

1889

2009-2010 Regular Sessions

I N S E N A T E

February 9, 2009

Introduced by Sens. KLEIN, DIAZ, DUANE, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, ONORATO, SAMPSON, SMITH -- 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 and the executive law, in relation to prohibiting the use of unsafe children's products; prohibiting child care facilities from using or having on the facility premises unsafe children's products; prescribing powers and duties of certain agencies; and providing for the promulgation of rules to carry out the provisions of this act

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 article
2 12-A to read as follows:

3 ARTICLE 12-A

4 NEW YORK INFANT CRIB SAFETY ACT

5 SECTION 211. SHORT TITLE.

6 211-A. DEFINITIONS.

7 211-B. UNSAFE CHILDREN'S PRODUCTS; PROHIBITION.

8 211-C. LIST OF UNSAFE CHILDREN'S PRODUCTS.

9 211-D. UNSAFE CHILDREN'S PRODUCTS; CHILD CARE.

10 211-E. RETROFITS.

11 211-F. EXCEPTION.

12 211-G. ENFORCEMENT.

13 211-H. REMEDIES.

14 S 211. SHORT TITLE. THIS ARTICLE MAY BE CITED AS THE "NEW YORK INFANT
15 CRIB SAFETY ACT".

16 S 211-A. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

17 (A) "CHILDREN'S PRODUCT" MEANS A PRODUCT, INCLUDING BUT NOT LIMITED TO
18 A FULL-SIZE CRIB, NON-FULL-SIZE CRIB, TODDLER BED, BED, CAR SEAT, CHAIR,
19 HIGH CHAIR, BOOSTER CHAIR, HOOK-ON CHAIR, BATH SEAT, GATE OR OTHER
20 ENCLOSURE FOR CONFINING A CHILD, PLAY YARD, STATIONARY ACTIVITY CENTER,

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

LBD02637-01-9

1 CARRIER, STROLLER, WALKER, SWING, OR TOY OR PLAY EQUIPMENT, THAT MEETS
2 THE FOLLOWING CRITERIA:

3 (1) THE PRODUCT IS DESIGNED OR INTENDED FOR THE CARE OF, OR USE BY,
4 CHILDREN UNDER SIX YEARS OF AGE OR IS DESIGNED OR INTENDED FOR THE CARE
5 OF, OR USE BY, BOTH CHILDREN UNDER SIX YEARS OF AGE AND CHILDREN SIX
6 YEARS OF AGE OR OLDER; AND

7 (2) THE PRODUCT IS DESIGNED OR INTENDED TO COME INTO CONTACT WITH THE
8 CHILD WHILE THE PRODUCT IS USED.

9 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PRODUCT IS
10 NOT A "CHILDREN'S PRODUCT" FOR PURPOSES OF THIS ARTICLE IF:

11 (A) IT MAY BE USED BY OR FOR THE CARE OF A CHILD UNDER SIX YEARS OF
12 AGE, BUT IT IS DESIGNED OR INTENDED FOR USE BY THE GENERAL POPULATION OR
13 SEGMENTS OF THE GENERAL POPULATION AND NOT SOLELY OR PRIMARILY FOR USE
14 BY OR FOR THE CARE OF A CHILD; OR

15 (B) IT IS A MEDICATION, DRUG, OR FOOD OR IS INTENDED TO BE INGESTED.

16 (B) "COMMERCIAL USER" MEANS ANY PERSON WHO DEALS IN CHILDREN'S
17 PRODUCTS OR WHO OTHERWISE BY ONE'S OCCUPATION HOLDS ONESELF OUT AS
18 HAVING KNOWLEDGE OR SKILL PECULIAR TO CHILDREN'S PRODUCTS, OR ANY PERSON
19 WHO IS IN THE BUSINESS OF REMANUFACTURING, RETROFITTING, SELLING, LEAS-
20 ING, SUBLETTING, OR OTHERWISE PLACING IN THE STREAM OF COMMERCE CHIL-
21 DREN'S PRODUCTS.

22 (C) "PERSON" MEANS A NATURAL PERSON, FIRM, CORPORATION, LIMITED
23 LIABILITY COMPANY, OR ASSOCIATION, OR AN EMPLOYEE OR AGENT OF A NATURAL
24 PERSON OR AN ENTITY INCLUDED IN THIS DEFINITION.

25 (D) "INFANT" MEANS ANY PERSON LESS THAN THIRTY-FIVE INCHES TALL AND
26 LESS THAN THREE YEARS OF AGE.

