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

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 2, 2009

Introduced by M. of A. WEISENBERG, PHEFFER, GALEF, COLTON, WEINSTEIN, J. MILLER, BURLING, ROSENTHAL, MAISEL, SPANO, McKEVITT, COOK, JAFFEE, CASTRO, FIELDS, TOBACCO, ZEBROWSKI, HOOPER -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, CALHOUN, DelMONTE, DESTITO, DINOWITZ, DUPREY, ERRIGO, GORDON, GOTTFRIED, HIKIND, JACOBS, JOHN, JORDAN, McENENY, MENG, ROBINSON, SCHIMEL, SWEENEY, TITONE -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to requiring sunscreen products to be labeled with a best if used before date and storage recommendations

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. DATE AND STORAGE LABELING OF SUNSCREEN PRODUCTS. 1. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY TO MANUFACTURE, FOR SALE, RESALE, OR DISTRIBUTION IN THIS STATE, SUNSCREEN WHICH DOES NOT CONTAIN A CLEAR AND CONSPICUOUS LABEL INDICATING A DATE ON WHICH THE PRODUCT IS BEST IF USED BEFORE. THE DATE REQUIRED BY THIS SECTION SHALL BE LABELED BY MONTH AND YEAR.

2. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY TO MANUFACTURE, FOR SALE, RESALE, OR DISTRIBUTION IN THIS STATE, SUNSCREEN WHICH DOES NOT CONTAIN A CLEAR AND CONSPICUOUS LABEL PROVIDING INFORMATION REGARDING THE RECOMMENDED STORAGE OF SUCH SUNSCREEN PRODUCT.

3. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY SHALL SELL SUNSCREEN WHICH IT KNOWS DOES NOT CONTAIN THE LABELING INFORMATION REQUIRED BY SUBDIVISIONS ONE AND TWO OF THIS SECTION.

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

4. FOR PURPOSES OF THIS SECTION, SUNSCREEN SHALL MEAN SUNBLOCK OR SIMILAR LOTION OR TOPICAL PREPARATION MANUFACTURED AND SOLD FOR THE SOLE PURPOSE OF PROTECTING THE SKIN FROM SOLAR AND ULTRAVIOLET LIGHT EXPOSURE.

5. (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 OR 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 TWO HUNDRED FIFTY DOLLARS FOR EACH SUCH 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) IN ADDITION TO THE AUTHORITY 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. IN SUCH ACTION, SUCH PERSON MAY RECOVER HIS OR HER ACTUAL DAMAGES OR TWO HUNDRED FIFTY DOLLARS, WHICHEVER IS GREATER. THE COURT MAY, IN ITS DISCRETION INCREASE THE DAMAGE AWARD TO AN AMOUNT NOT TO EXCEED ONE THOUSAND DOLLARS. THE COURT MAY AWARD REASONABLE ATTORNEYS' FEES TO A PREVAILING PLAINTIFF.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.