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

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:

Section 1. The general business law is amended by adding a new section 389-d to read as follows:

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

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

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

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

(C) BEDDING ASSOCIATED WITH RETAIL SALES OF USED MERCHANDISE BY INDIVIDUAL CONSUMERS SUBSEQUENT TO INITIAL RETAIL SALE.

3. REGULATIONS. ON OR BEFORE JUNE FIRST, TWO THOUSAND TEN, THE DEPARTMENT 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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AGING OF BEDDING AS PROVIDED IN THIS SECTION AND AS ARE OTHERWISE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

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

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

S 2. This act shall take effect immediately.