

7471--B

I N S E N A T E

April 14, 2010

Introduced by Sen. PERALTA -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to authorizing the enactment of local laws regarding playground equipment and requiring the use of a temperature test on playground equipment installed by municipalities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "playground
2 equipment safety act".
3 S 2. Section 399-dd of the general business law, as added by chapter
4 519 of the laws of 2006, is relettered section 399-ff and amended to
5 read as follows:
6 S 399-ff. Construction or installation of playground or playground
7 equipment. 1. Definitions relative to playground safety. For the
8 purposes of this section[, the term]:
9 (A) "playground" means an improved area designed, equipped, and set
10 aside for play of six or more children which is not intended for use as
11 an athletic playing field or athletic court, and shall include any play
12 equipment, surfacing, fencing, signs, internal pathways, internal land
13 forms, vegetation, and related structures[.]; AND
14 (B) "MUNICIPALITY" MEANS A CITY, VILLAGE, COUNTY OR TOWN; AND
15 (C) "TEMPERATURE TESTING" MEANS THE MEASUREMENT OF THE TEMPERATURE OF
16 PLAYGROUND EQUIPMENT, MATERIAL OR SURFACE, INCLUDING SAFETY SURFACING,
17 THAT MAY COME INTO CONTACT WITH THE SKIN OF A USER IN THE NORMAL COURSE
18 OF USE OF A PLAYGROUND PURSUANT TO A METHOD DEVELOPED BY THE CONSUMER
19 PROTECTION BOARD, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH.
20 2. The consumer protection board, in consultation with the office of
21 parks, recreation and historic preservation, shall promulgate rules and
22 regulations for the design, installation, inspection and maintenance of
23 playgrounds and playground equipment. Those regulations shall substan-

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

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1 tially comply with the guidelines and criteria which are contained in
2 the handbook for public playground safety produced by the United States
3 consumer products safety commission or any successor. The rules and
4 regulations shall include special provisions for playgrounds appropriate
5 for children within the range of ages in day care settings.

6 3. (a) No person, firm, corporation, or other legal entity which
7 constructs, assembles or installs a playground or playground equipment
8 shall construct, assemble, or install in this state such playground or
9 playground equipment unless such playground or playground equipment
10 shall conform to the requirements of those rules and regulations promul-
11 gated pursuant to this section.

12 (b) Playgrounds or playground equipment constructed upon one, two and
13 three-family residential real property are exempt from the requirements
14 of this section.

15 4. THE CONSUMER PROTECTION BOARD, IN CONSULTATION WITH THE DEPARTMENT
16 OF HEALTH, SHALL:

17 (A) DEVELOP A METHOD FOR THE TEMPERATURE TESTING OF PLAYGROUND EQUIP-
18 MENT, MATERIALS AND SURFACES, INCLUDING SAFETY SURFACING, AND SHALL
19 PROMULGATE RULES AND REGULATIONS RELATING TO SUCH TESTING. SUCH METHOD
20 SHALL INCORPORATE RELEVANT VARIABLES AND FACTORS, INCLUDING, BUT NOT
21 LIMITED TO, THE AVERAGE AIR TEMPERATURE DURING THE MONTHS OF MAY, JUNE,
22 JULY, AUGUST AND SEPTEMBER, THE AVERAGE AMOUNT AND INTENSITY OF SUNLIGHT
23 THAT MAY AFFECT THE TEMPERATURE OF PLAYGROUND EQUIPMENT, MATERIALS AND
24 SURFACES, INCLUDING SAFETY SURFACING, AND VARIATIONS IN TEMPERATURE AND
25 SUNLIGHT EXPOSURE AT DIFFERENT TIMES OF THE DAY; AND

26 (B) ESTABLISH A MAXIMUM POTENTIAL TEMPERATURE STANDARD FOR PLAYGROUND
27 EQUIPMENT, MATERIALS AND SURFACES, INCLUDING SAFETY SURFACING, THAT
28 SHALL REPRESENT THE TEMPERATURE AT WHICH SUCH EQUIPMENT, MATERIALS AND
29 SURFACES MAY POSE A RISK OF BURNING THE EXPOSED SKIN OF A USER IN THE
30 NORMAL COURSE OF USE OF A PLAYGROUND.

