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

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I N  S E N A T E

March 31, 2010

Introduced by Sen. ALESI -- 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, in relation to hazardous toys and other articles intended for use by children

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

Section 1. Section 396-k of the general business law, as added by chapter 754 of the laws of 1973, the section heading and subdivisions 1 and 4 as amended by chapter 358 of the laws of 1989 and such section as renumbered by chapter 432 of the laws of 1974, is amended to read as follows:

S 396-k. Hazardous toys and other articles intended primarily for use by children; prohibition and enforcement. 1. No person, firm, corporation, association or agent or employee thereof shall import, manufacture, sell, hold for sale or distribute a toy or other article intended for use by a child which presents an electrical, mechanical or thermal hazard OR THAT IS CONTAMINATED WITH ANY TOXIC SUBSTANCE. The following definitions are applicable to this section:

(a) "Child" means any person less than fourteen years of age;

(b) A toy or other article presents an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electrical shock or electrocution;

(B-1) "TOY" MEANS AN ARTICLE OR ITEM DESIGNED AND MADE FOR THE AMUSEMENT OF A CHILD OR FOR HIS OR HER USE IN PLAY;

(c) A toy or other article presents a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation or disassembly of the article;

(2) from propulsion of the article or any part or accessory thereof;

(3) from points or other protrusions, surfaces, edges, openings or closures;

(4) from moving parts;

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

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(5) from lack or insufficiency of controls to reduce or stop motion;
(6) as a result of self-adhering characteristics of the article;
(7) because the article or any part or accessory thereof may be aspirated or ingested;
(8) because of instability; OR
(9) [from stuffing material which is not free of dangerous or harmful substances; or
(10)] because of any other aspect of the article's design or manufacture.
(d) A toy or other article presents a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk to personal injury or illness because of heat as from heated parts, substances or surfaces[.]; AND
(E) A TOY IS CONTAMINATED WITH A TOXIC SUBSTANCE IF IT IS ANY OF THE FOLLOWING:
(1) IS COATED WITH PAINTS AND LACQUERS CONTAINING COMPOUNDS OF LEAD OF WHICH THE LEAD CONTENT (CALCULATED AS PB) IS IN EXCESS OF THAT PERMITTED BY FEDERAL REGULATIONS CONTAINED IN SECTION 1500.17 OF TITLE 16 OF THE CODE OF FEDERAL REGULATIONS ADOPTED PURSUANT TO THE FEDERAL HAZARDOUS SUBSTANCES ACT, CHAPTER 30 (COMMENCING WITH SECTION 1261) OF TITLE 15 OF THE UNITED STATES CODE, OR SOLUBLE COMPOUNDS OF ANTIMONY, ARSENIC, CADMIUM, MERCURY, SELENIUM OR BARIUM, INTRODUCED AS SUCH. COMPOUNDS SHALL BE CONSIDERED SOLUBLE IF QUANTITIES IN EXCESS OF 0.1 PERCENT ARE DISSOLVED BY 5 PERCENT HYDROCHLORIC ACID AFTER STIRRING FOR 10 MINUTES AT ROOM TEMPERATURE;
(2) CONSISTS IN WHOLE OR IN PART OF A DISEASED, CONTAMINATED, FILTHY, PUTRID OR DECOMPOSED SUBSTANCE;
(3) HAS BEEN PRODUCED, PREPARED, PACKED, SHIPPED, OR HELD UNDER UNSANITARY OR OTHER CONDITIONS WHEREBY IT MAY HAVE BECOME CONTAMINATED WITH FILTH OR HAZARDOUS MATERIALS OR OTHERWISE RENDERED INJURIOUS TO HEALTH;
(4) IS STUFFED, PADDED OR LINED WITH MATERIALS THAT ARE TOXIC OR THAT WOULD OTHERWISE BE HAZARDOUS IF INGESTED, INHALED, OR CONTACTED; OR
(5) IS A STUFFED, PADDED OR LINED TOY THAT IS NOT SECURELY WRAPPED OR PACKAGED.
2. 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 four 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.
3. 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.

4. In any such action it shall be a complete defense that the toy or other article sought to be enjoined either complies with, or is exempt under, the federal "Child Protection and Toy Safety Act of 1969", as amended, or the federal "Consumer Product Safety Act", as amended, or any regulation or exemption promulgated under either act or any other applicable federal law. In the case of children's [sleepware] SLEEPWEAR, it shall be a complete defense that the article sought to be enjoined complies with any enforcement policy formally issued by a federal agency having enforcement authority with respect thereto.

5. In connection with any such proposed application, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules.

6. If any provisions of this [chapter] SECTION or the application thereof to any person or circumstances is held unconstitutional, such invalidity shall not affect other provisions or applications of this [chapter] SECTION which can be given effect without the invalid provision or application, and to this end the provisions of this [chapter] SECTION are severable.

S 2. This act shall take effect immediately.