least two unrelated families for compensation. Under current law, certain family day care homes are subject to licensure, while others must register annually with the Department of Children and Family Services (s. 402.313, F.S.). Resembling a family day care home, a "large family care home" is also an occupied residence in which child care is provided for children of at least two unrelated families for compensation, but a large family child care home must also keep at least two full-time child care personnel on the premises during the hours of operation. Large family child care homes are subject to licensure (s. 402.3131, F.S.). The Department of Children and Family Services is required to adopt minimum standards for large family child care homes and for family day care homes that are subject to licensure (ss. 402.313(13) and 402.3131(7), F.S.). These standards are found in ch. 65C-20, F.A.C. Rule 65C-20.010(1)(i), F.A.C., requires that, when napping, each child in care must be provided safe and sanitary bedding. The rule defines the term "bedding" as a cot, bed, crib, mattress, playpen, or floor mat and specifies that "mats" must be at least one-inch thick and covered with an impermeable surface. With these exceptions, the rules do not contain safety regulations specifically related to cribs.

Each licensed child care facility, specialized child care facility for the care of mildly ill children, family day care home, and large family child care home is subject to inspection by the Department of Children and Family Services or the local licensing agency, as applicable (s. 402.311, F.S.; rules 65C-20.012(3) and 65C-20.013(1), F.A.C.). According to the department, its staff is responsible for the inspection and licensure of child care facilities and homes in 60 of

the 67 counties in the state.⁶ Seven counties regulate licensing of child care facilities and homes: Alachua, Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA), part II of ch. 501, F.S., provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful (s. 501.204(1), F.S.). In construing which acts or practices are unlawful under FDUTPA, current law (s. 501.204(2), F.S.) requires that due consideration and great weight be given to the interpretations of the Federal Trade Commission and the federal courts under the Federal Trade Commission Act (15 U.S.C. s. 45(a)(1)).

Current law allows the Department of Legal Affairs to adopt rules specifying acts or practices that violate FDUTPA, but requires these rules to be consistent with the rules, regulations, and decisions of the Federal Trade Commission and the federal courts interpreting the Federal Trade Commission Act. After the Fourth District Court of Appeal ruled in 1994 that no specific rule or regulation is needed to find that conduct is an unfair or deceptive act or practice under FDUTPA, in 1996 and 1997, the department repealed the rules it had adopted codifying specific acts and practices as violations and adopted rule 2-2.001, F.A.C., which states:

It is neither possible nor necessary to codify every conceivable deceptive and unfair trade practice prohibited by Part II, Chapter 501, Florida Statutes. (See *Department of Legal Affairs v. Father & Son Moving & Storage*, 643 So.2d 22 (Fla. 4th DCA 1994)). The repeal by the Department of Legal Affairs of [rules specifying violations] shall not modify or restrict the application of Part II, Chapter 501, Florida Statutes, to deceptive and unfair trade practices....

Despite the department's repeal of these rules, several statutes in current law specify that a violation of those statutes is a violation of FDUTPA, but do not provide a specific penalty, while other laws provide a specific penalty in addition to specifying that a prohibited act or practice is a violation of FDUTPA.

Violations of FDUTPA which occur in or affect a single judicial circuit are enforced by the state attorney for that circuit, while violations that occur in or affect multiple judicial circuits are enforced by the Department of Legal Affairs (s. 501.203(2), F.S.). The department may also enforce violations in a single judicial circuit if the state attorney defers to the department or fails to act upon a complaint within 90 days. To enforce FDUTPA, the department or state attorney, as applicable, may bring actions:

- To obtain a declaratory judgment that an act or practice violates FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; or

⁶ Fla. Dep't of Children & Family Services, *Child Care Licensing Information*, at http://www5.myflorida.com/cf_web/myflorida2/healthhuman/childcare/licensing.html (last visited Mar. 1, 2004).

- On behalf of one or more consumers for the actual damages caused by an act or practice that violates FDUTPA (s. 501.207(1), F.S.).

However, damages are not recoverable against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated FDUTPA (*id.*).

With the exception of violations that victimize senior citizens or handicapped persons,⁷ a person who willfully uses a method, act, or practice declared unlawful under FDUTPA, or who willfully violates any rules adopted under FDUTPA, is liable for a civil penalty of not more than \$10,000 for each violation (s. 501.2075, F.S.). A willful violation occurs when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule. If a civil penalty is assessed, the department or state attorney, as applicable, is entitled to reasonable attorney's fees and costs.

