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

9223

2009-2010 Regular Sessions

I N A S S E M B L Y

November 4, 2009

Introduced by M. of A. FIELDS, PHEFFER -- 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 sale of drop-side cribs

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

Section 1. Legislative intent. The legislature finds and declares all of the following:

(a) Drop-side cribs are manufactured with three immovable sides and one side that is able to slide up and down to allow for easier access to infants inside the crib.

(b) Drop-side cribs have more moving parts than cribs with four fixed sides, leading to an increased risk of separation of one side of the crib from the others and higher rates of other crib malfunctions.

(c) Frequently, parents are unaware that their drop-side crib has become unsafe because the crib's hardware malfunctions in a way that cannot be readily detected.

(d) Malfunctioning drop-side cribs have been the cause of at least three infant deaths and many injuries throughout the United States in the past eighteen months.

(e) The injuries and deaths resulting from the use of drop-side cribs have resulted in increased investigations and five recalls by the federal consumer product safety commission, involving more than three million cribs.

(f) In response to these concerns, the crib making industry has proposed through the industry safety standards organization, ASTM International, banning the manufacture and sale of drop-side cribs.

(g) Currently, the industry ban on the manufacture and sale of drop-side cribs is only voluntary and is not required by any laws or regulations.

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

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(h) It is the intent of the legislature to ensure the protection of its youngest and most vulnerable residents from the dangers associated with drop-side crib malfunctions. Therefore, the purpose of this act is to ban the sale of drop-side cribs.

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

S 399-I. PROHIBIT ANY SALE OF DROP-SIDE CRIBS. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "CRIB" MEANS A BED OR CONTAINMENT DESIGNATED TO ACCOMMODATE AN INFANT;

(B) "DROP-SIDE CRIB" SHALL MEAN ANY INFANT CRIB THAT HAS THREE IMMOVABLE SIDES, WITH A FOURTH SIDE THAT MOVES UP AND DOWN. THIS TERM SHALL NOT INCLUDE A CRIB THAT HAS FOUR IMMOVABLE SIDES WITH A PORTION OF ONE SIDE CAPABLE OF BEING FOLDED DOWN;

(C) "PERSON" SHALL MEAN A NATURAL PERSON, FIRM, CORPORATION, LIMITED LIABILITY COMPANY, OR ASSOCIATION, OR AN EMPLOYEE OR AGENT OF A NATURAL PERSON OR AN ENTITY INCLUDED IN THIS DEFINITION.

2. NO PERSON SHALL IMPORT, MANUFACTURE, SELL, HOLD FOR SALE OR DISTRIBUTE A DROP-SIDE CRIB.

3. 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 VIOLATIONS; 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 THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, 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. EACH SALE OF A DROP-SIDE CRIB IN VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE 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.

4. IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.