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

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 9, 2009

Introduced by M. of A. ENGLEBRIGHT, COLTON, ORTIZ, BENEDETTO, HOYT, DINOWITZ, JACOBS, CLARK, LAVINE -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, CAHILL, GABRYSZAK, GOTTFRIED, JOHN, KOON, LATIMER, LUPARDO, MILLMAN, PEOPLES, PERRY, N. RIVERA, ROBINSON, SWEENEY, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to lead in candy, soft vinyl lunch boxes, and infant and children's vinyl bibs

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

Section 1. The public health law is amended by adding two new sections 1371-a and 1371-b to read as follows:

S 1371-A. LEAD IN CANDY. 1. THE DEPARTMENT SHALL MONITOR LEAD LEVELS IN ALL CANDY SOLD OR DISTRIBUTED IN THE STATE. MONITORING SHALL INCLUDE SAMPLING AND TESTING TO DETERMINE THE LEAD LEVELS CONTAINED IN THE CANDY.

2. FOR THE PURPOSES OF THIS SECTION, "MAXIMUM ALLOWABLE LEAD LEVEL" SHALL MEAN ONE-TENTH PART OF LEAD PER MILLION PARTS AS ESTABLISHED IN THE REGULATIONS AND GUIDELINES OF THE FEDERAL FOOD AND DRUG ADMINISTRATION.

3. IF THE LEAD LEVEL IN CANDY THAT IS TESTED BY THE DEPARTMENT PURSUANT TO SUBDIVISION ONE OF THIS SECTION EXCEEDS THE MAXIMUM ALLOWABLE LEAD LEVEL, THE DEPARTMENT SHALL:

(A) ISSUE HEALTH ADVISORY NOTICES TO COUNTY HEALTH DEPARTMENTS ALERTING THEM TO THE DANGER POSED BY CONSUMPTION OF SUCH CANDY EXCEEDING THE MAXIMUM ALLOWABLE LEAD LEVEL; AND

(B) NOTIFY THE MANUFACTURER AND THE DISTRIBUTOR OF SUCH CANDY THAT SUCH CANDY EXCEEDS THE MAXIMUM ALLOWABLE LEAD LEVEL, AND THAT SUCH CANDY SHALL NOT BE SOLD OR DISTRIBUTED IN THE STATE UNTIL FURTHER TESTING PROVES THAT THE CANDY IS IN COMPLIANCE WITH THE MAXIMUM ALLOWABLE LEAD LEVEL.

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

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4. (A) IF CANDY EXCEEDS THE MAXIMUM ALLOWABLE LEAD LEVEL, THE MANUFACTURER OR DISTRIBUTOR THEREOF MAY CORRECT THE PROBLEM AND RESUBMIT THE CANDY TO THE DEPARTMENT FOR FURTHER TESTING.

(B) IF THE LEAD CONTENT OF SUCH CANDY IS BELOW THE MAXIMUM ALLOWABLE LEAD LEVEL WHEN IT IS RETESTED, THE DEPARTMENT SHALL PROVIDE THE MANUFACTURER OR DISTRIBUTOR AND THE COUNTY HEALTH DEPARTMENT WITH A LETTER STATING THAT THE CANDY HAS BEEN RETESTED AND DETERMINED TO CONTAIN LESS THAN THE MAXIMUM ALLOWABLE LEAD LEVEL, AND THAT THE SALE AND DISTRIBUTION OF THE CANDY IN THE STATE MAY RESUME. THE DEPARTMENT SHALL ALSO NOTIFY THE PUBLIC STATING THAT SUCH CANDY IS SAFE FOR CONSUMPTION.

(C) IF THE CANDY STILL EXCEEDS THE MAXIMUM ALLOWABLE LEAD LEVEL AFTER IT HAS BEEN RETESTED, THE MANUFACTURER OR DISTRIBUTOR MAY TAKE CORRECTIVE MEASURES AND CONTINUE TO RESUBMIT SAMPLES FOR TESTING UNTIL SUCH CANDY'S LEAD CONTENT IS BELOW THE MAXIMUM ALLOWABLE LEAD LEVEL IF THE MANUFACTURER OR DISTRIBUTOR WISHES TO SELL OR DISTRIBUTE THE CANDY IN THE STATE.

