

# STATE OF NEW YORK

1040

2019-2020 Regular Sessions

## IN ASSEMBLY

January 14, 2019

Introduced by M. of A. SIMOTAS, BENEDETTO, L. ROSENTHAL, SEAWRIGHT,  
PHEFFER AMATO -- Multi-Sponsored by -- M. of A. COOK, CYMBROWITZ,  
GOTTFRIED -- read once and referred to the Committee on Consumer  
Affairs and Protection

AN ACT to amend the general business law, the executive law and the  
social services law, in relation to prohibiting every child day care,  
child day care provider, child day care center, group family day care  
home, school age child care or family day care home from using or  
having for use unsafe children's products, defining unsafe children's  
products and authorizing civil penalties

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

Section 1. The general business law is amended by adding a new article  
28-G to read as follows:

### ARTICLE 28-G

#### NEW YORK SAFE CHILD CARE ACT

#### Section 495. Short title.

##### 495-a. Definitions.

##### 495-b. List of unsafe children's products and durable juvenile products.

##### 495-c. Unsafe children's products; child care.

##### 495-d. Enforcement.

§ 495. Short title. This article shall be known and may be cited as  
the "New York safe child care act".

§ 495-a. Definitions. For the purposes of this article: 1. "Chil-  
dren's product" means a toy or other article, other than clothing,  
primarily intended for use by a child under twelve years of age. The  
following shall be considered in determining if the toy or article is  
intended for a child under twelve years of age:

a. A statement by a manufacturer about the intended use of such toy or  
article, including a label on such toy or article;

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

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1 b. The context and manner of the advertising, promotion, and marketing  
2 associated with the toy or article; and

3 c. Whether the toy or article is commonly recognized by consumers as  
4 being intended for use by a child under twelve years of age.

5 2. "Child care program" means any place subject to section three  
6 hundred ninety of the social services law or article forty-seven of the  
7 New York city health code as authorized by section five hundred fifty-  
8 eight of the New York city charter.

9 3. "Department" means the department of state.

10 4. "Durable juvenile product" means products intended for use, or that  
11 may be reasonably expected to be used, by children under the age of five  
12 years as defined in subsection (f) of section 104 of the United States  
13 Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 or  
14 other similar durable juvenile products designed for children under age  
15 five as shall be specified in regulations promulgated by the United  
16 States consumer product safety commission.

17 5. "Person" means a natural person, firm, corporation, limited liabil-  
18 ity company, or association, and any employee or agent thereof.

19 6. "Office" means the office of children and family services.

20 7. "Recall" means a request to return a product to the manufacturer  
21 due to a defect in the product.

22 § 495-b. List of unsafe children's products and durable juvenile  
23 products. 1. The department, in consultation with the office, shall  
24 create, maintain, and update a comprehensive list of unsafe children's  
25 products and durable juvenile products.

26 2. A children's product or durable juvenile product is deemed to be  
27 unsafe for purposes of this article if it meets any of the following  
28 criteria:

29 a. the department has received notification from an agency of the  
30 federal government that the product does not conform to all applicable  
31 federal laws and regulations setting forth standards for the children's  
32 product or durable juvenile product;

33 b. the product has been recalled for safety reasons by an agency of  
34 the federal government or the product's manufacturer, distributor, or  
35 importer, and the recall has not been rescinded; or

36 c. an agency of the federal government has issued a warning that a  
37 specific product's intended use constitutes a safety hazard, and the  
38 warning has not been rescinded.

39 3. The department and the office shall make the comprehensive list  
40 available to the public at no cost, shall post it on its website, and  
41 shall encourage links.

42 § 495-c. Unsafe children's products; child care. 1. A child care  
43 program may not use or have on the premises an unsafe children's product  
44 or durable juvenile product as described in section four hundred nine-  
45 ty-five-b of this article. This subdivision shall not apply to a chil-  
46 dren's product or durable juvenile product that children bring to the  
47 premises from their home or an antique or collectible children's product  
48 or durable juvenile product if it is not used by, or accessible to, any  
49 child in the child care program.

50 2. The department, in consultation with the office and the New York  
51 city department of health and mental hygiene shall notify child care  
52 facilities of the provisions of this section and this article and of  
53 unsafe children's products and durable juvenile products, as determined  
54 in accordance with this article, in plain, non-technical language that  
55 will enable each child care program to effectively inspect children's  
56 products or durable juvenile products and identify unsafe children's

1 products or durable juvenile products. Such notice shall be provided to  
2 every child care program upon the effective date of this article or as  
3 soon as practicable thereafter and at every six month interval there-  
4 from, and such notice shall also be provided to each applicant for  
5 license or registration pursuant to section three hundred ninety of the  
6 social services law.

7 3. The department and the office shall promulgate rules and regu-  
8 lations to carry out the provisions of this section.

9 d. Each child care program shall maintain a file containing all bulle-  
10 tins, notices, or both issued by the department and the office regarding  
11 unsafe children's products or durable juvenile products, and shall make  
12 the file accessible to the program staff members and to parents of the  
13 children who attend the program.

