

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/SB 158
 SPONSOR: Commerce and Economic Opportunities Committee and Senator Wasserman Schultz
 SUBJECT: Infant Cribs
 DATE: February 6, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable</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>Favorable</u>
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 158 prohibits the manufacture and sale of infant cribs determined to be unsafe and prohibits transient public lodging establishments and child care facilities from using unsafe cribs. Violations constitute deceptive and unfair trade practices, thereby subject to increased civil liability. In addition, transient public lodging establishments and child care facilities are subject to penalties governed by their respective regulatory statutes. Further, a willful-and-knowing violation by a commercial user, other than a transient public lodging establishment or a child care facility, is subject to criminal penalties.

This committee substitute substantially amends section 509.221, Florida Statutes. The committee substitute also creates ss. 402.3031 and 501.144, F.S., and reenacts s. 509.032, F.S.

II. Present Situation:

During the 2001 Regular Session, the Legislature enacted CS for CS for Senate Bill 856, which is substantially similar to CS/SB 158 and which was subsequently vetoed by the Governor.

Infant Cribs

A report issued by the United States Consumer Product Safety Commission cites that, during the period from 1995 to 1997, 106 deaths were recorded involving cribs.¹ The preamble to CS/SB 158 states that more than 13,000 infants are injured in crib accidents each year. Since 1984, the commission has received reports of the deaths of 17 babies, most under 12 months old,

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

who suffocated or strangled primarily when they became entangled in sheets in their cribs or beds.² Two of these deaths related to fitted crib sheets. The commission also warns a strangulation hazard may exist with some cribs that have projections on the corner posts.³ According to the commission, decorative knobs or corner posts that extend above the crib end or side may catch clothing, necklaces, and pacifier cords as the child moves about in the corner areas of the crib. The commission reports these knobs or posts were implicated in two cases of brain damage and 48 deaths due to strangulation.

Federal regulations (16 C.F.R. parts 1508 and 1509) imposing requirements for baby cribs were adopted in 1973 and 1976. Since the adoption of the federal regulations, the commission estimates the annual number of deaths involving cribs has declined from between 150 and 200 deaths per year to about 35 deaths per year. These federal regulations address side height, slat spacing, mattress fit, and other factors, as well as requirements that must be followed in the manufacture of new cribs; however, these standards do not apply to cribs that are older or previously used before the federal regulations were adopted. The standards were amended in 1982 to prohibit hazardous cutouts in crib end panels. The commission also worked with the American Society for Testing and Materials on industry voluntary safety standards for cribs, which included provisions to address entanglement on corner posts and, most recently in 1999, to address the integrity of crib slats.

Transient Public Lodging Establishments

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

In his veto message accompanying CS/CS/SB 856, the Governor wrote that he would direct the Department of Business and Professional Regulation to “immediately begin an aggressive educational campaign to provide hotel and motel licensees with infant crib safety information.” The Governor wrote:

² U.S. Consumer Product Safety Comm’n, *Consumer Product Safety Alert: Crib Sheets*, available at <http://www.cpsc.gov/cpsc/pub/pubs/5137.pdf> (last visited Jan. 16, 2002).

³ U.S. Consumer Product Safety Comm’n, *Consumer Product Safety Alert: Some Crib Cornerposts May Be Dangerous*, available at <http://www.cpsc.gov/cpsc/pub/pubs/5027.pdf> (last visited Jan. 16, 2002).

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

In July 2001, the department issued a letter to licensed public lodging establishments urging voluntary compliance with crib safety standards and providing an information packet.⁴ The packet included the crib safety checklist for operators of public lodging establishments, a list of frequently asked questions about crib safety, and a list of crib safety tips for guests of public lodging establishments. The crib safety tips were provided in the English, Spanish, French, German, and Portuguese languages.

Child Care Facilities and Homes

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

The minimum statewide licensing standards for child care facilities are found in ch. 65C-22, F.A.C. Similar standards for licensing specialized child care facilities for the care of mildly ill children are found in ch. 65C-25, F.A.C. Among these standards, rules 64C-22.002(5)(f) and 65C-25.004(5)(f), F.A.C., require cribs in these facilities to meet the construction regulations adopted by the U.S. Consumer Product Safety Commission in 16 C.F.R. part 1508 (full-size cribs) and part 1509 (non-full-size cribs). These standards do not, however, require adherence to the federal regulations governing the ban on lead-containing paint products in 16 C.F.R. part

⁴ Fla. Dep't of Bus. & Professional Reg., *Form HR 5027-011 (Crib Safety Letter)* (last modified July 26, 2001), *Form HR 5027-012 (Crib Safety Hotel and Motel Checklist)* (last modified July 31, 2001), *Form HR 5027-013 (Crib Safety Tips)* (last modified July 31, 2001), and *Form HR 5027-014 (Crib Safety Frequently Asked Questions)* (last modified July 26, 2001), available at <http://www.state.fl.us/dbpr/hr/programs/crib/index.shtml>.

