STATE OF NEW YORK

5751

2023-2024 Regular Sessions

IN ASSEMBLY

March 23, 2023

Introduced by M. of A. VANEL -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to restrictions on lead-containing 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 11 to read as follows:

TITLE 11

LEAD-CONTAINING PRODUCTS

Section 37-1101. Definitions.
37-1103. Applicability.
37-1105. Presence of lead in consumer products prohibited.
37-1107. Exempt products.
37-1109. Private right of action.
37-1111. Construction.

§ 37-1101. Definitions.

As used in this title the following terms shall have the following meanings:

1. "Consumer product" shall mean any tangible good sold or manufactured in the state which is movable at the time it is conveyed by the seller to another party. Consumer products shall include components of products.

2. "Children's product" means a consumer product that is made for, marketed for use by, or marketed to, children and includes consumer products that meet any of the following conditions:

(a) Represented in its packaging, display, or advertising, as appropriate for use by children.

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

(c) Sold in any of the following:

(i) A vending machine.

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

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(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.

(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.

3. "Purchaser" shall mean a person who purchased a product sold as new directly from a manufacturer, retailer, or a person selling on behalf of a retailer or manufacturer.

4. "Retailer" shall mean a person or entity who, in the normal course of business, offers for sale to consumers new consumer products.

§ 37-1103. Applicability.

1. The provisions of this title shall apply to consumer products produced after the effective date of this title.

2. The provisions of this title shall not apply to consumer products sold or distributed for free at secondhand stores, yard sales, on the internet or donated to charities.

3. The requirements of this title shall not apply to children's product manufacturers that employ five persons or fewer and are independently owned and operated.

4. The requirements of this title shall not apply to lead generated solely as combustion by-products or that are present in combustible fuels.

5. A retailer is exempt from the requirements of this title unless such retailer sells a product which they know contains lead in violation of section 37-1105 of this title.

§ 37-1105. Presence of lead in consumer products prohibited.

No person or entity shall manufacture, sell, or offer for sale, any consumer product that contains a total lead content that is more than ninety milligrams per kilogram unless such item bears a conspicuous warning statement that indicates that the product contains lead.

§ 37-1107. Exempt products.

A consumer product may contain more lead than is prohibited by section 37-1105 of this title where:

1. The lead is necessary to produce an essential characteristic of the product; and

2. No alternative product containing less lead is available.

§ 37-1109. Private right of action.

Any person who has purchased a product which is in violation of section 37-1105 of this title shall have a private right of action against any person or entity within the supply chain of said product, other than the retailer in accordance with subdivision five of section 37-1103 of this title.

§ 37-1111. Construction.

This title shall not be construed as having any effect on any state, federal, or local law, rules, or local ordinance relating to the presence of lead in any specific product.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.