27 (E) "CRIB" MEANS A BED OR CONTAINMENT DESIGNED TO ACCOMMODATE AN
28 INFANT.

29 (F) "FULL-SIZE CRIB" MEANS A FULL-SIZE CRIB AS DEFINED IN SECTION
30 1508.3 OF TITLE 16 OF THE CODE OF FEDERAL REGULATIONS REGARDING THE
31 REQUIREMENTS FOR FULL-SIZE CRIBS.

32 (G) "NON-FULL-SIZE CRIB" MEANS A NON-FULL-SIZE CRIB AS DEFINED IN
33 SECTION 1509.2 OF TITLE 16 OF THE CODE OF FEDERAL REGULATIONS REGARDING
34 THE REQUIREMENTS FOR NON-FULL-SIZE CRIBS.

35 (H) "PLACE IN THE STREAM OF COMMERCE" MEANS TO SELL, OFFER FOR SALE,
36 GIVE AWAY, OFFER TO GIVE AWAY, OR ALLOW THE USE OF.

37 (I) "CHILDCARE FACILITY" MEANS ANY PLACE SUBJECT TO SECTION THREE
38 HUNDRED NINETY OF THE SOCIAL SERVICES LAW OR ARTICLE FORTY-SEVEN OF THE
39 NEW YORK CITY HEALTH CODE AS AUTHORIZED BY SECTION FIVE HUNDRED
40 FIFTY-EIGHT OF THE NEW YORK CITY CHARTER.

41 S 211-B. UNSAFE CHILDREN'S PRODUCTS; PROHIBITION. (A) NO COMMERCIAL
42 USER SHALL KNOWINGLY REMANUFACTURE, RETROFIT, SELL, CONTRACT TO SELL OR
43 RESELL, LEASE, SUBLET, OR OTHERWISE PLACE IN THE STREAM OF COMMERCE, ON
44 OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, A CRIB THAT IS UNSAFE.

45 (B) A CRIB IS PRESUMED TO BE UNSAFE FOR PURPOSES OF THIS ARTICLE IF IT
46 DOES NOT CONFORM TO THE STANDARDS ENDORSED OR ESTABLISHED BY THE CONSUM-
47 ER PRODUCT SAFETY COMMISSION, INCLUDING BUT NOT LIMITED TO TITLE 16 OF
48 THE CODE OF FEDERAL REGULATIONS AND THE AMERICAN SOCIETY FOR TESTING AND
49 MATERIALS, AS FOLLOWS:

50 (1) PART 1508 OF TITLE 16 OF THE CODE OF FEDERAL REGULATIONS AND ANY
51 REGULATIONS ADOPTED TO AMEND OR SUPPLEMENT SUCH REGULATIONS.

52 (2) PART 1509 OF TITLE 16 OF THE CODE OF FEDERAL REGULATIONS AND ANY
53 REGULATIONS ADOPTED TO AMEND OR SUPPLEMENT SUCH REGULATIONS.

54 (3) PART 1303 OF TITLE 16 OF THE CODE OF FEDERAL REGULATIONS AND ANY
55 REGULATIONS ADOPTED TO AMEND OR SUPPLEMENT SUCH REGULATIONS.

1 (4) THE FOLLOWING STANDARDS AND SPECIFICATIONS OF THE AMERICAN SOCIETY
2 FOR TESTING AND MATERIALS FOR CORNER POSTS OF BABY CRIBS AND STRUCTURAL
3 INTEGRITY OF BABY CRIBS:

4 (A) ASTM F 966 (CORNER POST STANDARD).

5 (B) ASTM F 1169 (STRUCTURAL INTEGRITY OF FULL-SIZE BABY CRIBS).

6 (C) ASTM F 1822 (NON-FULL-SIZE CRIBS).

7 S 211-C. LIST OF UNSAFE CHILDREN'S PRODUCTS. (A) THE CONSUMER
8 PROTECTION BOARD SHALL CREATE, MAINTAIN, AND UPDATE A COMPREHENSIVE LIST
9 OF UNSAFE CHILDREN'S PRODUCTS.

