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

782

2009-2010 Regular Sessions

I N S E N A T E

January 15, 2009

Introduced by Sen. ALESI -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the general business law, in relation to jewelry containing lead

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

Section 1. Legislative findings. The legislature hereby finds that stringent controls on the amount of lead in jewelry are necessary to protect public health, especially the health of children. Random samples of jewelry in New York state have been found to contain up to 60,000 parts per million of lead. To assure consistent application of these controls to all jewelry, specific technical standards and controls must be specified.

S 2. The environmental conservation law is amended by adding a new section 37-0113 to read as follows:

S 37-0113. LEAD-CONTAINING JEWELRY.

FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING DEFINITIONS: 1. "BODY PIERCING JEWELRY" MEANS ANY PART OF JEWELRY THAT IS MANUFACTURED OR SOLD FOR PLACEMENT IN A NEW PIERCING OR A MUCOUS MEMBRANE, BUT DOES NOT INCLUDE ANY PART OF THAT JEWELRY THAT IS NOT PLACED WITHIN A NEW PIERCING OR A MUCOUS MEMBRANE.

2. "CHILDREN" MEANS CHILDREN AGED SIX AND YOUNGER.

3. "CHILDREN'S JEWELRY" MEANS JEWELRY THAT IS MADE FOR, MARKETED FOR USE BY, OR MARKETED TO, CHILDREN. CHILDREN'S JEWELRY INCLUDES, BUT IS NOT LIMITED TO, JEWELRY THAT MEETS ANY OF THE FOLLOWING CONDITIONS:

(A) REPRESENTED IN ITS PACKAGING, DISPLAY, OR ADVERTISING, AS APPROPRIATE FOR USE BY CHILDREN.

(B) SOLD IN CONJUNCTION WITH, ATTACHED TO, OR PACKAGED TOGETHER WITH OTHER PRODUCTS THAT ARE PACKAGED, DISPLAYED, OR ADVERTISED AS APPROPRIATE FOR USE BY CHILDREN.

(C) SIZED FOR CHILDREN AND NOT INTENDED FOR USE BY ADULTS.

