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2011-2012 Regular Sessions

I N A S S E M B L Y

February 25, 2011

Introduced by M. of A. ENGLEBRIGHT, CAHILL, MILLMAN, GALEF, BARRON,
COLTON, GABRYSZAK, ORTIZ, WEISENBERG, JAFFEE -- Multi-Sponsored by --
M. of A. GIBSON, GOTTFRIED, GUNTHER, JACOBS, McENENY, PHEFFER -- read
once and referred to the Committee on Consumer Affairs and 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:

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

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

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

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

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

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

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

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- 1 (1) from fracture, fragmentation or disassembly of the article;
- 2 (2) from propulsion of the article or any part or accessory thereof;
- 3 (3) from points or other protrusions, surfaces, edges, openings or
- 4 closures;
- 5 (4) from moving parts;
- 6 (5) from lack or insufficiency of controls to reduce or stop motion;
- 7 (6) as a result of self-adhering characteristics of the article;
- 8 (7) because the article or any part or accessory thereof may be aspi-
- 9 rated or ingested;
- 10 (8) because of instability; OR
- 11 (9) [from stuffing material which is not free of dangerous or harmful
- 12 substances; or
- 13 (10)] because of any other aspect of the article's design or manufac-
- 14 ture.

15 (d) A toy or other article presents a thermal hazard if, in normal use
16 or when subjected to reasonably foreseeable damage or abuse, its design
17 or manufacture presents an unreasonable risk to personal injury or
18 illness because of heat as from heated parts, substances or surfaces[.];
19 AND

20 (E) A TOY IS CONTAMINATED WITH A TOXIC SUBSTANCE IF IT IS ANY OF THE
21 FOLLOWING:

22 (1) IS COATED WITH PAINTS AND LACQUERS CONTAINING COMPOUNDS OF LEAD OF
23 WHICH THE LEAD CONTENT (CALCULATED AS PB) IS IN EXCESS OF THAT PERMITTED
24 BY FEDERAL REGULATIONS CONTAINED IN SECTION 1500.17 OF TITLE 16 OF THE
25 CODE OF FEDERAL REGULATIONS ADOPTED PURSUANT TO THE FEDERAL HAZARDOUS
26 SUBSTANCES ACT, CHAPTER 30 (COMMENCING WITH SECTION 1261) OF TITLE 15 OF
27 THE UNITED STATES CODE, OR SOLUBLE COMPOUNDS OF ANTIMONY, ARSENIC,
28 CADMIUM, MERCURY, SELENIUM OR BARIUM, INTRODUCED AS SUCH. COMPOUNDS
29 SHALL BE CONSIDERED SOLUBLE IF QUANTITIES IN EXCESS OF 0.1 PERCENT ARE
30 DISSOLVED BY 5 PERCENT HYDROCHLORIC ACID AFTER STIRRING FOR 10 MINUTES
31 AT ROOM TEMPERATURE;

32 (2) CONSISTS IN WHOLE OR IN PART OF A DISEASED, CONTAMINATED, FILTHY,
33 PUTRID OR DECOMPOSED SUBSTANCE;

34 (3) HAS BEEN PRODUCED, PREPARED, PACKED, SHIPPED, OR HELD UNDER UNSAN-
35 ITARY OR OTHER CONDITIONS WHEREBY IT MAY HAVE BECOME CONTAMINATED WITH
36 FILTH OR HAZARDOUS MATERIALS OR OTHERWISE RENDERED INJURIOUS TO HEALTH;

37 (4) IS STUFFED, PADDED OR LINED WITH MATERIALS THAT ARE TOXIC OR THAT
38 WOULD OTHERWISE BE HAZARDOUS IF INGESTED, INHALED, OR CONTACTED; OR

39 (5) IS A STUFFED, PADDED OR LINED TOY THAT IS NOT SECURELY WRAPPED OR
40 PACKAGED.

41 2. Whenever the attorney general shall believe from evidence satisfac-
42 tory to him that any person, firm, corporation or association or agent
43 or employee thereof has violated any provision of this section, he may
44 bring an action in the supreme court of the state of New York for a
45 judgment enjoining the continuance of such violation and for a civil
46 penalty of not more than one thousand dollars for each violation, except
47 that the court may impose a civil penalty of not more than four thousand
48 dollars if the violation is knowing and willful. If it shall appear to
49 the satisfaction of the court or justice that the defendant has violated
50 any provision of this section, no proof shall be required that any
51 person has been injured thereby nor that the defendant knowingly or
52 intentionally violated such provision. In such action preliminary relief
53 may be granted under article sixty-three of the civil practice law and
54 rules.

55 3. Before any violation of this section is sought to be enjoined, the
56 attorney general shall be required to give the person against whom such

1 proceeding is contemplated notice by certified mail and an opportunity
2 to show in writing within five business days after receipt of notice why
3 proceedings should not be instituted against him, unless the attorney
4 general shall find, in any case in which he seeks preliminary relief,
5 that to give such notice and opportunity is not in the public interest.

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

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

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

24 S 2. This act shall take effect immediately.