31 5. ANY MUNICIPALITY THAT CONSTRUCTS, INSTALLS OR MAINTAINS PLAYGROUNDS
32 OR PLAYGROUND EQUIPMENT, SHALL PROMULGATE RULES AND REGULATIONS FOR THE
33 DESIGN, INSTALLATION, INSPECTION AND MAINTENANCE OF PLAYGROUNDS MAIN-
34 TAINED BY SUCH MUNICIPALITY. SUCH RULES AND REGULATIONS SHALL INCLUDE
35 PROVISIONS THAT:

36 (A) REQUIRE, AS PART OF THE DESIGN OF ANY NEW PLAYGROUND, AND PRIOR TO
37 THE INSTALLATION OF ANY NEW PLAYGROUND EQUIPMENT, MATERIALS OR SURFACES,
38 INCLUDING SAFETY SURFACING, THE PERFORMANCE OF AN ANALYSIS OF THE POTEN-
39 TIAL FOR SUCH PLAYGROUND EQUIPMENT, MATERIALS OR SURFACES TO EXCEED THE
40 MAXIMUM POTENTIAL TEMPERATURE STANDARD PROMULGATED BY THE CONSUMER
41 PROTECTION BOARD;

42 (B) REQUIRE, AS PART OF SUCH MUNICIPALITY'S PLAYGROUND INSPECTION AND
43 MAINTENANCE PROCEDURES, THE PERFORMANCE OF TEMPERATURE TESTING FOR
44 EQUIPMENT, MATERIALS AND SURFACES INSTALLED IN PLAYGROUNDS, INCLUDING
45 SAFETY SURFACING. IN CITIES HAVING A POPULATION OF ONE MILLION OR MORE
46 INHABITANTS, THE LOCAL DEPARTMENT OF PARKS AND RECREATION SHALL COMMENCE
47 TEMPERATURE TESTING PURSUANT TO THIS SECTION NO LATER THAN MAY FIRST,
48 TWO THOUSAND ELEVEN PURSUANT TO THE METHOD OF TEMPERATURE TESTING
49 ADOPTED BY THE CONSUMER PROTECTION BOARD. IN A MUNICIPALITY HAVING A
50 POPULATION OF LESS THAN ONE MILLION INHABITANTS, SUCH MUNICIPALITY SHALL
51 COMMENCE TEMPERATURE TESTING PURSUANT TO THIS SECTION NO LATER THAN MAY
52 FIRST, TWO THOUSAND TWELVE PURSUANT TO THE METHOD OF TEMPERATURE TESTING
53 ADOPTED BY THE CONSUMER PROTECTION BOARD; AND

54 (C) SPECIFY PROCEDURES FOR THE MITIGATION OF ANY SIGNIFICANT HEALTH
55 HAZARDS IDENTIFIED DURING ANY INSPECTION, INCLUDING, BUT NOT LIMITED TO,
56 HAZARDS THAT POSE A RISK OF BURNING EXPOSED SKIN BASED ON THE MAXIMUM

1 POTENTIAL TEMPERATURE STANDARD PROMULGATED BY THE CONSUMER PROTECTION
2 BOARD.

3 6. Whenever the attorney general shall believe from evidence satisfac-
4 tory to him that any person, firm, corporation or association or agent
5 or employee thereof has violated any provision of this section, he may
6 bring an action in the supreme court of the state of New York for a
7 judgment enjoining the continuance of such violation and for a civil
8 penalty of not more than one thousand dollars for each violation, except
9 that the court may impose a civil penalty of not more than ten thousand
10 dollars if the violation is knowing and willful. If it shall appear to
11 the satisfaction of the court or justice that the defendant has violated
12 any provision of this section, no proof shall be required that any
13 person has been injured thereby nor that the defendant knowingly or
14 intentionally violated such provision. In such action preliminary relief
15 may be granted under article sixty-three of the civil practice law and
16 rules. Before any violation of this section is sought to be enjoined,
17 the attorney general shall be required to give the person against whom
18 such proceeding is contemplated notice by certified mail and an opportu-
19 nity to show in writing within five business days after receipt of
20 notice why proceedings should not be instituted against him, unless the
21 attorney general shall find, in any case in which he seeks preliminary
22 relief, that to give such notice and opportunity is not in the public
23 interest.

24 S 3. This act shall take effect on the thirtieth day after it shall
25 have become a law.