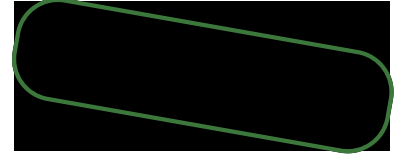




Westchester County New York

Local Law LL-2015-8



Local Law-Proposed amendment-Prohibiting the sale of children's products containing certain chemicals.

Information

Department:	Legislation	Sponsors:	D9 Legislator (Majority Leader) Catherine Borgia, D8 Legislator Alfreda Williams, D5 Legislator Benjamin Boykin, D7 Legislator Catherine Parker, D13 Legislator (Majority Whip) Lyndon Williams, D12 Legislator Mary Jane Shimsky, D2 Legislator Peter Harckham
Category:	Amendment to Local Law		

Links

- [Link RES-2015-40 : PH-Proposed Amendment-Prohibit sale of children's products containing certain chemical,](#)
- [Link 7505 : LEGISLATORS BORGIA, BOYKIN, SHIMSKY, HARCKHAM, PARKER, A. WILLIAMS AND L. WILLIAMS: Memo of Leg-Prohibit sale of Toxic Chemicals in Children's Products](#)

Attachments

- [Local Law-Proposed amendment-Prohibiting the sale of children's products containing certain chemicals-DRAFT](#)
- [LOCAL LAW-Prohibit sale of Toxic Chemicals in Children's Products-DRAFT #2](#)
- [LOCAL LAW-Prohibit sale of Toxic Chemicals in Children's Products-DRAFT #3](#)
- [LOCAL LAW-Prohibit sale of Toxic Chemicals in Children's Products-DRAFT #4](#)
- [LOCAL LAW-Prohibit sale of Toxic Chemicals in Children's Products-FINAL CERTIFIFED 05/20/2015 - Click here for copy](#)

Body

A Local Law amending the Laws of Westchester County by adding a new Chapter 433 prohibiting the sale of children's products containing certain chemicals.

Meeting History

Jan 12, 2015 1:30 PM Legislation Committee Meeting

Chairs Perez and Williams welcomed our guests, Christopher Goeken, Director of Public Policy and Government Relations, NY League of Conservation Voters and Kathleen Curtis, Executive Director of Clean and Healthy New York. Mr. Goeken began the discussion by giving some background on the issue. Last month they released a report which was a survey of products available here in Westchester

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Email: test@citizensgroup.com

that contained seven toxic products-antimony, benzene, cadmium, cobalt, lead and mercury. These can be a particular health threat to children.

Parents have no idea that you can walk into a store and find products that contain these chemicals and there is no reason for the manufacturers to be using them. The real problem is that the manufacturers are not taking control of their supply chain and are not telling their supply chain not to use these chemicals.

This law should be on a federal level. The main federal law to control toxic substances is called the Toxic Substance Control Act of 1976 (TSCA). This law hasn't been updated in almost 20 years. Mr. Goeken and Ms. Curtis then discussed the reasons the law hasn't been updated.

Leg. Perez asked if children were tested or could be tested for these chemicals, as they are tested for lead. Mr. Goeken said he didn't know the answer to that but would try to find out.

Leg. Testa asked how this law would be enforced. Mr. Goeken replied that they could suggest several ways to do that and the County should select whatever suits it best. He noted that most laws are not enforced. However, once a law is on the books, people generally do try to comply with it. Most retailers don't have any interest in selling these kinds of products. They believe that most retailers will be able to comply.

Leg. Kaplowitz stated that he has doubts as to how this law could be enforced and that the penalties are weak. He feels the State should be acting on this issue. Ms. Curtis noted that the way to get the State to move was for the Counties to pass their laws.

Leg. Kaplowitz stated this legislation should be done in concert with other counties in the State in order for the law to have the proper impact. He would want us to bring in retailers, the Dept. Of Health and the Dept. Of Consumer Affairs to discuss this legislation and contact other counties and ask for them all to join this effort.

Leg. Borgia noted that it is frequently the Counties passing the laws that gets the ball rolling in the State. She noted that they have discussed this legislation with the State delegation and they have been very approving. The Dept. of Consumer Affairs already has the equipment needed to test for these heavy metals because they test for lead. She stated that there are structures already in place in our county that inform parents, vendors and shopkeepers of the risks of some things and this is just adding to those tasks that are already done.

She also believes that it would be a good idea to involve NYSAC and other counties in this effort.

