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

313--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ, CUSICK -- read once and referred to the Committee on Consumer Affairs and 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 prohibiting the importation, manufacture or distribution of certain unsafe consumer products

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 399-j to read as follows:

S 399-J. PROHIBIT IMPORTATION, MANUFACTURE OR DISTRIBUTION OF CERTAIN UNSAFE CONSUMER PRODUCTS. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ANTIQUE" MEANS BEDROOM STORAGE FURNITURE, BOOKCASES, RESIDENTIAL FILE CABINETS, DESKS, CARTS, STANDS INTENDED TO HOLD TELEVISIONS, AND ANY OTHER PRODUCT HAVING SPECIAL VALUE BECAUSE OF ITS AGE, ESPECIALLY A WORK OF ART OR HANDICRAFT THAT IS OVER ONE HUNDRED YEARS OLD.

(B) "COVERED CONSUMER PRODUCT" MEANS BEDROOM STORAGE FURNITURE, BOOKCASES, RESIDENTIAL FILE CABINETS, DESKS, CARTS, STANDS INTENDED TO HOLD TELEVISIONS, AND ANY OTHER PRODUCT SUBJECT TO STANDARDS DEVELOPED TO ADDRESS TIPPING HAZARDS THAT ARE ESTABLISHED BY AMERICAN SOCIETY FOR TESTING AND MATERIALS INTERNATIONAL (ASTM) OR THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI).

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

(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.

(E) "RETAILER" SHALL MEAN ANY PERSON WHO AS A BUSINESS OR FOR-PROFIT VENTURE SELLS OR LEASES COVERED CONSUMER PRODUCTS FOR-PROFIT IN NEW YORK TO INITIAL CONSUMERS. SUCH TERM SHALL NOT INCLUDE:

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

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(I) SOMEONE WHO PURCHASED OR ACQUIRED A COVERED CONSUMER PRODUCT PRIMARILY FOR PERSONAL USE AND WHO SUBSEQUENTLY RESELLS THE PRODUCT; OR

(II) ANY SECONDHAND DEALER, AS DEFINED IN THIS SECTION.

(F) "SECONDHAND DEALER" SHALL MEAN A PERSON WHO SELLS AS A PRIMARY SOURCE OF INCOME RECONDITIONED, REMANUFACTURED, REFURBISHED, PREVIOUSLY OWNED, OR CONSIGNMENT ITEMS.

2. THE DEPARTMENT OF STATE SHALL PROMULGATE RULES AND REGULATIONS FOR STANDARDS AND SPECIFICATIONS OF COVERED CONSUMER PRODUCTS. THOSE REGULATIONS SHALL SUBSTANTIALLY COMPLY WITH THE STANDARDS ESTABLISHED BY AMERICAN SOCIETY FOR TESTING AND MATERIALS INTERNATIONAL (ASTM) OR THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) THAT ADDRESS TIPPING HAZARDS FOR COVERED CONSUMER PRODUCTS.

3. (A) NO PERSON SHALL IMPORT, MANUFACTURE, OR DISTRIBUTE A COVERED CONSUMER PRODUCT UNLESS SUCH COVERED CONSUMER PRODUCT CONFORMS WITH THE REQUIREMENTS OF THOSE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS SECTION.

(B) NO RETAILER SHALL SELL, LEASE OR OTHERWISE MAKE AVAILABLE A COVERED CONSUMER PRODUCT UNLESS SUCH COVERED CONSUMER PRODUCT CONFORMS WITH THE REQUIREMENTS OF THOSE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS SECTION.

4. THIS SECTION SHALL NOT APPLY TO:

(A) A MANUFACTURER, IMPORTER, DISTRIBUTOR OR WHOLESALE SELLER WHO CAN DEMONSTRATE THAT THE NON-CONFORMING COVERED CONSUMER PRODUCTS ARE NOT INTENDED FOR SALE WITHIN THE STATE; OR

(B) A RETAILER WHO CAN DEMONSTRATE THAT THE NON-CONFORMING COVERED CONSUMER PRODUCT IS AN ANTIQUE.

5. 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 COVERED CONSUMER PRODUCT 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.

6. 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 one year after it shall have become a law.