

S T A T E   O F   N E W   Y O R K

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2099

2009-2010 Regular Sessions

I N   S E N A T E

February 11, 2009

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Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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:

- 1     Section 1. The general business law is amended by adding a new section  
2     399-i to read as follows:  
3     S 399-I. DATE AND STORAGE LABELING OF SUNSCREEN PRODUCTS. 1. IT SHALL  
4     BE UNLAWFUL FOR ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, LIMITED  
5     LIABILITY CORPORATION, OR OTHER ENTITY TO MANUFACTURE, FOR SALE, RESALE,  
6     OR DISTRIBUTION IN THIS STATE, SUNSCREEN WHICH DOES NOT CONTAIN A CLEAR  
7     AND CONSPICUOUS LABEL INDICATING A DATE ON WHICH THE PRODUCT IS BEST IF  
8     USED BEFORE. THE DATE REQUIRED BY THIS SECTION SHALL BE LABELED BY MONTH  
9     AND YEAR.  
10    2. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, CORPORATION, PARTNER-  
11    SHIP, LIMITED LIABILITY CORPORATION, OR OTHER ENTITY TO MANUFACTURE, FOR  
12    SALE, RESALE, OR DISTRIBUTION IN THIS STATE, SUNSCREEN WHICH DOES NOT  
13    CONTAIN A CLEAR AND CONSPICUOUS LABEL PROVIDING INFORMATION REGARDING  
14    THE RECOMMENDED STORAGE OF SUCH SUNSCREEN PRODUCT.  
15    3. NO PERSON, FIRM, CORPORATION, PARTNERSHIP, LIMITED LIABILITY CORPO-  
16    RATION, OR OTHER ENTITY SHALL SELL SUNSCREEN WHICH IT KNOWS DOES NOT  
17    CONTAIN THE LABELING INFORMATION REQUIRED BY SUBDIVISIONS ONE AND TWO OF  
18    THIS SECTION.  
19    4. FOR PURPOSES OF THIS SECTION, SUNSCREEN SHALL MEAN SUNBLOCK OR  
20    SIMILAR LOTION OR TOPICAL PREPARATION MANUFACTURED AND SOLD FOR THE SOLE  
21    PURPOSE OF PROTECTING THE SKIN FROM SOLAR AND ULTRAVIOLET LIGHT EXPO-  
22    SURE.  
23    5. (A) WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLI-  
24    CATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF

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

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1 THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A  
2 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE  
3 DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTIN-  
4 UANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF  
5 THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS  
6 ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING  
7 AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY  
8 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH  
9 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS  
10 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE  
11 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-  
12 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTI-  
13 CLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN  
14 TWO HUNDRED FIFTY DOLLARS FOR EACH SUCH VIOLATION. IN CONNECTION WITH  
15 ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO  
16 TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE  
17 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

18 (B) IN ADDITION TO THE AUTHORITY GRANTED TO THE ATTORNEY GENERAL  
19 PURSUANT TO THIS SECTION, ANY PERSON WHO HAS BEEN INJURED BY REASON OF  
20 ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME  
21 TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE. IN SUCH ACTION, SUCH PERSON MAY  
22 RECOVER HIS OR HER ACTUAL DAMAGES OR TWO HUNDRED FIFTY DOLLARS, WHICHEV-  
23 ER IS GREATER. THE COURT MAY, IN ITS DISCRETION INCREASE THE DAMAGE  
24 AWARD TO AN AMOUNT NOT TO EXCEED ONE THOUSAND DOLLARS. THE COURT MAY  
25 AWARD REASONABLE ATTORNEYS' FEES TO A PREVAILING PLAINTIFF.

26 S 2. This act shall take effect on the first of January next succeed-  
27 ing the date on which it shall have become a law.