

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:

1 Section 1. The general business law is amended by adding a new article
2 38-B to read as follows:

3 ARTICLE 38-B

4 CONSUMER PROTECTION FROM PRESCRIPTION DRUG
5 REIMPORTATION

6 SECTION 830. UNLAWFUL PRACTICES.

7 831. ENFORCEMENT AND PENALTIES.

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

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

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

19 S 831. ENFORCEMENT AND PENALTIES. 1. WHENEVER THERE SHALL BE A
20 VIOLATION OF THIS ARTICLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY
21 GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR
22 JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNC-
23 TION TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF
24 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.

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1 DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE
2 ISSUED BY SUCH COURT OR JUSTICE ENJOINING AND RESTRAINING ANY FURTHER
3 VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN
4 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE
5 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF
6 SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRAC-
7 TICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL
8 DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED THE COURT MAY
9 IMPOSE A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE
10 THAN TEN THOUSAND DOLLARS FOR EACH VIOLATION. FOR THE PURPOSES OF THIS
11 SECTION, EACH GROUP OF IDENTICAL ITEMS SHALL CONSTITUTE A SINGLE
12 VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTOR-
13 NEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE
14 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRAC-
15 TICE LAW AND RULES.

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

24 3. IN ANY SUCH ACTION IT SHALL BE A COMPLETE DEFENSE THAT THE ACT OR
25 PRACTICE IS SUBJECT TO AND COMPLIES WITH THE RULES AND REGULATIONS OF,
26 AND THE STATUTES ADMINISTERED BY, THE FEDERAL FOOD AND DRUG ADMINIS-
27 TRATION OR ANY OFFICIAL DEPARTMENT, DIVISION, COMMISSION OR AGENCY OF
28 THE UNITED STATES AS SUCH RULES, REGULATIONS OR STATUTES ARE INTERPRETED
29 BY THE FEDERAL FOOD AND DRUG ADMINISTRATION OR SUCH DEPARTMENT, DIVI-
30 SION, COMMISSION OR AGENCY OR THE FEDERAL COURTS.

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