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

3678

2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

Introduced by M. of A. GABRYSZAK, PHEFFER, SPANO, GIBSON, MILLMAN, PERRY, COOK, GALEF, COLTON, CASTRO, ARROYO -- Multi-Sponsored by -- M. of A. BOYLAND, BURLING, CALHOUN, HOOPER, MARKEY, MAYERSOHN, McDONOUGH, MENG, ROBINSON, SALADINO, TITONE, TOBACCO -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to cadmium in children's products

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

Section 1. Article 37 of the environmental conservation law is amended by adding a new title VII to read as follows:

TITLE VII

PROHIBITION ON CADMIUM IN CHILDREN'S PRODUCTS

SECTION 37-0701. DEFINITIONS.
37-0703. PROHIBITIONS.
37-0705. EXEMPTIONS.
37-0707. CERTIFICATE OF COMPLIANCE.
37-0709. VIOLATIONS.
37-0711. PUBLIC ACCESS.
37-0713. REPORTS.
37-0715. RULES AND REGULATIONS.

S 37-0701. DEFINITIONS.

FOR THE PURPOSES OF THIS TITLE, THE TERM:

1. "DISTRIBUTOR" SHALL MEAN ANY PERSON, FIRM, ASSOCIATION, PARTNERSHIP OR CORPORATION WHO TAKES TITLE TO OR POSSESSION OF GOODS OR PURCHASES FOR RESALE OR PROMOTIONAL PURPOSES.

2. "DISTRIBUTION" SHALL MEAN THE PRACTICE OF TAKING TITLE TO OR POSSESSION OF CHILDREN'S PRODUCTS FOR PROMOTIONAL PURPOSES OR RESALE. PERSONS INVOLVED SOLELY IN DELIVERING CHILDREN'S PRODUCTS OR COMPONENTS OF CHILDREN'S PRODUCTS ON BEHALF OF THIRD PARTIES ARE NOT CONSIDERED DISTRIBUTORS.

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

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3. "INCIDENTAL PRESENCE" SHALL MEAN THE PRESENCE OF CADMIUM AS AN UNINTENDED OR UNDESIRED INGREDIENT OF A PRODUCT.

4. "INTENTIONAL INTRODUCTION" OR "INTENTIONALLY INTRODUCED" SHALL MEAN THE ACT OF DELIBERATELY UTILIZING CADMIUM IN THE FORMATION OF A CHILDREN'S PRODUCT WHERE ITS CONTINUED PRESENCE IS DESIRED IN THE FINAL PRODUCT TO PROVIDE A SPECIFIC CHARACTERISTIC, APPEARANCE OR QUALITY. THE USE OF CADMIUM AS A PROCESSING AGENT OR INTERMEDIATE TO IMPART CERTAIN CHEMICAL OR PHYSICAL CHANGES DURING MANUFACTURING, WHEREUPON THE INCIDENTAL RETENTION OF A RESIDUE OF ANY SUCH METAL IN THE FINAL COMPONENT OF A CHILDREN'S PRODUCT IS NEITHER DESIRED NOR DELIBERATE, IS NOT CONSIDERED INTENTIONAL INTRODUCTION FOR THE PURPOSES OF THIS TITLE WHERE THE FINAL CHILDREN'S PRODUCT IS IN COMPLIANCE WITH SUBDIVISION THREE OF SECTION 37-0705 OF THIS TITLE. THE USE OF RECYCLED MATERIALS AS FEED STOCK FOR THE MANUFACTURE OF A NEW COMPONENT OF A CHILDREN'S PRODUCT, WHERE SOME PORTION OF THE RECYCLED MATERIALS MAY CONTAIN AMOUNTS OF CADMIUM, IS NOT CONSIDERED INTENTIONAL INTRODUCTION FOR THE PURPOSES OF THIS TITLE WHERE THE NEW CHILDREN'S PRODUCT IS IN COMPLIANCE WITH SUBDIVISION THREE OF SECTION 37-0705 OF THIS TITLE.

