

S T A T E O F N E W Y O R K

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

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

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

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(c) Whether the toy or article is commonly recognized by consumers as being intended for use by a child under [fourteen] TWELVE years of age.

3. "Commercial dealer" means any person who is in the business of manufacturing, remanufacturing, retrofitting, distributing, importing, or selling at wholesale children's products in New York state. This definition shall not be construed to include retailers.

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

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

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

7. "Durable juvenile product" means [the following] products intended for use, or that may be reasonably expected to be used, by children under the age of five years[:

(i) cribs;

(ii) toddler beds;

(iii) car seats;

(iv) high chairs, booster chairs, and hook-on chairs;

(v) bath seats;

(vi) gates and other enclosures for confining a child;

(vii) playpens;

(viii) stationary activity centers;

(ix) strollers;

(x) walkers;

(xi) swings;

(xii) child carriers;

(xiii) bassinets and cradles; and

(xiv)] AS DEFINED IN SUBSECTION (F) OF SECTION 104 OF THE UNITED

STATES CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008, PUB. L. NO. 110-314 OR other similar durable juvenile products designed for children UNDER AGE FIVE as shall be specified in regulations promulgated by the United States consumer product safety commission.

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

9. "Product safety owner's card" means a [standardized product identification card that requests the initial consumer to provide to the manufacturer the name, address and other information by which the initial consumer may be contacted] POSTAGE PAID REGISTRATION FORM THAT (A) REQUESTS THE INITIAL CONSUMER TO PROVIDE PRESCRIBED INFORMATION TO THE MANUFACTURER, AND (B) REQUIRES THE MANUFACTURER PROVIDE CERTAIN PRESCRIBED INFORMATION TO THE INITIAL CONSUMER. ALL SUCH INFORMATION SHALL BE 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.

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

11. "Retailer" means any person who as a business or for-profit venture sells or leases children's products or durable juvenile products for-profit in New York to initial consumers. Such term shall not include

1 (A) someone who purchased or acquired a product primarily for personal
2 use and who subsequently resells the product, OR (B) ANY SECONDHAND
3 DEALER, AS DEFINED IN THIS SECTION.

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

8 S 2. Section 490-b of the general business law, as added by chapter
9 553 of the laws of 2008, is amended to read as follows:

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

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

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

35 S 3. Section 490-c of the general business law, as added by chapter
36 553 of the laws of 2008, is amended to read as follows:

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

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

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

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

50 S 4. Section 490-e of the general business law, as added by chapter
51 553 of the laws of 2008, is amended to read as follows:

52 S 490-e. Retailer responsibilities. 1. A retailer shall not sell,
53 lease or otherwise make available a children's product or durable juve-
54 nile product that does not contain an appropriate label as provided
55 under section four hundred ninety-c of this article [provided, however,
56 such retailer shall be allowed for six months from the effective date of

1 this section to sell without the appropriate label such products that
2 were ordered or in stock prior to the effective date of this article].

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

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

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

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

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

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

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

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

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