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

4103--A

2011-2012 Regular Sessions

I N S E N A T E

March 17, 2011

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

Section 1. Section 399-i of the general business law, as added by chapter 245 of the laws of 2010, is amended to read as follows:

S 399-i. Prohibit [any] sale AND LIMIT USE of unsafe cribs IN CERTAIN SETTINGS. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Crib" [means] SHALL MEAN a bed or containment designated to accommodate an infant.

(b) "Distribute" [means] SHALL MEAN to deliver to a person other than the purchaser, for the purpose of retail sale.

(c) "FACILITY" SHALL MEAN ANY CHILD DAY CARE, CHILD DAY CARE PROVIDER, CHILD DAY CARE CENTER, GROUP FAMILY DAY CARE HOME, SCHOOL AGE CHILD CARE OR FAMILY DAY CARE HOME, AS SUCH TERMS ARE DEFINED BY SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW. THE TERM "FACILITY" SHALL NOT INCLUDE ANY PRIVATE RESIDENCE.

(D) "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)] (E) "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:

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

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(i) Part [1508] 1219 of Title 16 of the Code of Federal Regulations and any regulations adopted to amend or supplement such part;
(ii) Part [1509] 1220 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. ON AND AFTER DECEMBER TWENTY-EIGHTH, TWO THOUSAND TWELVE, ANY FACILITY USING CRIBS MAY NOT USE AN UNSAFE CRIB. ALL CRIBS WITHIN ANY SUCH FACILITY MUST BE IN COMPLIANCE WITH THE FEDERAL REGULATIONS BY SUCH DATE.
4. 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 OR USE 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.] 5. 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 2. This act shall take effect on the thirtieth day after it shall have become a law.