

By Senator Wasserman Schultz

34-206-04

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 the safety
14 of infant cribs; providing exemptions;
15 providing specified immunity from civil
16 liability; providing penalties; providing that
17 violation of the act constitutes an unfair and
18 deceptive trade practice; authorizing the
19 Department of Agriculture and Consumer
20 Services, the Department of Business and
21 Professional Regulation, and the Department of
22 Children and Family Services to collaborate
23 with public agencies and private-sector
24 entities to prepare specified public education
25 materials and programs; authorizing the
26 Department of Agriculture and Consumer Services
27 to adopt rules and prescribe forms; amending s.
28 509.221, F.S.; prohibiting the use of certain
29 cribs in public lodging establishments;
30 reenacting s. 509.032, F.S.; providing for
31 regulation and rulemaking by the Division of

1 Hotels and Restaurants of the Department of
2 Business and Professional Regulation; creating
3 s. 402.3031, F.S.; prohibiting unsafe cribs in
4 certain facilities; providing for enforcement
5 and rulemaking powers of the Department of
6 Children and Family Services; creating an
7 infant crib safety enforcement demonstration
8 program; providing that crib inspections are
9 not required in certain counties for a
10 specified time; requiring crib inspections in
11 certain counties for a specified time;
12 providing requirements for crib inspections by
13 the Department of Business and Professional
14 Regulation; requiring transient public lodging
15 establishments to provide for inspection of
16 cribs; requiring a report; providing for
17 rulemaking by the Department of Business and
18 Professional Regulation; providing for
19 expiration of the demonstration program;
20 providing an effective date.

21
22 WHEREAS, the disability and death of infants resulting
23 from injuries sustained in crib accidents are a serious threat
24 to the public health, safety, and welfare of the people of the
25 state, and

26 WHEREAS, the design and construction of an infant crib
27 must ensure that it is safe, and a parent or caregiver has a
28 right to believe that an infant crib in use is a safe
29 containment in which to place an infant, and

30 WHEREAS, more than 13,000 infants are injured in unsafe
31 cribs every year, and

1 WHEREAS, prohibiting the manufacture, remanufacture,
2 retrofitting, sale, contracting to sell or resell, leasing, or
3 subletting of unsafe infant cribs, particularly unsafe
4 secondhand, hand-me-down, or heirloom cribs, will reduce
5 injuries and deaths caused by cribs, and

6 WHEREAS, it is the intent of the Legislature to reduce
7 the occurrence of injuries and deaths to infants as a result
8 of unsafe cribs that do not conform to modern safety standards
9 by making it illegal to manufacture, remanufacture, retrofit,
10 sell, contract to sell or resell, lease, or sublet any
11 full-size or non-full-size crib that is unsafe, and

12 WHEREAS, it is the intent of the Legislature to
13 encourage public and private collaboration in disseminating
14 materials relative to the safety of infant cribs to parents,
15 child care providers, and those individuals who would be
16 likely to sell, donate, or otherwise provide to others unsafe
17 infant cribs, NOW, THEREFORE,

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

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21 Section 1. Section 501.144, Florida Statutes, is
22 created to read:

23 501.144 Florida Infant Crib Safety Act.--

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

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

27 (a) "Commercial user" means a dealer under s.
28 212.06(2), or any person who is in the business of
29 manufacturing, remanufacturing, retrofitting, selling,
30 leasing, or subletting full-size or non-full-size cribs. The
31 term includes a child care facility, family day care home,

1 large family child care home, and specialized child care
2 facility for the care of mildly ill children, which facility
3 or home is licensed by the Department of Children and Family
4 Services or local licensing agencies.

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

7 (c) "Department" means the Department of Agriculture
8 and Consumer Services.

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

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

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

17 (g) "Transient public lodging establishment" means any
18 hotel, motel, resort condominium, transient apartment,
19 roominghouse, bed and breakfast inn, or resort dwelling, as
20 defined in s. 509.242.

