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

3631

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. CUSICK -- Multi-Sponsored by -- M. of A. BOYLAND, MAYERSOHN, PHEFFER, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to requiring that manufacturers and sellers of certain consumer products place a tipping warning on such products

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

Section 1. The general business law is amended by adding a new section 399-i to read as follows:

S 399-I. REQUIRED TIPPING WARNING. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "COVERED CONSUMER PRODUCT" MEANS ANY:

(1) DRESSER, BOOKCASE, BUREAU, ARMOIRE, OR SIMILAR FURNITURE DESIGNED TO STORE, DISPLAY, OR OTHERWISE PLACE ITEMS, THAT IS FORTY-TWO INCHES OR MORE IN HEIGHT;

(2) TELEVISION WITH A DISPLAY SCREEN THAT IS NINETEEN INCHES OR MORE IN LENGTH;

(3) TELEVISION STAND; AND

(4) SUCH OTHER CONSUMER PRODUCT AS THE CONSUMER PROTECTION BOARD CONSIDERS APPROPRIATE FOR ACHIEVING THE PURPOSE OF THIS SECTION.

(B) "TIPPING WARNING" MEANS A LABEL, HANGTAG, SHIELD OR PLATE WHICH IS CLEARLY VISIBLE TO THE CONSUMER CONTAINING A NOTICE REGARDING THE TIPPING DANGER CERTAIN CONSUMER PRODUCTS POSE TO CHILDREN AND THE EXISTENCE OF SEPARATELY AVAILABLE DEVICES DESIGNED TO ANCHOR, STABILIZE, OR OTHERWISE REDUCE OR PREVENT PRODUCT TIPPING AND ACCIDENTAL INJURY OR DEATH, PARTICULARLY WITH RESPECT TO YOUNG CHILDREN, AS PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE CONSUMER PROTECTION BOARD, IN CLEAR AND CONSPICUOUS TYPE.

2. (A) NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY WHICH MANUFACTURES OR ASSEMBLES COVERED CONSUMER PRODUCTS SHALL MANUFACTURE,

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

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ASSEMBLE, SELL, OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH COVERED CONSUMER PRODUCTS UNLESS SUCH PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH MANUFACTURES OR ASSEMBLES SUCH COVERED CONSUMER PRODUCTS CLEARLY AND CONSPICUOUSLY AFFIXES TO THE COVERED CONSUMER PRODUCT OR THE OUTSIDE OF THE PACKAGING IN WHICH SUCH COVERED CONSUMER PRODUCT IS SOLD OR OFFERED FOR SALE WITH A TIPPING WARNING.

(B) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGULARLY ENGAGED IN THE BUSINESS OF SELLING, OFFERING FOR SALE, OR DISTRIBUTING COVERED CONSUMER PRODUCTS AT RETAIL FOR CONSUMER USE, SHALL SELL, OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH PRODUCTS UNLESS SUCH PRODUCTS CONFORM TO THE REQUIREMENT SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION.

3. (A) WHENEVER THERE SHALL BE A VIOLATION 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 VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, 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. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS FOR A FIRST VIOLATION AND NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH SUBSEQUENT VIOLATION. 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.

(B) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGULARLY ENGAGED IN THE BUSINESS OF MANUFACTURING, DISTRIBUTING, SELLING, OR OFFERING FOR SALE COVERED CONSUMER PRODUCTS SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SUBDIVISION, IF SUCH PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY SHOWS BY A PREPONDERANCE OF EVIDENCE THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID ANY SUCH ERROR.

4. THIS SECTION SHALL NOT APPLY TO THE SALE OF COVERED CONSUMER PRODUCTS SOLD OR OFFERED FOR SALE BY CONSUMERS FOR CONSUMER USE.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided that the executive director of the state consumer protection board is immediately authorized and directed to promulgate, amend and/or repeal any rules and regulations necessary to implement the provisions of this act on its effective date.