

2966

2009-2010 Regular Sessions

I N S E N A T E

March 9, 2009

Introduced by Sen. C. JOHNSON -- 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 bedding to be securely sealed and packaged prior to shipping or delivery to end-user consumers

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
2 389-d to read as follows:

3 S 389-D. PACKAGING OF BEDDING. 1. ANY PERSON OR ENTITY THAT PRODUCES,
4 MANUFACTURES, PACKAGES, DISTRIBUTES, OR SELLS NEW BEDDING IN THIS STATE
5 SHALL ASSURE THAT SUCH BEDDING IS SECURELY PACKAGED AND SEALED PRIOR TO
6 SHIPPING AND PRIOR TO DELIVERY TO END-USER CONSUMERS. AS USED IN THIS
7 SECTION "SECURELY PACKAGED AND SEALED" MEANS THAT THE MATTRESS SHALL BE
8 ENCLOSED IN A PLASTIC BAG OR BOX HAVING NO RIPS, TEARS, HOLES OR OTHER
9 DAMAGE, AND SHALL COMPLY WITH REGULATIONS PROMULGATED BY THE DEPARTMENT
10 OF HEALTH PURSUANT TO SUBDIVISION THREE OF THIS SECTION. IT SHALL BE
11 UNLAWFUL TO SHIP OR PROVIDE TO END-USER CONSUMERS ANY BEDDING NOT SO
12 PACKAGED.

13 2. EXEMPTIONS. THE FOLLOWING SHALL BE UNCONDITIONALLY EXEMPT FROM THE
14 PROVISIONS OF THIS SECTION:

15 (A) BEDDING DESTINED FOR EXPORT FROM THE STATE IF THE PACKAGING IS NOT
16 SEPARATED FROM THE BEDDING BEFORE EXPORT;

17 (B) BEDDING THAT HAS BEEN DELIVERED TO A PACKAGER PRIOR TO JANUARY
18 FIRST, TWO THOUSAND ELEVEN OR WAS MANUFACTURED PRIOR TO JANUARY FIRST,
19 TWO THOUSAND ELEVEN; AND

20 (C) BEDDING ASSOCIATED WITH RETAIL SALES OF USED MERCHANDISE BY INDI-
21 VIDUAL CONSUMERS SUBSEQUENT TO INITIAL RETAIL SALE.

22 3. REGULATIONS. ON OR BEFORE JUNE FIRST, TWO THOUSAND TEN, THE DEPART-
23 MENT OF HEALTH SHALL ADOPT RULES AND REGULATIONS PERTAINING TO THE PACK-

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

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1 AGING OF BEDDING AS PROVIDED IN THIS SECTION AND AS ARE OTHERWISE NECES-
2 SARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

3 4. (A) ANY PERSON OR ENTITY VIOLATING THE PROVISIONS OF THIS SECTION
4 OR THE RULES AND REGULATIONS PROMULGATED PURSUANT TO THE PROVISIONS OF
5 SUBDIVISION THREE OF THIS SECTION SHALL BE FINED FOR EACH OFFENSE NOT
6 LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN THREE HUNDRED DOLLARS. EACH
7 ITEM OF BEDDING SOLD, OFFERED FOR SALE, DELIVERED OR CONSIGNED CONTRARY
8 TO THE PROVISIONS OF THIS SECTION SHALL CONSTITUTE A SEPARATE OFFENSE.

9 (B) WHENEVER THE ATTORNEY GENERAL SHALL BELIEVE FROM EVIDENCE SATIS-
10 FACTORY TO HIM OR HER THAT ANY PERSON, FIRM, CORPORATION OR ASSOCIATION
11 OR AGENT OR EMPLOYEE THEREOF HAS VIOLATED ANY PROVISION OF THIS SECTION,
12 HE OR SHE MAY BRING AN ACTION IN THE SUPREME COURT OF THE STATE OF NEW
13 YORK FOR A JUDGMENT ENJOINING THE CONTINUANCE OF SUCH VIOLATION AND FOR
14 A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH
15 VIOLATION. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
16 JUSTICE THAT THE DEFENDANT HAS VIOLATED ANY PROVISION OF THIS SECTION,
17 NO PROOF SHALL BE REQUIRED THAT ANY PERSON HAS BEEN INJURED THEREBY NOR
18 THAT THE DEFENDANT KNOWINGLY OR INTENTIONALLY VIOLATED SUCH PROVISION.
19 IN SUCH ACTION, PRELIMINARY RELIEF MAY BE GRANTED UNDER ARTICLE
20 SIXTY-THREE OF THE CIVIL PRACTICE LAW AND RULES.

21 S 2. This act shall take effect immediately.