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

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I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. KELLNER, BENEDETTO, PHEFFER, GOTTFRIED, AUBRY, ROBINSON, D. WEPRIN, MAISEL, POWELL, ROSENTHAL -- Multi-Sponsored by -- M. of A. GIBSON, GLICK, JEFFRIES, MARKEY, MAYERSOHN, SCARBOROUGH -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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:

Section 1. This act shall be known and may be cited as the "playground equipment safety act".

S 2. Section 399-dd of the general business law, as added by chapter 519 of the laws of 2006, is relettered section 399-ff and amended to read as follows:

S 399-ff. Construction or installation of playground or playground equipment. 1. Definitions relative to playground safety. For the purposes of this section[, the term]:

(A) "playground" means an improved area designed, equipped, and set aside for play of six or more children which is not intended for use as an athletic playing field or athletic court, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures[.]; AND

(B) "MUNICIPALITY" MEANS A CITY, VILLAGE, COUNTY OR TOWN; AND

(C) "TEMPERATURE TESTING" MEANS THE MEASUREMENT OF THE TEMPERATURE OF PLAYGROUND EQUIPMENT, MATERIAL OR SURFACE, INCLUDING SAFETY SURFACING, THAT MAY COME INTO CONTACT WITH THE SKIN OF A USER IN THE NORMAL COURSE

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

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OF USE OF A PLAYGROUND PURSUANT TO A METHOD DEVELOPED BY THE CONSUMER PROTECTION BOARD, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH.

2. The consumer protection board, in consultation with the office of parks, recreation and historic preservation, shall promulgate rules and regulations for the design, installation, inspection and maintenance of playgrounds and playground equipment. Those regulations shall substantially comply with the guidelines and criteria which are contained in the handbook for public playground safety produced by the United States consumer products safety commission or any successor. The rules and regulations shall include special provisions for playgrounds appropriate for children within the range of ages in day care settings.

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

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

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

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

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

5. ANY MUNICIPALITY THAT CONSTRUCTS, INSTALLS OR MAINTAINS PLAYGROUNDS OR PLAYGROUND EQUIPMENT, SHALL PROMULGATE RULES AND REGULATIONS FOR THE DESIGN, INSTALLATION, INSPECTION AND MAINTENANCE OF PLAYGROUNDS MAINTAINED BY SUCH MUNICIPALITY. PROVIDED, HOWEVER, THAT THIS SUBDIVISION SHALL NOT APPLY TO PLAYGROUND EQUIPMENT INSTALLED ON OR BEFORE THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND TEN WHICH ADDED THIS SUBDIVISION IN MUNICIPALITIES OTHER THAN A CITY HAVING A POPULATION OF ONE MILLION OR MORE. SUCH RULES AND REGULATIONS SHALL INCLUDE PROVISIONS THAT:

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

(B) REQUIRE, AS PART OF SUCH MUNICIPALITY'S PLAYGROUND INSPECTION AND MAINTENANCE PROCEDURES, THE PERFORMANCE OF TEMPERATURE TESTING FOR EQUIPMENT, MATERIALS AND SURFACES INSTALLED IN PLAYGROUNDS, INCLUDING SAFETY SURFACING. IN CITIES HAVING A POPULATION OF ONE MILLION OR MORE INHABITANTS, THE LOCAL DEPARTMENT OF PARKS AND RECREATION SHALL COMMENCE

TEMPERATURE TESTING PURSUANT TO THIS SECTION NO LATER THAN MAY FIRST, TWO THOUSAND ELEVEN PURSUANT TO THE METHOD OF TEMPERATURE TESTING ADOPTED BY THE CONSUMER PROTECTION BOARD. IN A MUNICIPALITY HAVING A POPULATION OF LESS THAN ONE MILLION INHABITANTS, SUCH MUNICIPALITY SHALL COMMENCE TEMPERATURE TESTING PURSUANT TO THIS SECTION NO LATER THAN MAY FIRST, TWO THOUSAND TWELVE PURSUANT TO THE METHOD OF TEMPERATURE TESTING ADOPTED BY THE CONSUMER PROTECTION BOARD; AND

(C) SPECIFY PROCEDURES FOR THE MITIGATION OF ANY SIGNIFICANT HEALTH HAZARDS IDENTIFIED DURING ANY INSPECTION, INCLUDING, BUT NOT LIMITED TO, HAZARDS THAT POSE A RISK OF BURNING EXPOSED SKIN BASED ON THE MAXIMUM POTENTIAL TEMPERATURE STANDARD PROMULGATED BY THE CONSUMER PROTECTION BOARD.

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

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