

Update on Legislative Agenda of Interest to Products Liability and Toxic Tort Practitioners

by Kerry J. Roach

PENDING LEGISLATION (AS OF OCTOBER 2006)

S-780/A-428 (Madden/Mayer) Prohibits the sale of Yo-Yo Waterballs. On March 20, S-780 passed in the Senate (39-0). This bill bans the sale of a specific toy that has been linked to serious injuries. Sellers of the subject toy, or persons offering the toy for sale, in addition to civil liability for any injuries suffered as a result of the sale of the toy, will be subject to a fine of up to \$10,000 for a first offense and up to \$20,000 for each subsequent offense. Additionally, law enforcement officers may confiscate toys fitting this description.

S-1137 (Connors) Requires the removal of sodium azide from air bags prior to scrapping of vehicles. Introduced on Jan. 30 and referred to the Senate Environment Committee. The act imposes a penalty for failure to remove sodium azide canisters from supplemental restraint systems prior to intentional scrapping of vehicles and for the sale of scrapped vehicles that have not had the canisters removed. The penalty for violation of the act is a \$5,000 fine. Additionally, the bill provides for an education program regarding the dangers of sodium azide canisters and their appropriate disposal. The act authorizes the Department of Environmental Protection to adopt rules and regulations implementing the provisions of the act.

S-1712/A-1840 (Buono/Greenstein) Eliminates the statute of limitations for certain environmental crimes and crimes causing widespread injury or damage. S-1712

passed in the Senate (37-0) on June 26. The bill amends N.J.S. 2C:1-6 to eliminate the statute of limitations for the following environmental crimes that currently have a 10-year statute of limitations: 1) N.J.S.A. 2C:1717-2, causing or risking widespread injury or damage; 2) N.J.S.A. 13:1E-9 of the Solid Waste Management Act; 3) N.J.S.A. 13:1E-48.20 of the Comprehensive Regulated Medical Waste Management Act; 4) N.J.S.A. 26:2C-19 of the Air Pollution Control Act (1954); 5) the law concerning asbestos, N.J.S.A. 34:5A-41; and 6) N.J.S.A. 58:10A-10 of the Water Pollution Control Act. The impetus for the bill is that the prosecution for such environmental crimes often does not commence within the statute of limitations because the damage resulting from the offense is not perceptible for many years after discovery of the offense.

S-1965/A-2804 (Sweeney/Diegnan) Prohibits the manufacture, sale, use and burning of creosote or creosote-treated products. A-2804 was introduced on March 6 and referred to the Assembly Environment and Solid Waste Committee. S-1965 was introduced on June 12 and referred to the Senate Environment Committee. This bill is intended to address the dangers of creosote-treated products to the public health. The act prohibits the burning, manufacture, sale, offer for sale, or use of creosote-treated products in New Jersey. The act excludes products used by railways and public utilities. The bill provides for a fine of \$500 for a first offense and \$1,000 for each subsequent

offense. Pursuant to the bill, the Department of Environmental Protection shall adopt rules and regulations to implement the provisions of the act.

S-2056/A-1306 (Bucco/Biondi) Establishes the New Jersey Bleacher Safety Act. A-1306 was introduced on Jan. 10 and referred to the Assembly Housing and Local Government Committee. S-2056 was introduced on June 22 and referred to the Senate Community and Urban Affairs Committee. This bill requires the retrofitting of all existing bleachers for public use in New Jersey in compliance with safety standards adopted by the commissioner of community affairs. Government entities will have one year to comply with the standards. Private and nonprofit entities will have two years to comply with the requirements. In the interim, signs shall be hung stating that the bleachers are not in compliance with the safety requirements, and that users should proceed with caution. If any entities do not comply, they shall be forbidden from using the bleachers until they are up to code.

A-145 (Vandervalk) Requires pharmacists to report prescription drug-related deaths and substantial bodily injuries to Board of Pharmacy. Introduced on Jan. 10 and referred to the Assembly Health and Senior Services Committee. This bill amends R.S. 45:14-12, addressing the revocation or suspension of a registered pharmacist's certification for "grossly unprofessional conduct." The bill adds a provision requiring pharmacists and pharmacist assistants to file a

report within 14 days after discovery of any information that reasonably suggests a prescription filled by the pharmacist caused or contributed to any deaths or serious bodily injuries. Pharmacists and pharmacist assistants violating the 14-day requirement will be subject to possible suspension or revocation of their certificate to practice pharmacy in New Jersey. The goal of the amendment is to facilitate systemic improvements that will reduce the possibility of medication errors in the future.

