

STATE OF NEW YORK

7723

2017-2018 Regular Sessions

IN ASSEMBLY

May 11, 2017

Introduced by M. of A. RYAN -- read once and referred 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:

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.

23 (b) Sold in conjunction with, attached to, or packaged together with
24 other products that are packaged, displayed, or advertised as appropri-
25 ate for use by children.

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

LBD06217-01-7

1 (c) Sized for children and not intended for use by adults.

2 (d) Sold in any of the following:

3 (1) A vending machine.

4 (2) Retail store, catalogue, or online web site, in which a person
5 exclusively offers for sale products that are packaged, displayed, or
6 advertised as appropriate for use by children.

7 (3) A discrete portion of a retail store, catalogue, or online web
8 site, in which a person offers for sale products that are packaged,
9 displayed, or advertised as appropriate for use by children.

10 4. "Class 1 material" means any of the following materials:

11 (a) stainless or surgical steel;

12 (b) karat gold;

13 (c) sterling silver;

14 (d) platinum, palladium, iridium, ruthenium, rhodium or osmium;

15 (e) natural or cultured pearls;

16 (f) glass, ceramic, or crystal decorative components, including cat's
17 eye, cubic zirconia, including cubic zirconium or cz, rhinestones, and
18 cloisonne;

19 (g) a gemstone that is cut and polished for ornamental purposes;

20 (h) elastic, fabric, ribbon, rope, or string, unless it contains
21 intentionally added lead and is listed as a class 2 material;

22 (i) all natural decorative material, including amber, bone, coral,
23 feathers, fur, horn, leather, shell, or wood, that is in its natural
24 state and is not treated in a way that adds lead; and

25 (j) adhesive.

26 (k) The following gemstones are not class 1 materials: aragonite,
27 bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,
28 phosgenite, samarskite, vanadinite, and wulfenite.

29 5. "Class 2 material" means any of the following materials:

30 (a) electroplated metal that meets the following standards:

31 (1) on and before August 30, 2022, a metal alloy with less than ten
32 percent lead by weight that is electroplated with suitable under and
33 finish coats.

34 (2) on and after August 31, 2022, a metal alloy with less than six
35 percent lead by weight that is electroplated with suitable under and
36 finish coats; or

37 (b) unplated metal with less than 1.5 percent lead that is not other-
38 wise listed as a class 1 material; or

39 (c) plastic or rubber, including acrylic, polystyrene, plastic beads
40 and stones, and polyvinyl chloride (PVC) that meets the following stand-
41 ards:

42 (1) on and before August 30, 2022, less than 0.06 percent (six hundred
43 parts per million) lead by weight; and

44 (2) on and after August 31, 2022, less than 0.02 percent (two hundred
45 parts per million) lead by weight; or

46 (d) a dye or surface coating containing less than 0.06 percent (six
47 hundred parts per million) lead by weight.

48 6. "Class 3 material" means any portion of jewelry that meets both of
49 the following criteria:

50 (a) is not a class 1 or class 2 material; and

51 (b) contains less than 0.06 percent (six hundred parts per million)
52 lead by weight.

53 7. "Component" means any part of jewelry.

54 8. "EPA reference methods 3050B (acid digestion of sediments, sludges
55 and soils) or 3051 (microwave assisted digestion/sludge, soils)" means
56 those test methods incorporated by reference in paragraph eleven of

1 subdivision (a) of section 260.11 of title 40 of the code of federal
2 regulations.

3 9. "Jewelry" means:

4 (a) any of the following ornaments worn by a person: an anklet, arm
5 cuff, bracelet, brooch, chain, crown, cuff link, decorated hair accesso-
6 ries, earring, necklace, pin, ring, or body piercing jewelry; or

7 (b) any bead, chain, link, pendant, or other component of such an
8 ornament.

9 10. (a) "Surface coating" means a fluid, semifluid, or other material,
10 with or without a suspension of finely divided coloring matter, that
11 changes to a solid film when a thin layer is applied to a metal, wood,
12 stone, paper, leather, cloth, plastic, or other surface.