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

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(D) SOLD IN ANY OF THE FOLLOWING:
(1) A VENDING MACHINE.
(2) RETAIL STORE, CATALOGUE, OR ONLINE WEB SITE, IN WHICH A PERSON EXCLUSIVELY OFFERS FOR SALE PRODUCTS THAT ARE PACKAGED, DISPLAYED, OR ADVERTISED AS APPROPRIATE FOR USE BY CHILDREN.
(3) A DISCRETE PORTION OF A RETAIL STORE, CATALOGUE, OR ONLINE WEB SITE, IN WHICH A PERSON OFFERS FOR SALE PRODUCTS THAT ARE PACKAGED, DISPLAYED, OR ADVERTISED AS APPROPRIATE FOR USE BY CHILDREN.
4. "CLASS 1 MATERIAL" MEANS ANY OF THE FOLLOWING MATERIALS:
(A) STAINLESS OR SURGICAL STEEL;
(B) KARAT GOLD;
(C) STERLING SILVER;
(D) PLATINUM, PALLADIUM, IRIDIUM, RUTHENIUM, RHODIUM OR OSMIUM;
(E) NATURAL OR CULTURED PEARLS;
(F) GLASS, CERAMIC, OR CRYSTAL DECORATIVE COMPONENTS, INCLUDING CAT'S EYE, CUBIC ZIRCONIA, INCLUDING CUBIC ZIRCONIUM OR CZ, RHINESTONES, AND CLOISONNE;
(G) A GEMSTONE THAT IS CUT AND POLISHED FOR ORNAMENTAL PURPOSES;
(H) ELASTIC, FABRIC, RIBBON, ROPE, OR STRING, UNLESS IT CONTAINS INTENTIONALLY ADDED LEAD AND IS LISTED AS A CLASS 2 MATERIAL;
(I) ALL NATURAL DECORATIVE MATERIAL, INCLUDING AMBER, BONE, CORAL, FEATHERS, FUR, HORN, LEATHER, SHELL, WOOD, THAT IS IN ITS NATURAL STATE AND IS NOT TREATED IN A WAY THAT ADDS LEAD; AND
(J) ADHESIVE.
(K) THE FOLLOWING GEMSTONES ARE NOT CLASS 1 MATERIALS: ARAGONITE, BAYLDONITE, BOLEITE, CERUSSITE, CROCOITE, EKANITE, LINARITE, MIMETITE, PHOSGENITE, SAMARSKITE, VANADINITE, AND WULFENITE.
5. "CLASS 2 MATERIAL" MEANS ANY OF THE FOLLOWING MATERIALS:
(A) ELECTROPLATED METAL THAT MEETS THE FOLLOWING STANDARDS:
(1) ON AND BEFORE AUGUST 30, 2012, A METAL ALLOY WITH LESS THAN TEN PERCENT LEAD BY WEIGHT THAT IS ELECTROPLATED WITH SUITABLE UNDER AND FINISH COATS.
(2) ON AND AFTER AUGUST 31, 2012, A METAL ALLOY WITH LESS THAN SIX PERCENT LEAD BY WEIGHT THAT IS ELECTROPLATED WITH SUITABLE UNDER AND FINISH COATS; OR
(B) UNPLATED METAL WITH LESS THAN 1.5 PERCENT LEAD THAT IS NOT OTHERWISE LISTED AS A CLASS 1 MATERIAL; OR
(C) PLASTIC OR RUBBER, INCLUDING ACRYLIC, POLYSTYRENE, PLASTIC BEADS AND STONES, AND POLYVINYL CHLORIDE (PVC) THAT MEETS THE FOLLOWING STANDARDS:
(1) ON AND BEFORE AUGUST 30, 2012, LESS THAN 0.06 PERCENT (SIX HUNDRED PARTS PER MILLION) LEAD BY WEIGHT; AND
(2) ON AND AFTER AUGUST 31, 2012, LESS THAN 0.02 PERCENT (TWO HUNDRED PARTS PER MILLION) LEAD BY WEIGHT; OR
(D) A DYE OR SURFACE COATING CONTAINING LESS THAN 0.06 PERCENT (SIX HUNDRED PARTS PER MILLION) LEAD BY WEIGHT.
6. "CLASS 3 MATERIAL" MEANS ANY PORTION OF JEWELRY THAT MEETS BOTH OF THE FOLLOWING CRITERIA:
(A) IS NOT A CLASS 1 OR CLASS 2 MATERIAL; AND
(B) CONTAINS LESS THAN 0.06 PERCENT (SIX HUNDRED PARTS PER MILLION) LEAD BY WEIGHT.
7. "COMPONENT" MEANS ANY PART OF JEWELRY.
8. "EPA REFERENCE METHODS 3050B (ACID DIGESTION OF SEDIMENTS, SLUDGES AND SOILS) OR 3051 (MICROWAVE ASSISTED DIGESTION/SLUDGE, SOILS)" MEANS THOSE TEST METHODS INCORPORATED BY REFERENCE IN PARAGRAPH ELEVEN OF

SUBDIVISION (A) OF SECTION 260.11 OF TITLE 40 OF THE CODE OF FEDERAL REGULATIONS.

9. "JEWELRY" MEANS:

(A) ANY OF THE FOLLOWING ORNAMENTS WORN BY A PERSON: AN ANKLET, ARM CUFF, BRACELET, BROOCH, CHAIN, CROWN, CUFF LINK, DECORATED HAIR ACCESSORIES, EARRING, NECKLACE, PIN, RING, OR BODY PIERCING JEWELRY; OR

(B) ANY BEAD, CHAIN, LINK, PENDANT, OR OTHER COMPONENT OF SUCH AN ORNAMENT.

10. (A) "SURFACE COATING" MEANS A FLUID, SEMIFLUID, OR OTHER MATERIAL, WITH OR WITHOUT A SUSPENSION OF FINELY DIVIDED COLORING MATTER, THAT CHANGES TO A SOLID FILM WHEN A THIN LAYER IS APPLIED TO A METAL, WOOD, STONE, PAPER, LEATHER, CLOTH, PLASTIC, OR OTHER SURFACE.