1303, nor do they include the American Society for Testing and Materials' standards for design and testing of infant cribs.

Similar to a child care facility, a "family day care home" is an occupied residence in which child care is provided for children of at least two unrelated families for compensation. Under current law, certain family day care homes are subject to licensure, while others must register annually with the Department of Children and Family Services (s. 402.313, F.S.). Resembling a family day care home, a "large family care home" is also an occupied residence in which child care is provided for children of at least two unrelated families for compensation, but a large family child care home must also keep at least two full-time child care personnel on the premises during the hours of operation. Large family child care homes are subject to licensure (s. 402.3131, F.S.). The Department of Children and Family Services is required to adopt minimum standards for large family child care homes and for family day care homes that are subject to licensure (ss. 402.313(10) and 402.3131(5), F.S.). These standards are found in ch. 65C-20, F.A.C. Rule 65C-20.010(1)(i), F.A.C., requires that, when napping, each child in care must be provided safe and sanitary bedding. The rule defines the term "bedding" as a cot, bed, crib, mattress, playpen, or floor mat and specifies that "mats" must be at least one-inch thick and covered with an impermeable surface. With these exceptions, the rules do not contain safety regulations specifically related to cribs.

Each licensed child care facility, specialized child care facility for the care of mildly ill children, family day care home, and large family child care home is subject to inspection by the Department of Children and Family Services or the local licensing agency, as applicable (s. 402.311, F.S.; rules 65C-20.012(3) and 65C-20.013(1), F.A.C.). According to the department, its staff is responsible for the inspection and licensure of child care facilities and homes in 58 of the 67 counties in the state.⁵ Nine counties regulate licensing of child care facilities and homes: Alachua, Brevard, Broward, Hillsborough, Leon, Palm Beach, Pinellas, Polk, and Sarasota. Volusia County, however, designated a local licensing agency to regulate only family day care homes.

Florida Deceptive and Unfair Trade Practices Act

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

Current law allows the Department of Legal Affairs to adopt rules specifying acts or practices that violate FDUTPA, but requires these rules to be consistent with the rules, regulations, and decisions of the Federal Trade Commission and the federal courts interpreting the Federal Trade Commission Act. After the Fourth District Court of Appeal ruled in 1994 that no specific rule or

⁵ Fla. Dep't of Children & Family Services, *Child Care Licensing*, at http://www5.myflorida.com/cf_web/myflorida2/healthhuman/childcare/licensingpermitting/index.html (last visited Jan. 16, 2002).

regulation is needed to find that conduct is an unfair or deceptive act or practice under FDUTPA, in 1996 and 1997, the department repealed the rules it had adopted codifying specific acts and practices as violations and adopted rule 2-2.001, F.A.C., which states:

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

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

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

- To obtain a declaratory judgment that an act or practice violates FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; or
- On behalf of one or more consumers for the actual damages caused by an act or practice that violates FDUTPA.

However, damages are not recoverable against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated FDUTPA (s. 501.207, F.S.).

With the exception of violations that victimize senior citizens or handicapped persons,⁶ a person who willfully uses a method, act, or practice declared unlawful under FDUTPA, or who willfully violates any rules adopted under FDUTPA, is liable for a civil penalty of not more than \$10,000 for each violation (s. 501.2075, F.S.). A willful violation occurs when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule. If a civil penalty is assessed, the department or state attorney, as applicable, is entitled to reasonable attorney's fees and costs.

In addition to enforcement by the department or a state attorney, a consumer who has suffered a loss resulting from a violation of FDUTPA may bring an individual action to recover actual damages, plus certain attorney's fees and court costs. However, damages, fees, or costs are not

⁶ A person who victimizes or attempts to victimize a senior citizen or handicapped person under FDUTPA is liable for a civil penalty of not more than \$15,000 for each violation (s. 501.2077(2), F.S.).

recoverable against a retailer who has, in good faith, engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated FDUTPA (s. 501.211, F.S.).