10 (B) A CHILDREN'S PRODUCT IS DEEMED TO BE UNSAFE FOR PURPOSES OF THIS
11 ARTICLE IF IT MEETS ANY OF THE FOLLOWING CRITERIA:

12 (1) IT DOES NOT CONFORM TO ALL FEDERAL LAWS AND REGULATIONS SETTING
13 FORTH STANDARDS FOR THE CHILDREN'S PRODUCT;

14 (2) IT HAS BEEN RECALLED FOR ANY REASON BY AN AGENCY OF THE FEDERAL
15 GOVERNMENT OR THE PRODUCT'S MANUFACTURER, DISTRIBUTOR, OR IMPORTER, AND
16 THE RECALL HAS NOT BEEN RESCINDED;

17 (3) AN AGENCY OF THE FEDERAL GOVERNMENT HAS ISSUED A WARNING THAT A
18 SPECIFIC PRODUCT'S INTENDED USE CONSTITUTES A SAFETY HAZARD, AND THE
19 WARNING HAS NOT BEEN RESCINDED; OR

20 (4) IT IS A CRIB THAT HAS BEEN DEEMED UNSAFE PURSUANT TO SECTION TWO
21 HUNDRED ELEVEN-B OF THIS ARTICLE.

22 THIS SUBDIVISION DOES NOT APPLY TO AN ANTIQUE OR COLLECTIBLE CHIL-
23 DREN'S PRODUCT IF IT IS NOT USED BY, OR ACCESSIBLE TO, ANY CHILD IN THE
24 CHILD CARE FACILITY.

25 (C) THE CONSUMER PROTECTION BOARD SHALL MAKE THE COMPREHENSIVE LIST
26 AVAILABLE TO THE PUBLIC AT NO COST, SHALL POST IT ON THE INTERNET, AND
27 SHALL ENCOURAGE LINKS.

28 S 211-D. UNSAFE CHILDREN'S PRODUCTS; CHILD CARE. (A) A CHILD CARE
29 FACILITY MAY NOT USE OR HAVE ON THE PREMISES, ON OR AFTER JANUARY FIRST,
30 TWO THOUSAND ELEVEN, AN UNSAFE CHILDREN'S PRODUCT AS DESCRIBED IN
31 SECTION TWO HUNDRED ELEVEN-C OF THIS ARTICLE. THIS SUBDIVISION DOES NOT
32 APPLY TO AN ANTIQUE OR COLLECTIBLE CHILDREN'S PRODUCT IF IT IS NOT USED
33 BY, OR ACCESSIBLE TO, ANY CHILD IN THE CHILD CARE FACILITY.

34 (B) THE CONSUMER PROTECTION BOARD, IN CONSULTATION WITH THE OFFICE OF
35 CHILDREN AND FAMILY SERVICES AND THE NEW YORK CITY DEPARTMENT OF HEALTH
36 AND MENTAL HYGIENE SHALL NOTIFY CHILDCARE FACILITIES OF THE PROVISIONS
37 OF THIS SECTION AND THIS ARTICLE AND OF UNSAFE CHILDREN'S PRODUCTS, AS
38 DETERMINED IN ACCORDANCE WITH THIS ARTICLE, IN PLAIN, NON-TECHNICAL
39 LANGUAGE THAT WILL ENABLE EACH CHILDCARE FACILITY TO EFFECTIVELY INSPECT
40 CHILDREN'S PRODUCTS AND IDENTIFY UNSAFE CHILDREN'S PRODUCTS. SUCH NOTICE
41 SHALL BE GIVEN TO EVERY CHILDCARE FACILITY UPON THE EFFECTIVE DATE OF
42 THIS ARTICLE OR AS SOON AS PRACTICABLE THEREAFTER AND AT EVERY SIX MONTH
43 INTERVAL THEREFROM, AND SUCH NOTICE SHALL ALSO BE GIVEN TO EACH APPLI-
44 CANT FOR LICENSE OR REGISTRATION PURSUANT TO SECTION THREE HUNDRED NINE-
45 TY OF THE SOCIAL SERVICES LAW.

46 (C) THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL PROMULGATE RULES
47 AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

48 (D) EACH CHILD CARE FACILITY SHALL MAINTAIN A FILE CONTAINING ALL
49 BULLETINS, NOTICES, OR BOTH ISSUED BY THE STATE CONSUMER PROTECTION
50 BOARD REGARDING UNSAFE CHILDREN'S PRODUCTS, AND SHALL MAKE THE FILE
51 ACCESSIBLE TO THE FACILITY STAFF MEMBERS AND TO PARENTS OF THE CHILDREN
52 WHO ATTEND THE FACILITY.

