S T A T E O F N E W Y O R K

7436

2009-2010 Regular Sessions

I N A S S E M B L Y

April 6, 2009

Introduced by M. of A. FIELDS -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting the sale of certain articles containing phthalates

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and declaration. The legislature finds and declares both of the following:

(a) Phthalates are a class of chemicals used in polyvinyl chloride (PVC) plastic to improve flexibility and in cosmetics to bind fragrance to the product. Phthalates are used in many products intended for use by young children, including, but not limited to, teethers, toys and soft plastic books.

(b) There is extensive scientific literature reporting the hormone-disrupting effects of phthalates and substantial evidence that levels of the phthalates of concern are found in humans at levels associated with adverse effects. Population studies show that virtually everyone carries some level of phthalates in their body. For the general population, the oral route of exposure is considered a major route.

S 2. The general business law is amended by adding a new section 392-j to read as follows:

S 392-J. PHTHALATES. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "TOY" SHALL MEAN ALL PRODUCTS DESIGNED OR INTENDED BY THE MANUFACTURER TO BE USED BY CHILDREN WHEN THEY PLAY.

(B) "CHILD CARE ARTICLE" SHALL MEAN ALL PRODUCTS DESIGNED OR INTENDED BY THE MANUFACTURER TO FACILITATE SLEEP, RELAXATION, OR THE FEEDING OF CHILDREN, OR TO HELP CHILDREN WITH SUCKING OR TEETHING.

2. (A) ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY SHALL MANUFACTURE, SELL, OFFER TO SELL, OR DISTRIBUTE IN COMMERCE ANY TOY OR CHILD CARE ARTICLE THAT

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

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CONTAINS DI-(2-ETHYLHEXYL) PHTHALATE (DEHP), DIBUTYL PHTHALATE (DBP), OR BENZYL BUTYL PHTHALATE (BBP), IN CONCENTRATIONS EXCEEDING 0.1 PERCENT.

(B) ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY SHALL MANUFACTURE, SELL, OFFER TO SELL, OR DISTRIBUTE IN COMMERCE ANY TOY OR CHILD CARE ARTICLE INTENDED FOR USE BY A CHILD UNDER THREE YEARS OF AGE IF THAT PRODUCT CAN BE PLACED IN THE CHILD'S MOUTH AND CONTAINS DIISONONYL PHTHALATE (DINP), DIISODECYL PHTHALATE (DIDP), OR DI-N-OCTYL PHTHALATE (DNOP), IN CONCENTRATIONS EXCEEDING 0.1 PERCENT.

3. (A) MANUFACTURERS SHALL USE THE LEAST TOXIC ALTERNATIVE WHEN REPLACING PHTHALATES IN ACCORDANCE WITH THIS SECTION.

(B) MANUFACTURERS SHALL NOT REPLACE PHTHALATES, PURSUANT TO THIS SECTION, WITH CARCINOGENS RATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS A, B, OR C CARCINOGENS, OR SUBSTANCES LISTED AS KNOWN OR LIKELY CARCINOGENS, KNOWN TO BE HUMAN CARCINOGENS, LIKELY TO BE HUMAN CARCINOGENS, OR SUGGESTIVE OF BEING HUMAN CARCINOGENS, AS DESCRIBED IN THE "LIST OF CHEMICALS EVALUATED FOR CARCINOGENIC POTENTIAL".

(C) MANUFACTURERS SHALL NOT REPLACE PHTHALATES, PURSUANT TO THIS SECTION, WITH REPRODUCTIVE TOXICANTS THAT CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, OR DEVELOPMENTAL HARM AS IDENTIFIED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO SUPERSEDE ANY PROVISION OF SECTION THREE HUNDRED NINETY-SIX-K OF THIS ARTICLE, AS ADDED BY CHAPTER SEVEN HUNDRED FIFTY-FOUR OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE.

5. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. IF THE COURT IN SUCH A SPECIAL PROCEEDING DETERMINES THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

6. THIS SECTION SHALL NOT APPLY TO THE SALE OR DISTRIBUTION OF TOYS OR CHILD CARE ARTICLES SOLD OR OFFERED FOR SALE, OR DISTRIBUTED BY CONSUMERS FOR CONSUMER USE.

S 3. This act shall take effect immediately.