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

April 22, 2009

Introduced by M. of A. CASTRO, MILLMAN, SPANO, ESPAILLAT, FIELDS, POWELL -- Multi-Sponsored by -- M. of A. BARRON, COOK, GOTTFRIED, MARKEY, McKEVITT, MENG, NOLAN, REILLY, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- reported and referred to Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to articles of bedding

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

Section 1. Subdivisions 2 and 3 of section 383 of the general business law, as added by chapter 309 of the laws of 1996, are amended to read as follows:

2. "New" shall mean any material or article which has not been previously used for any purpose, including by-products produced in the manufacture of new fabric, and material reclaimed from new fabric[; except that an article of bedding returned by the purchaser for exchange, alteration, or correction, within thirty days after date of delivery after original sale at retail, shall be deemed to be a new article, but thirty days after date of such delivery such article shall be deemed to be used];

3. "Used" shall mean any components, ARTICLES OR MATERIALS from [previously used] bedding NOT CLASSIFIED AS NEW.

S 2. Subdivision 1 of section 385 of the general business law, as amended by chapter 249 of the laws of 1999, is amended to read as follows:

1. Every manufacturer of used bedding sold in this state and repairer-renovator or rebuilder of bedding sold in this state shall file a notice with the department of state which: (a) states its name and

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

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address; [and] (b) affirms that it sanitizes its used bedding in accordance with the standards established in regulation by the department of state in consultation with the department of health; AND (C) DESCRIBES THE MANNER OF SANITIZATION AND CHEMICALS USED.

S 3. The general business law is amended by adding a new section 385-b to read as follows:

S 385-B. TRANSPORT, STORAGE AND SALE OF USED BEDDING. NO USED BEDDING SHALL BE TRANSPORTED, STORED OR SOLD WITH NEW BEDDING UNLESS THE USED BEDDING HAS BEEN: SANITIZED USING A METHOD APPROVED BY THE DEPARTMENT OF HEALTH THAT IS INTENDED TO KILL BEDBUGS, DUST MITES, OTHER INSECTS, MOLDS, FUNGI, GERMS OR OTHER ORGANISMS, AND TO REMOVE SOIL, DUST MITE AND INSECT FECES, ALLERGENS, AND OTHER CONTAMINANTS; OR ENCLOSED IN A SEALED IMPERMEABLE MEMBRANE DESIGNED TO PREVENT THE PASSAGE OF CONTAMINANTS.

S 4. Section 387 of the general business law, as amended by chapter 249 of the laws of 1999, is amended to read as follows:

S 387. Inspections. Every place where articles of bedding are made, remade or renovated, or materials therefor are prepared or sterilized, or where such articles or materials are sold, shall be subject to BI-ANNUAL inspection by the secretary of state who shall have power to inspect the manufacture, sale or delivery, and sanitization of all articles or materials covered by this article, to open and examine the contents thereof and power to seize and hold for evidence any article of bedding, in whole or in part, which the secretary has reason to believe is made or sold or held in possession in violation of this article. For the purpose of administering and enforcing the provisions of this article the secretary shall have and may use the powers conferred on him by the executive law in addition to the powers conferred in this article.

S 5. Section 389-a of the general business law, as amended by chapter 249 of the laws of 1999, is amended to read as follows:

S 389-a. Label requirements for used bedding. The label indicating that an article of bedding contains used material, in whole or in part, shall be at least fifteen square inches in area, contain the phrase ["used material" or "used bedding", as the case may be,] "THIS BEDDING CONTAINS PREVIOUSLY USED MATERIALS WHICH HAVE BEEN SANITIZED" in prominent print, be yellow in color, and be stitched or otherwise securely attached to the bedding in such a manner that it may be seen by consumers prior to purchase.

S 6. Section 389-c of the general business law, as added by chapter 309 of the laws of 1996, is amended to read as follows:

S 389-c. Special application of section three hundred forty-nine of this chapter. 1. In addition to the power set forth in subdivision (b) of section three hundred forty-nine of this chapter, the attorney general shall have the power to assess a fine of up to one thousand dollars for each violation of this article; and the defense under subdivision (d) of section three hundred forty-nine of this chapter shall not be available in connection with any violation of this article.

2. IN ADDITION TO THE POWER SET FORTH IN SUBDIVISION (B) OF SECTION THREE HUNDRED FORTY-NINE OF THIS CHAPTER AND SUBDIVISION ONE OF THIS SECTION, ANY PERSON WHO HAS BEEN SOLD USED BEDDING WHICH HAS NOT BEEN SANITIZED PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL HAVE A CAUSE OF ACTION FOR DAMAGES AGAINST THE PERSON WHO TRANSPORTED, STORED OR SOLD SUCH USED BEDDING IN VIOLATION OF THIS ARTICLE FOR THE COST OF THE MATTRESS, THE COST REQUIRED TO SANITIZE THE MATTRESS AND FOR MEDICAL EXPENSES RESULTING FROM THE FAILURE TO SANITIZE SUCH USED BEDDING PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

S 7. This act shall take effect on the sixtieth day after it shall have become a law.