13 (b) "Surface coating" does not include a printing ink or a material
14 that actually becomes a part of the substrate, including, but not limit-
15 ed to, pigment in a plastic article, or a material that is actually
16 bonded to the substrate, such as by electroplating or ceramic glazing.

17 11. On or after March 1, 2021, no person shall advertise, manufacture,
18 offer for sale, sell, or distribute for promotional purposes in this
19 state, or import for distribution or sale in this state, any jewelry
20 unless the jewelry is made entirely from a class 1, class 2, or class 3
21 material, or any combination thereof.

22 12. Notwithstanding subdivision eleven of this section, on or after
23 January 1, 2021, no person shall advertise, manufacture, offer for sale,
24 sell, or distribute for promotional purposes in this state, or import
25 for distribution or sale in this state, any children's jewelry unless
26 the children's jewelry is made entirely from one or more of the follow-
27 ing materials:

28 (a) a nonmetallic material that is a class 1 material;

29 (b) a nonmetallic material that is a class 2 material;

30 (c) a metallic material that is either a class 1 material or contains
31 less than 0.06 percent (six hundred parts per million) lead by weight;

32 (d) glass or crystal decorative components that weigh in total no more
33 than one gram, excluding any glass or crystal decorative component that
34 contains less than 0.02 percent (two hundred parts per million) lead by
35 weight and has no intentionally added lead;

36 (e) printing ink or ceramic glaze that contains less than 0.06 percent
37 (six hundred parts per million) lead by weight; or

38 (f) class 3 material that contains less than 0.02 percent (two hundred
39 parts per million) lead by weight.

40 13. Notwithstanding subdivision 11 of this section, on or after March
41 1, 2021, no person shall advertise, manufacture, offer for sale, sell,
42 or distribute for promotional purposes in this state, or import for
43 distribution or sale in this state, any body piercing jewelry unless the
44 body piercing jewelry is made of one or more of the following materials:
45 surgical implant stainless steel, surgical implant grade of titanium,
46 niobium (NB), solid fourteen karat or higher white or yellow nickel-free
47 gold, solid platinum, or a dense low-porosity plastic, including, but
48 not limited to, tygon or polytetrafluoroethylene (PTFE), if the plastic
49 contains no intentionally added lead.

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

52 § 37-0117. Testing methods for determining compliance with section
53 37-0115.

54 1. The testing methods for determining compliance with section 37-0115
55 of this title shall be conducted using the EPA reference methods 3050B
56 or 3051 for the material being tested, except as otherwise provided in

1 subparagraphs five and six of paragraph (e) of subdivision two of this
2 section, and in accordance with all of the following procedures:

3 (a) When preparing a sample, the laboratory shall make every effort to
4 assure that the sample removed from a jewelry piece is representative of
5 the component to be tested, and is free of contamination from extraneous
6 dirt and material not related to the jewelry component to be tested.

7 (b) All jewelry component samples shall be washed prior to testing
8 using standard laboratory detergent, rinsed with laboratory reagent
9 grade deionized water, and dried in a clean ambient environment.

10 (c) If a component is required to be cut or scraped to obtain a
11 sample, the metal snips, scissors, or other cutting tools used for the
12 cutting or scraping shall be made of stainless steel and washed and
13 rinsed before each use and between samples.

14 (d) A sample shall be digested in a container that is known to be free
15 of lead and with the use of an acid that is not contaminated by lead,
16 including analytical reagent grade digestion acids and reagent grade
17 deionized water.

18 (e) Method blanks, consisting of all reagents used in sample prepara-
19 tion handled, digested, and made to volume in the same exact manner and
20 in the same container type as samples, shall be tested with each group
21 of twenty or fewer samples tested.

22 (f) The results for the method blanks shall be reported with each
23 group of sample results, and shall be below the stated reporting limit
24 for sample results to be considered valid.

25 2. In addition to the requirements of subdivision one of this section,
26 the following procedures shall be used for testing the following mate-
27 rials:

28 (a) For testing a metal plated with suitable undercoats and finish
29 coats, the following protocols shall be observed:

30 (1) Digestion shall be conducted using hot concentrated nitric acid
31 with the option of using hydrochloric acid or hydrogen peroxide.

32 (2) The sample size shall be 0.050 gram to one gram.