(B) "SURFACE COATING" DOES NOT INCLUDE A PRINTING INK OR A MATERIAL THAT ACTUALLY BECOMES A PART OF THE SUBSTRATE, INCLUDING, BUT NOT LIMITED TO, PIGMENT IN A PLASTIC ARTICLE, OR A MATERIAL THAT IS ACTUALLY BONDED TO THE SUBSTRATE, SUCH AS BY ELECTROPLATING OR CERAMIC GLAZING.

11. ON OR AFTER MARCH 1, 2011, NO PERSON SHALL ADVERTISE, MANUFACTURE, OFFER FOR SALE, SELL, OR DISTRIBUTE FOR PROMOTIONAL PURPOSES IN THIS STATE, OR IMPORT FOR DISTRIBUTION OR SALE IN THIS STATE, ANY JEWELRY UNLESS THE JEWELRY IS MADE ENTIRELY FROM A CLASS 1, CLASS 2, OR CLASS 3 MATERIAL, OR ANY COMBINATION THEREOF.

12. NOTWITHSTANDING SUBDIVISION ELEVEN OF THIS SECTION, ON OR AFTER JANUARY 1, 2011, NO PERSON SHALL ADVERTISE, MANUFACTURE, OFFER FOR SALE, SELL, OR DISTRIBUTE FOR PROMOTIONAL PURPOSES IN THIS STATE, OR IMPORT FOR DISTRIBUTION OR SALE IN THIS STATE, ANY CHILDREN'S JEWELRY UNLESS THE CHILDREN'S JEWELRY IS MADE ENTIRELY FROM ONE OR MORE OF THE FOLLOWING MATERIALS:

(A) A NONMETALLIC MATERIAL THAT IS A CLASS 1 MATERIAL;

(B) A NONMETALLIC MATERIAL THAT IS A CLASS 2 MATERIAL;

(C) A METALLIC MATERIAL THAT IS EITHER A CLASS 1 MATERIAL OR CONTAINS LESS THAN 0.06 PERCENT (SIX HUNDRED PARTS PER MILLION) LEAD BY WEIGHT;

(D) GLASS OR CRYSTAL DECORATIVE COMPONENTS THAT WEIGH IN TOTAL NO MORE THAN ONE GRAM, EXCLUDING ANY GLASS OR CRYSTAL DECORATIVE COMPONENT THAT CONTAINS LESS THAN 0.02 PERCENT (TWO HUNDRED PARTS PER MILLION) LEAD BY WEIGHT AND HAS NO INTENTIONALLY ADDED LEAD;

(E) PRINTING INK OR CERAMIC GLAZE THAT CONTAINS LESS THAN 0.06 PERCENT (SIX HUNDRED PARTS PER MILLION) LEAD BY WEIGHT; OR

(F) CLASS 3 MATERIAL THAT CONTAINS LESS THAN 0.02 PERCENT (TWO HUNDRED PARTS PER MILLION) LEAD BY WEIGHT.

13. NOTWITHSTANDING SUBDIVISION 11 OF THIS SECTION, ON OR AFTER MARCH 1, 2011, NO PERSON SHALL ADVERTISE, MANUFACTURE, OFFER FOR SALE, SELL, OR DISTRIBUTE FOR PROMOTIONAL PURPOSES IN THIS STATE, OR IMPORT FOR DISTRIBUTION OR SALE IN THIS STATE, ANY BODY PIERCING JEWELRY UNLESS THE BODY PIERCING JEWELRY IS MADE OF ONE OR MORE OF THE FOLLOWING MATERIALS: SURGICAL IMPLANT STAINLESS STEEL, SURGICAL IMPLANT GRADE OF TITANIUM, NIOBIUM (NB), SOLID FOURTEEN KARAT OR HIGHER WHITE OR YELLOW NICKEL-FREE GOLD, SOLID PLATINUM, OR A DENSE LOW-POROSITY PLASTIC, INCLUDING, BUT NOT LIMITED TO, TYGON OR POLYTETRAFLUOROETHYLENE (PTFE), IF THE PLASTIC CONTAINS NO INTENTIONALLY ADDED LEAD.

S 3. The environmental conservation law is amended by adding a new section 37-0115 to read as follows:

S 37-0115. TESTING METHODS FOR DETERMINING COMPLIANCE WITH SECTION 37-0113.

