

# STATE OF NEW YORK

7874

## IN SENATE

February 27, 2020

Introduced by Sen. MYRIE -- 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 infant inclined sleepers and the restriction of the use of such sleepers 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-iii to read as follows:

3 § 399-iii. Prohibit the sale of infant inclined sleepers and restrict  
4 use of such inclined sleepers in certain settings. 1. For the purposes  
5 of this section: (a) "Infant inclined sleeper" shall mean a free stand-  
6 ing product with an inclined sleep surface primarily intended and  
7 marketed to provide sleeping accommodations for an infant up to five  
8 months old or when the infant begins to roll over or pull up on the  
9 sides of the sleeper, whichever comes first.

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

12 (c) "Manufacturer" shall mean any person who makes and places into the  
13 stream of commerce an infant inclined sleeper as defined by this  
14 section.

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

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

19 (f) "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  
22 city health code as authorized by section five hundred fifty-eight of  
23 the New York city charter.

24 (g) "Person" shall mean a natural person, firm, corporation, limited  
25 liability company, association, or an employee or agent of a natural  
26 person or an entity included in this definition.

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

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1 2. No manufacturer, importer, distributor, wholesaler, retailer or  
2 secondhand dealer shall sell, lease, offer for sale, or offer for lease  
3 in this state any infant inclined sleeper.

4 3. (a) On or after the effective date of this section, no child care  
5 facility shall use or have on the premises any infant inclined sleeper  
6 unless a medical professional has determined that use of an infant  
7 inclined sleeper is medically necessary for a particular child in such  
8 child care facility.

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

17 (c) The office of children and family services shall promulgate rules  
18 and regulations to carry out the provisions of this subdivision, with  
19 respect to the ban on infant inclined sleepers in child care facilities.

20 4. Whenever there shall be a violation of subdivision two of this  
21 section an application may be made by the attorney general in the name  
22 of the people of the state of New York to a court or justice having  
23 jurisdiction by a special proceeding to issue an injunction, and upon  
24 notice to the defendant of not less than five days, to enjoin and  
25 restrain the continuance of such violations; and if it shall appear to  
26 the satisfaction of the court or justice that the defendant has, in  
27 fact, violated this section, an injunction may be issued by the court or  
28 justice, enjoining and restraining any further violations, without  
29 requiring proof that any person has, in fact, been injured or damaged  
30 thereby. In any such proceeding, the court may make allowances to the  
31 attorney general as provided in paragraph six of subdivision (a) of  
32 section eighty-three hundred three of the civil practice law and rules,  
33 and direct restitution. Whenever the court shall determine that a  
34 violation of subdivision two of this section has occurred, the court may  
35 impose a civil penalty of not more than five hundred dollars for each  
36 violation. Each sale of an infant inclined sleeper in violation of this  
37 section shall constitute a separate violation. In connection with any  
38 such proposed application, the attorney general is authorized to take  
39 proof and make a determination of the relevant facts and to issue  
40 subpoenas in accordance with the civil practice law and rules.

41 5. If any provision of this section or the application thereof to any  
42 person or circumstance is held unconstitutional, such invalidity shall  
43 not affect other provisions or applications of this section which can be  
44 given effect without the invalid provision or application, and to this  
45 end the provisions of this section are severable.

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