Leg. Shimsky asked if there is current legislation in New York City. Mr. Goeken replied that there is a lot of interest, but he doesn't know for sure.

Leg. Shimsky noted that it might be helpful to have phone calls and meetings with officials in other counties. Leg. Maisano agreed. Leg. Maisano recommend the effective date be changed to 6 Or 9 months. Leg. Borgia agreed to do so.

To view this meeting, please go to: <http://westchestercountyny.iqm2.com/Citizens/Default.aspx>. Click on meeting group and then on date of meeting.

RESULT: PENDING

Jan 12, 2015 1:31 PM Video Community Services Committee Meeting

Chairs Perez and Williams welcomed our guests, Christopher Goeken, Director of Public Policy and Government Relations, NY League of Conservation Voters and Kathleen Curtis, Executive Director of Clean and Healthy New York. Mr. Goeken began the discussion by giving some background on the issue. Last month they released a report which was a survey of products available here in Westchester that contained seven toxic products-antimony, benzene, cadmium, cobalt, lead and mercury. These can be a particular health threat to children.

Parents have no idea that you can walk into a store and find products that contain these chemicals and there is no reason for the manufacturers to be using them. The real problem is that the manufacturers are not taking control of their supply chain and are not telling their supply chain not to use these chemicals.

This law should be on a federal level. The main federal law to control toxic substances is called the Toxic Substance Control Act of 1976 (TSCA). This law hasn't been updated in almost 20 years. Mr. Goeken and Ms. Curtis then discussed the reasons the law hasn't been updated.

Legislator Perez asked if children were tested or could be tested for these chemicals, as they are tested for lead. Mr. Goeken said he didn't know the answer to that but would try to find out.

Legislator Testa asked how this law would be enforced. Mr. Goeken replied that they could suggest several ways to do that and the County should select whatever suits it best. He noted that most laws are not enforced. However, once a law is on the books, people generally do try to comply with it. Most

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retailers don't have any interest in selling these kinds of products. They believe that most retailers will be able to comply.

Legislator Kaplowitz stated that he has doubts as to how this law could be enforced and that the penalties are weak. He feels the State should be acting on this issue. Ms. Curtis noted that the way to get the State to move was for the Counties to pass their laws.

Legislator Kaplowitz stated this legislation should be done in concert with other counties in the State in order for the law to have the proper impact. He would want us to bring in retailers, the Dept. Of Health and the Dept. Of Consumer Affairs to discuss this legislation and contact other counties and ask for them all to join this effort.

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She also believes that it would be a good idea to involve NYSAC and other counties in this effort.

Legislator Shimsky asked if there is current legislation in New York City. Mr. Goeken replied that there is a lot of interest, but he doesn't know for sure.

Legislator Shimsky noted that it might be helpful to have phone calls and meetings with officials in other counties. Legislator Maisano agreed. Legislator Maisano recommended the effective date be changed to 6 or 9 months. Legislator Borgia agreed to do so.

Mar 2, 2015 1:30 PM Video Legislation Committee Meeting

Legislator Borgia explained that testing in toys showed high metal counts in toys. Legislator Borgia had suggested that this is a good opportunity to speak to the retail suppliers to certify their products free of metals. This legislation does not want to create burdens on small retailers but give them time to clear their inventory on the banning of toxic items. It is being asked that retailers sell certified toys. This legislation is similar to the proposed state legislation.

Bobbi Chase Wilding, Deputy Director of Clean and Healthy NY, did testing for heavy metals and the results showed that children's products contained chemicals in some zippers, some clothes, and toys. A XRF technology was used to detect her findings; her company has been established for 8 years.

Legislator Harckham mentioned that this technology is not new to Westchester County it has been used by the health department in the lead free program.

Chair Maisano asked why the chemicals have gone undetected?

Ms. Chase Wilding's company did an investigation which showed that 24,000 companies reported chemicals in their items, indicating that current Federal regulations are not adequate.

Laura Orenstein of the New York State Substantial Business Council stated that TSCA (Toxic Substance Control Act) was established in 1976. She further noted that there are 82,000 chemicals and out of those 82,000 chemicals, the U.S. Environmental Protection Agency (EPA) only tests for 200.

Legislator Parker mentioned that retailers have a seal or symbol to certify the toy is toxic free.

