STATE OF NEW YORK

3173

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 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:

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 inclined sleepers and restrict use of such inclined sleepers in certain settings. 1. For the purposes of this section: (a) "Infant inclined sleeper" shall mean a free standing product with an inclined sleep surface primarily intended and marketed to provide sleeping accommodations for an infant up to five months old or when the infant begins to roll over or pull up on the sides of the sleeper, whichever comes first.

(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 inclined sleeper 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.

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

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(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.

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

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

(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 infant inclined sleepers 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 an infant inclined sleeper 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.