STATE OF NEW YORK

4046

2019-2020 Regular Sessions

IN SENATE

February 26, 2019

Introduced by Sen. PARKER -- 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, 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.

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

§ 37-0115. 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 under the age of twelve.

3. "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to, children and includes 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.

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

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

(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. "Jewelry" means any of the following ornaments worn by a person:

(a) ankle bracelet;

(b) arm cuff;

(c) bracelet;

(d) brooch;

(e) chain;

(f) crown;

(g) cuff link;

(h) hair accessory;

(i) earring;

(j) necklace;

(k) decorative pin;

(l) ring;

(m) body piercing jewelry;

(n) jewelry placed in the mouth for display or ornament;

(o) any charm, bead, chain, link, pendant, or other component of the items listed in this definition;

(p) a charm, bead, chain, link, pendant, or other attachment to shoes or clothing that can be removed and may be used as a component of an item listed in this definition;

(q) a watch in which a timepiece is a component of an item listed in this definition, excluding the timepiece itself if the timepiece can be removed from the ornament.

5. Effective January first, two thousand twenty-one, no manufacturer shall sell, or offer for sale, children's jewelry that contain a total lead content in any component part of the item that is more than 0.004% (40 parts per million) but less than 0.06% (600 parts per million) by total weight or a lower standard for lead content as may be established by federal or state law or rule unless that item bears a warning statement that indicates that at least one component part of the item contains lead.

The warning statement for children's jewelry shall contain at least the following: "WARNING: CONTAINS LEAD. MAY BE HARMFUL IF EATEN OR CHEWED. COMPLIES WITH FEDERAL STANDARDS."

A manufacturer is in compliance if the warning statement is provided on the children's jewelry or on the label on the immediate container of the children's jewelry.

The warning statement requirement does not apply to any children's jewelry:

(a) for which federal law governs warning in a manner that preempts state authority;

(b) if the component parts of the children's jewelry containing lead are inaccessible to a child through normal and reasonably foreseeable use and abuse as defined by the United States Consumer Product Safety Commission;

(c) if the component parts in question are exempt from third-party testing as determined by the United States Consumer Product Safety Commission; or

(d) to children's jewelry resold or offered for resale, or distributed by consumers for consumer use.

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

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

1. Any person who violates any provision of or fails to perform any duty imposed by section 37-0115 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 37-0115 of this chapter may be enjoined from continuing such violation.

3. All civil penalties and fines collected for any violation of section 37-0115 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. This act shall take effect immediately.