

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: CS/CS/SB 856

SPONSOR: Commerce and Economic Opportunities Committee, Agriculture and Consumer Services Committee, and Senator Wasserman Schultz

SUBJECT: Infant Cribs

DATE: April 13, 2001 REVISED: 04/17/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The CS for CS for Senate Bill 856 prohibits the manufacture and sale of cribs determined to be unsafe for use by infants and prohibits transient public lodging establishments from using these unsafe cribs. Violations are subject to civil liability, are established as unfair trade practices, and may be subject to criminal penalties if the violation was willful and knowing. Transient public lodging establishments are subject to licensure discipline for violations.

This committee substitute creates section 501.144, Florida Statutes, and substantially amends s. 509.221, F.S.

II. Present Situation:

The United States Consumer Product Safety Commission (commission) reports that during the period from 1995 to 1997, 106 deaths were recorded involving cribs.¹ As reported in the preamble to the committee substitute, more than 13,000 infants are injured in crib accidents each year. Since the commission adopted federal regulations imposing requirements for baby cribs in the early 1970s, the commission estimates the annual number of deaths involving cribs has declined from about 150 to 200 deaths per year to about 35 deaths per year.²

¹ U.S. Consumer Product Safety Comm'n, *Consumer Product Safety Review: Winter 2001*, 2 (2001).

² *Id.*

These federal regulations,³ adopted in 1973 and 1976, address side height, slat spacing, mattress fit, and other factors.⁴ The federal regulations contain 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. These standards were amended in 1982 to prohibit hazardous cutouts in crib end panels.⁵ The commission also worked with the American Society for Testing and Materials (ASTM) on industry voluntary safety standards for cribs, including provisions to address entanglement on cornerposts and, most recently in 1999, to address the integrity of crib slats.⁶

In Florida, there are currently no controls over the types of cribs provided by transient public lodging establishments. There is currently no state agency responsible for informing the public about the dangers of using unsafe, secondhand, hand-me-down, or heirloom cribs.

III. Effect of Proposed Changes:

Manufacture and Sale of Unsafe Cribs Prohibited, Criminal Penalties

The committee substitute prohibits the manufacture, remanufacture, retrofit, sale, contract for sale or resale, lease, or sublet of unsafe infant cribs. These prohibitions apply to “commercial users,” which the committee substitute defines as “dealers”⁷ who collect sales and use taxes. Thus, these prohibitions apply to virtually all businesses that would sell an infant crib. The committee substitute also applies these prohibitions to child-care facilities licensed by the Department of Children and Family Services and local governments.

If a commercial user willfully and knowingly violates these prohibitions, the committee substitute 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.

Use of Unsafe Cribs by Transient Public Lodging Establishments Prohibited

The committee substitute prohibits transient public lodging establishments from offering, providing for use, or otherwise placing in the stream of commerce unsafe cribs. These establishments include hotels, motels, resort condominiums, transient apartments, roominghouses, bed-and-breakfast inns, and resort dwellings.⁸ The license of any transient public

³ 16 C.F.R. pts. 1508 & 1509.

⁴ *Id.*; U.S. Consumer Product Safety Comm’n, *Consumer Product Safety Review: Winter 2001*, 2 (2001).

⁵ *Id.*

⁶ U.S. Consumer Product Safety Comm’n, *Consumer Product Safety Review: Winter 2001*, 2 (2001); American Society for Testing and Materials, Voluntary Standards F966-00 (2000), F1169-99 (1999), & F1822-97 (1997).

⁷ *See* s. 212.06(2), F.S.

⁸ *See* s. 509.242, F.S.

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.⁹

Unsafe Cribs

The committee substitute defines a “crib” as a bed for an infant and includes full-size and non-full-size cribs intended for use by infants. The committee substitute defines an infant as a person less than 3 years old and less than 35 inches tall. The Department of Health recommended the term “toddler” be used throughout the committee substitute in addition to the term “infant.” Two current statutes use these terms interchangeably and define the term as a child from birth until the child’s third birthday.¹⁰ These definitions are, therefore, distinguished from the definition provided in the committee substitute because they lack the 35-inch height standard.

The committee substitute 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.

The committee substitute authorizes the Department of Agriculture and Consumer Services (department) to adopt rules under the Florida Administrative Procedure Act¹¹ to administer the act. In addition, the committee substitute allows, but does not require, the department to adopt rules incorporating future changes to the regulations adopted the United States Consumer Product Safety Commission and the standards published by the American Society for Testing and Materials.

Because adherence to the federal regulations is required for all new cribs, the committee substitute’s incorporation of these regulations will affect only cribs manufactured before the regulations took effect; however, the committee substitute also requires conformance to the voluntary standards published by the American Society for Testing and Materials. Thus, the committee substitute requires standards for new infant cribs that are not necessarily imposed by the federal regulations. The committee substitute further declares that infant cribs are unsafe if any of the following features are present:

⁹ See s. 509.261, F.S.

¹⁰ Sections 391.302(4) & 411.202(12), F.S.

¹¹ Chapter 120, F.S.

