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An Act To Ensure That Children's Toys and Products Are Free of Lead

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1316-A is enacted to read:

§ 1316-A. Restrictions on lead-containing children's products

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Child" means a person under 12 years of age.

B. "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation or feeding of children or to help children with sucking or teething.

C. "Children's jewelry" means jewelry that is made for, marketed for use by or marketed to a child and that is:

(1) Represented by its packaging, display, distribution or advertising as appropriate for use by children;

(2) Sold in conjunction with, attached to or packaged together with other products that are packaged, displayed or advertised as appropriate for use by children;

(3) Sized for children and not intended for use by adults;

(4) Sold in a vending machine; or

(5) Sold in a retail store, catalog or website, or in a defined area of that store, catalog or website, in which a person exclusively offers for sale products that are packaged, displayed or advertised as appropriate for use by children.

D. "Children's lunch box" means a fabricated container marketed or intended for use to carry food or drink for consumption by a child.

E. "Children's product" means a product that is marketed for use by a child or the use of which by a child is foreseeable, including but not limited to a toy, child care article, children's lunch box or children's jewelry.

F. "Lead-containing children's product" means a children's product that:

(1) Contains lead in the aggregate, excluding lead in a paint or surface coating, at more than .009% of the total weight or is made with a product component containing lead at more than .009% of the total weight of the product component, except that if the product or product component lead level is preempted by federal law then the federal standard for lead level governs; or

(2) Is coated with a paint or surface coating with a lead content that exceeds the Consumer Product Safety Commission safety rule as established in 16 Code of Federal Regulations, Part 1303, as amended.

G. "Toy" means a product designed and made for the amusement of a child or for the child's use in play.

2. Restriction. Beginning July 1, 2009, a person may not manufacture, or knowingly sell, distribute or offer for sale or distribution, a lead-containing children's product except as provided in subsection 3.

3. Exception. The restrictions imposed in subsection 2 do not apply to consumer electronic products in which the lead-containing component is inaccessible to children, including but not limited to electronic toys, personal computers, audio and video equipment, calculators, wireless telephones, game consoles, hand-held electronic and electrical devices that incorporate a video screen used to access interactive software, and their related devices and products that comply with the provisions of directive 2002/95/EC of the European Union as adopted by the European Parliament and the Council of the European Union.

4. Enforcement. This section may be enforced in a civil action brought by the Attorney General under the Maine Unfair Trade Practices Act, except that the following provisions apply as penalties for violations of this section.

A. For the first violation by a manufacturer a warning must be given instead of an enforcement by the Attorney General if the employer has the equivalent of 25 or fewer full-time, year-round employees.

B. For all other violations the following provisions apply as penalties for violations of this section.

(1) For the first violation of this section, the penalty is not more than \$100 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$5,000.

(2) For a 2nd violation of this section, the penalty is not more than \$500 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$25,000.

(3) For a 3rd or subsequent violation of this section, the penalty is not more than \$1,000 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$50,000.

(4) A penalty under this section may be waived by the court if it is determined that the person in good faith and with due diligence attempted to comply with the requirements of this section and promptly corrected after discovery any noncompliance with this section.

5. Lead Poisoning Prevention Fund. Penalties collected under this section must be paid to the Lead Poisoning Prevention Fund established pursuant to section 1322-E.

Sec. 2. Report. The Department of Health and Human Services, Maine Center for Disease Control and Prevention shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 15, 2010 regarding lead in children's toys and products. The report must include developments on the federal level and in other states with regard to protecting children from lead poisoning from children's toys and products, thresholds for lead in children's toys and products and a summary of literature on lead poisoning from children's toys and products. The joint standing committee may submit a bill to the Second Regular Session of the 124th Legislature based on the report.

Sec. 3. Effective date. This Act takes effect July 1, 2009.

Effective July 1, 2009.