5. "MANUFACTURER" SHALL MEAN ANY PERSON, FIRM, ASSOCIATION, PARTNERSHIP OR CORPORATION, WHO PRODUCES COMPONENTS OF CHILDREN'S PRODUCTS.

6. "MANUFACTURING" SHALL MEAN PHYSICAL OR CHEMICAL MODIFICATION OF MATERIALS TO PRODUCE COMPONENTS OF CHILDREN'S PRODUCTS.

7. "CHILDREN'S PRODUCT" SHALL MEAN A TOY, CHILDREN'S JEWELRY OR ANOTHER ARTICLE, OTHER THAN CLOTHING, PRIMARILY INTENDED FOR USE BY A CHILD UNDER TWELVE YEARS OF AGE. THE FOLLOWING SHALL BE CONSIDERED IN DETERMINING IF THE TOY OR ARTICLE IS INTENDED FOR A CHILD UNDER TWELVE YEARS OF AGE:

(A) A STATEMENT BY A MANUFACTURER ABOUT THE INTENDED USE OF SUCH TOY OR ARTICLE, INCLUDING A LABEL ON SUCH TOY OR ARTICLE;

(B) THE CONTEXT AND MANNER OF THE ADVERTISING, PROMOTION, AND MARKETING ASSOCIATED WITH THE TOY OR ARTICLE; AND

(C) WHETHER THE TOY OR ARTICLE IS COMMONLY RECOGNIZED BY CONSUMERS AS BEING INTENDED FOR USE BY A CHILD UNDER TWELVE YEARS OF AGE.

8. "CHILDREN'S JEWELRY" SHALL MEAN JEWELRY THAT IS MADE FOR, MARKETED FOR USE BY, OR MARKETED TO CHILDREN UNDER THE AGE OF TWELVE. "CHILDREN'S JEWELRY" INCLUDES JEWELRY THAT MEETS ANY OF THE FOLLOWING CONDITIONS:

(A) IS REPRESENTED IN ITS PACKAGING, DISPLAY OR ADVERTISING AS APPROPRIATE FOR USE BY CHILDREN UNDER THE AGE OF TWELVE;

(B) IS 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) IS SIZED FOR CHILDREN AND NOT INTENDED FOR USE BY ADULTS; OR

(D) IS SOLD IN ANY OF THE FOLLOWING:

(I) A VENDING MACHINE;

(II) 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; OR

(III) 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.

9. "PURCHASER" SHALL MEAN ANY PERSON, FIRM, ASSOCIATION, PARTNERSHIP OR CORPORATION, WHO PURCHASES ANY CHILDREN'S PRODUCTS OR COMPONENTS OF CHILDREN'S PRODUCTS. THIS TERM SHALL NOT MEAN ANY RETAIL STORE OR INDIVIDUAL MAKING RETAIL PURCHASES.

10. "SUPPLIER" SHALL MEAN ANY PERSON, FIRM, ASSOCIATION, PARTNERSHIP OR CORPORATION, WHO SELLS, OFFERS FOR SALE OR OFFERS FOR PROMOTIONAL

PURPOSES COMPONENTS OF CHILDREN'S PRODUCTS FOR USE BY ANY OTHER PERSON, FIRM, ASSOCIATION, PARTNERSHIP OR CORPORATION TO PACK PRODUCTS.

S 37-0703. PROHIBITIONS.

NO CHILDREN'S PRODUCTS SHALL BE SOLD, OR OFFERED FOR SALE OR FOR PROMOTIONAL PURPOSES BY A MANUFACTURER, DISTRIBUTOR OR SUPPLIER WHICH INCLUDES, IN THE CHILDREN'S PRODUCT ITSELF, OR IN ANY COMPONENT OF THE CHILDREN'S PRODUCT, INKS, DYES, PIGMENTS, ADHESIVES, STABILIZERS OR ANY OTHER ADDITIVES, ANY CADMIUM, WHICH HAS BEEN INTENTIONALLY INTRODUCED AS AN ELEMENT DURING MANUFACTURING OR DISTRIBUTION.

