

7041

I N S E N A T E

March 18, 2016

Introduced by Sen. VENDITTO -- 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 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" MEANS ANY PERSON OTHER THAN A MANUFACTURER, DISTRIBUTOR,
16 OR WHOLESALE WHO SELLS, LEASES, OR SUBLETS CRIB BUMPER PADS.
17 (F) "CHILD CARE FACILITY" SHALL MEAN ANY PLACE SUBJECT TO SECTION
18 THREE HUNDRED NINETY OF THE SOCIAL SERVICES LAW OR ARTICLE FORTY-SEVEN
19 OF THE NEW YORK CITY HEALTH CODE AS AUTHORIZED BY SECTION FIVE HUNDRED
20 FIFTY-EIGHT OF THE NEW YORK CITY CHARTER.
21 (G) "PLACE OF PUBLIC ACCOMMODATION" SHALL MEAN ANY INN, HOTEL, MOTEL,
22 MOTOR COURT OR OTHER ESTABLISHMENT THAT PROVIDES LODGING TO TRANSIENT
23 GUESTS. SUCH TERM SHALL NOT INCLUDE AN ESTABLISHMENT TREATED AS AN
24 APARTMENT BUILDING FOR PURPOSES OF ANY STATE OR LOCAL LAW OR REGULATION
25 OR AN ESTABLISHMENT LOCATED WITHIN A BUILDING THAT CONTAINS NOT MORE
26 THAN FIVE ROOMS FOR RENT OR HIRE AND THAT IS ACTUALLY OCCUPIED AS A
27 RESIDENCE BY THE PROPRIETOR OF SUCH ESTABLISHMENT.

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

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1 (H) "PERSON" SHALL MEAN A NATURAL PERSON, FIRM, CORPORATION, LIMITED
2 LIABILITY COMPANY, ASSOCIATION, OR AN EMPLOYEE OR AGENT OF A NATURAL
3 PERSON OR AN ENTITY INCLUDED IN THIS DEFINITION.

4 2. NO COMMERCIAL DEALER, MANUFACTURER, IMPORTER, DISTRIBUTOR, WHOLE-
5 SALER, OR RETAILER SHALL SELL, LEASE, OFFER FOR SALE, OR OFFER FOR LEASE
6 IN THIS STATE ANY CRIB BUMPER PAD AS AN ACCESSORY TO A CRIB OR AS A
7 SEPARATE ITEM. USE OF CRIB BUMPER PADS SHALL ALSO BE PROHIBITED AT ALL
8 CHILD CARE FACILITIES AND PLACES OF PUBLIC ACCOMMODATION IN THIS STATE.

9 3. (A) ON OR AFTER DECEMBER FIRST, TWO THOUSAND SIXTEEN, NO CHILD CARE
10 FACILITY OR PLACE OF PUBLIC ACCOMMODATION SHALL USE OR HAVE ON THE PREM-
11 ISES ANY CRIB BUMPER PADS.

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

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

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

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

50 S 2. This act shall take effect immediately.