21 (3) PROHIBITED PRACTICES.--

22 (a) A commercial user may not manufacture,
23 remanufacture, retrofit, sell, contract to sell or resell,
24 lease, or sublet a full-size or non-full-size crib that is
25 unsafe for an infant because the crib does not conform to the
26 standards set forth in paragraph (4)(a) or because the crib
27 has any of the dangerous features or characteristics set forth
28 in paragraph (4)(b).

29 (b) A transient public lodging establishment may not
30 offer or provide for use a full-size or non-full-size crib
31 that is unsafe for an infant because the crib does not conform

1 to the standards set forth in paragraph (4)(a) or because the
2 crib has any of the dangerous features or characteristics set
3 forth in paragraph (4)(b). Further, violation of this section
4 by a transient public lodging establishment is a violation of
5 chapter 509 and is subject to the penalties set forth in s.
6 509.261.

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

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

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

14 1. 16 C.F.R. part 1303, relating to ban of
15 lead-containing paint and certain consumer products bearing
16 lead-containing paint; 16 C.F.R. part 1508, relating to
17 requirements for full-size baby cribs; and 16 C.F.R. part
18 1509, relating to requirements for non-full-size baby cribs.

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

21 3. Rules adopted by the department which implement the
22 provisions of this subsection.

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

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

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

28 3. A mattress support that can be easily dislodged
29 from any point of the crib. A mattress segment can be easily
30 dislodged if it cannot withstand at least a 25-pound upward
31 force from underneath the crib. For portable folding cribs,

1 this subparagraph does not apply to mattress supports or
2 mattress segments that are designed to allow the crib to be
3 folded, if the crib is equipped with latches that work to
4 prevent the unintentional collapse of the crib.

5 4. Cutout designs on the end panels.

6 5. Rail-height dimensions that do not conform to the
7 following:

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

12 b. The height of the rail and end panel as measured
13 from the top of the rail or panel in its highest position to
14 the top of the mattress support in its lowest position is at
15 least 26 inches.

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

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

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

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

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

29 (5) EXEMPTIONS; CIVIL IMMUNITY.--

30 (a) A crib that is clearly not intended for use by an
31 infant, including, but not limited to, a toy or display item,

1 is exempt from this section if the crib is accompanied, at the
2 time of manufacturing, remanufacturing, retrofitting, selling,
3 leasing, or subletting, by a notice to be furnished by the
4 commercial user on forms prescribed by the department
5 declaring that the crib is not intended to be used for an
6 infant and is dangerous to use for an infant.

7 (b) A commercial user, other than a child care
8 facility, family day care home, large family child care home,
9 or specialized child care facility for the care of mildly ill
10 children, which has complied with the notice requirements set
11 forth under paragraph (a) is immune from civil liability
12 resulting from the use of a crib, notwithstanding the
13 provisions of this section.

14 (c) When a commercial user leases a crib for use away
15 from the premises of the commercial user, the commercial user
16 is immune from civil liability created by this section
17 resulting from the assembly of the crib by a person other than
18 the commercial user or its agent or resulting from the use of
19 crib sheets that were not provided by the commercial user or
20 its agent.

21 (6) PENALTY.--

22 (a) A commercial user, other than a commercial user
23 subject to the penalties provided in paragraph (b) or
24 paragraph (c), which willfully and knowingly violates
25 subsection (3) commits a misdemeanor of the first degree,
26 punishable by a fine of not more than \$10,000 and imprisonment
27 for a term of not more than 1 year.

28 (b) A transient public lodging establishment that
29 violates subsection (3) is subject to the penalties set forth
30 in s. 509.261.