In addition to enforcement by the department or a state attorney, a consumer who has suffered a loss resulting from a violation of FDUTPA may bring an individual action to recover actual damages, plus certain attorney's fees and court costs. However, damages, fees, or costs are not recoverable against a retailer who has, in good faith, engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated FDUTPA (s. 501.211, F.S.).

III. Effect of Proposed Changes:

Florida Infant Crib Safety Act (Section 1)

The bill creates the Florida Infant Crib Safety Act (s. 501.144, F.S.).

Manufacture and Sale of Unsafe Cribs Prohibited, Criminal and Administrative Penalties

This bill prohibits the manufacture, remanufacture, retrofit, sale, contract to sell or resell, lease, or sublet of unsafe infant cribs. These prohibitions apply to a "commercial user," which is defined as a "dealer" who collects sales and use taxes or a person who is in the business of manufacturing, remanufacturing, retrofitting, selling, leasing, or subletting full-size or non-full-size cribs. Thus, these prohibitions apply to virtually all businesses that would sell an infant crib. These prohibitions also apply specifically to licensed child care facilities and homes.

If a commercial user, other than a transient public lodging establishment or a licensed child care facility or home, willfully and knowingly violates these prohibitions, the bill imposes a criminal penalty as a misdemeanor of the first degree, punishable by a fine not to exceed \$10,000 and imprisonment for a term of not more than 1 year.

If a child care facility, family day care home, large family child care home, or specialized child care facility for the care of mildly ill children that is licensed by the Department of Children and

⁷ A person who victimizes or attempts to victimize a senior citizen or handicapped person under FDUTPA is liable for a civil penalty of not more than \$15,000 for each violation (s. 501.2077(2), F.S.).

Family Services or the local licensing agency violates these prohibitions, the license of the child care facility or home is subject to discipline by the department or the local licensing agency, as applicable.

Use of Unsafe Cribs by Transient Public Lodging Establishments Prohibited, Administrative Penalties

The bill prohibits transient public lodging establishments from offering or providing for the use of unsafe cribs. These establishments include hotels, motels, resort condominiums, transient apartments, rooming houses, bed and breakfast inns, and resort dwellings. The license of a transient public lodging establishment that commits a violation is subject to discipline by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

Description of an Unsafe Crib

The bill defines a “crib” as a bed for an infant and includes within the term full-size and non-full-size cribs designed to accommodate an infant. An infant is defined as a person less than 3 years of age and less than 35 inches tall. The bill creates a presumption that an infant crib is unsafe if it does not conform to all of the following federal regulations and industry standards:

United States Consumer Product Safety Commission:

- Ban on lead-containing paint products in 16 C.F.R. part 1303.
- Requirements for full-size cribs in 16 C.F.R. part 1508.
- Requirements for non-full-size cribs in 16 C.F.R. part 1509.

American Society for Testing and Materials:

- Design and testing requirements for infant cribs in Voluntary Standards F966-96, F1169-99, and F1822-97.

Florida Department of Agriculture and Consumer Services:

- Rules adopted by the department which implement the Florida Infant Crib Safety Act.

The bill further provides that an infant crib is unsafe if it has any of the following dangerous features or characteristics:

- Corner posts are extended (by more than 1/16 inch) or spaces between side slats are too wide (more than 2 3/8 inches).
- Mattress supports can be easily dislodged by less than 25 pounds of upward force, except for supports on a portable folding crib having latches that work to prevent the unintentional collapse of the crib.
- Latches that do not automatically engage on a portable folding crib having central hinges and rail assemblies that move downward when folded.
- Cutout designs on end panels.
- Rail heights are less than a specified minimum.
- Loose hardware (upon completion of assembly), sharp edges, rough surfaces, or tears in mesh or fabric sides.

- Sheets are not properly matched to size of mattress.

The bill will primarily affect cribs manufactured before the federal regulations took effect because adherence to the federal regulations is required for all new cribs. However, as the bill requires conformance to the voluntary standards published by the American Society for Testing and Materials and the rules adopted by the Department of Agriculture and Consumer Services, the bill may impose requirements for new infant cribs that are not necessarily required by the federal regulations.

