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

439

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to consumer protection from prescription drug reimportation

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 article 38-B to read as follows:

ARTICLE 38-B

CONSUMER PROTECTION FROM PRESCRIPTION DRUG REIMPORTATION

SECTION 830. UNLAWFUL PRACTICES.

831. ENFORCEMENT AND PENALTIES.

S 830. UNLAWFUL PRACTICES. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, CORPORATION OR ASSOCIATION OR AGENT OR EMPLOYEE THEREOF TO PURCHASE FOR RESALE, SELL, OFFER FOR SALE, OR DELIVER IN ANY MANNER, ANY PRESCRIPTION DRUG APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION THAT IS EITHER:

1. MANUFACTURED IN THE UNITED STATES, EXPORTED FROM THE UNITED STATES TO ANY OTHER COUNTRY, AND IMPORTED INTO THE UNITED STATES FROM ANY PLACE OUTSIDE THEREOF IN VIOLATION OF STATE OR FEDERAL LAW; OR

2. MANUFACTURED FOR SALE IN A COUNTRY OTHER THAN THE UNITED STATES AND IMPORTED INTO THE UNITED STATES FROM ANY PLACE OUTSIDE THEREOF IN VIOLATION OF STATE OR FEDERAL LAW.

S 831. ENFORCEMENT AND PENALTIES. 1. WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, 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 TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE

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

LBD01364-01-5

DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, 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 ARTICLE HAS OCCURRED THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE THAN TEN THOUSAND DOLLARS FOR EACH VIOLATION. FOR THE PURPOSES OF THIS SECTION, EACH GROUP OF IDENTICAL ITEMS SHALL CONSTITUTE A SINGLE 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.

2. BEFORE ANY VIOLATION OF THIS ARTICLE IS SOUGHT TO BE ENJOINED, THE ATTORNEY GENERAL SHALL BE REQUIRED TO GIVE THE PERSON AGAINST WHOM SUCH PROCEEDING IS CONTEMPLATED NOTICE BY CERTIFIED MAIL AND AN OPPORTUNITY TO SHOW IN WRITING WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF NOTICE WHY PROCEEDINGS SHOULD NOT BE INSTITUTED AGAINST HIM OR HER, UNLESS THE ATTORNEY GENERAL SHALL FIND, IN ANY CASE IN WHICH HE OR SHE SEEKS PRELIMINARY RELIEF, THAT TO GIVE SUCH NOTICE AND OPPORTUNITY IS NOT IN THE PUBLIC INTEREST.

3. IN ANY SUCH ACTION IT SHALL BE A COMPLETE DEFENSE THAT THE ACT OR PRACTICE IS SUBJECT TO AND COMPLIES WITH THE RULES AND REGULATIONS OF, AND THE STATUES ADMINISTERED BY, THE FEDERAL FOOD AND DRUG ADMINISTRATION OR ANY OFFICIAL DEPARTMENT, DIVISION, COMMISSION OR AGENCY OF THE UNITED STATES AS SUCH RULES, REGULATIONS OR STATUES ARE INTERPRETED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION OR SUCH DEPARTMENT, DIVISION, COMMISSION OR AGENCY OR THE FEDERAL COURTS.

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