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

5 (7) PUBLIC EDUCATION MATERIALS AND PROGRAMS.--The
6 Department of Agriculture and Consumer Services, the
7 Department of Business and Professional Regulation, and the
8 Department of Children and Family Services may collaborate
9 with any public agency or private-sector entity to prepare
10 public education materials or programs designed to inform
11 parents, child care providers, commercial users, and any other
12 person or entity that is likely to place unsafe cribs in the
13 stream of commerce of the dangers posed by secondhand,
14 hand-me-down, or heirloom cribs that do not conform to the
15 standards set forth in this section or that have any of the
16 dangerous features or characteristics set forth in this
17 section.

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

21 Section 2. Subsection (10) is added to section
22 509.221, Florida Statutes, to read:

23 509.221 Sanitary regulations.--

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

28 Section 3. Section 509.032, Florida Statutes, is
29 reenacted to read:

30 509.032 Duties.--

31

1 (1) GENERAL.--The division shall carry out all of the
2 provisions of this chapter and all other applicable laws and
3 rules relating to the inspection or regulation of public
4 lodging establishments and public food service establishments
5 for the purpose of safeguarding the public health, safety, and
6 welfare. The division shall be responsible for ascertaining
7 that an operator licensed under this chapter does not engage
8 in any misleading advertising or unethical practices.

9 (2) INSPECTION OF PREMISES.--

10 (a) The division has responsibility and jurisdiction
11 for all inspections required by this chapter. The division
12 has responsibility for quality assurance. Each licensed
13 establishment shall be inspected at least biannually, except
14 for transient and nontransient apartments, which shall be
15 inspected at least annually, and shall be inspected at such
16 other times as the division determines is necessary to ensure
17 the public's health, safety, and welfare. The division shall
18 establish a system to determine inspection frequency. Public
19 lodging units classified as resort condominiums or resort
20 dwellings are not subject to this requirement, but shall be
21 made available to the division upon request. If, during the
22 inspection of a public lodging establishment classified for
23 renting to transient or nontransient tenants, an inspector
24 identifies vulnerable adults who appear to be victims of
25 neglect, as defined in s. 415.102, or, in the case of a
26 building that is not equipped with automatic sprinkler
27 systems, tenants or clients who may be unable to self-preserve
28 in an emergency, the division shall convene meetings with the
29 following agencies as appropriate to the individual situation:
30 the Department of Health, the Department of Elderly Affairs,
31 the area agency on aging, the local fire marshal, the landlord

1 and affected tenants and clients, and other relevant
2 organizations, to develop a plan which improves the prospects
3 for safety of affected residents and, if necessary, identifies
4 alternative living arrangements such as facilities licensed
5 under part II or part III of chapter 400.

6 (b) For purposes of performing required inspections
7 and the enforcement of this chapter, the division has the
8 right of entry and access to public lodging establishments and
9 public food service establishments at any reasonable time.

10 (c) Public food service establishment inspections
11 shall be conducted to enforce provisions of this part and to
12 educate, inform, and promote cooperation between the division
13 and the establishment.

14 (d) The division shall adopt and enforce sanitation
15 rules consistent with law to ensure the protection of the
16 public from food-borne illness in those establishments
17 licensed under this chapter. These rules shall provide the
18 standards and requirements for obtaining, storing, preparing,
19 processing, serving, or displaying food in public food service
20 establishments, approving public food service establishment
21 facility plans, conducting necessary public food service
22 establishment inspections for compliance with sanitation
23 regulations, cooperating and coordinating with the Department
24 of Health in epidemiological investigations, and initiating
25 enforcement actions, and for other such responsibilities
26 deemed necessary by the division. The division may not
27 establish by rule any regulation governing the design,
28 construction, erection, alteration, modification, repair, or
29 demolition of any public lodging or public food service
30 establishment. It is the intent of the Legislature to preempt
31 that function to the Florida Building Commission and the State

1 Fire Marshal through adoption and maintenance of the Florida
2 Building Code and the Florida Fire Prevention Code. The
3 division shall provide technical assistance to the commission
4 and the State Fire Marshal in updating the construction
5 standards of the Florida Building Code and the Florida Fire
6 Prevention Code which govern public lodging and public food
7 service establishments. Further, the division shall enforce
8 the provisions of the Florida Building Code and the Florida
9 Fire Prevention Code which apply to public lodging and public
10 food service establishments in conducting any inspections
11 authorized by this part.

