

2433

2017-2018 Regular Sessions

I N S E N A T E

January 13, 2017

Introduced by Sens. PARKER, HOYLMAN -- 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 busi-
ness law, in relation to jewelry containing lead

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

1 Section 1. Legislative findings. The legislature hereby finds that
2 stringent controls on the amount of lead in jewelry are necessary to
3 protect public health, especially the health of children. Random
4 samples of jewelry in New York state have been found to contain up to
5 60,000 parts per million of lead. To assure consistent application of
6 these controls to all jewelry, specific technical standards and controls
7 must be specified.

8 § 2. The environmental conservation law is amended by adding a new
9 section 37-0115 to read as follows:

10 § 37-0115. LEAD-CONTAINING JEWELRY.

11 FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE
12 FOLLOWING DEFINITIONS:

13 1. "BODY PIERCING JEWELRY" MEANS ANY PART OF JEWELRY THAT IS MANUFAC-
14 TURED OR SOLD FOR PLACEMENT IN A NEW PIERCING OR A MUCOUS MEMBRANE, BUT
15 DOES NOT INCLUDE ANY PART OF THAT JEWELRY THAT IS NOT PLACED WITHIN A
16 NEW PIERCING OR A MUCOUS MEMBRANE.

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

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

21 (A) REPRESENTED IN ITS PACKAGING, DISPLAY, OR ADVERTISING, AS APPRO-
22 PRIATE FOR USE BY CHILDREN.

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

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- 1 (B) SOLD IN CONJUNCTION WITH, ATTACHED TO, OR PACKAGED TOGETHER WITH
2 OTHER PRODUCTS THAT ARE PACKAGED, DISPLAYED, OR ADVERTISED AS APPROPRI-
3 ATE FOR USE BY CHILDREN.
- 4 (C) SIZED FOR CHILDREN AND NOT INTENDED FOR USE BY ADULTS.
- 5 (D) SOLD IN ANY OF THE FOLLOWING:
- 6 (1) A VENDING MACHINE.
- 7 (2) RETAIL STORE, CATALOGUE, OR ONLINE WEB SITE, IN WHICH A PERSON
8 EXCLUSIVELY OFFERS FOR SALE PRODUCTS THAT ARE PACKAGED, DISPLAYED, OR
9 ADVERTISED AS APPROPRIATE FOR USE BY CHILDREN.
- 10 (3) A DISCRETE PORTION OF A RETAIL STORE, CATALOGUE, OR ONLINE WEB
11 SITE, IN WHICH A PERSON OFFERS FOR SALE PRODUCTS THAT ARE PACKAGED,
12 DISPLAYED, OR ADVERTISED AS APPROPRIATE FOR USE BY CHILDREN.
- 13 4. "CLASS 1 MATERIAL" MEANS ANY OF THE FOLLOWING MATERIALS:
- 14 (A) STAINLESS OR SURGICAL STEEL;
- 15 (B) KARAT GOLD;
- 16 (C) STERLING SILVER;
- 17 (D) PLATINUM, PALLADIUM, IRIDIUM, RUTHENIUM, RHODIUM OR OSMIUM;
- 18 (E) NATURAL OR CULTURED PEARLS;
- 19 (F) GLASS, CERAMIC, OR CRYSTAL DECORATIVE COMPONENTS, INCLUDING CAT'S
20 EYE, CUBIC ZIRCONIA, INCLUDING CUBIC ZIRCONIUM OR CZ, RHINESTONES, AND
21 CLOISONNE;
- 22 (G) A GEMSTONE THAT IS CUT AND POLISHED FOR ORNAMENTAL PURPOSES;
- 23 (H) ELASTIC, FABRIC, RIBBON, ROPE, OR STRING, UNLESS IT CONTAINS
24 INTENTIONALLY ADDED LEAD AND IS LISTED AS A CLASS 2 MATERIAL;
- 25 (I) ALL NATURAL DECORATIVE MATERIAL, INCLUDING AMBER, BONE, CORAL,
26 FEATHERS, FUR, HORN, LEATHER, SHELL, OR WOOD, THAT IS IN ITS NATURAL
27 STATE AND IS NOT TREATED IN A WAY THAT ADDS LEAD; AND
- 28 (J) ADHESIVE.
- 29 (K) THE FOLLOWING GEMSTONES ARE NOT CLASS 1 MATERIALS: ARAGONITE,
30 BAYLDONITE, BOLEITE, CERUSSITE, CROCOITE, EKANITE, LINARITE, MIMETITE,
31 PHOSGENITE, SAMARSKITE, VANADINITE, AND WULFENITE.
- 32 5. "CLASS 2 MATERIAL" MEANS ANY OF THE FOLLOWING MATERIALS:
- 33 (A) ELECTROPLATED METAL THAT MEETS THE FOLLOWING STANDARDS:
- 34 (1) ON AND BEFORE AUGUST 30, 2022, A METAL ALLOY WITH LESS THAN TEN
35 PERCENT LEAD BY WEIGHT THAT IS ELECTROPLATED WITH SUITABLE UNDER AND
36 FINISH COATS.
- 37 (2) ON AND AFTER AUGUST 31, 2022, A METAL ALLOY WITH LESS THAN SIX
38 PERCENT LEAD BY WEIGHT THAT IS ELECTROPLATED WITH SUITABLE UNDER AND
39 FINISH COATS; OR
- 40 (B) UNPLATED METAL WITH LESS THAN 1.5 PERCENT LEAD THAT IS NOT OTHER-
41 WISE LISTED AS A CLASS 1 MATERIAL; OR
- 42 (C) PLASTIC OR RUBBER, INCLUDING ACRYLIC, POLYSTYRENE, PLASTIC BEADS
43 AND STONES, AND POLYVINYL CHLORIDE (PVC) THAT MEETS THE FOLLOWING STAND-
44 ARDS:
- 45 (1) ON AND BEFORE AUGUST 30, 2022, LESS THAN 0.06 PERCENT (SIX HUNDRED
46 PARTS PER MILLION) LEAD BY WEIGHT; AND
- 47 (2) ON AND AFTER AUGUST 31, 2022, LESS THAN 0.02 PERCENT (TWO HUNDRED
48 PARTS PER MILLION) LEAD BY WEIGHT; OR
- 49 (D) A DYE OR SURFACE COATING CONTAINING LESS THAN 0.06 PERCENT (SIX
50 HUNDRED PARTS PER MILLION) LEAD BY WEIGHT.
- 51 6. "CLASS 3 MATERIAL" MEANS ANY PORTION OF JEWELRY THAT MEETS BOTH OF
52 THE FOLLOWING CRITERIA:
- 53 (A) IS NOT A CLASS 1 OR CLASS 2 MATERIAL; AND
- 54 (B) CONTAINS LESS THAN 0.06 PERCENT (SIX HUNDRED PARTS PER MILLION)
55 LEAD BY WEIGHT.
- 56 7. "COMPONENT" MEANS ANY PART OF JEWELRY.