Deceptive and Unfair Trade Practices, Civil Immunity

The bill provides that violations of the Florida Infant Crib Safety Act are violations of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), which provides remedies such as declaratory judgments, injunctions, and actions for damages. Thus, the bill provides that the manufacture, remanufacture, retrofit, sale, contract to sell or resell, lease, or sublet of unsafe infant cribs by a commercial user, including a licensed child care facility or home, or the offering or providing for the use of unsafe cribs by a transient public lodging establishment, would constitute violations of FDUTPA.

The bill exempts a crib from the requirements of the Florida Crib Infant Safety Act if the crib is clearly not intended for use by an infant and the crib is accompanied by a notice, in the format determined by the Department of Agriculture and Consumer Services, to that effect at the time of manufacturing, remanufacturing, retrofitting, selling, leasing, or subletting. The bill further provides immunity from civil liability resulting from the use of a crib for a commercial user, other than a child care facility or home, which complies with the notice requirement.

The bill 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 Florida Infant Crib Safety 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.

Public Education

The bill 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 any public agency or private-sector entity to prepare materials or programs designed to inform the public about the dangers posed by the use of unsafe, secondhand, hand-me-down, or heirloom cribs that do not conform to the standards required by the Florida Infant Crib Safety Act.

Rulemaking

The bill authorizes the Department of Agriculture and Consumer Services to adopt rules for the administration of the Florida Infant Crib Safety Act.

Transient Public Lodging Establishments (Sections 2 and 3)

The bill prohibits a transient public lodging establishment from offering or providing for the use of a full-size or non-full-size crib that is unsafe under the Florida Infant Crib Safety Act. The bill adds this prohibition as a sanitary regulation in s. 509.221, F.S. The bill also reenacts s. 509.032, F.S., which provides the duties of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation governing the inspection of public lodging establishments. By reenacting this section, the bill incorporates this additional sanitary regulation in s. 509.221, F.S., and requires the division to include crib safety as part of its biannual inspections. For inspections conducted after the expiration of the infant crib safety enforcement demonstration program (see section 5 of the bill), the bill is unclear to what extent the division is required to inspect for unsafe cribs, whether random sampling or selective inspections are permitted or whether every crib on the premises of a transient public lodging establishment must be inspected twice each year. The Legislature may wish to amend the bill to clarify the extent of the division's inspections for unsafe cribs.

Child Care Facilities and Homes (Section 4)

The bill prohibits a child care facility, family day care home, large family child care home, or a specialized child care facility for the care of mildly ill children from offering or providing for the use of a full-size or non-full-size crib that is unsafe under the Florida Infant Crib Safety Act. The license of a child care facility or home is subject to discipline by the Department of Children and Family Services or the local licensing agency, as applicable, for violations. The department is directed to enforce this prohibition and is authorized to adopt rules for that purpose.

Infant Crib Safety Enforcement Demonstration Program (Section 5)

The bill creates an infant crib safety demonstration program effective October 1, 2004, through June 30, 2007. The demonstration program limits the inspection of infant cribs in transient public lodging establishments to only those cribs found in lodging establishments located within the five counties included in the demonstration program: Broward, Franklin, Miami-Dade, Orange, and Osceola. As part of the demonstration program, the Division of Hotels and Restaurants within the Department of Business and Professional Regulation is required to inspect the full-size and non-full-size cribs offered or provided for use in each lodging establishment located within the five demonstration counties. The division is directed to perform these crib inspections during its routine inspections. The bill authorizes the division to use selective inspection techniques (e.g., random sampling), rather than requiring the inspection of every crib at each lodging establishment.

During the period of the demonstration program, in the five demonstration counties, the bill requires each transient public lodging establishment to annually file with the Division of Hotels and Restaurants a certificate attesting that each full-size and non-full-size crib offered or provided for use in the lodging establishment has been inspected by a person who is competent, based upon criteria established by the division, to conduct the inspection, and that each crib is in conformity with the requirements of the Florida Infant Crib Safety Act (see section 1 of the bill). The bill directs the division to prescribe the forms, timetables, and procedures for filing the certificates.