A-250 (Cruz-Perez) Establishes the Toy Safety Act. Introduced on Jan. 20 and referred to the Assembly Consumer Affairs Committee. This act makes it unlawful to sell any toy that has been included in a list of unsafe or recalled products issued by the U.S. Consumer Products Safety Commission or that the director of the Division of Consumer Affairs has determined to be unsafe. The first offense would be punishable by a fine of not more than \$10,000. A second violation, and any subsequent violations, would be punishable by a fine of not more than \$20,000. Additionally, punitive damages and an award of treble damages and costs to injured parties are authorized.

A-319 (Cohen) and **A-645** (Rumpf) Requires a bittering agent to be added to certain engine coolants and antifreeze to render them unpalatable. Both bills were introduced on Jan. 10 and referred to the Assembly Environment and Solid Waste Committee. This bill mandates the addition of a bittering agent to anti-freeze in order to make it unpalatable. It protects the manufacturer, packager, seller, distributor and recycler of anti-freeze from liability for injuries resulting from the use of the bittering agent in the mandated quantities. The bill does not provide for a penalty for the violation of the act.

A-1693 (Fisher) Requires retail food establishments to provide certain nutritional information for food or beverage items sold to its customers. Introduced on Jan. 10 and referred to the Assembly Health and Senior Services Committee. This bill requires retail food establishments to list the

calories, fat grams, grams of carbohydrates and milligrams of sodium per serving of each food item on the establishment's menu. For establishments with menu boards, the calories must be listed, and the other information must be available upon request. The penalty for violation of the act is not less than \$50 and not more than \$100 for the first offense and not less than \$250 and not more than \$500 for each subsequent offense. The bill provides that the commissioner of Health and Senior Services shall adopt rules and regulations to effectuate the purposes of the act.

A-2216 (Gusciora) Eliminates the award of attorneys' fees, filing fees and costs of suit for technical violations of the Consumer Fraud Act. Introduced on Jan. 30 and referred to the Assembly Consumer Affairs Committee. This bill is intended to amend the Consumer Fraud Act's damages provisions to preclude an award of attorneys' fees, filing fees and reasonable costs of suit where there were no damages resulting from the violation of the Consumer Fraud Act (*i.e.*, technical violations).

A-2806 (Moriarty) Concerns meat packing. Introduced on March 6 and referred to the Assembly Consumer Affairs Committee. This bill requires meat packers in New Jersey to adhere a specific label to any meat that has been treated with an agent in order to make it appear fresher than it actually is. Violation of the act is treated as an unlawful practice pursuant to the Consumer Fraud Act, and will be punishable by a fine of not more than \$10,000 for the first offense, and not more than \$20,000 for any subsequent violation. Additionally, punitive damages, treble damages and costs may be awarded to any party injured as a result of a violation of the act.

A-3053 (Cohen) Requires cigarettes to meet certain safety standards. Introduced on May 15 and referred to the Assembly Consumer Affairs Committee. This bill requires that cigarettes sold in New Jersey meet established safety requirements with respect to how long they burn after being lit and flammability when coming in contact with upholstery,

mattresses and other household furnishings. Pursuant to the act, the director of consumer affairs shall adopt rules and regulations necessary to implement the act. Violation of the act would result in punishment under the Consumer Fraud Act of a fine not greater than \$10,000 for the first offense and not greater than \$20,000 for any subsequent offense. Additionally, punitive damages, treble damages and costs may be awarded to persons injured as a result of the violation of the act.

A-3103 (Chatzidakis) Invalidates consumer contracts that require a waiver of right to file a consumer complaint. Introduced on May 18 and referred to the Assembly Consumer Affairs Committee. This bill amends P.L. 1981, c.454, and mandates that no consumer contract, warranty, notice, or sign may contain language requiring the consumer to waive his or her right to contact a law enforcement agent or any other entity for the purposes of reporting a consumer complaint. The bill is intended to invalidate any consumer contract that requires the consumer to waive his or her rights to report a consumer complaint.

AR-100 (Gusciora) Opposes federal legislation titled the Fairness in Asbestos Injury Resolution Act of 2005. Released from the Assembly Environment and Solid Waste Committee on March 9. This resolution act opposes the Fairness in Asbestos Injury Resolution Act of 2005 (FAIRA) currently before the United States Congress based upon the concern that under the contribution structure of FAIRA, many Fortune 500 companies responsible for the injuries suffered by asbestos plaintiffs will avoid having to pay their complete share of the damages owed each plaintiff, and some plaintiffs will not be compensated adequately for their injuries. ■

Kerry Roach is an associate at the law firm of Norris, McLaughlin & Marcus, P.A., with offices in New York and New Jersey. She presently serves as legislative coordinator for the Products Liability and Toxic Tort Law Section.