

Bill No. CS for CS for SB 856

Amendment No. 1 Barcode 152608

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Judiciary recommended the following amendment
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Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

501.144 Florida Infant Crib Safety Act.--

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

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

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

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1 agencies.

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

4 (c) "Department" means the Department of Agriculture
5 and Consumer Services.

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

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

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

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

18 (3) PROHIBITED PRACTICES.--

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

26 (b) No transient public lodging establishment shall
27 offer or provide for use a full-size or non-full-size crib
28 that is unsafe for any infant using the crib because the crib
29 does not conform to the standards set forth in paragraph
30 (4)(a) or because the crib has any of the dangerous features
31 or characteristics set forth in paragraph (4)(b). Further,

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1 violation of this section by a transient public lodging
 2 establishment is a violation of chapter 509 and is subject to
 3 the penalties set forth in s. 509.261.

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

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

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

11 1. 16 C.F.R. part 1303, relating to ban of
 12 lead-containing paint and certain consumer products bearing
 13 lead-containing paint; 16 C.F.R. part 1508, relating to
 14 requirements for full-size baby cribs; and 16 C.F.R. part
 15 1509, relating to requirements for non-full-size baby cribs.

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

18 3. Rules adopted by the department which incorporate
 19 amendments or supplements to the regulations or standards
 20 described in subparagraphs 1. and 2.

21 (b) Cribs are unsafe which have any of the following
 22 dangerous features or characteristics:

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

24 2. Spaces between side slats more than 2 3/8 inches.

25 3. A mattress support that can be easily dislodged
 26 from any point of the crib. A mattress segment can be easily
 27 dislodged if it cannot withstand at least a 25-pound upward
 28 force from underneath the crib. For portable folding cribs,
 29 this subparagraph shall not apply to mattress supports or
 30 mattress segments that are designed to allow the crib to be
 31 folded, provided that the crib is equipped with latches that

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1 work automatically to prevent the unintentional collapse of
2 the crib.

3 4. Cutout designs on the end panels.

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

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

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

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

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

19 8. A tear in mesh or fabric sides for a non-full-size
20 crib.

21 9. With respect to portable folding cribs, latches
22 that do not work automatically to prevent the unintentional
23 collapse of the crib.

24 10. Crib sheets used on mattresses must be sized to
25 match the mattress size.

26 (5) EXEMPTIONS; CIVIL IMMUNITY.--

27 (a) A crib that is clearly not intended for use by an
28 infant, including, but not limited to, a toy or display item,
29 is exempt from this section if the crib is accompanied, at the
30 time of manufacturing, remanufacturing, retrofitting, selling,
31 leasing, or subletting by a notice to be furnished by the

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1 commercial user on forms prescribed by the department
2 declaring that the crib is not intended to be used for an
3 infant and is dangerous to use for an infant.

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

11 (6) PENALTY.--

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

18 (b) A transient public lodging establishment that
19 violates subsection (3) shall be subject to the penalties set
20 forth in s. 509.261.

21 (c) A child care facility, family day care home, large
22 family child care home, or specialized child care facility for
23 the care of mildly ill children that violates subsection (3)
24 shall be subject to the penalties set forth in ss.
25 402.301-402.319.

26 (7) PUBLIC EDUCATION MATERIALS AND PROGRAMS.--The
27 Department of Agriculture and Consumer Services, the
28 Department of Business and Professional Regulation, and the
29 Department of Children and Family Services may collaborate
30 with any public agency or private sector entity to prepare
31 public education materials or programs designed to inform

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1 parents, child care providers, commercial users, and any other
2 person or entity that is likely to place unsafe cribs in the
3 stream of commerce of the dangers posed by secondhand,
4 hand-me-down, or heirloom cribs that do not conform to the
5 standards set forth in this section or that have any of the
6 dangerous features or characteristics set forth in this
7 section.

8 (8) RULEMAKING AUTHORITY.--The department may adopt
9 rules pursuant to ss. 120.536(1) and 120.54 to administer this
10 section.

11 Section 2. Subsection (10) is added to section
12 509.221, Florida Statutes, to read:

13 509.221 Sanitary regulations.--

14 (10) No transient public lodging establishment shall
15 offer or provide for use a full-size or non-full-size crib
16 that is unsafe for any infant using the crib because it is not
17 in conformity with the requirements of s. 501.144.

