

S T A T E   O F   N E W   Y O R K

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3141--A

2009-2010 Regular Sessions

I N   S E N A T E

March 11, 2009

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Introduced by Sens. MONSERRATE, STEWART-COUSINS -- (at request of the Consumer Protection Board) -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to making technical corrections to the children's product safety and recall effectiveness act of 2008; and to amend chapter 553 of the laws of 2008 amending the general business law relating to the children's product safety and recall effectiveness act, in relation to the effectiveness thereof

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

1     Section 1. Section 490-a of the general business law, as added by  
2 chapter 553 of the laws of 2008, is amended to read as follows:  
3     S 490-a. Definitions. For the purposes of this article, the following  
4 terms shall have the following meanings:  
5     1. "Board" means the consumer protection board.  
6     2. "Children's product" shall mean a toy or other article, other than  
7 clothing, PRIMARILY intended for use by a child under [fourteen] TWELVE  
8 years of age. The following shall be considered in determining if the  
9 toy or article is intended for a child under [fourteen] TWELVE years of  
10 age:  
11     (a) A statement by a manufacturer about the intended use of such toy  
12 or article, including a label on such toy or article;  
13     (b) The context and manner of the advertising, promotion, and market-  
14 ing associated with the toy or article; and  
15     (c) Whether the toy or article is commonly recognized by consumers as  
16 being intended for use by a child under [fourteen] TWELVE years of age.  
17     3. "Commercial dealer" means any person who is in the business of  
18 manufacturing, remanufacturing, retrofitting, distributing, importing,

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

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1 or selling at wholesale children's products in New York state. This  
2 definition shall not be construed to include retailers.

3 4. "Director" means the chairperson and executive director of the  
4 consumer protection board.

5 5. "Initial consumer" means a person who purchases a children's prod-  
6 uct or durable juvenile product for any purpose other than resale.

7 6. "Secondhand dealer" means a person who sells as a primary source of  
8 income reconditioned, remanufactured, refurbished, previously owned, or  
9 consignment items. Such term shall not include the initial consumer or  
10 someone who purchases a children's product or durable juvenile product  
11 primarily for personal use but who subsequently sells the product.

12 7. "Durable juvenile product" means [the following] products intended  
13 for use, or that may be reasonably expected to be used, by children  
14 under the age of five years[:  
15 (i) cribs;  
16 (ii) toddler beds;  
17 (iii) car seats;  
18 (iv) high chairs, booster chairs, and hook-on chairs;  
19 (v) bath seats;  
20 (vi) gates and other enclosures for confining a child;  
21 (vii) playpens;  
22 (viii) stationary activity centers;  
23 (ix) strollers;  
24 (x) walkers;  
25 (xi) swings;  
26 (xii) child carriers;  
27 (xiii) bassinets and cradles; and  
28 (xiv)] AS DEFINED IN SUBSECTION (F) OF SECTION 104 OF THE UNITED  
29 STATES CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008, PUB. L. NO.  
30 110-314 OR other similar durable juvenile products designed for children  
31 UNDER AGE FIVE as shall be specified in regulations promulgated by the  
32 United States consumer product safety commission.

33 8. "Person" means a natural person and any entity, including but not  
34 limited to a sole proprietorship, partnership, firm, corporation, limit-  
35 ed liability company, or association, and any employee or agent thereof.

36 9. "Product safety owner's card" means a [standardized product iden-  
37 tification card that requests the initial consumer to provide to the  
38 manufacturer the name, address and other information by which the  
39 initial consumer may be contacted] POSTAGE PAID REGISTRATION FORM THAT  
40 (A) REQUESTS THE INITIAL CONSUMER TO PROVIDE PRESCRIBED INFORMATION TO  
41 THE MANUFACTURER, AND (B) REQUIRES THE MANUFACTURER PROVIDE CERTAIN  
42 PRESCRIBED INFORMATION TO THE INITIAL CONSUMER. ALL SUCH INFORMATION  
43 SHALL BE PRESCRIBED BY THE UNITED STATES CONSUMER PRODUCT SAFETY COMMIS-  
44 SION, PURSUANT TO SUBSECTION (D) OF SECTION 104 OF THE UNITED STATES  
45 CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008, PUB. L. NO. 110-314  
46 AND THE UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION RULES PROMUL-  
47 GATED IN ACCORDANCE WITH SUCH ACT.

48 10. "Recall" means a request to return a product to the manufacturer  
49 due to a defect in the product.

50 11. "Retailer" means any person who as a business or for-profit  
51 venture sells or leases children's products or durable juvenile products  
52 for-profit in New York to initial consumers. Such term shall not include  
53 (A) someone who purchased or acquired a product primarily for personal  
54 use and who subsequently resells the product, OR (B) ANY SECONDHAND  
55 DEALER, AS DEFINED IN THIS SECTION.

12. "KNOWLEDGE" MEANS (A) THE RECEIPT OF NOTICE OR HAVING ACTUAL KNOWLEDGE OR (B) THE PRESUMED HAVING OF KNOWLEDGE DEEMED TO BE POSSESSED BY A REASONABLE PERSON WHO ACTS IN THE CIRCUMSTANCES, INCLUDING KNOWLEDGE OBTAINABLE UPON THE EXERCISE OF DUE CARE.