1. THE TESTING METHODS FOR DETERMINING COMPLIANCE WITH SECTION 37-0113 OF THIS TITLE SHALL BE CONDUCTED USING THE EPA REFERENCE METHODS 3050B OR 3051 FOR THE MATERIAL BEING TESTED, EXCEPT AS OTHERWISE PROVIDED IN

SUBPARAGRAPHS 5 AND 6 OF PARAGRAPH (E) OF SUBDIVISION 2 OF THIS SECTION, AND IN ACCORDANCE WITH ALL OF THE FOLLOWING PROCEDURES:

(A) WHEN PREPARING A SAMPLE, THE LABORATORY SHALL MAKE EVERY EFFORT TO ASSURE THAT THE SAMPLE REMOVED FROM A JEWELRY PIECE IS REPRESENTATIVE OF THE COMPONENT TO BE TESTED, AND IS FREE OF CONTAMINATION FROM EXTRANEOUS DIRT AND MATERIAL NOT RELATED TO THE JEWELRY COMPONENT TO BE TESTED.

(B) ALL JEWELRY COMPONENT SAMPLES SHALL BE WASHED PRIOR TO TESTING USING STANDARD LABORATORY DETERGENT, RINSED WITH LABORATORY REAGENT GRADE DEIONIZED WATER, AND DRIED IN A CLEAN AMBIENT ENVIRONMENT.

(C) IF A COMPONENT IS REQUIRED TO BE CUT OR SCRAPED TO OBTAIN A SAMPLE, THE METAL SNIPS, SCISSORS, OR OTHER CUTTING TOOLS USED FOR THE CUTTING OR SCRAPING SHALL BE MADE OF STAINLESS STEEL AND WASHED AND RINSED BEFORE EACH USE AND BETWEEN SAMPLES.

(D) A SAMPLE SHALL BE DIGESTED IN A CONTAINER THAT IS KNOWN TO BE FREE OF LEAD AND WITH THE USE OF AN ACID THAT IS NOT CONTAMINATED BY LEAD, INCLUDING ANALYTICAL REAGENT GRADE DIGESTION ACIDS AND REAGENT GRADE DEIONIZED WATER.

(E) METHOD BLANKS, CONSISTING OF ALL REAGENTS USED IN SAMPLE PREPARATION HANDLED, DIGESTED, AND MADE TO VOLUME IN THE SAME EXACT MANNER AND IN THE SAME CONTAINER TYPE AS SAMPLES, SHALL BE TESTED WITH EACH GROUP OF TWENTY OR FEWER SAMPLES TESTED.

(F) THE RESULTS FOR THE METHOD BLANKS SHALL BE REPORTED WITH EACH GROUP OF SAMPLE RESULTS, AND SHALL BE BELOW THE STATED REPORTING LIMIT FOR SAMPLE RESULTS TO BE CONSIDERED VALID.

2. IN ADDITION TO THE REQUIREMENTS OF SUBDIVISION 1 OF THIS SECTION, THE FOLLOWING PROCEDURES SHALL BE USED FOR TESTING THE FOLLOWING MATERIALS:

(A) FOR TESTING A METAL PLATED WITH SUITABLE UNDERCOATS AND FINISH COATS, THE FOLLOWING PROTOCOLS SHALL BE OBSERVED:

(1) DIGESTION SHALL BE CONDUCTED USING HOT CONCENTRATED NITRIC ACID WITH THE OPTION OF USING HYDROCHLORIC ACID OR HYDROGEN PEROXIDE.

(2) THE SAMPLE SIZE SHALL BE 0.050 GRAM TO ONE GRAM.

(3) THE DIGESTED SAMPLE MAY REQUIRE DILUTION PRIOR TO ANALYSIS.

(4) THE DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED DETECTION LIMIT NO GREATER THAN 0.1 PERCENT FOR SAMPLES.

(5) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT MEASUREMENTS ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.

(B) FOR TESTING UNPLATED METAL AND METAL SUBSTRATES THAT ARE NOT A CLASS 1 MATERIAL THE FOLLOWING PROTOCOLS SHALL BE OBSERVED:

(1) DIGESTION SHALL BE CONDUCTED USING HOT CONCENTRATED NITRIC ACID WITH THE OPTION OF USING HYDROCHLORIC ACID AND HYDROGEN PEROXIDE.