S 37-0705. EXEMPTIONS.

ALL CHILDREN'S PRODUCTS AND COMPONENTS OF CHILDREN'S PRODUCTS SHALL BE SUBJECT TO THIS TITLE EXCEPT THE FOLLOWING:

1. THOSE CHILDREN'S PRODUCTS OR COMPONENTS OF CHILDREN'S PRODUCTS WHICH HAVE BEEN DELIVERED TO A DISTRIBUTOR, SUPPLIER OR MANUFACTURER PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE; OR THOSE PACKAGES OR PACKAGING COMPONENTS WITH A CODE INDICATING DATE OF MANUFACTURE PRIOR TO TWO THOUSAND TWELVE;

2. THOSE CHILDREN'S PRODUCTS OR COMPONENTS OF CHILDREN'S PRODUCTS TO WHICH CADMIUM HAS BEEN ADDED IN THE MANUFACTURING, FORMING, PRINTING OR DISTRIBUTION PROCESS IN ORDER TO COMPLY WITH HEALTH OR SAFETY REQUIREMENTS OF FEDERAL LAW OR FOR WHICH THERE IS NO PRACTICABLE ALTERNATIVE, AS DETERMINED BY THE COMMISSIONER, PROVIDED THAT THE MANUFACTURER OF A CHILDREN'S PRODUCT OR COMPONENT OF CHILDREN'S PRODUCTS MUST PETITION THE DEPARTMENT FOR ANY EXEMPTION FROM THE PROVISIONS OF THIS TITLE FOR A PARTICULAR CHILDREN'S PRODUCT OR COMPONENT OF CHILDREN'S PRODUCTS BASED ON THE CRITERIA OF THIS SUBDIVISION; AND PROVIDED FURTHER THAT THE DEPARTMENT MAY GRANT AN EXEMPTION FOR UP TO TWO YEARS IF WARRANTED BY THE CIRCUMSTANCES; AND PROVIDED FURTHER THAT SUCH AN EXEMPTION MAY, UPON REAPPLICATION FOR EXEMPTION AND MEETING THE CRITERIA OF THIS SUBDIVISION, BE RENEWED AT TWO-YEAR INTERVALS; OR

3. CHILDREN'S PRODUCTS OR COMPONENTS OF CHILDREN'S PRODUCTS THAT WOULD NOT POSSESS CADMIUM BUT FOR THE ADDITION OF RECYCLED MATERIALS; PROVIDED THAT THE EXEMPTION FOR THIS SUBDIVISION:

(A) SHALL NOT APPLY TO CHILDREN'S PRODUCTS OR COMPONENTS OF CHILDREN'S PRODUCTS THAT POSSESS CADMIUM AT A CONCENTRATION LEVEL THAT EXCEEDS .004 PERCENT BY WEIGHT (FORTY PARTS PER MILLION);

(B) SHALL NOT APPLY TO ANY CADMIUM THAT HAS BEEN RECOVERED AND/OR SEPARATED FROM OTHER MATERIALS FOR USE AS A METAL OR METALLIC COMPOUND; AND

(C) SHALL EXPIRE ON JANUARY FIRST, TWO THOUSAND FIFTEEN.

S 37-0707. CERTIFICATE OF COMPLIANCE.