- Spaces between side slats are too wide or corner posts are extended.
- Mattress support can be easily dislodged.
- Cutout designs on end panels.
- Rail heights are less than a specified minimum.
- Loose hardware, sharp edges, rough surface, and tear in mesh or fabric sides.
- Latches do not prevent unintentional collapse of the crib.
- Use of sheets that are not properly matched to size of mattress.

Civil Liability

The committee substitute exempts an infant crib from these standards if the crib is clearly not intended for use by an infant and the crib is accompanied by a notice to that effect before being put into the stream of commerce. The form of the notice is determined by the Department of Agriculture and Consumer Services. The committee substitute also provides immunity from civil liability, resulting from the use of a crib, to a commercial user who complies with this notice requirement.

The committee substitute establishes that a violation is a deceptive and unfair trade practice under Florida law, which provides remedies such as declaratory judgments, injunctions, and actions for damages.¹²

Public Education

The committee substitute allows both the Department of Agriculture and Consumer Affairs and the Department of Business and Professional Regulation 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 placing unsafe, secondhand, hand-me-down, or heirloom cribs in the stream of commerce.

Effective Date

The committee substitute takes effect October 1, 2001. Because the committee substitute imposes criminal penalties upon commercial users for willful and knowing violations, any violation committed after the effective date is subject to prosecution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹² See part II of ch. 501, F.S.

C. Trust Funds Restrictions:

None.

D. Constitutional Issues:

Subsection (4)(a)3. provides that a crib is presumed to be unsafe if it does not conform to “Rules adopted by the department which incorporate amendments or supplements to the regulations or standards described in subparagraphs 1. and 2.” The regulations and standards referred to are those promulgated by the United States Consumer Product Safety Commission and the American Society for Testing and Materials.

This provision of the bill potentially violates two constitutional provisions. First, The bill imposes criminal penalties of no more than \$10,000 and imprisonment for no longer than 1 year for commercial users who willfully and knowingly place a crib into the stream of commerce that is not in compliance with future regulations and standards adopted by the agency. Accordingly, subsection (4)(a)3. may violate s.18 of Article I of the State Constitution which provides that “no 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).

Second, s. 3 of Article II of the State Constitution, which is the separation of powers doctrine, provides that the powers of the state government shall be divided into legislative, executive and judicial branches, with no person belonging to one branch exercising any powers appertaining to another branch. Florida courts have held that when material other than Florida law is incorporated in a statute by reference, only the version of that material which existed at the time the legislature made the incorporation will be given effect. An attempt to incorporate future versions of federal law or industry standards would delegate to Congress or the industry board the power to make Florida law, which is prohibited by the separation of powers doctrine. *See, Florida Industrial Commission, et. al. v. State ex rel. Orange Oil Co.*, 21 So.2d 599, 603 (Fla. 1945). Subsection (4)(a)3. arguably violates this provision of the State Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Commercial users whose businesses involve older, used cribs may be prevented from selling these cribs, or they may have to incur costs to make the cribs meet the required safety standards. Transient public lodging establishments may have to replace some of the cribs in use or may incur expenses to make some of their cribs meet the required safety standards. The precise impact of these circumstances is not known.

C. Government Sector Impact:

The Department of Business and Professional Regulation reports that the committee substitute will impose a nominal impact on its Division of Hotels and Restaurants. Standards for inspecting infant cribs will need to be incorporated into the training and materials used by the inspectors who inspect transient public lodging establishments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Subsection (6) provides that a commercial user that willfully and knowingly violates subsection (3) commits a misdemeanor of the first degree and imposes potential monetary fines and imprisonment. Subsection (3) provides that commercial users "...may not manufacture...sell...or otherwise place in the stream of commerce..." a crib that is unsafe because it does not conform to the standards in subsection (4)(b). One of the standards in subsection (4)(b) is "any screw, bolt, or hardware that is loose and not secured." Most cribs that are manufactured and sold are not completely assembled and they are often packaged with loose screws, bolts and other hardware that the buyer must incorporate when assembling the crib. Accordingly, most manufacturers and retailers will be violating this provision of the bill, thereby subjecting them to criminal penalties.

VIII. Amendments:

#1 by Judiciary

Strike everything amendment that: revises the definition of the term "commercial user"; removes the definition of the term "person"; removes the phrase "or otherwise place in the stream of commerce" from the prohibited practices section of the bill; adds an exception for portable folding cribs in subparagraph 3. of subsection (4)(b), relating to dangerous features on cribs; clarifies that loose, unsecured screws, bolts or hardware will only be considered dangerous when they exist upon completion of assembly; removes the phrase "placement in the stream of commerce" from subsection (5), relating to civil immunity; modifies the exemption from civil immunity to provide that child care facilities are exempt from this subsection; revises subsection (6) relating to civil and criminal penalties; adds a new subsection (10) to s. 509.221, F.S., relating to sanitary regulations for transient public lodging establishments; reenacts s. 509.032, F.S., relating to duties of the Division of Hotels and Restaurants; and creates s. 402.3031, F.S., to provide that no child care facility, family day care home, large family child care home, or specialized child care facility for the care of mildly ill children shall use cribs that do not conform with this act, and the Department of Children and Families is directed to enforce this section and adopt rules to administer this section. (WITH TITLE AMENDMENT)