

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

A bill to be entitled

An act relating to infant cribs; creating s. 501.144, F.S., the Florida Infant Crib Safety Act; providing definitions; prohibiting 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; prohibiting transient public lodging establishments from offering or providing for use specified cribs determined to be unsafe for use by infants; providing criteria for determining the safety of infant cribs; providing exemptions; providing specified immunity from civil liability; providing penalties; providing that violation of the act constitutes an unfair and deceptive trade practice; authorizing 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; authorizing the Department of Agriculture and Consumer Services to adopt rules and prescribe forms; amending s. 509.221, F.S.; prohibiting the use of certain cribs in public lodging establishments; reenacting s. 509.032, F.S.; providing for regulation and rulemaking by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation; creating s. 402.3031, F.S.; prohibiting unsafe cribs in certain facilities; providing for enforcement and rulemaking powers of the Department of Children and Family

HB 0525

2004

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

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

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

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

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

HB 0525

2004

58 WHEREAS, it is the intent of the Legislature to reduce the
 59 occurrence of injuries and deaths to infants as a result of
 60 unsafe cribs that do not conform to modern safety standards by
 61 making it illegal to manufacture, remanufacture, retrofit, sell,
 62 contract to sell or resell, lease, or sublet any full-size or
 63 non-full-size crib that is unsafe, and

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

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

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

75 501.144 Florida Infant Crib Safety Act.--

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

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

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

HB 0525

2004

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

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

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

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

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

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

103 (3) PROHIBITED PRACTICES.--

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

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

HB 0525

2004

116 transient public lodging establishment is a violation of chapter
 117 509 and is subject to the penalties set forth in s. 509.261.

118 (c) A violation of this section is a deceptive and unfair
 119 trade practice and constitutes a violation of part II of chapter
 120 501, the Florida Deceptive and Unfair Trade Practices Act.

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

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

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

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

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

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

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

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

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

HB 0525

2004

144 the crib is equipped with latches that work to prevent the
 145 unintentional collapse of the crib.

146 4. Cutout designs on the end panels.

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

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

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

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

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

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

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

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

169 (5) EXEMPTIONS; CIVIL IMMUNITY.--

170 (a) A crib that is clearly not intended for use by an
 171 infant, including, but not limited to, a toy or display item, is
 172 exempt from this section if the crib is accompanied, at the time

HB 0525

2004

173 of manufacturing, remanufacturing, retrofitting, selling,
 174 leasing, or subletting, by a notice to be furnished by the
 175 commercial user on forms prescribed by the department declaring
 176 that the crib is not intended to be used for an infant and is
 177 dangerous to use for an infant.

178 (b) A commercial user, other than a child care facility,
 179 family day care home, large family child care home, or
 180 specialized child care facility for the care of mildly ill
 181 children, which has complied with the notice requirements set
 182 forth under paragraph (a) is immune from civil liability
 183 resulting from the use of a crib, notwithstanding the provisions
 184 of this section.

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

HB 0525

2004

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
 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.--

HB 0525

2004

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.--

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

HB 0525

2004

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 chapter
 265 400.

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

HB 0525

2004

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,
 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

HB 0525

2004

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
 322 for 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
 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 food service establishments.

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

HB 0525

2004

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
 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 food service event in
 368 which it participates; or an annual license, for a fee of no
 369 more than \$1,000, that entitles the licensee to participate in
 370 an 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

HB 0525

2004

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
 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

HB 0525

2004

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 food service establishments for
 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 day care 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
 426 may adopt rules under ss. 120.536(1) and 120.54 necessary for
 427 the administration of this section.

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

HB 0525

2004

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, 2004, through June 30, 2007, 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:

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

HB 0525

2004

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, 2007,
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
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, 2007.

482 Section 6. This act shall take effect October 1, 2004.