III. Effect of Proposed Changes:

Florida Infant Crib Safety Act (Section 1)

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

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

If a commercial user, other than a transient public lodging establishment or a licensed child care facility or home, willfully and knowingly violates these prohibitions, the 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.

If a child care facility, family day care home, large family child care home, or specialized child care facility for the care of mildly ill children that is licensed by the Department of Children and Family Services or the local licensing agency violates these prohibitions, the license of the child care facility or home is subject to discipline by the department or the local licensing agency, as applicable.

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

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

Description of an Unsafe Crib

The committee substitute defines a “crib” as a bed for an infant and includes full-size and non-full-size cribs designed to accommodate an infant. An infant is defined as a person less than 3 years of age and less than 35 inches tall. The 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.

Florida Department of Agriculture and Consumer Services:

- Rules adopted by the department that implement the provisions of the Florida Infant Crib Safety Act.

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

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

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

Deceptive and Unfair Trade Practices, Civil Immunity

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

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

The committee substitute also provides qualified immunity from civil liability for commercial users that lease cribs for use away from the premises of the commercial user. This immunity applies to liability created by the Florida Infant Crib Safety Act resulting from the assembly of a crib by a person other than the commercial user or its agents or resulting from the use of crib sheets that were not provided by the commercial user or its agents.

Public Education

The committee substitute authorizes the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, and the Department of Children and Family Services to collaborate with any public agency or private-sector entity to prepare materials or programs designed to inform the public about the dangers posed by the use of unsafe, secondhand, hand-me-down, or heirloom cribs that do not conform to the standards required by the Florida Infant Crib Safety Act.

Rulemaking

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

Transient Public Lodging Establishments (Sections 2 and 3)

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

Child Care Facilities and Homes (Section 4)

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

Effective Date (Section 5)

The committee substitute provides an effective date of October 1, 2002.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Commercial users that sell infant cribs may be prevented from selling older cribs that remain in inventory if these cribs are considered unsafe under the Florida Infant Crib Safety Act, or they may have to incur costs to make the cribs meet the required safety standards. Transient public lodging establishments may have to replace older cribs in use or may incur expenses to retrofit some of their cribs to meet the required safety standards. Further, although infant cribs used in child care facilities and homes are currently required to adhere to federal regulations governing the construction of cribs, child care facilities and homes are not currently required to comply with federal regulations governing the ban on lead-containing paint products, the American Society for Testing and Materials' standards for design and testing of infant cribs, or the Florida Infant Crib Safety Act's ban on cribs that have certain dangerous features or characteristics. These additional crib safety standards, which may exceed the federal regulations governing the

construction of cribs, may prohibit child care facilities and homes from using or reselling some cribs that remain in inventory without incurring additional costs to make the cribs meet the required safety standards. The precise impact of these circumstances is not known.

C. Government Sector Impact:

Department of Business and Professional Regulation

During the 2001 Regular Session, the Department of Business and Professional Regulation estimated that CS/CS/SB 856, which was subsequently vetoed by the Governor, had no fiscal impact on the department or its Division of Hotels and Restaurants. In his veto message accompanying CS/CS/SB 856, the Governor disagreed, writing that, “if properly and diligently implemented, the bill could consume an unknown and substantial amount of agency resources and could impede the Department’s ability to perform its other inspection responsibilities.”

According to its analysis of CS/SB 158, the department estimates the Division of Hotels and Restaurants does not have sufficient resources to accommodate a full inspection of every crib at each public lodging establishment during each twice-annual routine inspection. To inspect for unsafe cribs at this frequency, the department estimates it would require an additional 23 full-time-equivalent positions; \$1,000,625 in recurring salaries, benefits, and related expenses; and \$145,324 in non-recurring expenses and operating capital outlay for fiscal year 2002-2003. These cost estimates include the purchase of specialized crib testing equipment and 8 hours of training for 240 inspectors. The cost estimates are based upon calculations that approximate the 12,539 licensed establishments would own about 84,613 cribs and the inspection of each crib would occupy an average 15 minutes to complete.

As discussed in the Effect of Proposed Changes section of this analysis, CS/SB 158 is unclear to what extent the division is required to inspect for unsafe cribs, whether random sampling or selective inspections are permitted or whether every crib on the premises of a transient public lodging establishment must be inspected twice each year. The Legislature may wish to amend the committee substitute to clarify the extent of the division’s inspections for unsafe cribs, which could cause a significant difference in the estimated government sector impact.

Department of Children and Family Services

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

Department of Agriculture and Consumer Services

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
