

3631

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. CUSICK -- Multi-Sponsored by -- M. of A. BOYLAND,
MAYERSOHN, PHEFFER, WEISENBERG -- read once and referred to the
Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to requiring that
manufacturers and sellers of certain consumer products place a tipping
warning on such products

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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. REQUIRED TIPPING WARNING. 1. AS USED IN THIS SECTION, THE
4 FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
5 (A) "COVERED CONSUMER PRODUCT" MEANS ANY:
6 (1) DRESSER, BOOKCASE, BUREAU, ARMOIRE, OR SIMILAR FURNITURE DESIGNED
7 TO STORE, DISPLAY, OR OTHERWISE PLACE ITEMS, THAT IS FORTY-TWO INCHES OR
8 MORE IN HEIGHT;
9 (2) TELEVISION WITH A DISPLAY SCREEN THAT IS NINETEEN INCHES OR MORE
10 IN LENGTH;
11 (3) TELEVISION STAND; AND
12 (4) SUCH OTHER CONSUMER PRODUCT AS THE CONSUMER PROTECTION BOARD
13 CONSIDERS APPROPRIATE FOR ACHIEVING THE PURPOSE OF THIS SECTION.
14 (B) "TIPPING WARNING" MEANS A LABEL, HANGTAG, SHIELD OR PLATE WHICH IS
15 CLEARLY VISIBLE TO THE CONSUMER CONTAINING A NOTICE REGARDING THE
16 TIPPING DANGER CERTAIN CONSUMER PRODUCTS POSE TO CHILDREN AND THE EXIST-
17 ENCE OF SEPARATELY AVAILABLE DEVICES DESIGNED TO ANCHOR, STABILIZE, OR
18 OTHERWISE REDUCE OR PREVENT PRODUCT TIPPING AND ACCIDENTAL INJURY OR
19 DEATH, PARTICULARLY WITH RESPECT TO YOUNG CHILDREN, AS PRESCRIBED BY THE
20 EXECUTIVE DIRECTOR OF THE CONSUMER PROTECTION BOARD, IN CLEAR AND
21 CONSPICUOUS TYPE.
22 2. (A) NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY WHICH MANU-
23 FACTURES OR ASSEMBLES COVERED CONSUMER PRODUCTS SHALL MANUFACTURE,

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

LBD01272-01-9

1 ASSEMBLE, SELL, OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH COVERED
2 CONSUMER PRODUCTS UNLESS SUCH PERSON, FIRM, CORPORATION OR OTHER LEGAL
3 ENTITY WHICH MANUFACTURES OR ASSEMBLES SUCH COVERED CONSUMER PRODUCTS
4 CLEARLY AND CONSPICUOUSLY AFFIXES TO THE COVERED CONSUMER PRODUCT OR THE
5 OUTSIDE OF THE PACKAGING IN WHICH SUCH COVERED CONSUMER PRODUCT IS SOLD
6 OR OFFERED FOR SALE WITH A TIPPING WARNING.

7 (B) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGU-
8 LARLY ENGAGED IN THE BUSINESS OF SELLING, OFFERING FOR SALE, OR DISTRIB-
9 UTING COVERED CONSUMER PRODUCTS AT RETAIL FOR CONSUMER USE, SHALL SELL,
10 OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH PRODUCTS UNLESS SUCH
11 PRODUCTS CONFORM TO THE REQUIREMENT SET FORTH IN PARAGRAPH (A) OF THIS
12 SUBDIVISION.

13 3. (A) WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLI-
14 CATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF
15 THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A
16 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE
17 DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTIN-
18 UANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF
19 THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS
20 ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING
21 AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
22 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. WHENEVER THE COURT
23 SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT
24 MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS
25 FOR A FIRST VIOLATION AND NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH
26 SUBSEQUENT VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION,
27 THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMI-
28 NATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH
29 THE CIVIL PRACTICE LAW AND RULES.

30 (B) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGU-
31 LARLY ENGAGED IN THE BUSINESS OF MANUFACTURING, DISTRIBUTING, SELLING,
32 OR OFFERING FOR SALE COVERED CONSUMER PRODUCTS SHALL BE DEEMED TO HAVE
33 VIOLATED THE PROVISIONS OF THIS SUBDIVISION, IF SUCH PERSON, FIRM,
34 CORPORATION OR OTHER LEGAL ENTITY SHOWS BY A PREPONDERANCE OF EVIDENCE
35 THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE
36 ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY
37 ADOPTED TO AVOID ANY SUCH ERROR.

38 4. THIS SECTION SHALL NOT APPLY TO THE SALE OF COVERED CONSUMER
39 PRODUCTS SOLD OR OFFERED FOR SALE BY CONSUMERS FOR CONSUMER USE.

40 S 2. This act shall take effect on the one hundred twentieth day after
41 it shall have become a law, provided that the executive director of the
42 state consumer protection board is immediately authorized and directed
43 to promulgate, amend and/or repeal any rules and regulations necessary
44 to implement the provisions of this act on its effective date.