

STATE OF NEW YORK

8623

IN SENATE

March 22, 2022

Introduced by Sen. CLEARE -- 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.