14 § 495-d. Enforcement. Whenever the office determines that any child  
15 care program has violated any provision of this article, the office may  
16 bring an enforcement action pursuant to subdivision eleven of section  
17 three hundred ninety of the social services law.

18 § 2. Subdivision 3 of section 94-a of the executive law is amended by  
19 adding a new paragraph 16 to read as follows:

20 (16) create a list of unsafe children's products and durable juvenile  
21 products and provide such list to child care facilities pursuant to  
22 article twenty-eight-G of the general business law.

23 § 3. Subdivision 11 of section 390 of the social services law, as  
24 added by chapter 750 of the laws of 1990, paragraphs (a) and (b) as  
25 amended and paragraph (d) as added by chapter 416 of the laws of 2000  
26 and paragraph (c) as amended and paragraph (e) as added by chapter 117  
27 of the laws of 2010, is amended to read as follows:

28 11. (a) (i) The office of children and family services shall adopt  
29 regulations establishing civil penalties of no more than five hundred  
30 dollars per day to be assessed against child day care centers, school  
31 age child care programs, group family day care homes or family day care  
32 homes for violations of this section, sections three hundred ninety-a  
33 and three hundred ninety-b of this title, article twenty-eight-G of the  
34 general business law and any regulations promulgated thereunder. The  
35 regulations establishing civil penalties shall specify the violations  
36 subject to penalty.

37 (ii) The office of children and family services shall adopt regu-  
38 lations establishing civil penalties of no more than five hundred  
39 dollars per day to be assessed against child day care providers who  
40 operate child day care centers or group family day care homes without a  
41 license or who operate family day care homes, school-age child care  
42 programs, or child day care centers required to be registered without  
43 obtaining such registration.

44 (iii) In addition to any other civil or criminal penalty provided by  
45 law, the office of children and family services shall have the power to  
46 assess civil penalties in accordance with its regulations adopted pursu-  
47 ant to this subdivision after a hearing conducted in accordance with  
48 procedures established by regulations of the office of children and  
49 family services. Such procedures shall require that notice of the time  
50 and place of the hearing, together with a statement of charges of  
51 violations, shall be served in person or by certified mail addressed to  
52 the school age child care program, group family day care home, family  
53 day care home, or child day care center at least thirty days prior to  
54 the date of the hearing. The statement of charges shall set forth the  
55 existence of the violation or violations, the amount of penalty for  
56 which the program may become liable, the steps which must be taken to

1 rectify the violation, and where applicable, a statement that a penalty  
2 may be imposed regardless of rectification. A written answer to the  
3 charges of violations shall be filed with the office of children and  
4 family services not less than ten days prior to the date of hearing with  
5 respect to each of the charges and shall include all material and rele-  
6 vant matters which, if not disclosed in the answer, would not likely be  
7 known to the office of children and family services.

8 (iv) The hearing shall be held by the commissioner of the office of  
9 children and family services or the commissioner's designee. The burden  
10 of proof at such hearing shall be on the office of children and family  
11 services to show that the charges are supported by a preponderance of  
12 the evidence. The commissioner of the office of children and family  
13 services or the commissioner's designee, in his or her discretion, may  
14 allow the child day care center operator or provider to attempt to prove  
15 by a preponderance of the evidence any matter not included in the  
16 answer. Where the child day care provider satisfactorily demonstrates  
17 that it has rectified the violations in accordance with the requirements  
18 of paragraph (c) of this subdivision, no penalty shall be imposed except  
19 as provided in paragraph (c) of this subdivision.

20 (b)(i) In assessing penalties pursuant to this subdivision, the office  
21 of children and family services may consider the completeness of any  
22 rectification made and the specific circumstances of such violations as  
23 mitigating factors.

24 (ii) Upon the request of the office of children and family services,  
25 the attorney general shall commence an action in any court of competent  
26 jurisdiction against any child day care program subject to the  
27 provisions of this subdivision and against any person, entity or corpo-  
28 ration operating such center or school age child care program, group  
29 family day care home or family day care home for the recovery of any  
30 penalty assessed by the office of children and family services in  
31 accordance with the provisions of this subdivision.

32 (iii) Any such penalty assessed by the office of children and family  
33 services may be released or compromised by the office of children and  
34 family services before the matter has been referred to the attorney  
35 general; when such matter has been referred to the attorney general,  
36 such penalty may be released or compromised and any action commenced to  
37 recover the same may be settled and discontinued by the attorney general  
38 with the consent of the office of children and family services.

39 (c)(i) Except as provided for in this paragraph, a child day care  
40 provider shall avoid payment of a penalty imposed pursuant to this  
41 subdivision where the provider has rectified the condition which  
42 resulted in the imposition of the penalty within thirty days of notifi-  
43 cation of the existence of the violation of statute or regulation.

