

# STATE OF NEW YORK

3788--A

2019-2020 Regular Sessions

## IN SENATE

February 14, 2019

Introduced by Sens. CARLUCCI, BIAGGI, MARTINEZ, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, 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 § 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 a 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 child day care provider as  
20 defined in section three hundred ninety of the social services law or  
21 child care program as defined in article forty-seven of the New York

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

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1 city health code as authorized by section five hundred fifty-eight of  
2 the New York city charter.

3 (h) "Place of public accommodation" shall mean any inn, hotel, motel,  
4 motor court or other establishment that provides lodging to transient  
5 guests. Such term shall not include an establishment treated as an  
6 apartment building for purposes of any state or local law or regulation  
7 or an establishment located within a building that contains not more  
8 than five rooms for rent or hire and that is actually occupied as a  
9 residence by the proprietor of such establishment.

10 (i) "Person" shall mean a natural person, firm, corporation, limited  
11 liability company, association, or an employee or agent of a natural  
12 person or an entity included in this definition.

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

17 3. (a) On or after the effective date of this section, no child care  
18 facility or place of public accommodation shall use or have on the prem-  
19 ises any crib bumper pads unless a medical professional has determined  
20 that use of crib bumper pads is medically necessary for a particular  
21 child using a crib in such child care facility or place of public accom-  
22 modation.

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

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

34 4. Whenever there shall be a violation of subdivision two of this  
35 section an application may be made by the attorney general in the name  
36 of the people of the state of New York to a court or justice having  
37 jurisdiction by a special proceeding to issue an injunction, and upon  
38 notice to the defendant of not less than five days, to enjoin and  
39 restrain the continuance of such violations; and if it shall appear to  
40 the satisfaction of the court or justice that the defendant has, in  
41 fact, violated this section, an injunction may be issued by the court or  
42 justice, enjoining and restraining any further violations, without  
43 requiring proof that any person has, in fact, been injured or damaged  
44 thereby. In any such proceeding, the court may make allowances to the  
45 attorney general as provided in paragraph six of subdivision (a) of  
46 section eighty-three hundred three of the civil practice law and rules,  
47 and direct restitution. Whenever the court shall determine that a  
48 violation of subdivision two of this section has occurred, the court may  
49 impose a civil penalty of not more than five hundred dollars for each  
50 violation. Each sale of a crib bumper pad in violation of this section  
51 shall constitute a separate violation. In connection with any such  
52 proposed application, the attorney general is authorized to take proof  
53 and make a determination of the relevant facts and to issue subpoenas in  
54 accordance with the civil practice law and rules.

55 5. If any provision of this section or the application thereof to any  
56 person or circumstance is held unconstitutional, such invalidity shall

1 not affect other provisions or applications of this section which can be  
2 given effect without the invalid provision or application, and to this  
3 end the provisions of this section are severable.

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