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

19 a. The variance shall not adversely affect the health
20 of the public.

21 b. No reasonable alternative to the required
22 construction exists.

23 c. The hardship was not caused intentionally by the
24 action of the applicant.

25 2. The division's advisory council shall review
26 applications for variances and recommend agency action. The
27 division shall make arrangements to expedite emergency
28 requests for variances, to ensure that such requests are acted
29 upon within 30 days of receipt.

30 3. The division shall establish, by rule, a fee for
31 the cost of the variance process. Such fee shall not exceed

1 \$150 for routine variance requests and \$300 for emergency
2 variance requests.

3 (f) In conducting inspections of establishments
4 licensed under this chapter, the division shall determine if
5 each coin-operated amusement machine that is operated on the
6 premises of a licensed establishment is properly registered
7 with the Department of Revenue. Each month the division shall
8 report to the Department of Revenue the sales tax registration
9 number of the operator of any licensed establishment that has
10 on location a coin-operated amusement machine and that does
11 not have an identifying certificate conspicuously displayed as
12 required by s. 212.05(1)(h).

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

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

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

20 (b) Inspect public lodging establishments and public
21 food service establishments whenever necessary to respond to
22 an emergency or epidemiological condition.

23 (c) Administer a public notification process for
24 temporary food service events and distribute educational
25 materials that address safe food storage, preparation, and
26 service procedures.

27 1. Sponsors of temporary food service events shall
28 notify the division not less than 3 days prior to the
29 scheduled event of the type of food service proposed, the time
30 and location of the event, a complete list of food service
31 vendors participating in the event, the number of individual

1 food service facilities each vendor will operate at the event,
2 and the identification number of each food service vendor's
3 current license as a public food service establishment or
4 temporary food service event licensee. Notification may be
5 completed orally, by telephone, in person, or in writing. A
6 public food service establishment or food service vendor may
7 not use this notification process to circumvent the license
8 requirements of this chapter.

9 2. The division shall keep a record of all
10 notifications received for proposed temporary food service
11 events and shall provide appropriate educational materials to
12 the event sponsors, including the food-recovery brochure
13 developed under s. 570.0725.

14 3.a. A public food service establishment or other food
15 service vendor must obtain one of the following classes of
16 license from the division: an individual license, for a fee of
17 no more than \$105, for each temporary food service event in
18 which it participates; or an annual license, for a fee of no
19 more than \$1,000, that entitles the licensee to participate in
20 an unlimited number of food service events during the license
21 period. The division shall establish license fees, by rule,
22 and may limit the number of food service facilities a licensee
23 may operate at a particular temporary food service event under
24 a single license.

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

29 (4) STOP-SALE ORDERS.--The division may stop the sale,
30 and supervise the proper destruction, of any food or food
31 product when the director or the director's designee

1 determines that such food or food product represents a threat
2 to the public safety or welfare. If the operator of a public
3 food service establishment licensed under this chapter has
4 received official notification from a health authority that a
5 food or food product from that establishment has potentially
6 contributed to any instance or outbreak of food-borne illness,
7 the food or food product must be maintained in safe storage in
8 the establishment until the responsible health authority has
9 examined, sampled, seized, or requested destruction of the
10 food or food product.

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

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

26 (7) PREEMPTION AUTHORITY.--The regulation of public
27 lodging establishments and public food service establishments,
28 the inspection of public lodging establishments and public
29 food service establishments for compliance with the sanitation
30 standards adopted under this section, and the regulation of
31 food safety protection standards for required training and

1 testing of food service establishment personnel are preempted
2 to the state. This subsection does not preempt the authority
3 of a local government or local enforcement district to conduct
4 inspections of public lodging and public food service
5 establishments for compliance with the Florida Building Code
6 and the Florida Fire Prevention Code, pursuant to ss. 553.80
7 and 633.022.

