

774

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. FUSCHILLO, LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to prohibiting the sale of unsafe cribs and restricting the use of such cribs in certain settings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 399-i of the general business law, as added by
2 chapter 245 of the laws of 2010, is amended to read as follows:
3 S 399-i. Prohibit [any] THE sale of unsafe cribs AND RESTRICT USE OF
4 SUCH CRIBS IN CERTAIN SETTINGS. 1. For the purposes of this section, the
5 following terms shall have the following meanings:
6 (a) "Crib" [means] SHALL MEAN a bed or containment designated to
7 accommodate an infant.
8 (b) "Distribute" [means] SHALL MEAN to deliver to a person other than
9 the purchaser, for the purpose of retail sale.
10 (c) "CHILD CARE FACILITY" SHALL MEAN ANY PLACE SUBJECT TO SECTION
11 THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW OR ARTICLE FORTY-SEVEN
12 OF THE NEW YORK CITY HEALTH CODE AS AUTHORIZED BY SECTION FIVE HUNDRED
13 FIFTY-EIGHT OF THE NEW YORK CITY CHARTER.
14 (D) "PLACE OF PUBLIC ACCOMMODATION" SHALL MEAN ANY INN, HOTEL, MOTEL,
15 MOTOR COURT OR OTHER ESTABLISHMENT THAT PROVIDES LODGING TO TRANSIENT
16 GUESTS. SUCH TERM SHALL NOT INCLUDE AN ESTABLISHMENT TREATED AS AN
17 APARTMENT BUILDING FOR PURPOSES OF ANY STATE OR LOCAL LAW OR REGULATION
18 OR AN ESTABLISHMENT LOCATED WITHIN A BUILDING THAT CONTAINS NOT MORE
19 THAN FIVE ROOMS FOR RENT OR HIRE AND THAT IS ACTUALLY OCCUPIED AS A
20 RESIDENCE BY THE PROPRIETOR OF SUCH ESTABLISHMENT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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(E) "Person" shall mean a natural person, firm, corporation, limited liability company, association, or an employee or agent of a natural person or an entity included in this definition.

[(d)] (F) "Unsafe crib" shall mean any crib that does not conform to the standards endorsed or established by the federal Consumer Product Safety Commission including, but not limited to, Title 16 of the Code of Federal Regulations and the standards endorsed or established by [American Society for Testing and Materials International (ASTM)] ASTM INTERNATIONAL (FORMERLY KNOWN AS THE AMERICAN SOCIETY FOR TESTING AND MATERIALS), as follows:

(i) Part [1508] 1219 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement such part;

(ii) Part [1509] 1220 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement such part;

(iii) Part 1303 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement such part; and

(iv) The following standards and specifications of ASTM International for corner posts of baby cribs and structural integrity of baby cribs and any standards and specifications adopted to amend or supplement such standards:

(A) ASTM F 966 (corner post standard),

(B) ASTM F 1169 (structural integrity of full-size baby cribs), and

(C) ASTM F 406 (non-full-size cribs).

2. (a) No person shall import, manufacture, or distribute an unsafe crib.

(b) No retailer, as defined in subdivision eleven of section four hundred ninety-a of this chapter, or secondhand dealer, as defined in subdivision six of section four hundred ninety-a of this chapter, shall sell, lease or otherwise make available an unsafe crib.

3. (A) ON OR AFTER DECEMBER TWENTY-EIGHTH, TWO THOUSAND THIRTEEN, NO CHILD CARE FACILITY OR PLACE OF PUBLIC ACCOMMODATION SHALL USE OR HAVE ON THE PREMISES AN UNSAFE CRIB. THIS SUBDIVISION SHALL NOT APPLY TO AN ANTIQUE OR COLLECTIBLE CRIB IF IT IS NOT USED BY, OR ACCESSIBLE TO, ANY CHILD IN THE CHILD CARE FACILITY OR PLACE OF PUBLIC ACCOMMODATION.

(B) THE OFFICE OF CHILDREN AND FAMILY SERVICES, IN CONSULTATION WITH THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, SHALL NOTIFY CHILD CARE FACILITIES OF THE PROVISIONS OF THIS SUBDIVISION IN PLAIN, NON-TECHNICAL LANGUAGE THAT WILL ENABLE EACH CHILD CARE FACILITY TO EFFECTIVELY INSPECT AND IDENTIFY UNSAFE CRIBS. SUCH NOTICE SHALL BE GIVEN TO EVERY CHILD CARE FACILITY UPON THE EFFECTIVE DATE OF THIS ARTICLE OR AS SOON AS PRACTICABLE THEREAFTER, AND SUCH NOTICE SHALL ALSO BE GIVEN TO EACH APPLICANT FOR LICENSE OR REGISTRATION PURSUANT TO SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW.

(C) THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL PROMULGATE RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION.

4. Whenever there shall be a violation of SUBDIVISION TWO OF this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the

1 attorney general as provided in paragraph six of subdivision (a) of
2 section eighty-three hundred three of the civil practice law and rules,
3 and direct restitution. Whenever the court shall determine that a
4 violation of SUBDIVISION TWO OF this section has occurred, the court may
5 impose a civil penalty of not more than one thousand dollars for each
6 violation. Each sale of an unsafe crib in violation of this section
7 shall constitute a separate violation. In connection with any such
8 proposed application, the attorney general is authorized to take proof
9 and make a determination of the relevant facts and to issue subpoenas in
10 accordance with the civil practice law and rules.

11 [4.] 5. If any provision of this section or the application thereof to
12 any person or circumstances is held unconstitutional, such invalidity
13 shall not affect other provisions or applications of this section which
14 can be given effect without the invalid provision or application, and to
15 this end the provisions of this section are severable.

16 S 2. This act shall take effect on the thirtieth day after it shall
17 have become a law; provided that the office of children and family
18 services is authorized to promulgate any and all rules and regulations
19 and take any other measures necessary to implement this act on its
20 effective date on or before such date.