S 2. Section 490-b of the general business law, as added by chapter 553 of the laws of 2008, is amended to read as follows:

S 490-b. Manufacturers' requirements to include product safety owner's cards. 1. Manufacturers of durable juvenile products distributed, sold or made available in New York state shall include a product safety owner's card with all sales to initial consumers of durable juvenile products. The manufacturer shall not use or disseminate to any other party the information collected by the manufacturer for any purpose other than notification to the consumer concerned in the event of a product recall or safety alert regarding the product concerned. Within the product safety owner's card, such manufacturers shall request [adequate] initial consumer information AS PRESCRIBED BY THE UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION, PURSUANT TO SUBSECTION (D) OF SECTION 104 OF THE UNITED STATES CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008, PUB. L. NO. 110-314 AND THE UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION RULES PROMULGATED IN ACCORDANCE WITH SUCH ACT, to effectuate the notification required by this article. The product safety owner's card shall include a statement indicating that the information shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

2. Such manufacturer shall retain for a period of no less than [ten] SIX years any initial consumer contact information obtained. This information shall not be sold, posted, transferred or used for any other purpose other than to communicate information relating to a recall, warning or defect directly associated with the product.

3. Nothing in this section shall be deemed to compel a consumer to complete and return such product safety owner's card.

S 3. Section 490-c of the general business law, as added by chapter 553 of the laws of 2008, is amended to read as follows:

S 490-c. Labeling of children's products and durable juvenile products. 1. Every manufacturer or importer of a children's product or a durable juvenile product sold or distributed in New York state shall [to the extent practicable] label such product or its packaging with [the following information:

(a) the manufacturer's name and contact information and importer's name and contact information if different from the manufacturer; and

(b) lot and batch number or other code if applicable.] A LABEL AS PRESCRIBED BY 15 USC 2063 AND THE UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION RULES PROMULGATED IN ACCORDANCE WITH THE UNITED STATES CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008.

2. No commercial dealer or retailer shall obscure, in part or in full, any label required under this section.

S 4. Section 490-e of the general business law, as added by chapter 553 of the laws of 2008, is amended to read as follows:

S 490-e. Retailer responsibilities. 1. A retailer shall not sell, lease or otherwise make available a children's product or durable juvenile product that does not contain an appropriate label as provided under section four hundred ninety-c of this article [provided, however, such retailer shall be allowed for six months from the effective date of this section to sell without the appropriate label such products that were ordered or in stock prior to the effective date of this article].

1 2. When a retailer [receives from] HAS KNOWLEDGE OF a commercial deal-  
2 er or a federal or state [agency] AGENCY'S notice of a recall or warning  
3 regarding a children's product or durable juvenile product, and if the  
4 retailer currently offers for sale or otherwise makes available or had  
5 offered for sale or otherwise made available such product, the retailer  
6 shall do the following:

7 (a) Within one business day [after receiving notice] OF KNOWLEDGE of a  
8 recall [remove] NOTICE, INITIATE A CORRECTIVE UNDERTAKING THAT INCLUDES  
9 (I) REMOVING the children's product or durable juvenile product from the  
10 store shelves and [take] (II) TAKING steps to ensure that such product  
11 is not sold or made available, including, but not limited to implement-  
12 ing a mechanism or procedure which will prevent a recalled product or  
13 products from being purchased at a point of sale.

14 (b) Within one business day [after receiving] OF KNOWLEDGE OF either a  
15 notice of a recall or a warning:

16 (i) post recall and warning notices conspicuously at the retailer's  
17 locations for a period of at least sixty days; and

18 (ii) if the retailer maintains a website, post on the home page (or  
19 the first entry point) for a period of sixty days a link to recall or  
20 warning information that contains the specific recall or warning notice  
21 that was issued for the product. The information may include only a  
22 photograph or detailed rendering of the product and the product recall  
23 or warning information and may not include sales or marketing informa-  
24 tion.

25 (c) [After receiving notice] UPON KNOWLEDGE of a recall or warning  
26 notice, when contact information was provided at the time of purchase  
27 and remains available at the time of receipt of the recall or warning  
28 notice the retailer shall contact the initial consumer of a durable  
29 juvenile product to provide the recall or warning information. The  
30 recall or warning information must include a description of the product,  
31 the reason for the recall or warning, and instructions on how to  
32 exchange, return for a refund or otherwise respond to the children's  
33 product involved in the recall or warning. Such notice shall include  
34 only the product recall or warning information and may not include sales  
35 or marketing information on that product or any other product, other  
36 than the pertinent return and exchange policies.

37 S 5. Section 3 of chapter 553 of the laws of 2008 amending the general  
38 business law relating to the children's product safety and recall effec-  
39 tiveness act is amended to read as follows:

40 S 3. This act shall take effect on the one hundred eightieth day after  
41 it shall have become a law provided, however[, section 490-c of the  
42 general business law, as added by section one of this act, shall take  
43 effect July 1, 2009. Effective immediately], the consumer protection  
44 board may promulgate any rule or regulation necessary for the timely  
45 implementation of this act on its effective date.

46 S 6. This act shall take effect on the same date and in the same  
47 manner as chapter 553 of the laws of 2008 takes effect, provided, howev-  
48 er, if such chapter takes effect on or before August 14, 2009 section  
49 two of this act shall take effect August 14, 2009. Effective immediate-  
50 ly, the consumer protection board may promulgate any rule or regulation  
51 necessary for the timely implementation of this act on its effective  
52 date.