33 (3) The digested sample may require dilution prior to analysis.

34 (4) The digestion and analysis shall achieve a reported detection
35 limit no greater than 0.1 percent for samples.

36 (5) All necessary dilutions shall be made to ensure that measurements
37 are made within the calibrated range of the analytical instrument.

38 (b) For testing unplated metal and metal substrates that are not a
39 class 1 material the following protocols shall be observed:

40 (1) Digestion shall be conducted using hot concentrated nitric acid
41 with the option of using hydrochloric acid and hydrogen peroxide.

42 (2) The sample size shall be 0.050 gram to one gram.

43 (3) The digested sample may require dilution prior to analysis.

44 (4) The digestion and analysis shall achieve a reported detection
45 limit no greater than 0.01 percent for samples.

46 (5) All necessary dilutions shall be made to ensure that measurements
47 are made within the calibrated range of the analytical instrument.

48 (c) For testing polyvinyl chloride (PVC), the following protocols
49 shall be observed:

50 (1) The digestion shall be conducted using hot concentrated nitric
51 acid with the option of using hydrochloric acid and hydrogen peroxide.

52 (2) The sample size shall be a minimum of 0.05 gram if using microwave
53 digestion or 0.5 gram if using hotplate digestion, and shall be chopped
54 or comminuted prior to digestion.

55 (3) Digested samples may require dilution prior to analysis.

1 (4) Digestion and analysis shall achieve a reported detection limit no
2 greater than 0.001 percent (ten parts per million) for samples.

3 (5) All necessary dilutions shall be made to ensure that measurements
4 are made within the calibrated range of the analytical instrument.

5 (d) For testing plastic or rubber that is not polyvinyl chloride
6 (PVC), including acrylic, polystyrene, plastic beads, or plastic stones,
7 the following protocols shall be observed:

8 (1) The digestion shall be conducted using hot concentrated nitric
9 acid with the option of using hydrochloric acid or hydrogen peroxide.

10 (2) The sample size shall be a minimum of 0.05 gram if using microwave
11 digestion or 0.5 gram if using hotplate digestion, and shall be chopped
12 or comminuted prior to digestion.

13 (3) Plastic beads or stones shall be crushed prior to digestion.

14 (4) Digested samples may require dilution prior to analysis.

15 (5) Digestion and analysis shall achieve a reported detection limit no
16 greater than 0.001 percent (ten parts per million) for samples.

17 (6) All necessary dilutions shall be made to ensure that measurements
18 are made within the calibrated range of the analytical instrument.

19 (e) For testing coatings on glass and plastic pearls, the following
20 protocols shall be observed:

21 (1) The coating of glass or plastic beads shall be scraped onto a
22 surface free of dust, including a clean weighing paper or pan, using a
23 clean stainless steel razor blade or other clean sharp instrument that
24 will not contaminate the sample with lead. The substrate pearl material
25 shall not be included in the scrapings.

26 (2) The razor blade or sharp instrument shall be rinsed with deionized
27 water, wiped to remove particulate matter, rinsed again, and dried
28 between samples.

29 (3) The scrapings shall be weighed and not less than fifty micrograms
30 of scraped coating shall be used for analysis. If less than fifty micro-
31 grams of scraped coating is obtained from an individual pearl, multiple
32 pearls from that sample shall be scraped and composited to obtain a
33 sufficient sample amount.

34 (4) The number of pearls used to make the composite shall be noted.

35 (5) The scrapings shall be digested according to EPA reference method
36 3050B or 3051 or an equivalent procedure for hot acid digestion in prep-
37 aration for trace lead analysis.

38 (6) The digestate shall be diluted in the minimum volume practical for
39 analysis.

40 (7) The digested sample shall be analyzed according to specification
41 of an approved and validated methodology for inductively coupled plasma
42 mass spectrometry.

43 (8) A reporting limit of 0.001 percent (ten parts per million) in the
44 coating shall be obtained for the analysis.

45 (9) The sample result shall be reported within the calibrated range of
46 the instrument. If the initial test of the sample is above the highest
47 calibration standard, the sample shall be diluted and reanalyzed within
48 the calibrated range of the instrument.

