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2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. PHEFFER, FIELDS, JAFFEE, RUSSELL, SKARTADOS, HYER-SPENCER, STIRPE, GORDON, ROSENTHAL -- Multi-Sponsored by -- M. of A. ALESSI, BARRON, BING, EDDINGTON, ESPAILLAT, GABRYSZAK, GREENE, KOON, MILLMAN, REILLY, SPANO, SWEENEY, TITONE, TOWNS, WEISENBERG -- (at request of the Consumer Protection Board) -- read once and referred to the Committee on Consumer Affairs and Protection

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

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.

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

5 S 2. Section 490-b of the general business law, as added by chapter
6 553 of the laws of 2008, is amended to read as follows:

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

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

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

32 S 3. Section 490-c of the general business law, as added by chapter
33 553 of the laws of 2008, is amended to read as follows:

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

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

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

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

47 S 4. Section 490-e of the general business law, as added by chapter
48 553 of the laws of 2008, is amended to read as follows:

49 S 490-e. Retailer responsibilities. 1. A retailer shall not sell,
50 lease or otherwise make available a children's product or durable juve-
51 nile product that does not contain an appropriate label as provided
52 under section four hundred ninety-c of this article [provided, however,
53 such retailer shall be allowed for six months from the effective date of
54 this section to sell without the appropriate label such products that
55 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.