By January 1, 2007, the bill requires the Division of Hotels and Restaurants to submit a report to the Governor and the Legislature, evaluating the effectiveness of the demonstration program. The bill also authorizes the Department of Business and Professional Regulation to adopt rules for the administration of the demonstration program. The demonstration program expires June 30, 2007, at which time inspections for unsafe cribs at transient public lodging establishments are expanded statewide, and the requirements for inspections would revert to the standard requirements in section 3 of the bill.

Effective Date (Section 6)

The bill provides an effective date of October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill imposes criminal penalties of no more than \$10,000 and imprisonment for a term not more than 1 year for a commercial user, other than a transient public lodging establishment or a child care facility, who willfully and knowingly manufactures, remanufactures, retrofits, sells, contracts to sell or resell, leases, or sublets unsafe infant cribs. Because the definition of an unsafe crib is subject to future rules to be adopted by the Department of Agriculture and Consumer Services, the bill may violate s. 18, Art. I of the State Constitution, which provides that “[n]o administrative agency ... shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.” See, e.g., *B.H. v. State*, 645 So. 2d 987 (Fla. 1994).

The bill imposes civil and criminal penalties for violations involving unsafe cribs. The bill specifies that an infant crib is presumed to be unsafe unless it adheres to certain standards, including some industry standards that are not widely and freely available (i.e., American Society for Testing and Materials Voluntary Standards F966-96, F1169-99, and F1822-97). In addition, the bill uses subjective terms to describe unsafe cribs, including “a tear,” “not secured,” or “any sharp edge.” Accordingly, these civil and criminal penalties may be unconstitutionally vague and constitute an unconstitutional delegation of the legislative power to the executive branch. See *Conner v. Joe Hatton, Inc.*, 216 So. 2d 209, 211 (Fla. 1968) (“When the statute is couched in vague and

uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.”).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Commercial users that sell infant cribs may be prevented from selling older cribs that remain in inventory if these cribs are considered unsafe under the Florida Infant Crib Safety Act, or they may have to incur costs to make the cribs meet the required safety standards. Transient public lodging establishments may have to replace older cribs in use or may incur expenses to retrofit some of their cribs to meet the required safety standards. Further, although infant cribs used in child care facilities and homes are currently required to adhere to federal regulations governing the construction of cribs, child care facilities and homes are not currently required to comply with federal regulations governing the ban on lead-containing paint products, the American Society for Testing and Materials' voluntary standards for design and testing of infant cribs, or the Florida Infant Crib Safety Act's ban on cribs that have certain dangerous features or characteristics. These additional crib safety standards, which may exceed the federal regulations governing the construction of cribs, may prohibit child care facilities and homes from using or reselling some cribs that remain in inventory without incurring additional costs to make the cribs meet the required safety standards. The precise impact of these circumstances is unknown.

C. Government Sector Impact:

Department of Business and Professional Regulation

According to the Department of Business and Professional Regulation, during the 3-year demonstration program, the bill would require an additional 2 full-time-equivalent positions (a Sanitation and Safety Specialist and an Operations Review Specialist). The department estimates the bill would require \$91,335 in salaries, benefits, and related expenses for fiscal year 2004-2005. The department's estimate cites that the recurring costs for these additional personnel would increase to \$118,122 for fiscal year 2005-2006 and \$121,138 for fiscal year 2006-2007. In addition, the department estimates the bill would require \$13,019 in nonrecurring expenses and operating capital outlay for fiscal year 2004-2005. The department notes that the bill does not include an appropriation or otherwise identify a source of funding for these costs.

Department of Children and Family Services

According to the Department of Children and Family Services, because the department currently inspects infant cribs during the course of inspecting licensed child care facilities and homes, the bill would present no additional government sector impact. In addition, the department estimates the costs associated with increasing public education of infant crib safety would be minimal unless a major public awareness campaign was conducted in conjunction with the Department of Agriculture and Consumer Services and the Department of Business of Professional Regulation, in which case additional funding would be necessary.

Department of Agriculture and Consumer Services

According to the Department of Agriculture and Consumer Services, the bill would present no additional government sector impact. The department estimates the costs associated with adopting rules to implement the Florida Infant Crib Safety Act and with increasing public education of infant crib safety would be minimal unless a major public awareness campaign was conducted in conjunction with the Department of Business of Professional Regulation and the Department of Children and Family Services, in which case additional funding would be necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.