Tanye Steel from the Center for Environmental Health, which is a national organization with a main goal to protect people. The organization is working with the federal government on TSCA, and is hoping that reform may be introduced soon. She mentioned chemical companies are not required to disclose chemicals in their products.

Laura Orenstein noted that she has worked with small businesses and has pushed for legislation to require safe TSCA reform. A national poll was conducted in 2012 of small businesses, in which 73% said government regulations are to insure nontoxic items, 75% said there should be stricter regulations of chemicals in everyday products and 90% said that chemical manufacturers should be held accountable for safe products. Retailers don't want to sell toxic items, but may be doing so unknowingly, because they think safety issues and standards are taken care of.

Josh Klainberg of NYLCU, working with Clean and Healthy NY, stated that he thinks it's a good idea to bring regulations to the county level.

Ted Potrikus, President and Chief Executive Office of The Retail Council of New York State, participated in the meeting via teleconference. He stated that he would like to see completely chemical free items, however, he is not sure how this could be. He requested that the county work with the retailers towards creating comprehensive laws.

Chair Maisano agreed with Ted Potrikus that this should be on a statewide level, noting that the NY Retail Council has lobbied to prevent state legislation, but is now working with the state.

Mr. Steven Rosario from the Chemistry Council with Plastics and Raw Materials mentioned that 96% of

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products have chemicals and would like an opportunity to discuss why chemicals are in the products.

Chair Maisano asked who would enforce this legislation. He requested the Administration be invited to the next meeting, which will be on Monday March 16, 2015 at 1:30 pm.

RESULT: PENDING

Next: 3/16/2015 1:30 PM

Mar 2, 2015 1:31 PM

Community Services Committee Meeting

The Committees heard from the President of the Retail Council for New York State Ted Potrikus, Josh Klainberg from the New York League of Conservation Voters, Tanye Steel from the Center for Environmental Health, and a representative from Clean and Healthy New York.

Legislator Borgia provided a summary of the legislation and the discussion held so far. She explained that recent testing in toys showed high metal counts which can be toxic to children. Legislator Borgia stated that this is a good opportunity to speak to the retail suppliers to certify their products free of metals. She said this legislation is not meant to create burdens on small retailers but give them time to clear their inventory of the toxic items. Legislator Maisano stated there is state legislation pending. Legislator Borgia agreed, saying it is similar legislation, although she believes the County bill includes one more chemical.

Bobbi Chase Wilding, Deputy Director of Clean and Healthy NY, did testing for heavy metals and the results showed that children's products contained toxic chemicals in some zippers, jewelry, and toys. An XRF technology was used to detect these chemicals.

Legislator Harchham stated that this technology is not new to Westchester County, it has been used by the Health Department in the lead free program.

Chair Maisano asked how these chemicals have gone undetected in children's toys until now. Ms. Chase Wilding explained it goes back to the federal law and how chemicals are regulated. She stated that the federal regulatory system is currently inadequate to handle the task of monitoring so many chemicals and products. Her Company did an investigation which showed that 24,000 companies reported chemicals in their items, indicating that current Federal regulations are not adequate.

Laura Orenstein of the New York State Substantial Business Council stated that TSCA (Toxic Substance Control Act) was established in 1976. She further noted that there are 82,000 chemicals and out of those 82,000 chemicals, the U.S. Environmental Protection Agency (EPA) only tests for 200. She stated that the current system is not adequate to testing all of these chemicals.

Legislator Parker mentioned that retailers have a seal or symbol to certify the toy is toxic free.

Tanye Steel from the Center for Environmental Health, which is a national organization with a main goal to protect people. The organization is working with the federal government on TSCA, and is hoping that reform may be introduced soon. She mentioned chemical companies are not required to disclose chemicals in their products.

Laura Orenstein noted that she has worked with small businesses and has pushed for legislation to require safe TSCA reform. A national poll was conducted in 2012 of small businesses, in which 73% said government regulations are to insure nontoxic items, 75% said there should be stricter regulations of chemicals in everyday products and 90% said that chemical manufactures should be held accountable for safe products. Retailers don't want to sell toxic items, but may be doing so unknowingly, because they think safety issues and standards are taken care of.

Josh Klainberg of NYLCU, working with Clean and Healthy NY, stated that he thinks it's a good idea to bring regulations to the county level.

Ted Potrikus, President and Chief Executive Office of The Retail Council of New York State, participated in the meeting via teleconference. He stated that he would like to see completely chemical free items, however, he is not sure how this could be, as no product will test to a zero level of chemicals. He requested that the county work with the retailers towards creating comprehensive laws. A discussion ensued regarding testing to a zero level, and what level becomes toxic.

