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

5201

2009-2010 Regular Sessions

I N A S S E M B L Y

February 11, 2009

Introduced by M. of A. BRODSKY, WEISENBERG -- Multi-Sponsored by -- M. of A. CAHILL, COOK, KOON, MAYERSOHN -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to liability in civil actions brought against manufacturers of prescription drugs or medical devices in certain cases

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 396-aaa to read as follows:

S 396-AAA. DIRECT-TO-CONSUMER ADVERTISING OF PRESCRIPTION DRUGS OR MEDICAL DEVICES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHERE A MANUFACTURER OF A PRESCRIPTION DRUG OR MEDICAL DEVICE ENGAGES IN DIRECT-TO-CONSUMER ADVERTISING, A PRESCRIPTION DRUG OR MEDICAL DEVICE IS NOT REASONABLY SAFE DUE TO INADEQUATE INSTRUCTIONS OR WARNINGS IF REASONABLE INSTRUCTIONS OR WARNINGS REGARDING FORESEEABLE RISKS OF HARM ARE NOT PROVIDED TO THE PATIENT. WHERE A MANUFACTURER OF A PRESCRIPTION DRUG OR MEDICAL DEVICE ENGAGES IN SUCH FORM OF ADVERTISING AND SELLS OR OTHERWISE DISTRIBUTES A DRUG OR MEDICAL DEVICE WHICH IS DEFECTIVE DUE TO INADEQUATE INSTRUCTIONS OR WARNINGS, SUCH MANUFACTURER IS SUBJECT TO LIABILITY FOR HARM TO PERSONS CAUSED BY SUCH DEFECT.

2. AS USED IN THIS SECTION "PRESCRIPTION DRUG OR MEDICAL DEVICE" MEANS ONE THAT MAY BE LEGALLY SOLD OR OTHERWISE DISTRIBUTED ONLY PURSUANT TO A HEALTH CARE PROVIDER'S PRESCRIPTION.

3. IN ANY CIVIL ACTION BROUGHT PURSUANT TO THE PROVISIONS OF THIS SECTION, IT SHALL BE AN ISSUE OF FACT TO BE DETERMINED BY A JURY WHETHER OR NOT THE WARNINGS SUPPLIED BY THE MANUFACTURER OF THE PRESCRIPTION DRUGS OR MEDICAL DEVICES WERE ADEQUATE.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.

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

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