ANY MANUFACTURER, DISTRIBUTOR OR SUPPLIER MUST FURNISH TO ANY PURCHASER OF A CHILDREN'S PRODUCT OR COMPONENT OF A CHILDREN'S PRODUCT A CERTIFICATE OF COMPLIANCE STATING THAT A CHILDREN'S PRODUCT OR COMPONENT OF A CHILDREN'S PRODUCT IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE. EXCEPT WHERE AN EXEMPTION IS PROVIDED IN SECTION 37-0705 OF THIS TITLE THE CERTIFICATE SHALL STATE THE SPECIFIC BASIS UPON WHICH THE EXEMPTION IS CLAIMED. THE CERTIFICATE OF COMPLIANCE SHALL BE SIGNED BY AN AUTHORIZED OFFICIAL OF THE MANUFACTURER, DISTRIBUTOR OR SUPPLIER. THE PURCHASER SHALL RETAIN THE CERTIFICATE OF COMPLIANCE FOR AS LONG AS SUCH PURCHASER IS USING THE CHILDREN'S PRODUCTS OR COMPONENT OF A CHILDREN'S PRODUCT. A COPY OF THE CERTIFICATE OF COMPLIANCE SHALL BE KEPT ON FILE BY THE MANUFACTURER, DISTRIBUTOR OR SUPPLIER FOR EACH CHILDREN'S PRODUCT OR COMPONENT OF A CHILDREN'S PRODUCT. IF A MANUFACTURER, DISTRIBUTOR OR SUPPLIER REFORMULATES OR CREATES A NEW CHILDREN'S PRODUCT OR COMPONENT OF A CHILDREN'S PRODUCT, IT SHALL FURNISH TO THE PURCHASER AN AMENDED OR

NEW CERTIFICATE OF COMPLIANCE FOR THE REFORMULATED OR NEW CHILDREN'S PRODUCT OR COMPONENT OF A CHILDREN'S PRODUCT. CERTIFICATES OF COMPLIANCE, OR COPIES THEREOF, SHALL BE FURNISHED TO THE DEPARTMENT UPON ITS REQUEST AND TO MEMBERS OF THE PUBLIC IN ACCORDANCE WITH SECTION 37-0711 OF THIS TITLE.

S 37-0709. VIOLATIONS.

1. A VIOLATION OF ANY OF THE PROVISIONS OF THIS TITLE OR ANY RULE OR REGULATION PROMULGATED PURSUANT THERETO SHALL BE PUNISHABLE IN THE CASE OF A FIRST VIOLATION, BY A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS. IN THE CASE OF A SECOND AND ANY FURTHER VIOLATION, THE LIABILITY SHALL BE FOR A CIVIL PENALTY NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS FOR EACH VIOLATION.

2. NO MANUFACTURER, DISTRIBUTOR OR SUPPLIER OF A PRODUCT SHALL BE HELD IN VIOLATION OF THIS TITLE WHO CAN SHOW THAT, IN THE PURCHASE OF A PACKAGE OR PACKAGING COMPONENT, IT RELIED IN GOOD FAITH ON A CERTIFICATE OF COMPLIANCE MEETING THE REQUIREMENTS OF SECTION 37-0707 OF THIS TITLE.

S 37-0711. PUBLIC ACCESS.

1. ANY MEMBER OF THE PUBLIC MAY REQUEST ANY CERTIFICATE OF COMPLIANCE FROM THE MANUFACTURER, DISTRIBUTOR OR SUPPLIER OF A CHILDREN'S PRODUCT OR COMPONENT OF A CHILDREN'S PRODUCT. SUCH REQUEST SHALL BE:

(A) IN WRITING; AND

(B) SPECIFIC AS TO THE CHILDREN'S PRODUCT OR COMPONENT OF A CHILDREN'S PRODUCT FOR WHICH INFORMATION IS REQUESTED.

2. THE MANUFACTURER, DISTRIBUTOR OR SUPPLIER MUST RESPOND TO SUCH REQUEST WITHIN SIXTY DAYS OF RECEIPT OF THE REQUEST.

S 37-0713. REPORTS.

THE DEPARTMENT SHALL INCLUDE A REPORT ON THE EFFECTIVENESS OF THIS TITLE AS PART OF ITS ANNUAL SOLID WASTE MANAGEMENT PLAN AS REQUIRED BY SECTION 27-0103 OF THIS CHAPTER.

S 37-0715. RULES AND REGULATIONS.

THE COMMISSIONER SHALL HAVE THE POWER TO ADOPT SUCH RULES AND REGULATIONS TO PROVIDE FOR THE EFFECTIVE APPLICATION AND ENFORCEMENT OF THIS TITLE.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.