1 8. "EPA REFERENCE METHODS 3050B (ACID DIGESTION OF SEDIMENTS, SLUDGES
2 AND SOILS) OR 3051 (MICROWAVE ASSISTED DIGESTION/SLUDGE, SOILS)" MEANS
3 THOSE TEST METHODS INCORPORATED BY REFERENCE IN PARAGRAPH ELEVEN OF
4 SUBDIVISION (A) OF SECTION 260.11 OF TITLE 40 OF THE CODE OF FEDERAL
5 REGULATIONS.

6 9. "JEWELRY" MEANS:

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

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

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

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

20 11. ON OR AFTER MARCH 1, 2021, NO PERSON SHALL ADVERTISE, MANUFACTURE,
21 OFFER FOR SALE, SELL, OR DISTRIBUTE FOR PROMOTIONAL PURPOSES IN THIS
22 STATE, OR IMPORT FOR DISTRIBUTION OR SALE IN THIS STATE, ANY JEWELRY
23 UNLESS THE JEWELRY IS MADE ENTIRELY FROM A CLASS 1, CLASS 2, OR CLASS 3
24 MATERIAL, OR ANY COMBINATION THEREOF.

25 12. NOTWITHSTANDING SUBDIVISION ELEVEN OF THIS SECTION, ON OR AFTER
26 JANUARY 1, 2021, NO PERSON SHALL ADVERTISE, MANUFACTURE, OFFER FOR SALE,
27 SELL, OR DISTRIBUTE FOR PROMOTIONAL PURPOSES IN THIS STATE, OR IMPORT
28 FOR DISTRIBUTION OR SALE IN THIS STATE, ANY CHILDREN'S JEWELRY UNLESS
29 THE CHILDREN'S JEWELRY IS MADE ENTIRELY FROM ONE OR MORE OF THE FOLLOW-
30 ING MATERIALS:

