

Intro. Res. No. 1382-2015

Laid on Table 4/28/2015

Introduced by Legislators Hahn, Stern, Spencer, Anker, Calarco, Gregory, and D'Amaro

RESOLUTION NO. 490 -2015, ADOPTING LOCAL LAW NO. -2015, A LOCAL LAW PROTECTING CHILDREN FROM EXPOSURE TO TOXIC CHEMICALS ("THE TOXIC FREE TOYS ACT")

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on April 28, 2015, a proposed local law entitled, "**A LOCAL LAW PROTECTING CHILDREN FROM EXPOSURE TO TOXIC CHEMICALS ("THE TOXIC FREE TOYS ACT")**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2015, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW PROTECTING CHILDREN FROM EXPOSURE TO TOXIC CHEMICALS ("THE TOXIC FREE TOYS ACT")

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the County of Suffolk is a leader in protecting the health and safety of its residents, particularly children, who are the most vulnerable in our communities.

This Legislature also finds and determines that there are chemicals of high concern for the environment and human health that can be found in every day products, as has been determined by many authoritative government bodies, including the state of Maine, Article 38 MRSA Chapter 16-D, *Toxic Chemicals in Children's Products*.

This Legislature further finds and determines that several of the chemicals of high concern listed in Maine's law are known to be toxic and carcinogenic, including lead, mercury, antimony, arsenic, cadmium, and cobalt.

This Legislature finds that many common children's products contain these toxic and carcinogenic chemicals.

This Legislature also finds that lead can contaminate drinking water supplies and may cause conditions such as brain damage, hyperactivity, anemia, liver and kidney damage, developmental delays, lowered IQ, poor impulse control, and, in some cases, even death.

This Legislature further finds that mercury can contaminate fish and other wildlife and can cause damage to brain development, impairments in cognitive thinking, a decrease in fine motor and visual special skills, and muscle weakness.

This Legislature also determines that antimony can cause respiratory and cardiovascular damage, skin disorders, and gastrointestinal disorders.

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This Legislature further determines that arsenic is known to cause skin lesions, developmental delays, neurotoxicity, diabetes, and cardiovascular disease, as well as lung and other cancers.

This Legislature finds and determines that cobalt, while an essential element as a constituent of vitamin B12, can cause cardiomyopathy and gastrointestinal effects from chronic exposure.

This Legislature also finds and determines that cadmium exposure can result in kidney disease, bronchiolitis, emphysema, and damage to the liver, lungs, bone, immune system, blood, and nervous system.

This Legislature further finds and determines that several states, localities and the federal government are considering a ban on these six chemicals in children's products.

This Legislature finds that Suffolk County is committed to protecting the environment and the public health and welfare of our County's infants and children whose growing bodies are vulnerable to the health hazards caused by these seven chemicals, particularly given the absence of State or federal regulation on this subject.

Therefore, the purpose of this law is to ban the sale of children's products which contain lead, mercury, antimony, arsenic, cadmium, or cobalt in the County of Suffolk.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

CHILDREN - any person or persons aged twelve and under.

CHILDREN'S PRODUCT - any product primarily intended for, made for, or marketed for use by children. Children's product does not mean batteries, consumer electronics or electronic components, paper products, or a drug, biologic, medical device, food, or food additive regulated by the US Food and Drug Administration.

PPM – Parts per million total content.

RETAILER – Any public establishment in the County of Suffolk that sells children's products.

Section 3. Toxic Content Restrictions.

Effective July 1, 2016, no retailer shall:

- A. Knowingly distribute, sell or offer for sale in the County of Suffolk a children's product containing mercury, antimony, arsenic or cobalt above 40 PPM of total content per chemical.
- B. Knowingly distribute, sell or offer for sale in the County of Suffolk a children's product containing lead above 100 PPM of total lead content in accessible parts or above 90 PPM in paint or any similar surface coating.

- C. Knowingly distribute, sell or offer for sale in the County of Suffolk a children's product containing cadmium above 75 PPM of total cadmium content.

Section 4. Exemption.

- A. This law shall not apply to used children's products or apparel that are sold or distributed for free at secondhand stores, yard sales, or donated to charities, nor shall it apply to children's products or apparel sold exclusively on the internet.
- B. This law shall not apply to protective sporting equipment designed to prevent injury, including, but not limited to, helmets, athletic supporters, knee pads or elbow pads.
- C. The restrictions in this law shall not apply to a children's product solely based on its containing an enclosed battery or enclosed electronic components.

Section 5. Enforcement.

- A. This law shall be enforced by the Department of Health Services.
- B. Beginning on January 1, 2016, the Department of Health Services will inform retailers selling children's products of the requirements of this law.
- C. Enforcement of the law through the random inspection of at least 10 retailers per quarter shall commence on December 1, 2016.
 - 1. At each retailer inspected, the Department will select no more than 10 children's products for on-site toxic content screening using an x-ray fluorescence analyzer.
 - 2. The Department shall inform the retailer of products screened that exceed the toxic content levels in this law. A retailer that continues to offer for sale a children's product found by the Department to violate this law shall be issued a notice of violation.

Section 6. Rules and Regulations.

- A. The Commissioner of the Department of Health Services is hereby authorized, empowered and directed to promulgate such rules and regulations as he or she deems necessary to implement this law.
- B. The Commissioner of the Department of Health Services may, in his or her discretion, exempt a children's product from this law if, in the Commissioner's judgment, the lack of availability of such product could pose an unreasonable risk to public health, safety or welfare.

Section 7. Penalties.

- A. Any retailer who knowingly violates the provisions of this law shall be subject to an initial civil penalty of five hundred dollars (\$500) per violation, with all subsequent violations subject to a civil penalty of one thousand dollars (\$1,000) per violation. Each violation shall constitute a separate and distinct offense.

- B. No penalties shall be imposed by the Department of Health Services until a hearing is held by the Commissioner or his or her designee and the alleged violator is given an opportunity to be heard.
- C. In the event the Department of Health Services determines that an illegal children's product is being sold by a retailer, the Commissioner is authorized and empowered to order the removal of all stock of such product from being offered for sale by the retailer, in addition to any civil penalties that may be assessed.

Section 8. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. Reverse Preemption.

This article shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Section 11. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 12. Effective Date.

This law shall take effect immediately upon its filing in the Office of the Secretary of State.

DATED: June 16, 2015

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: June 24, 2015