53 S 211-E. RETROFITS. (A) AN UNSAFE CRIB, AS DETERMINED PURSUANT TO
54 SECTION TWO HUNDRED ELEVEN-B OF THIS ARTICLE, MAY BE RETROFITTED IF THE
55 RETROFIT HAS BEEN APPROVED BY THE AGENCY OF THE FEDERAL GOVERNMENT ISSU-
56 ING THE RECALL OR WARNING OR THE AGENCY RESPONSIBLE FOR APPROVING THE

1 RETROFIT IF DIFFERENT FROM THE AGENCY ISSUING THE RECALL OR WARNING. A
2 RETROFITTED CRIB MAY BE SOLD IF IT IS ACCOMPANIED AT THE TIME OF SALE BY
3 A NOTICE DECLARING THAT IT IS SAFE TO USE FOR A CHILD UNDER SIX YEARS OF
4 AGE. THE COMMERCIAL USER IS RESPONSIBLE FOR ENSURING THAT THE NOTICE IS
5 PRESENT WITH THE RETROFITTED CRIB AT THE TIME OF SALE. THE NOTICE SHALL
6 INCLUDE:

7 (1) A DESCRIPTION OF THE ORIGINAL PROBLEM WHICH MADE THE RECALLED CRIB
8 UNSAFE.

9 (2) A DESCRIPTION OF THE RETROFIT WHICH EXPLAINS HOW THE ORIGINAL
10 PROBLEM WAS ELIMINATED AND DECLARING THAT IT IS NOW SAFE TO USE FOR A
11 CHILD UNDER SIX YEARS OF AGE.

12 (3) THE NAME AND ADDRESS OF THE COMMERCIAL USER WHO ACCOMPLISHED THE
13 RETROFIT CERTIFYING THAT THE WORK WAS DONE, ALONG WITH THE NAME AND
14 MODEL NUMBER OF THE CRIB RETROFITTED.

15 (B) A RETROFIT IS EXEMPT FROM THIS ARTICLE IF:

16 (1) THE RETROFIT IS FOR A CRIB THAT REQUIRES ASSEMBLY BY THE CONSUMER,
17 THE APPROVED RETROFIT IS PROVIDED WITH THE PRODUCT BY THE COMMERCIAL
18 USER, AND THE RETROFIT IS ACCOMPANIED AT THE TIME OF SALE BY
19 INSTRUCTIONS EXPLAINING HOW TO APPLY THE RETROFIT; OR

20 (2) THE SELLER OF A PREVIOUSLY UNSOLD CRIB ACCOMPLISHES THE REPAIR,
21 APPROVED OR RECOMMENDED BY AN AGENCY OF THE FEDERAL GOVERNMENT, PRIOR TO
22 SALE.

23 S 211-F. EXCEPTION. THE COMMERCIAL USER SHALL NOT BE FOUND NONCOMPLI-
24 ANT IF THE SPECIFIC RECALLED CRIB SOLD WAS NOT INCLUDED ON THE CONSUMER
25 PROTECTION BOARD'S LIST ON THE DAY BEFORE THE SALE.

26 S 211-G. ENFORCEMENT. WHENEVER THERE SHALL BE A VIOLATION OF SECTION
27 TWO HUNDRED ELEVEN-B OR TWO HUNDRED ELEVEN-E OF THIS ARTICLE, AN APPLI-
28 CATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF
29 THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A
30 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE
31 DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTIN-
32 UANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF
33 THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED SECTION
34 TWO HUNDRED ELEVEN-B OR TWO HUNDRED ELEVEN-E OF THIS ARTICLE, AN INJUNC-
35 TION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING
36 ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN
37 FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT
38 MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX
39 OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL
40 PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL
41 DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY
42 IMPOSE A CIVIL PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS NOR LESS
43 THAN ONE THOUSAND DOLLARS FOR SUCH VIOLATION. IN CONNECTION WITH ANY
44 SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE
45 PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
46 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

47 S 211-H. REMEDIES. REMEDIES AVAILABLE UNDER THIS ARTICLE ARE IN ADDI-
48 TION TO ANY OTHER REMEDIES OR PROCEDURES UNDER ANY OTHER PROVISION OF
49 LAW THAT MAY BE AVAILABLE TO AN AGGRIEVED PARTY.

50 S 2. Subdivision 3 of section 553 of the executive law is amended by
51 adding a new paragraph 1 to read as follows:

52 L. CREATE A LIST OF UNSAFE CHILDREN'S PRODUCTS AND PROVIDE SUCH LIST
53 TO CHILDCARE FACILITIES PURSUANT TO ARTICLE TWELVE-A OF THE GENERAL
54 BUSINESS LAW.

55 S 3. This act shall take effect on the first of January next succeed-
56 ing the date on which it shall have become a law. Effective immediately

1 the consumer protection board and the office of children and family
2 services are authorized to promulgate any and all rules and regulations
3 and take any other measures necessary to implement this act on its
4 effective date.