

10635

I N A S S E M B L Y

April 13, 2010

Introduced by M. of A. MARKEY -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting the return of underwear

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 section
2 390-d to read as follows:

3 S 390-D. PROHIBITION ON THE RETURN OF UNDERWEAR. 1. "UNDERWEAR" MEANS
4 AN ARTICLE OF CLOTHING WORN OR INTENDED TO BE WORN BY INDIVIDUALS ON THE
5 LOWER BODY NEXT TO THE SKIN AND IS KNOWN BY COMMON PARLANCE AS UNDERWEAR
6 OR UNDERGARMENTS.

7 2. NO INDIVIDUAL, PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER FORM
8 OF BUSINESS SHALL ACCEPT ANY UNDERWEAR FOR RETURN, UNLESS SUCH UNDERWEAR
9 IS IN ITS SEALED UNOPENED ORIGINAL PACKAGE.

10 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION AN APPLICATION
11 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
12 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL
13 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
14 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH
15 VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
16 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN
17 INJUNCTION MAY BE ISSUED BY THE COURT OF JUSTICE, ENJOINING AND
18 RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY
19 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
20 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
21 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
22 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
23 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
24 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE
25 THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION. EACH SALE OF RETURNED
26 UNDERWEAR IN VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE
27 VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTOR-
28 NEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE
29 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE
30 LAW AND RULES.

31 S 2. This act shall take effect immediately.

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

LBD16449-04-0