

# STATE OF NEW YORK

4431

2019-2020 Regular Sessions

## IN SENATE

March 11, 2019

Introduced by Sen. PARKER -- 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:

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

5 § 396-k. Hazardous toys and other articles intended primarily for use  
6 by children; prohibition and enforcement. 1. No person, firm, corpo-  
7 ration, association or agent or employee thereof shall import, manufac-  
8 ture, sell, hold for sale or distribute a toy or other article intended  
9 for use by a child which presents an electrical, mechanical or thermal  
10 hazard or that is contaminated with any toxic substance. The following  
11 definitions are applicable to this section:

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

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

17 (b-1) "Toy" means an article or item designed and made for the amuse-  
18 ment of a child or for his or her use in play;

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

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

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

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

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

3 (4) from moving parts;

4 (5) from lack or insufficiency of controls to reduce or stop motion;

5 (6) as a result of self-adhering characteristics of the article;

6 (7) because the article or any part or accessory thereof may be aspi-  
7 rated or ingested;

8 (8) because of instability; or

9 (9) [~~from stuffing material which is not free of dangerous or harmful~~  
10 ~~substances; or~~

11 ~~(10)~~] because of any other aspect of the article's design or manufac-  
12 ture.

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

18 (e) A toy is contaminated with a toxic substance if it is any of the  
19 following:

20 (1) is coated with paints and lacquers containing compounds of lead of  
21 which the lead content (calculated as Pb) is in excess of that permitted  
22 by federal regulations contained in Section 1500.17 of Title 16 of the  
23 Code of Federal Regulations adopted pursuant to the Federal Hazardous  
24 Substances Act, Chapter 30 (commencing with Section 1261) of Title 15 of  
25 the United States Code, or soluble compounds of antimony, arsenic,  
26 cadmium, mercury, selenium or barium, introduced as such. Compounds  
27 shall be considered soluble if quantities in excess of 0.1 percent are  
28 dissolved by 5 percent hydrochloric acid after stirring for 10 minutes  
29 at room temperature;

30 (2) consists in whole or in part of a diseased, contaminated, filthy,  
31 putrid or decomposed substance;

32 (3) has been produced, prepared, packed, shipped, or held under unsan-  
33 itary or other conditions whereby it may have become contaminated with  
34 filth or hazardous materials or otherwise rendered injurious to health;

35 (4) is stuffed, padded or lined with materials that are toxic or that  
36 would otherwise be hazardous if ingested, inhaled, or contacted; or

37 (5) is a stuffed, padded or lined toy that is not securely wrapped or  
38 packaged.

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

53 3. Before any violation of this section is sought to be enjoined, the  
54 attorney general shall be required to give the person against whom such  
55 proceeding is contemplated notice by certified mail and an opportunity  
56 to show in writing within five business days after receipt of notice why

1 proceedings should not be instituted against him or her, unless the  
2 attorney general shall find, in any case in which he or she seeks  
3 preliminary relief, that to give such notice and opportunity is not in  
4 the public interest.

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

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

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

23 § 2. This act shall take effect immediately.