8 Section 4. Section 402.3031, Florida Statutes, is
9 created to read:

10 402.3031 Infant crib safety.--A child care facility,
11 family day care home, large family child care home, or
12 specialized child care facility for the care of mildly ill
13 children may not offer or provide for use a full-size or
14 non-full-size crib that is not in conformity with the
15 requirements of s. 501.144. The department shall enforce this
16 section and may adopt rules under ss. 120.536(1) and 120.54
17 necessary for the administration of this section.

18 Section 5. Infant crib safety enforcement
19 demonstration program.--

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

21 (a) "Division" means the Division of Hotels and
22 Restaurants of the Department of Business and Professional
23 Regulation.

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

26 (2) Effective October 1, 2004, through June 30, 2007,
27 the division shall implement an infant crib safety enforcement
28 demonstration program consistent with this section in Broward,
29 Franklin, Miami-Dade, Orange, and Osceola counties. During the
30 period of the demonstration program, the division is not
31 required to inspect infant cribs for enforcement of section

1 501.144, section 509.032, or section 509.221(10), Florida
2 Statutes, in a county that is not included in the
3 demonstration program.

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

5 (a) Each transient public lodging establishment
6 located in a county included in the demonstration program
7 shall annually file with the division a certificate attesting
8 that each full-size and non-full-size crib offered or provided
9 for use in the establishment has been inspected by a person
10 who is competent, based upon criteria established by the
11 division, to conduct the inspection, and that each crib is in
12 conformity with the requirements of section 501.144, Florida
13 Statutes. The division shall prescribe the forms, timetables,
14 and procedures for filing the certificate.

15 (b) The division shall inspect the full-size and
16 non-full-size cribs offered or provided for use in each
17 transient public lodging establishment located in a county
18 included in the demonstration program. The division shall
19 perform these crib inspections during its routine inspections
20 conducted under section 509.032, Florida Statutes. When
21 performing these crib inspections, the division is not
22 required to inspect every crib at each establishment, but may
23 use selective inspection techniques, including, but not
24 limited to, random sampling.

25 (4) The division shall conduct an evaluation of the
26 effectiveness of the demonstration program. By January 1,
27 2007, the division shall submit a report on the evaluation to
28 the Governor, the President of the Senate, the Speaker of the
29 House of Representatives, and the majority and minority
30 leaders of the Senate and the House of Representatives. The
31 report must include an evaluation of compliance by transient

1 public lodging establishments, the time and costs associated
2 with conducting crib inspections, and the barriers to
3 enforcing the Florida Infant Crib Safety Act. The report must
4 also include recommendations as to whether the demonstration
5 program should be continued, expanded, or revised to enhance
6 its administration or effectiveness.

7 (5) The Department of Business and Professional
8 Regulation may adopt rules under sections 120.536(1) and
9 120.54, Florida Statutes, for the administration of this
10 section.

11 (6) This section expires June 30, 2007.

12 Section 6. This act shall take effect October 1, 2004.
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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 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. Provides for regulation and rulemaking by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. Prohibits unsafe cribs in any child care facility, family day care home, large family child care home, or specialized child care facility for the care of mildly ill children. Provides for enforcement and rulemaking powers of the Department of Children and Family Services.

Creates an infant crib safety enforcement demonstration program. Provides that crib inspections are not required in certain counties during the duration of the program. Requires crib inspections in certain counties during the duration of the program. Provides requirements for crib inspections by the Department of Business and Professional Regulation. Requires transient public lodging establishments to provide for inspection of cribs. Requires a report. Provides for rulemaking by the Department of Business and Professional Regulation. Provides for the expiration of the demonstration program.