

9186--B

I N A S S E M B L Y

February 2, 2016

Introduced by M. of A. PAULIN, DINOWITZ, LUPARDO, SOLAGES, SIMON, BUCHWALD, ARROYO, McDONOUGH, SEAWRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to the prohibition of the sale of crib bumper pads and the restriction of the use of such pads in certain settings

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

1 Section 1. The general business law is amended by adding a new section
2 399-ii to read as follows:
3 S 399-II. PROHIBIT THE SALE OF CRIB BUMPER PADS AND RESTRICT USE OF
4 SUCH PADS IN CERTAIN SETTINGS. 1. FOR THE PURPOSES OF THIS SECTION: (A)
5 "CRIB" SHALL MEAN A BED OR CONTAINMENT DESIGNATED TO ACCOMMODATE AN
6 INFANT.
7 (B) "CRIB BUMPER PADS" SHALL MEAN A PAD OR PADS OF NON-MESH MATERIAL
8 RESTING DIRECTLY ABOVE THE MATTRESS IN A CRIB, RUNNING THE SURFACE AREA
9 OF THE CRIB OR ALONG THE LENGTH OF ANY OF THE INTERIOR SIDES OF THE
10 CRIB. "CRIB BUMPER PAD" DOES NOT INCLUDE MESH LINERS.
11 (C) "DISTRIBUTOR" SHALL MEAN ANY PERSON WHO DELIVERS TO A PERSON OTHER
12 THAN THE PURCHASER, FOR THE PURPOSE OF RETAIL SALE.
13 (D) "MANUFACTURER" SHALL MEAN ANY PERSON WHO MAKES AND PLACES INTO THE
14 STREAM OF COMMERCE A BUMPER PAD AS DEFINED BY THIS SECTION.
15 (E) "RETAILER" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION
16 ELEVEN OF SECTION FOUR HUNDRED NINETY-A OF THIS CHAPTER.
17 (F) "SECONDHAND DEALER" SHALL HAVE THE SAME MEANING AS SET FORTH IN
18 SUBDIVISION SIX OF SECTION FOUR HUNDRED NINETY-A OF THIS CHAPTER.
19 (G) "CHILD CARE FACILITY" SHALL MEAN ANY PLACE SUBJECT TO SECTION
20 THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW OR ARTICLE FORTY-SEVEN
21 OF THE NEW YORK CITY HEALTH CODE AS AUTHORIZED BY SECTION FIVE HUNDRED
22 FIFTY-EIGHT OF THE NEW YORK CITY CHARTER.
23 (H) "PLACE OF PUBLIC ACCOMMODATION" SHALL MEAN ANY INN, HOTEL, MOTEL,
24 MOTOR COURT OR OTHER ESTABLISHMENT THAT PROVIDES LODGING TO TRANSIENT
25 GUESTS. SUCH TERM SHALL NOT INCLUDE AN ESTABLISHMENT TREATED AS AN

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

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1 APARTMENT BUILDING FOR PURPOSES OF ANY STATE OR LOCAL LAW OR REGULATION
2 OR AN ESTABLISHMENT LOCATED WITHIN A BUILDING THAT CONTAINS NOT MORE
3 THAN FIVE ROOMS FOR RENT OR HIRE AND THAT IS ACTUALLY OCCUPIED AS A
4 RESIDENCE BY THE PROPRIETOR OF SUCH ESTABLISHMENT.

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

8 2. NO MANUFACTURER, IMPORTER, DISTRIBUTOR, WHOLESALER, RETAILER OR
9 SECONDHAND DEALER SHALL SELL, LEASE, OFFER FOR SALE, OR OFFER FOR LEASE
10 IN THIS STATE ANY CRIB BUMPER PAD AS AN ACCESSORY TO A CRIB OR AS A
11 SEPARATE ITEM.

12 3. (A) ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, NO CHILD CARE
13 FACILITY OR PLACE OF PUBLIC ACCOMMODATION SHALL USE OR HAVE ON THE PREM-
14 ISES ANY CRIB BUMPER PADS.

15 (B) THE OFFICE OF CHILDREN AND FAMILY SERVICES, IN CONSULTATION WITH
16 THE CITY OF NEW YORK DEPARTMENT OF HEALTH AND MENTAL HYGIENE, SHALL
17 NOTIFY CHILD CARE FACILITIES OF THE PROVISIONS OF THIS SUBDIVISION IN
18 PLAIN, NON-TECHNICAL LANGUAGE THAT WILL ENABLE EACH CHILD CARE FACILITY
19 TO EFFECTIVELY IDENTIFY AND REMOVE CRIB BUMPER PADS. SUCH NOTICE SHALL
20 BE GIVEN TO EVERY CHILD CARE FACILITY UPON THE EFFECTIVE DATE OF THIS
21 SECTION OR AS SOON AS PRACTICABLE THEREAFTER, AND SUCH NOTICE SHALL ALSO
22 BE GIVEN TO EACH APPLICANT FOR LICENSE OR REGISTRATION PURSUANT TO
23 SECTION THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW.

24 (C) THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL PROMULGATE RULES
25 AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBDIVISION, WITH
26 RESPECT TO THE BAN ON CRIB BUMPER PADS IN CHILD CARE FACILITIES.

27 4. WHENEVER THERE SHALL BE A VIOLATION OF SUBDIVISION TWO OF THIS
28 SECTION AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME
29 OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING
30 JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON
31 NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND
32 RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO
33 THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN
34 FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR
35 JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT
36 REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED
37 THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE
38 ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF
39 SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES,
40 AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A
41 VIOLATION OF SUBDIVISION TWO OF THIS SECTION HAS OCCURRED, THE COURT MAY
42 IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH
43 VIOLATION. EACH SALE OF A CRIB BUMPER PAD IN VIOLATION OF THIS SECTION
44 SHALL CONSTITUTE A SEPARATE VIOLATION. IN CONNECTION WITH ANY SUCH
45 PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF
46 AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN
47 ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

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

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