Chair Maisano agreed with Ted Potrikus that this should be on a statewide level, noting that The NYS Retail Council has lobbied to prevent state legislation, but is now working with the state.

Mr. Steven Rosario from the American Chemistry Council mentioned that 96% of products have chemicals and would like an opportunity to discuss why chemicals are in the products. He asked that he be able to bring in his experts at the next meeting.

Chair Maisano asked who would enforce this legislation. He requested the Administration be invited to the next meeting to discuss the bill and enforcement. The Committees agreed to meet again on March 16th at 1:30 pm.

RESULT: PENDING

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David Garriepy from the American Toy Industry stated to the Committees that they fully support safety in children's toys. He said there are federal laws, tests, and regulations that mandate toy safety. He said the ASTM, the federal provision, is preemptive to the bill before the committees. He said he expects there to be a lawsuit filed against Albany County due to this preemption. He also stated that the labs cannot test to zero in terms of chemical levels. A discussion ensued regarding testing to zero and trace amounts.

A discussion ensued regarding the preemption. Christopher Goeken of the League of Conservation Voters explained preemption law. He stated that the only chemical that is in the legislation that may be preempted by federal law is Lead.

Steven Rosario of the American Chemistry Council stated that his chemical expert was unable to attend the meeting due to a death in the family but he would like her to have an opportunity for her to speak about chemicals to the Committees. He spoke about the cost of testing and the cost that this legislation is going to bring for the companies to test their toys. Mr. Rosario talked about the difficulty is following all of the local laws and regulations with regarding to manufacturing products and stated that they prefer when things are handled at the federal level so they are standard.

Further discussion regarding testing ensued.

Legislator Borgia stated that the law was written by the County Law Department with the intent to allow the Department of Consumer Protection the room to enforce the law in a way that works for the Department.

John Gaccione, Executive Director of Department of Consumer Protection stated that he would like to enforce the law with a large educational component to the stores in the County and requested more time to do so before the law goes into effect. He also stated that the County does not go into Yonkers or Mount Vernon because they have their own regulations with regard to consumer protection. He stated the law uses the word "willful" and he does not think he can prove, or find, anyone who is willfully harming children with toys they are selling.

Legislator Maisano asked how the law would be enforced after the education campaign. Mr. Gaccione said the Department would do spot checks at random stores by interviewing the manager and asking who their suppliers and if they provide any certificates stating that the chemicals are not used. He said in order to test the toys he would have to work with the Health Department who has the equipment.

Sarah Beatty, a small business owner of home products explained to the Committees that she does ask her vendors and manufactures what is in the products because she wants to provide safe and healthy products to her consumers. She wanted the Committees to know that it is possible to get safe products and sell them. David Levine, another member of the business community agreed and stated that regulations like these empower small business owners to ask the right questions and know that they have safe products.

Further discussion ensued.

Legislator Maisano stated several changes and issues that he sees that could be made to the legislation. He suggested removing lead from the legislation to avoid a preemption lawsuit. He said he would like to see a modification to section 433.11 to reflect that testing cannot be done to zero levels and trace levels of the chemical can be allowed. He stated that the Committees may want to include the education component in the legislation, as well as, possibly, a rule making piece for the Commissioner.

Legislator Testa asked if there is MSDS sheet for toys. Sarah Beatty stated that there isn't but it would be very helpful if there was.

Kathy Curtis stated that she will provide the Committees with a good definition of children's products that is used in many regulations. She also stated that she can provide the Committees with the D. Landrigan report regarding the levels of chemicals and how they affect babies I utero.

A discussion ensued regarding what a "reporting" state means.

Legislator Maisano asked that Mr. Rosario have his expert, Dr. Wise, submit comments in writing prior to our next discussion.

The Committees agreed to review the proposed changes and discuss them in a future meeting.

RESULT: PENDING

Next: 3/30/2015 1:30 PM

Mar 16, 2015 1:31 PM**Community Services Committee Meeting**

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Further discussion regarding testing ensued.

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John Gaccione, Commissioner of the Department of Consumer Protection stated that he would like to enforce the law with a large educational component to the stores in the County and requested more time to do so before the law goes into effect. He also stated that the County does not go into Yonkers or Mount Vernon because they have their own regulations with regard to consumer protection. He stated the law uses the word "willful" and he does not think he can prove, or find, anyone who is willfully harming children with toys they are selling.