49 (f) For testing dyes, paints, coatings, varnish, printing inks, ceram-
50 ic glazes, glass, or crystal, the following testing protocols shall be
51 observed:

52 (1) The digestion shall use hot concentrated nitric acid with the
53 option of using hydrochloric acid or hydrogen peroxide.

54 (2) The sample size shall be not less than 0.050 gram, and shall be
55 chopped or comminuted prior to digestion.

56 (3) The digested sample may require dilution prior to analysis.

1 (4) The digestion and analysis shall achieve a reported detection
2 limit no greater than 0.001 percent (ten parts per million) for samples.

3 (5) All necessary dilutions shall be made to ensure that measurements
4 are made within the calibrated range of the analytical instrument.

5 (g) For testing glass and crystal used in children's jewelry, the
6 following testing protocols for determining weight shall be used:

7 (1) A component shall be free of any extraneous material, including
8 adhesive, before it is weighed.

9 (2) The scale used to weigh a component shall be calibrated immediate-
10 ly before the components are weighed using s-class weights of one and
11 two grams, as certified by the National Institute of Standards and Tech-
12 nology (NIST) of the Department of Commerce.

13 (3) The calibration of the scale shall be accurate to within 0.01
14 gram.

15 3. The commissioner may promulgate rules and/or regulations modifying
16 the testing protocols specified in subdivisions one and two of this
17 section, as such commissioner deems necessary to further the purposes of
18 this section.

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

21 § 71-3705. Enforcement of section 37-0115.

22 1. Any person who violates any provision of or fails to perform any
23 duty imposed by section 37-0115 of this chapter shall upon the first
24 finding of such a violation be liable for a civil penalty not to exceed
25 five hundred dollars for each violation. Any person convicted of a
26 second or subsequent violation shall be liable for a civil penalty not
27 to exceed twenty-five hundred dollars for each violation.

28 2. Penalties under this section shall be assessed by the commissioner
29 after a hearing pursuant to the provisions of section 71-1709 of this
30 article. In assessing the penalty under this section, the commissioner
31 shall consider: the nature and extent of the violation; the number and
32 severity of the violations; the economic effect of the penalty on the
33 violation; whether the violator took good faith measures to comply with
34 this chapter; the willfulness of the violator's misconduct; the deter-
35 rent effect that the imposition of the penalty would have on both the
36 violation and the regulated community as a whole; and other factors that
37 the commissioner deems appropriate and relevant. Any person found to
38 have violated section 37-0115 of this chapter may be enjoined from
39 continuing such violation.

40 3. All civil penalties and fines collected for any violation of
41 section 37-0115 of this chapter shall be paid over to the commissioner
42 for deposit in the environmental protection fund established by section
43 ninety-two-s of the state finance law.

44 4. (a) No charge of a violation of the provisions of, or failure to
45 perform a duty imposed by section 37-0115 of this chapter shall be based
46 upon excessive lead content except upon a showing that the laboratory
47 tests establishing such excessive lead content were performed by a labo-
48 ratory that complies with the testing requirements established by
49 section 37-0117 of this chapter.

50 (b) A person charged with a violation of the provisions of, or failure
51 to perform a duty imposed by section 37-0115 of this chapter shall be
52 provided with all supporting documentation related to the testing of the
53 jewelry, including, but not limited to, documentation of the procedures
54 utilized by the laboratory, copies of all test results, exemplars of the
55 products tested to the extent practicable, and such other documentation

1 and evidence which shall reasonably be required to verify the accuracy
2 of the test results.

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

5 § 399-ggg. Labeling of jewelry. 1. No person, firm or corporation
6 shall sell or offer for sale any jewelry, as defined by section 37-0115
7 of the environmental conservation law, unless there is printed on the
8 package in which such jewelry is sold or offered for sale a conspicuous
9 notice stating the percentage of lead contained in such jewelry. Any
10 jewelry containing more than 0.02 percent (two hundred parts per
11 million) lead by weight shall contain a warning label, prominently
12 displayed, which states, "Contains lead which may be harmful to your
13 health. Not to be used by children under the age of six."

14 2. Any violation of this section shall be punishable by a civil penal-
15 ty not to exceed five hundred dollars.

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