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

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

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

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

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

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

43 13. NOTWITHSTANDING SUBDIVISION 11 OF THIS SECTION, ON OR AFTER MARCH
44 1, 2021, NO PERSON SHALL ADVERTISE, MANUFACTURE, OFFER FOR SALE, SELL,
45 OR DISTRIBUTE FOR PROMOTIONAL PURPOSES IN THIS STATE, OR IMPORT FOR
46 DISTRIBUTION OR SALE IN THIS STATE, ANY BODY PIERCING JEWELRY UNLESS THE
47 BODY PIERCING JEWELRY IS MADE OF ONE OR MORE OF THE FOLLOWING MATERIALS:
48 SURGICAL IMPLANT STAINLESS STEEL, SURGICAL IMPLANT GRADE OF TITANIUM,
49 NIOBIUM (NB), SOLID FOURTEEN KARAT OR HIGHER WHITE OR YELLOW NICKEL-FREE
50 GOLD, SOLID PLATINUM, OR A DENSE LOW-POROSITY PLASTIC, INCLUDING, BUT
51 NOT LIMITED TO, TYGON OR POLYTETRAFLUOROETHYLENE (PTFE), IF THE PLASTIC
52 CONTAINS NO INTENTIONALLY ADDED LEAD.

53 § 3. The environmental conservation law is amended by adding a new
54 section 37-0117 to read as follows:

55 § 37-0117. TESTING METHODS FOR DETERMINING COMPLIANCE WITH SECTION

56 37-0115.

1 1. THE TESTING METHODS FOR DETERMINING COMPLIANCE WITH SECTION 37-0115
2 OF THIS TITLE SHALL BE CONDUCTED USING THE EPA REFERENCE METHODS 3050B
3 OR 3051 FOR THE MATERIAL BEING TESTED, EXCEPT AS OTHERWISE PROVIDED IN
4 SUBPARAGRAPHS FIVE AND SIX OF PARAGRAPH (E) OF SUBDIVISION TWO OF THIS
5 SECTION, AND IN ACCORDANCE WITH ALL OF THE FOLLOWING PROCEDURES:

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

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

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

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

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

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

28 2. IN ADDITION TO THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION,
29 THE FOLLOWING PROCEDURES SHALL BE USED FOR TESTING THE FOLLOWING MATE-
30 RIALS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (5) THE SCRAPINGS SHALL BE DIGESTED ACCORDING TO EPA REFERENCE METHOD
40 3050B OR 3051 OR AN EQUIVALENT PROCEDURE FOR HOT ACID DIGESTION IN PREP-
41 ARATION FOR TRACE LEAD ANALYSIS.

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

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

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

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

53 (F) FOR TESTING DYES, PAINTS, COATINGS, VARNISH, PRINTING INKS, CERAM-
54 IC GLAZES, GLASS, OR CRYSTAL, THE FOLLOWING TESTING PROTOCOLS SHALL BE
55 OBSERVED:

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

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

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

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

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

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

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

14 (2) THE SCALE USED TO WEIGH A COMPONENT SHALL BE CALIBRATED IMMEDIATE-
15 LY BEFORE THE COMPONENTS ARE WEIGHED USING S-CLASS WEIGHTS OF ONE AND
16 TWO GRAMS, AS CERTIFIED BY THE NATIONAL INSTITUTE OF STANDARDS AND TECH-
17 NOLOGY (NIST) OF THE DEPARTMENT OF COMMERCE.

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

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

24 § 4. The environmental conservation law is amended by adding a new
25 section 71-3705 to read as follows:

26 § 71-3705. ENFORCEMENT OF SECTION 37-0115.

27 1. ANY PERSON WHO VIOLATES ANY PROVISION OF OR FAILS TO PERFORM ANY
28 DUTY IMPOSED BY SECTION 37-0115 OF THIS CHAPTER SHALL UPON THE FIRST
29 FINDING OF SUCH A VIOLATION BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED
30 FIVE HUNDRED DOLLARS FOR EACH VIOLATION. ANY PERSON CONVICTED OF A
31 SECOND OR SUBSEQUENT VIOLATION SHALL BE LIABLE FOR A CIVIL PENALTY NOT
32 TO EXCEED TWENTY-FIVE HUNDRED DOLLARS FOR EACH VIOLATION.

