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I N S E N A T E

(PREFILED)

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Introduced by Sens. ALESI, BONACIC, FLANAGAN, FUSCHILLO,
LARKIN,
LEIBELL, MALTESE, MORAHAN, PADAVAN, RATH, SEWARD, TRUNZO -- 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
ASSEM-
BLY, 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:
24 (1) from fracture, fragmentation or disassembly of the article;
25 (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 that any person, firm, corporation or association or
agent
41 or employee thereof has violated any provision of this section,
he may
42 bring an action in the supreme court of the state of New York
for a
43 judgment enjoining the continuance of such violation and for a
civil
44 penalty of not more than one thousand dollars for each violation,
except
45 that the court may impose a civil penalty of not more than four
thousand
46 dollars if the violation is knowing and willful. If it shall
appear to
47 the satisfaction of the court or justice that the defendant has
violated
48 any provision of this section, no proof shall be required
that any
49 person has been injured thereby nor that the defendant
knowingly or
50 intentionally violated such provision. In such action preliminary
relief

51 may be granted under article sixty-three of the civil practice
law and
52 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

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1 proceedings should not be instituted against him, unless the
attorney
2 general shall find, in any case in which he seeks preliminary
relief,
3 that to give such notice and opportunity is not in the public
interest.
4 4. In any such action it shall be a complete defense that the
toy or
5 other article sought to be enjoined either complies with, or is
exempt
6 under, the federal "Child Protection and Toy Safety Act of
1969", as
7 amended, or the federal "Consumer Product Safety Act", as
amended, or
8 any regulation or exemption promulgated under either act or any
other
9 applicable federal law. In the case of children`s {sleepware}
SLEEPWEAR,
10 it shall be a complete defense that the article sought to be
enjoined
11 complies with any enforcement policy formally issued by a federal
agency
12 having enforcement authority with respect thereto.
13 5. In connection with any such proposed application, the
attorney
14 general is authorized to take proof, issue subpoenas and
administer
15 oaths in the manner provided in the civil practice law and rules.
16 6. If any provisions of this chapter or the application thereof
to any
17 person or circumstances is held unconstitutional, such invalidity
shall
18 not affect other provisions or applications of this chapter which
can be
19 given effect without the invalid provision or application, and to
this
20 end the provisions of this chapter are severable.
21 S 2. This act shall take effect immediately.