5. THE DEPARTMENT SHALL CONDUCT AN EXTENSIVE PUBLIC INFORMATION PROGRAM ON THE POTENTIAL HAZARDS OF CANDY CONTAINING LEAD, TARGETING CANDY PRODUCTS AND CONSUMERS OF SPECIFIC CANDY PRODUCTS THAT HAVE BEEN FOUND TO EXCEED THE MAXIMUM ALLOWABLE LEAD LEVEL. THE DEPARTMENT SHALL NOTIFY THE PUBLIC THAT SPECIFIC CANDY PRODUCTS THAT EXCEED THE MAXIMUM ALLOWABLE LEAD LEVEL ARE PROHIBITED FROM SALE OR DISTRIBUTION UNTIL THEY COMPLY WITH THE MAXIMUM ALLOWABLE LEAD LEVEL. AT SUCH TIME AS THESE CANDY PRODUCTS ARE RETESTED AND HAVE BEEN FOUND TO COMPLY WITH THE MAXIMUM ALLOWABLE LEAD LEVEL, THE DEPARTMENT SHALL PROVIDE THE PUBLIC WITH SUCH INFORMATION.

6. ON OR BEFORE MARCH FIRST EACH YEAR, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE GOVERNOR AND THE LEGISLATURE WHICH SHALL INCLUDE THE RESULTS OF THE TESTING OF CANDY PURSUANT TO THIS SECTION AND A LISTING OF ALL CANDIES WHICH ARE PROHIBITED FROM BEING SOLD OR DISTRIBUTED IN THE STATE PURSUANT TO THIS SECTION.

S 1371-B. LEAD IN SOFT VINYL LUNCH BOXES, AND INFANT AND CHILDREN'S BIBS. 1. THE DEPARTMENT SHALL MONITOR LEAD LEVELS IN AND ON ALL SOFT VINYL LUNCH BOXES, AND INFANT AND CHILDREN'S BIBS SOLD OR DISTRIBUTED IN THE STATE. MONITORING SHALL INCLUDE TESTING TO DETERMINE THE LEAD LEVELS CONTAINED IN OR ON SOFT VINYL LUNCH BOXES, AND INFANT AND CHILDREN'S BIBS.

2. NO PERSON OR ENTITY SHALL MANUFACTURE, DISTRIBUTE, SELL OR OFFER FOR SALE IN THIS STATE ANY SOFT VINYL LUNCH BOX, OR INFANT OR CHILDREN'S BIB WHICH CONTAINS MORE THAN SIX HUNDRED PARTS PER MILLION OF LEAD. EACH VIOLATION OF THIS SUBDIVISION SHALL CONSTITUTE A SEPARATE VIOLATION AND SHALL SUBJECT THE PERSON COMMITTING THE VIOLATION TO A CIVIL PENALTY OF ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION.

3. THE DEPARTMENT SHALL CONDUCT AN EXTENSIVE PUBLIC INFORMATION PROGRAM ON THE POTENTIAL HAZARDS OF SOFT VINYL LUNCH BOXES, AND INFANT AND CHILDREN'S BIBS CONTAINING LEAD AND ADVISE ANY PERSON POSSESSING A SOFT VINYL LUNCH BOX, OR INFANT OR CHILDREN'S BIB ACQUIRED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION THAT THEY SHOULD DISCARD SUCH LUNCH BOX OR BIB. THE DEPARTMENT SHALL UTILIZE ITS WEBSITE AND OTHER MEANS OF PUBLIC OUTREACH TO ENSURE THAT CONSUMERS, PARTICULARLY THOSE WITH CHILDREN, ARE ALERTED TO SUCH HAZARDS. THE INFORMATION SHALL INCLUDE THE MEANS BY WHICH THE PUBLIC CAN IDENTIFY SOFT VINYL LUNCH BOXES, AND INFANT AND CHILDREN'S BIBS WHICH CAN POTENTIALLY CONTAIN EXCESSIVE LEVELS OF LEAD.

4. ON OR BEFORE MARCH FIRST EACH YEAR, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE GOVERNOR AND THE LEGISLATURE WHICH SHALL INCLUDE A LISTING OF ALL SOFT VINYL LUNCH BOXES, AND INFANT AND CHILDREN'S BIBS WHICH ARE PROHIBITED PURSUANT TO THIS SECTION.

S 2. This act shall take effect immediately.