33 2. PENALTIES UNDER THIS SECTION SHALL BE ASSESSED BY THE COMMISSIONER
34 AFTER A HEARING PURSUANT TO THE PROVISIONS OF SECTION 71-1709 OF THIS
35 ARTICLE. IN ASSESSING THE PENALTY UNDER THIS SECTION, THE COMMISSIONER
36 SHALL CONSIDER: THE NATURE AND EXTENT OF THE VIOLATION; THE NUMBER AND
37 SEVERITY OF THE VIOLATIONS; THE ECONOMIC EFFECT OF THE PENALTY ON THE
38 VIOLATOR; WHETHER THE VIOLATOR TOOK GOOD FAITH MEASURES TO COMPLY WITH
39 THIS CHAPTER; THE WILLFULNESS OF THE VIOLATOR'S MISCONDUCT; THE DETER-
40 RENT EFFECT THAT THE IMPOSITION OF THE PENALTY WOULD HAVE ON BOTH THE
41 VIOLATOR AND THE REGULATED COMMUNITY AS A WHOLE; AND OTHER FACTORS THAT
42 THE COMMISSIONER DEEMS APPROPRIATE AND RELEVANT. ANY PERSON FOUND TO
43 HAVE VIOLATED SECTION 37-0115 OF THIS CHAPTER MAY BE ENJOINED FROM
44 CONTINUING SUCH VIOLATION.

45 3. ALL CIVIL PENALTIES AND FINES COLLECTED FOR ANY VIOLATION OF
46 SECTION 37-0115 OF THIS CHAPTER SHALL BE PAID OVER TO THE COMMISSIONER
47 FOR DEPOSIT IN THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED BY SECTION
48 NINETY-TWO-S OF THE STATE FINANCE LAW.

49 4. (A) NO CHARGE OF A VIOLATION OF THE PROVISIONS OF, OR FAILURE TO
50 PERFORM A DUTY IMPOSED BY SECTION 37-0115 OF THIS CHAPTER SHALL BE BASED
51 UPON EXCESSIVE LEAD CONTENT EXCEPT UPON A SHOWING THAT THE LABORATORY
52 TESTS ESTABLISHING SUCH EXCESSIVE LEAD CONTENT WERE PERFORMED BY A LABO-
53 RATORY THAT COMPLIES WITH THE TESTING REQUIREMENTS ESTABLISHED BY
54 SECTION 37-0117 OF THIS CHAPTER.

55 (B) A PERSON CHARGED WITH A VIOLATION OF THE PROVISIONS OF, OR FAILURE
56 TO PERFORM A DUTY IMPOSED BY SECTION 37-0115 OF THIS CHAPTER SHALL BE

1 PROVIDED WITH ALL SUPPORTING DOCUMENTATION RELATED TO THE TESTING OF THE
2 JEWELRY, INCLUDING, BUT NOT LIMITED TO, DOCUMENTATION OF THE PROCEDURES
3 UTILIZED BY THE LABORATORY, COPIES OF ALL TEST RESULTS, EXEMPLARS OF THE
4 PRODUCTS TESTED TO THE EXTENT PRACTICABLE, AND SUCH OTHER DOCUMENTATION
5 AND EVIDENCE WHICH SHALL REASONABLY BE REQUIRED TO VERIFY THE ACCURACY
6 OF THE TEST RESULTS.

7 § 5. The general business law is amended by adding a new section 399-
8 ggg to read as follows:

9 § 399-GGG. LABELING OF JEWELRY. 1. NO PERSON, FIRM OR CORPORATION
10 SHALL SELL OR OFFER FOR SALE ANY JEWELRY, AS DEFINED BY SECTION 37-0115
11 OF THE ENVIRONMENTAL CONSERVATION LAW, UNLESS THERE IS PRINTED ON THE
12 PACKAGE IN WHICH SUCH JEWELRY IS SOLD OR OFFERED FOR SALE A CONSPICUOUS
13 NOTICE STATING THE PERCENTAGE OF LEAD CONTAINED IN SUCH JEWELRY. ANY
14 JEWELRY CONTAINING MORE THAN 0.02 PERCENT (TWO HUNDRED PARTS PER
15 MILLION) LEAD BY WEIGHT SHALL CONTAIN A WARNING LABEL, PROMINENTLY
16 DISPLAYED, WHICH STATES, "CONTAINS LEAD WHICH MAY BE HARMFUL TO YOUR
17 HEALTH. NOT TO BE USED BY CHILDREN UNDER THE AGE OF SIX."

18 2. ANY VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL PENAL-
19 TY NOT TO EXCEED FIVE HUNDRED DOLLARS.

20 § 6. This act shall take effect immediately; provided, however that
21 section five of this act shall take effect March 1, 2021.