S T A T E O F N E W Y O R K

1309

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. PHEFFER, GREENE, MARKEY, GABRYSZAK -- Multi-Sponsored by -- M. of A. CLARK, COLTON, COOK, CUSICK, CYMBROWITZ, DIAZ, FARRELL, GALEF, GIANARIS, GLICK, HOOPER, JOHN, KOON, MAGEE, MAGNARELLI, MAYERSOHN, McENENY, MILLMAN, ORTIZ, PERRY, SCARBOROUGH, SEMINERIO, TOWNS, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to providing for notice of compatibility to purchasers of child safety seats

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

Section 1. Legislative findings and purpose. The legislature finds and declares that the safest method to transport young children when riding in passenger cars is in a federally approved child safety seat. New York's mandatory child restraint law has demonstrated its value in protecting young children from fatalities and injuries when involved in motor vehicle accidents. It is critical to the children's safety that they are protected in a properly fitting child safety seat. The National Highway Traffic Safety Administration estimates that a properly used child safety seat reduces the risk of fatality by seventy-one percent and the risk of serious injury by sixty-seven percent among children less than five years of age.

However, the legislature finds that many child safety seats are not used properly. There exist compatibility problems in the design of child restraints that make secure installation of child safety seats in some vehicle seating positions difficult and, occasionally, impossible. Not all child safety seats can be used effectively in all makes and models of cars. An improperly installed child safety seat can reduce its potential benefits and cause injuries and/or death to children using them.

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

LBD03056-01-9

Additionally, the legislature finds and declares that consumers should be made aware that certain child restraint devices may be inappropriate for certain automobile makes and models.

Therefore, the legislature intends by this act to ensure consumers be provided information concerning the compatibility of child safety seats with the automobiles in which they will be used.

S 2. The general business law is amended by adding a new section 399-ff to read as follows:

S 399-FF. CHILD SAFETY SEATS; LABELING REQUIREMENTS. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "LABEL" MEANS A DISPLAY OF WRITTEN, PRINTED OR GRAPHIC MATTER UPON THE IMMEDIATE CONTAINER OF ANY CHILD SAFETY SEAT OR IN THE CASE OF A CHILD SAFETY SEAT WHICH IS UNPACKAGED OR IS NOT PACKAGED IN AN IMMEDIATE CONTAINER INTENDED OR SUITABLE FOR DELIVERY TO THE ULTIMATE CONSUMER, A DISPLAY OF SUCH MATTER DIRECTLY UPON THE CHILD SAFETY SEAT INVOLVED OR UPON A TAG OR SUITABLE MATERIAL AFFIXED THERETO. LABEL SHALL INCLUDE A PERMANENTLY AFFIXED OR IMPRINTED NOTICE ON THE ACTUAL CHILD SAFETY SEAT.

(B) "CHILD SAFETY SEAT" MEANS ANY SPECIALLY DESIGNED DETACHABLE OR REMOVABLE SEAT WHICH MEETS THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS SET FORTH IN 49 C.F.R. 571.213.

2. NO MANUFACTURER, FIRM, CORPORATION, ASSOCIATION OR AGENT OR EMPLOYEE THEREOF SHALL IMPORT, MANUFACTURE, SELL, HOLD FOR SALE OR DISTRIBUTION ANY CHILD SAFETY SEAT INTENDED FOR USE BY A CHILD LESS THAN FOUR YEARS OF AGE WHICH FAILS TO CONSPICUOUSLY DISCLOSE ON ITS LABEL A WARNING OF COMPATIBILITY OF THE CHILD SAFETY SEAT WITH AUTOMOBILES.

3. ANY CHILD SAFETY SEAT INTENDED FOR USE BY A CHILD LESS THAN FOUR YEARS OF AGE MUST BE LABELED AS FOLLOWS:
"ATTENTION: NOT ALL CHILD SAFETY SEATS ARE COMPATIBLE WITH ALL MOTOR VEHICLES."

4. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, 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 VIOLATION; 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 SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, 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 ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION, BUT IN NO EVENT SHALL THE TOTAL AMOUNT OF SUCH PENALTIES EXCEED TWENTY-FIVE THOUSAND DOLLARS. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

5. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION, ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR ONE HUNDRED DOLLARS, WHICHEVER IS GREATER, OR BOTH

SUCH ACTIONS. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 3. This act shall take effect one year after it shall have become a law and shall apply to child safety seats imported, manufactured, sold, held for sale or distributed in this state on and after such effective date.