(2) THE SAMPLE SIZE SHALL BE 0.050 GRAM TO ONE GRAM.

(3) THE DIGESTED SAMPLE MAY REQUIRE DILUTION PRIOR TO ANALYSIS.

(4) THE DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED DETECTION LIMIT NO GREATER THAN 0.01 PERCENT FOR SAMPLES.

(5) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT MEASUREMENTS ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.

(C) FOR TESTING POLYVINYL CHLORIDE (PVC), THE FOLLOWING PROTOCOLS SHALL BE OBSERVED:

(1) THE DIGESTION SHALL BE CONDUCTED USING HOT CONCENTRATED NITRIC ACID WITH THE OPTION OF USING HYDROCHLORIC ACID AND HYDROGEN PEROXIDE.

(2) THE SAMPLE SIZE SHALL BE A MINIMUM OF 0.05 GRAM IF USING MICROWAVE DIGESTION OR 0.5 GRAM IF USING HOTPLATE DIGESTION, AND SHALL BE CHOPPED OR COMMINUTED PRIOR TO DIGESTION.

(3) DIGESTED SAMPLES MAY REQUIRE DILUTION PRIOR TO ANALYSIS.

(4) DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED DETECTION LIMIT NO GREATER THAN 0.001 PERCENT (TEN PARTS PER MILLION) FOR SAMPLES.

(5) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT MEASUREMENTS ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.

(D) FOR TESTING PLASTIC OR RUBBER THAT IS NOT POLYVINYL CHLORIDE (PVC), INCLUDING ACRYLIC, POLYSTYRENE, PLASTIC BEADS, OR PLASTIC STONES, THE FOLLOWING PROTOCOLS SHALL BE OBSERVED:

(1) THE DIGESTION SHALL BE CONDUCTED USING HOT CONCENTRATED NITRIC ACID WITH THE OPTION OF USING HYDROCHLORIC ACID OR HYDROGEN PEROXIDE.

(2) THE SAMPLE SIZE SHALL BE A MINIMUM OF 0.05 GRAM IF USING MICROWAVE DIGESTION OR 0.5 GRAM IF USING HOTPLATE DIGESTION, AND SHALL BE CHOPPED OR COMMINUTED PRIOR TO DIGESTION.

(3) PLASTIC BEADS OR STONES SHALL BE CRUSHED PRIOR TO DIGESTION.

(4) DIGESTED SAMPLES MAY REQUIRE DILUTION PRIOR TO ANALYSIS.

(5) DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED DETECTION LIMIT NO GREATER THAN 0.001 PERCENT (TEN PARTS PER MILLION) FOR SAMPLES.

(6) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT MEASUREMENTS ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.

(E) FOR TESTING COATINGS ON GLASS AND PLASTIC PEARLS, THE FOLLOWING PROTOCOLS SHALL BE OBSERVED:

(1) THE COATING OF GLASS OR PLASTIC BEADS SHALL BE SCRAPED ONTO A SURFACE FREE OF DUST, INCLUDING A CLEAN WEIGHING PAPER OR PAN, USING A CLEAN STAINLESS STEEL RAZOR BLADE OR OTHER CLEAN SHARP INSTRUMENT THAT WILL NOT CONTAMINATE THE SAMPLE WITH LEAD. THE SUBSTRATE PEARL MATERIAL SHALL NOT BE INCLUDED IN THE SCRAPINGS.

(2) THE RAZOR BLADE OR SHARP INSTRUMENT SHALL BE RINSED WITH DEIONIZED WATER, WIPED TO REMOVE PARTICULATE MATTER, RINSED AGAIN, AND DRIED BETWEEN SAMPLES.

(3) THE SCRAPINGS SHALL BE WEIGHED AND NOT LESS THAN FIFTY MICROGRAMS OF SCRAPED COATING SHALL BE USED FOR ANALYSIS. IF LESS THAN FIFTY MICROGRAMS OF SCRAPED COATING IS OBTAINED FROM AN INDIVIDUAL PEARL, MULTIPLE PEARLS FROM THAT SAMPLE SHALL BE SCRAPED AND COMPOSITED TO OBTAIN A SUFFICIENT SAMPLE AMOUNT.

