

# 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:

1 Section 1. Article 37 of the environmental conservation law is amended  
2 by adding a new title 11 to read as follows:

3 TITLE 11

4 LEAD-CONTAINING PRODUCTS

5 Section 37-1101. Definitions.

6 37-1103. Applicability.

7 37-1105. Presence of lead in consumer products prohibited.

8 37-1107. Exempt products.

9 37-1109. Private right of action.

10 37-1111. Construction.

11 § 37-1101. Definitions.

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

14 1. "Consumer product" shall mean any tangible good sold or manufac-  
15 tured in the state which is movable at the time it is conveyed by the  
16 seller to another party. Consumer products shall include components of  
17 products.

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

21 (a) Represented in its packaging, display, or advertising, as appro-  
22 priate for use by children.

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

24 (c) Sold in any of the following:

25 (i) A vending machine.

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

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

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

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

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

12 § 37-1103. Applicability.

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

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

18 3. The requirements of this title shall not apply to children's prod-  
19 uct manufacturers that employ five persons or fewer and are independ-  
20 ently owned and operated.

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

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

27 § 37-1105. Presence of lead in consumer products prohibited.

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

32 § 37-1107. Exempt products.

33 A consumer product may contain more lead than is prohibited by section  
34 37-1105 of this title where:

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

37 2. No alternative product containing less lead is available.

38 § 37-1109. Private right of action.

39 Any person who has purchased a product which is in violation of  
40 section 37-1105 of this title shall have a private right of action  
41 against any person or entity within the supply chain of said product,  
42 other than the retailer in accordance with subdivision five of section  
43 37-1103 of this title.

44 § 37-1111. Construction.

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

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