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

6356--B

2009-2010 Regular Sessions

I N S E N A T E

December 23, 2009

Introduced by Sens. SALAND, FUSCHILLO, SKELOS, PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to prohibiting the sale of unsafe cribs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The legislature finds and declares all of the following:

(a) Drop-side cribs are manufactured with three immovable sides and one side that is able to slide up and down to allow for easier access to infants inside the crib.

(b) Drop-side cribs have more moving parts than cribs with four fixed sides, leading to an increased risk of separation of one side of the crib from the others and higher rates of other crib malfunctions.

(c) Frequently, parents are unaware that their drop-side crib has become unsafe because the crib's hardware malfunctions in a way that cannot be readily detected.

(d) Malfunctioning drop-side cribs have been the cause of at least twelve infant deaths and many injuries throughout the United States in the past eighteen months.

(e) The injuries and deaths resulting from the use of drop-side cribs have resulted in increased investigations and numerous recalls by the federal consumer product safety commission, involving more than seven million cribs.

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

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(f) In response to these concerns, the crib making industry has proposed through the industry safety standards organization, ASTM International, banning the manufacture and sale of drop-side cribs.

(g) Currently, the industry ban on the manufacture and sale of drop-side cribs is only voluntary and is not required by any laws or regulations.

(h) It is the intent of the legislature to ensure the protection of its youngest and most vulnerable residents from the dangers associated with drop-side and other crib malfunctions. Therefore, the purpose of this act is to ban the sale of drop-side and other unsafe cribs by making the ASTM International standards and specifications regarding corner post standards and structural integrity of cribs as well as Title 16 of the Code of Federal Regulations applicable to cribs.

S 2. The general business law is amended by adding a new section 399-i to read as follows:

S 399-I. PROHIBIT ANY SALE OF UNSAFE CRIBS. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "CRIB" MEANS A BED OR CONTAINMENT DESIGNATED TO ACCOMMODATE AN INFANT.

(B) "DISTRIBUTE" MEANS TO DELIVER TO A PERSON OTHER THAN THE PURCHASER, FOR THE PURPOSE OF RETAIL SALE.

(C) "PERSON" SHALL MEAN A NATURAL PERSON, FIRM, CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION, OR AN EMPLOYEE OR AGENT OF A NATURAL PERSON OR AN ENTITY INCLUDED IN THIS DEFINITION.

(D) "UNSAFE CRIB" SHALL MEAN ANY CRIB THAT DOES NOT CONFORM TO THE STANDARDS ENDORSED OR ESTABLISHED BY THE FEDERAL CONSUMER PRODUCT SAFETY COMMISSION INCLUDING, BUT NOT LIMITED TO, TITLE 16 OF THE CODE OF FEDERAL REGULATIONS AND THE STANDARDS ENDORSED OR ESTABLISHED BY AMERICAN SOCIETY FOR TESTING AND MATERIALS INTERNATIONAL (ASTM), AS FOLLOWS:

(I) PART 1508 OF TITLE 16 OF THE CODE OF FEDERAL REGULATIONS AND ANY REGULATIONS ADOPTED TO AMEND OR SUPPLEMENT SUCH PART;

(II) PART 1509 OF TITLE 16 OF THE CODE OF FEDERAL REGULATIONS AND ANY REGULATIONS ADOPTED TO AMEND OR SUPPLEMENT SUCH PART;

(III) PART 1303 OF TITLE 16 OF THE CODE OF FEDERAL REGULATIONS AND ANY REGULATIONS ADOPTED TO AMEND OR SUPPLEMENT SUCH PART; AND

(IV) THE FOLLOWING STANDARDS AND SPECIFICATIONS OF ASTM INTERNATIONAL FOR CORNER POSTS OF BABY CRIBS AND STRUCTURAL INTEGRITY OF BABY CRIBS AND ANY STANDARDS AND SPECIFICATIONS ADOPTED TO AMEND OR SUPPLEMENT SUCH STANDARDS:

(A) ASTM F 966 (CORNER POST STANDARD),

(B) ASTM F 1169 (STRUCTURAL INTEGRITY OF FULL-SIZE BABY CRIBS), AND

(C) ASTM F 406 (NON-FULL-SIZE CRIBS).

2. (A) NO PERSON SHALL IMPORT, MANUFACTURE, OR DISTRIBUTE AN UNSAFE CRIB.

(B) NO RETAILER, AS DEFINED IN SUBDIVISION ELEVEN OF SECTION FOUR HUNDRED NINETY-A OF THIS CHAPTER, OR SECONDHAND DEALER, AS DEFINED IN SUBDIVISION SIX OF SECTION FOUR HUNDRED NINETY-A OF THIS CHAPTER, SHALL SELL, LEASE OR OTHERWISE MAKE AVAILABLE AN UNSAFE CRIB.

3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION 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, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, 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 SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND

RESTRAINING ANY FURTHER VIOLATIONS, 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 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION. EACH SALE OF AN UNSAFE CRIB IN VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION. 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.

4. IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.