(4) THE NUMBER OF PEARLS USED TO MAKE THE COMPOSITE SHALL BE NOTED.

(5) THE SCRAPINGS SHALL BE DIGESTED ACCORDING TO EPA REFERENCE METHOD 3050B OR 3051 OR AN EQUIVALENT PROCEDURE FOR HOT ACID DIGESTION IN PREPARATION FOR TRACE LEAD ANALYSIS.

(6) THE DIGESTATE SHALL BE DILUTED IN THE MINIMUM VOLUME PRACTICAL FOR ANALYSIS.

(7) THE DIGESTED SAMPLE SHALL BE ANALYZED ACCORDING TO SPECIFICATION OF AN APPROVED AND VALIDATED METHODOLOGY FOR INDUCTIVELY COUPLED PLASMA MASS SPECTROMETRY.

(8) A REPORTING LIMIT OF 0.001 PERCENT (TEN PARTS PER MILLION) IN THE COATING SHALL BE OBTAINED FOR THE ANALYSIS.

(9) THE SAMPLE RESULT SHALL BE REPORTED WITHIN THE CALIBRATED RANGE OF THE INSTRUMENT. IF THE INITIAL TEST OF THE SAMPLE IS ABOVE THE HIGHEST CALIBRATION STANDARD, THE SAMPLE SHALL BE DILUTED AND REANALYZED WITHIN THE CALIBRATED RANGE OF THE INSTRUMENT.

(F) FOR TESTING DYES, PAINTS, COATINGS, VARNISH, PRINTING INKS, CERAMIC GLAZES, GLASS, OR CRYSTAL, THE FOLLOWING TESTING PROTOCOLS SHALL BE OBSERVED:

(1) THE DIGESTION SHALL USE HOT CONCENTRATED NITRIC ACID WITH THE OPTION OF USING HYDROCHLORIC ACID OR HYDROGEN PEROXIDE.

(2) THE SAMPLE SIZE SHALL BE NOT LESS THAN 0.050 GRAM, AND SHALL BE CHOPPED OR COMMINUTED PRIOR TO DIGESTION.

(3) THE DIGESTED SAMPLE MAY REQUIRE DILUTION PRIOR TO ANALYSIS.

(4) THE DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED DETECTION LIMIT NO GREATER THAN 0.001 PERCENT (TEN PARTS PER MILLION) FOR SAMPLES.

(5) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT MEASUREMENTS ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.

(G) FOR TESTING GLASS AND CRYSTAL USED IN CHILDREN'S JEWELRY, THE FOLLOWING TESTING PROTOCOLS FOR DETERMINING WEIGHT SHALL BE USED:

(1) A COMPONENT SHALL BE FREE OF ANY EXTRANEOUS MATERIAL, INCLUDING ADHESIVE, BEFORE IT IS WEIGHED.

(2) THE SCALE USED TO WEIGH A COMPONENT SHALL BE CALIBRATED IMMEDIATELY BEFORE THE COMPONENTS ARE WEIGHED USING S-CLASS WEIGHTS OF ONE AND TWO GRAMS, AS CERTIFIED BY THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST) OF THE DEPARTMENT OF COMMERCE.

(3) THE CALIBRATION OF THE SCALE SHALL BE ACCURATE TO WITHIN 0.01 GRAM.

3. THE COMMISSIONER MAY PROMULGATE RULES AND/OR REGULATIONS MODIFYING THE TESTING PROTOCOLS SPECIFIED IN SUBDIVISIONS ONE AND TWO OF THIS SECTION, AS SUCH COMMISSIONER DEEMS NECESSARY TO FURTHER THE PURPOSES OF THIS SECTION.

S 4. The environmental conservation law is amended by adding a new section 71-3711 to read as follows:

S 71-3711. ENFORCEMENT OF SECTION 37-0113.

1. ANY PERSON WHO VIOLATES ANY PROVISION OF OR FAILS TO PERFORM ANY DUTY IMPOSED BY SECTION 37-0113 OF THIS CHAPTER SHALL UPON THE FIRST FINDING OF SUCH A VIOLATION BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH VIOLATION. ANY PERSON CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED TWENTY-FIVE HUNDRED DOLLARS FOR EACH VIOLATION.

