

# STATE OF NEW YORK

3172

2023-2024 Regular Sessions

## IN SENATE

January 30, 2023

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 prohibiting the sale of infant loungers and restricting the use of such infant loungers 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-iii to read as follows:

§ 399-iii. Prohibit the sale of infant loungers and restrict use of such infant loungers in certain settings. 1. For the purposes of this section: (a) "Infant lounger" shall mean a padded pillow or cushioned product, sometimes with a lower indented region, used to support or hug an infant as it lies face up, primarily intended and marketed for the support of an infant while awake.

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

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

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

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

(f) "Child care facility" shall mean any child day care provider as defined in section three hundred ninety of the social services law or child care program as defined in article forty-seven of the New York city health code as authorized by section five hundred fifty-eight of the New York city charter.

(g) "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.

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 lounger.

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 lounger unless a  
6 medical professional has determined that use of an infant lounger is  
7 medically necessary for a particular child in such child care facility.

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

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

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

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

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