18 Section 3. Section 509.032, Florida Statutes, is
19 reenacted to read:

20 509.032 Duties.--

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

29 (2) INSPECTION OF PREMISES.--

30 (a) The division has responsibility and jurisdiction
31 for all inspections required by this chapter. The division

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

24 (b) For purposes of performing required inspections
25 and the enforcement of this chapter, the division has the
26 right of entry and access to public lodging establishments and
27 public food service establishments at any reasonable time.

28 (c) Public food service establishment inspections
29 shall be conducted to enforce provisions of this part and to
30 educate, inform, and promote cooperation between the division
31 and the establishment.

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

30 (e)1. Relating to facility plan approvals, the
31 division may establish, by rule, fees for conducting plan

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1 reviews and may grant variances from construction standards in
2 hardship cases, which variances may be less restrictive than
3 the provisions specified in this section or the rules adopted
4 under this section. A variance may not be granted pursuant to
5 this section until the division is satisfied that:

6 a. The variance shall not adversely affect the health
7 of the public.

8 b. No reasonable alternative to the required
9 construction exists.

10 c. The hardship was not caused intentionally by the
11 action of the applicant.

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

17 3. The division shall establish, by rule, a fee for
18 the cost of the variance process. Such fee shall not exceed
19 \$150 for routine variance requests and \$300 for emergency
20 variance requests.

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

31 (g) In inspecting public food service establishments,

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1 the department shall provide each inspected establishment with
2 the food-recovery brochure developed under s. 570.0725.

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

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

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

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

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

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

30 3.a. A public food service establishment or other food
31 vendor must obtain a license from the division for each

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1 temporary food service event in which it participates.

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

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

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

31 (6) RULEMAKING AUTHORITY.--The division shall adopt

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1 such rules as are necessary to carry out the provisions of
2 this chapter.

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

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

18 402.3031 Infant crib safety.--No child care facility,
19 family day care home, large family child care home, or
20 specialized child care facility for the care of mildly ill
21 children shall offer or provide for use a full-size or
22 non-full-size crib that is not in conformity with the
23 requirements of s. 501.144. The department shall enforce the
24 provisions of this section and may adopt rules pursuant to ss.
25 120.536(1) and 120.54 to administer this section.

26 Section 5. This act shall take effect October 1, 2001.
27
28

29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 Delete everything before the enacting clause

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1 rulemaking by the Division of Hotels and
2 Restaurants of the Department of Business and
3 Professional Regulation; creating s. 402.3031,
4 F.S.; prohibiting unsafe cribs in certain
5 facilities; providing for enforcement and
6 rulemaking powers of the Department of Children
7 and Family Services; providing an effective
8 date.

9
10 WHEREAS, the disability and death of infants resulting
11 from injuries sustained in crib accidents are a serious threat
12 to the public health, safety, and welfare of the people of the
13 state, and

14 WHEREAS, the design and construction of an infant crib
15 must ensure that it is safe, and a parent or caregiver has a
16 right to believe that an infant crib in use is a safe
17 containment in which to place an infant, and

18 WHEREAS, more than 13,000 infants are injured in unsafe
19 cribs every year, and

20 WHEREAS, prohibiting the manufacture, remanufacture,
21 retrofitting, sale, contracting to sell or resell, leasing, or
22 subletting of unsafe infant cribs, particularly unsafe
23 secondhand, hand-me-down, or heirloom cribs, will reduce
24 injuries and deaths caused by cribs, and

25 WHEREAS, it is the intent of the Legislature to reduce
26 the occurrence of injuries and deaths to infants as a result
27 of unsafe cribs that do not conform to modern safety standards
28 by making it illegal to manufacture, remanufacture, retrofit,
29 sell, contract to sell or resell, lease, or sublet, any
30 full-size or non-full-size crib that is unsafe, and

31 WHEREAS, it is the intent of the Legislature to

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1 encourage public and private collaboration in disseminating
2 materials relative to the safety of infant cribs to parents,
3 child care providers, and those individuals who would be
4 likely to sell, donate, or otherwise provide to others unsafe
5 infant cribs, NOW, THEREFORE,
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