2. PENALTIES UNDER THIS SECTION SHALL BE ASSESSED BY THE COMMISSIONER AFTER A HEARING PURSUANT TO THE PROVISIONS OF SECTION 71-1709 OF THIS ARTICLE. IN ASSESSING THE PENALTY UNDER THIS SECTION, THE COMMISSIONER SHALL CONSIDER: THE NATURE AND EXTENT OF THE VIOLATION; THE NUMBER AND SEVERITY OF THE VIOLATIONS; THE ECONOMIC EFFECT OF THE PENALTY ON THE VIOLATOR; WHETHER THE VIOLATOR TOOK GOOD FAITH MEASURES TO COMPLY WITH THIS CHAPTER; THE WILLFULNESS OF THE VIOLATOR'S MISCONDUCT; THE DETERRENT EFFECT THAT THE IMPOSITION OF THE PENALTY WOULD HAVE ON BOTH THE VIOLATOR AND THE REGULATED COMMUNITY AS A WHOLE; AND OTHER FACTORS THAT THE COMMISSIONER DEEMS APPROPRIATE AND RELEVANT. ANY PERSON FOUND TO HAVE VIOLATED SECTION 37-0113 OF THIS CHAPTER MAY BE ENJOINED FROM CONTINUING SUCH VIOLATION.

3. ALL CIVIL PENALTIES AND FINES COLLECTED FOR ANY VIOLATION OF SECTION 37-0113 OF THIS CHAPTER SHALL BE PAID OVER TO THE COMMISSIONER FOR DEPOSIT IN THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED BY SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

4. (A) NO CHARGE OF A VIOLATION OF THE PROVISIONS OF, OR FAILURE TO PERFORM A DUTY IMPOSED BY SECTION 37-0113 OF THIS CHAPTER SHALL BE BASED UPON EXCESSIVE LEAD CONTENT EXCEPT UPON A SHOWING THAT THE LABORATORY TESTS ESTABLISHING SUCH EXCESSIVE LEAD CONTENT WERE PERFORMED BY A LABORATORY THAT COMPLIES WITH THE TESTING REQUIREMENTS ESTABLISHED BY SECTION 37-0115 OF THIS CHAPTER.

(B) A PERSON CHARGED WITH A VIOLATION OF THE PROVISIONS OF, OR FAILURE TO PERFORM A DUTY IMPOSED BY SECTION 37-0113 OF THIS CHAPTER SHALL BE PROVIDED WITH ALL SUPPORTING DOCUMENTATION RELATED TO THE TESTING OF THE JEWELRY, INCLUDING, BUT NOT LIMITED TO, DOCUMENTATION OF THE PROCEDURES UTILIZED BY THE LABORATORY, COPIES OF ALL TEST RESULTS, EXEMPLARS OF THE PRODUCTS TESTED TO THE EXTENT PRACTICABLE, AND SUCH OTHER DOCUMENTATION

AND EVIDENCE WHICH SHALL REASONABLY BE REQUIRED TO VERIFY THE ACCURACY OF THE TEST RESULTS.

S 5. The general business law is amended by adding a new section 399-gg to read as follows:

S 399-GG. LABELING OF JEWELRY. 1. NO PERSON, FIRM OR CORPORATION SHALL SELL OR OFFER FOR SALE ANY JEWELRY, AS DEFINED BY SECTION 37-0113 OF THE ENVIRONMENTAL CONSERVATION LAW, UNLESS THERE IS PRINTED ON THE PACKAGE IN WHICH SUCH JEWELRY IS SOLD OR OFFERED FOR SALE A CONSPICUOUS NOTICE STATING THE PERCENTAGE OF LEAD CONTAINED IN SUCH JEWELRY. ANY JEWELRY CONTAINING MORE THAN 0.02 PERCENT (TWO HUNDRED PARTS PER MILLION) LEAD BY WEIGHT SHALL CONTAIN A WARNING LABEL, PROMINENTLY DISPLAYED, WHICH STATES, "CONTAINS LEAD WHICH MAY BE HARMFUL TO YOUR HEALTH. NOT TO BE USED BY CHILDREN UNDER THE AGE OF SIX."

2. ANY VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS.

S 6. This act shall take effect immediately; provided, however that section five of this act shall take effect March 1, 2011.