44 (ii) ~~Clause~~ Subparagraph (i) of this paragraph notwithstanding,  
45 rectification shall not preclude the imposition of a penalty pursuant to  
46 this subdivision where:

47 (A) the child day care provider has operated a child day care center  
48 or group family day care home without a license, has refused to seek a  
49 license for the operation of such a center or home, or has continued to  
50 operate such a center or home after denial of a license application,  
51 revocation of an existing license or suspension of an existing license;

52 (B) the child day care provider has operated a family day care home,  
53 school-age child care program or child day care center required to be  
54 registered without being registered, has refused to seek registration  
55 for the operation of such home, program or center or has continued to  
56 operate such a home, program or center after denial of a registration

1 application, revocation of an existing registration or suspension of an  
2 existing registration;

3 (C) there has been a total or substantial failure of the facility's  
4 fire detection or prevention systems or emergency evacuation procedures;

5 (D) the child day care provider or an assistant, employee or volunteer  
6 has failed to provide adequate and competent supervision;

7 (E) the child day care provider or an assistant, employee or volunteer  
8 has failed to provide adequate sanitation;

9 (F) the child day care provider or an assistant, employee, volunteer  
10 or, for a family day care home or group family day care home, a member  
11 of the provider's household, has injured a child in care, unreasonably  
12 failed to obtain medical attention for a child in care requiring such  
13 attention, used corporal punishment against a child in care or abused or  
14 maltreated a child in care;

15 (G) the child day care provider has violated the same statutory or  
16 regulatory standard more than once within a six month period;

17 (H) the child day care provider or an assistant, employee or volunteer  
18 has failed to make a report of suspected child abuse or maltreatment  
19 when required to do so pursuant to section four hundred thirteen of this  
20 article; [ex]

21 (I) the child day care provider or an assistant, employee or volunteer  
22 has submitted to the office of children and family services a forged  
23 document as defined in section 170.00 of the penal law; or

24 (J) the child day care provider has violated the provisions of article  
25 twenty-eight-G of the general business law on more than one occasion.

26 (d) Any civil penalty received by the office of children and family  
27 services pursuant to this subdivision shall be deposited to the credit  
28 of the "quality child care and protection fund" established pursuant to  
29 section ninety-seven-ww of the state finance law.

30 (e)(i) The office of children and family services shall deny a new  
31 application for licensure or registration made by a day care provider  
32 whose license or registration was previously revoked or terminated based  
33 on a violation of statute or regulation for a period of two years from  
34 the date that the revocation or termination of the license or registra-  
35 tion became finally effective, unless such office determines, in its  
36 discretion, that approval of the application will not in any way jeop-  
37 ardize the health, safety or welfare of children in the center, program  
38 or home. For the purposes of this paragraph, the date that the revoca-  
39 tion or termination became finally effective shall be, as applicable:

40 (A) the date that the revocation or termination became effective based  
41 on the notice of revocation or termination;

42 (B) the date that the hearing decision was issued upholding the revo-  
43 cation or termination;

44 (C) the date of issuance of a final court order affirming the revoca-  
45 tion or termination or affirming a hearing decision that upheld the  
46 revocation or termination; or

47 (D) another date mutually agreed upon by the office of children and  
48 family services and the provider.

49 (ii)(A) Such office shall deny a new application for licensure or  
50 registration made by a day care provider who is enjoined or otherwise  
51 prohibited by a court order from operation of a day care center, group  
52 family day care home, family day care home or school-age child care  
53 program without a license or registration for a period of two years from  
54 the date of the court order unless the court order specifically enjoins  
55 the provider from providing day care for a period longer than two years,

1 in which case the office shall deny any new application made by the  
2 provider while the provider is so enjoined.

3 (B) Such office shall deny a new application for licensure or regis-  
4 tration made by a day care provider who is assessed a second civil  
5 penalty by such office for having operated a day care center, group  
6 family day care home, family day care home or school-age child care  
7 program without a license or registration for a period of two years from  
8 the date of the second fine. For the purposes of this paragraph, the  
9 date of the second fine shall be either the date upon which the day care  
10 provider signs a stipulation agreement to pay the second fine or the  
11 date upon which a hearing decision is issued affirming the determination  
12 of such office to impose the second fine, as applicable.

13 (iii) A day care provider who surrenders the provider's license or  
14 registration while such office is engaged in enforcement seeking suspen-  
15 sion, revocation or termination of such provider's license or registra-  
16 tion pursuant to the regulations of such office, shall be deemed to have  
17 had their license or registration revoked or terminated and shall be  
18 subject to the prohibitions against licensing or registration pursuant  
19 to subparagraph (i) of this paragraph for a period of two years from the  
20 date of surrender of the license or registration.

21 § 4. This act shall take effect one year after it shall have become a  
22 law; provided that the department of state and the office of children  
23 and family services are authorized to promulgate any and all rules and  
24 regulations and take any other measures necessary to implement this act  
25 on its effective date on or before such date.