STATE OF NEW YORK

3788

2019-2020 Regular Sessions

IN SENATE

February 14, 2019

Introduced by Sen. CARLUCCI -- 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:

Section 1. The general business law is amended by adding a new section 399-ii to read as follows:

§ 399-ii. Prohibit the sale of crib bumper pads and restrict use of such pads in certain settings. 1. For the purposes of this section: (a) "Crib" shall mean a bed or containment designated to accommodate an infant.

(b) "Crib bumper pads" shall mean a pad or pads of a non-mesh material resting directly above the mattress in a crib, running the surface area of the crib or along the length of any of the interior sides of the crib. "Crib bumper pad" does not include mesh liners.

(c) "Distributor" shall mean any person who delivers to a person other than the purchaser, for the purpose of retail sale.

(d) "Manufacturer" shall mean any person who makes and places into the stream of commerce a bumper pad as defined by this section.

(e) "Retailer" shall have the same meaning as set forth in subdivision eleven of section four hundred ninety-a of this chapter.

(f) "Secondhand dealer" shall have the same meaning as set forth in subdivision six of section four hundred ninety-a of this chapter.

(g) "Child care facility" shall mean any place subject to section three hundred ninety of the social services law or article forty-seven of the New York city health code as authorized by section five hundred fifty-eight of the New York city charter.

(h) "Place of public accommodation" shall mean any inn, hotel, motel, motor court or other establishment that provides lodging to transient guests. Such term shall not include an establishment treated as an apartment building for purposes of any state or local law or regulation or an establishment located within a building that contains not more

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

LBD00621-01-9

than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

(i) "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.

2. No manufacturer, importer, distributor, wholesaler, retailer or secondhand dealer shall sell, lease, offer for sale, or offer for lease in this state any crib bumper pad as an accessory to a crib or as a separate item.

3. (a) On or after the effective date of this section, no child care facility or place of public accommodation shall use or have on the premises any crib bumper pads unless a medical professional has determined that use of crib bumper pads is medically necessary for a particular child using a crib in such child care facility or place of public accommodation.

(b) The office of children and family services, in consultation with the city of New York department of health and mental hygiene, shall notify child care facilities of the provisions of this subdivision in plain, non-technical language. Such notice shall be given to every child care facility upon the effective date of this section or as soon as practicable thereafter, and such notice shall also be given to each applicant for license or registration pursuant to section three hundred ninety of the social services law.

(c) The office of children and family services shall promulgate rules and regulations to carry out the provisions of this subdivision, with respect to the ban on crib bumper pads in child care facilities.

4. Whenever there shall be a violation of subdivision two 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 subdivision two of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. Each sale of a crib bumper pad 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.

5. If any provision of this section or the application thereof to any person or circumstance 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.

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