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

4602

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. ENGLEBRIGHT -- 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 manufacture, distribution and sale of toys and child care products, containing bisphenol-A, which are intended for use by or upon a child under the age of fourteen years

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 397-b to read as follows:

S 397-B. TOYS AND CHILD CARE PRODUCTS; BISPHENOL-A. 1. THE LEGISLATURE HEREBY FINDS THAT BISPHENOL-A, AN ESTROGEN-MIMICKING ENDOCRINE DISRUPTER CHEMICAL, IS USED IN THE PRODUCTION OF EPOXY RESINS AND POLYCARBONATE PLASTICS, AND IS THE MAIN INGREDIENT IN HARD POLYCARBONATE PLASTICS. THESE PLASTICS ARE USED IN MANY FOOD AND DRINK PACKAGING APPLICATIONS, AND THE RESINS ARE COMMONLY USED AS LACQUERS TO COAT METAL PRODUCTS SUCH AS FOOD CANS, BOTTLE TOPS AND WATER SUPPLY PIPES. BISPHENOL-A HAS BEEN SHOWN TO HAVE HORMONE DISRUPTING EFFECTS, AND IS ALSO USED IN MANY PRODUCTS INTENDED FOR USE BY YOUNG CHILDREN INCLUDING TOYS, PACIFIERS, BABY BOTTLES AND TEETHERS.

2. WHEN USED IN THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "TOY" SHALL MEAN ALL PRODUCTS DESIGNED OR INTENDED BY THE MANUFACTURER TO BE USED BY CHILDREN WHEN THEY PLAY; AND

(B) "CHILD CARE ARTICLE" SHALL MEAN ALL PRODUCTS DESIGNED OR INTENDED BY THE MANUFACTURER FOR CHILD CARE, INCLUDING BUT NOT LIMITED TO THOSE TO HELP CHILDREN WITH SUCKING OR TEETHING TO FACILITATE SLEEP, RELAXATION OR THE FEEDING OF CHILDREN.

3. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR CORPORATION SHALL MANUFACTURE, DISTRIBUTE, SELL OR OFFER FOR SALE ANY TOY OR CHILD CARE PRODUCT INTENDED FOR USE BY A CHILD UNDER FOURTEEN YEARS OF AGE CONTAINING BISPHENOL-A.

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

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4. EVERY MANUFACTURER OF A PRODUCT OR TOY PROHIBITED BY THIS SECTION SHALL USE THE LEAST TOXIC ALTERNATIVE TO THE BISPHENOL-A IN THE TOY OR PRODUCT. SUCH ALTERNATIVE SHALL NOT BE (I) A CARCINOGEN RATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS A, B OR C CARCINOGENS, OR SUBSTANCES LISTED AS KNOWN OR LIKELY CARCINOGENS, KNOWN TO BE HUMAN CARCINOGENS, LIKELY TO BE HUMAN CARCINOGENS OR SUGGESTIVE OF BEING HUMAN CARCINOGENS, AS DESCRIBED IN THE "LIST OF CHEMICALS EVALUATED FOR CARCINOGEN POTENTIAL"; OR (II) REPRODUCTIVE TOXICANTS THAT CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM OR DEVELOPMENTAL HARM AS IDENTIFIED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

5. THIS SECTION SHALL NOT APPLY TO THE SALE OR DISTRIBUTION OF TOYS OR CHILD CARE ARTICLES SOLD OR OFFERED FOR SALE, OR DISTRIBUTED BY CONSUMERS FOR CONSUMER USE.

6. (A) WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, 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 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 ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, 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 ARTICLE HAS OCCURRED THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION, EXCEPT THAT THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS IF THE VIOLATION IS KNOWING AND WILLFUL. 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.

(B) BEFORE ANY VIOLATION OF THIS ARTICLE IS SOUGHT TO BE ENJOINED, THE ATTORNEY GENERAL SHALL BE REQUIRED TO GIVE THE PERSON AGAINST WHOM SUCH PROCEEDING IS CONTEMPLATED NOTICE BY CERTIFIED MAIL AND AN OPPORTUNITY TO SHOW IN WRITING WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF NOTICE WHY PROCEEDINGS SHOULD NOT BE INSTITUTED AGAINST HIM, UNLESS THE ATTORNEY GENERAL SHALL FIND, IN ANY CASE IN WHICH HE SEEKS PRELIMINARY RELIEF, THAT TO GIVE SUCH NOTICE AND OPPORTUNITY IS NOT IN THE PUBLIC INTEREST.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.