

7389--A

I N   S E N A T E

May 14, 2014

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Introduced by Sens. GALLIVAN, KENNEDY, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to consumer protection from prescription drug reimportation

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

1     Section 1. The general business law is amended by adding a new article  
2     38-B to read as follows:

3                                 ARTICLE 38-B

4                         CONSUMER PROTECTION FROM PRESCRIPTION DRUG  
5                                 REIMPORTATION

6     SECTION 830. UNLAWFUL PRACTICES.

7                 831. ENFORCEMENT AND PENALTIES.

8     S 830. UNLAWFUL PRACTICES. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM,  
9     CORPORATION OR ASSOCIATION OR AGENT OR EMPLOYEE THEREOF TO PURCHASE FOR  
10    RESALE, SELL, OFFER FOR SALE, OR DELIVER IN ANY MANNER, ANY PRESCRIPTION  
11    DRUG APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION THAT IS  
12    EITHER:

13    1. MANUFACTURED IN THE UNITED STATES, EXPORTED FROM THE UNITED STATES  
14    TO ANY OTHER COUNTRY, AND IMPORTED INTO THE UNITED STATES FROM ANY PLACE  
15    OUTSIDE THEREOF IN VIOLATION OF STATE OR FEDERAL LAW; OR

16    2. MANUFACTURED FOR SALE IN A COUNTRY OTHER THAN THE UNITED STATES AND  
17    IMPORTED INTO THE UNITED STATES FROM ANY PLACE OUTSIDE THEREOF IN  
18    VIOLATION OF STATE OR FEDERAL LAW.

19    S 831. ENFORCEMENT AND PENALTIES. 1. WHENEVER THERE SHALL BE A  
20    VIOLATION OF THIS ARTICLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY  
21    GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR  
22    JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNC-  
23    TION TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF  
24    IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE  
25    DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE  
26    ISSUED BY SUCH COURT OR JUSTICE ENJOINING AND RESTRAINING ANY FURTHER

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

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1 VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN  
2 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE  
3 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF  
4 SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRAC-  
5 TICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL  
6 DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED THE COURT MAY  
7 IMPOSE A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE  
8 THAN TEN THOUSAND DOLLARS FOR EACH VIOLATION. FOR THE PURPOSES OF THIS  
9 SECTION, EACH GROUP OF IDENTICAL ITEMS SHALL CONSTITUTE A SINGLE  
10 VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTOR-  
11 NEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE  
12 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRAC-  
13 TICE LAW AND RULES.

14 2. BEFORE ANY VIOLATION OF THIS ARTICLE IS SOUGHT TO BE ENJOINED, THE  
15 ATTORNEY GENERAL SHALL BE REQUIRED TO GIVE THE PERSON AGAINST WHOM SUCH  
16 PROCEEDING IS CONTEMPLATED NOTICE BY CERTIFIED MAIL AND AN OPPORTUNITY  
17 TO SHOW IN WRITING WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF NOTICE WHY  
18 PROCEEDINGS SHOULD NOT BE INSTITUTED AGAINST HIM OR HER, UNLESS THE  
19 ATTORNEY GENERAL SHALL FIND, IN ANY CASE IN WHICH HE OR SHE SEEKS  
20 PRELIMINARY RELIEF, THAT TO GIVE SUCH NOTICE AND OPPORTUNITY IS NOT IN  
21 THE PUBLIC INTEREST.

22 3. IN ANY SUCH ACTION IT SHALL BE A COMPLETE DEFENSE THAT THE ACT OR  
23 PRACTICE IS SUBJECT TO AND COMPLIES WITH THE RULES AND REGULATIONS OF,  
24 AND THE STATUTES ADMINISTERED BY, THE FEDERAL FOOD AND DRUG ADMINIS-  
25 TRATION OR ANY OFFICIAL DEPARTMENT, DIVISION, COMMISSION OR AGENCY OF  
26 THE UNITED STATES AS SUCH RULES, REGULATIONS OR STATUTES ARE INTERPRETED  
27 BY THE FEDERAL FOOD AND DRUG ADMINISTRATION OR SUCH DEPARTMENT, DIVI-  
28 SION, COMMISSION OR AGENCY OR THE FEDERAL COURTS.

29 S 2. This act shall take effect on the ninetieth day after it shall  
30 have become a law.