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A discussion ensued regarding what a "reporting" state means.

Legislator Maisano asked that Mr. Rosario have his expert, Dr. Wise, submit comments in writing prior to our next discussion.

The Committees agreed to review the proposed changes and review them in a future meeting.

RESULT: PENDING**Mar 30, 2015 1:30 PM Video Legislation Committee Meeting**

A discussion took place with the Consumer Protection and Law Departments in the recommendation to amend Local Law, Executive Director Gaccione prefers to amend legislation to remove parts per

million" and add "no person knowingly". Legislator A. Williams recommended reviewing the Journal News article dated March 21, 2015 - "Researcher Keeps Kids Safe from Chemicals". Legislator Jenkins reminded the Committee of a past incident that certain toys were discovered to have high levels of lead in dollar stores. Executive Director Gaccione determined that a few stores were selling these items and were asked to remove the products from their shelves. Executive Director Gaccione would reach out to the Health Department for any assistance on future testing. Testimony from all sides have been heard with Legislator Borgia recommending a Public Hearing.

On the motion of Legislator Borgia and seconded by Legislator Kaplowitz this item was approved with a vote of 10 to 0 with Legislator Testa, Legislator, Marcotte, and Legislator Burrows voting Without Prejudice, (WOP).

RESULT: SIGNED BY COMMITTEE

Mar 30, 2015 1:31 PM

Community Services

Committee Meeting

 **Draft**

Legislator Borgia made a motion to amend section 433.11 to read "No person shall knowingly distribute,..." her motion was seconded by Legislator Shimsky for the Committee on Community Services. The motion was approved with a vote of 6-0.

With a motion by Legislator Borgia seconded by Legislator Shimsky the amendment was approved for the Committee on Legislaton.

With a motion by Legislator Harckham seconded by Legislator Perez the amendment was approved for the Committee on Public Safety.

CB for CS & LEG, PH VP for PS, KP for CS & PS

A discussion took place with the Consumer Protection and Law Departments in the recommendation to amend Local Law, Executive Director Gaccione prefers to amend legislation to remove "parts per million" and add "no person knowingly". Legislator A. Williams recommended reviewing the Journal News article dated March 21, 2015 - "Researcher Keeps Kids Safe from Chemicals". Legislator Jenkins reminded the Committee of a past incident that certain toys were discovered to have high levels of lead in dollar stores. Executive Director Gaccione determined that a few stores were selling these items and were asked to remove the products from their shelves. Executive Director Gaccione would reach out to the Health Department for any assistance on future testing. Testimony from all sides have been heard with Legislator Borgia recommending a Public Hearing.

On the motion of Legislator Borgia and seconded by Legislator Kaplowitz this item was approved with a vote of 10 to 0 with Legislator Testa, Legislator, Marcotte, and Legislator Burrows voting Without Prejudice, (WOP).

RESULT: SIGNED BY COMMITTEE

Mar 30, 2015 1:35 PM

Public Safety

Committee Meeting

Discussion with the Consumer Protection and Law Departments in the recommendation to amend Local Law, Commissioner Gaccione prefers to amend without parts per million and replace "no person knowingly" in local law. Legislator A. Williams recommend reviewing the Journal News article dated March 21, 2015 - Researcher keeps kids safe from chemicals. Legislator Jenkins reminded the committee of a past incident that certain toys were discovered to have high levels of lead in dollar stores. Commissioner Guccione determined that a few stores were selling these items and where asked to remove the products off the shelves. Commissioner Guccione would reach out to the Health Department for any testing.

On motion of Peter Harckham and seconded by Legislator Michael Kaplowitz this item was approved with a vote of 6 to 0.

Further discussion on the levels of lead in certain products and have been determined that their is no safe level of lead. It was recommended by Legislator A. Williams to take the European model. Testimony from all sides have been heard with Legislator Borgia recommending a Public Hearing.

RESULT: SIGNED BY COMMITTEE

Apr 27, 2015 7:00 PM Video

Board of Legislators

Regular Meeting

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Submitted by COMMITTEES ON LEGISLATION, PUBLIC SAFETY AND COMMUNITY SERVICES.

On motion of Ms. Borgia, this item was laid over under the rules.

RESULT: OVERED

Next: 5/11/2015 7:00 PM

May 11, 2015 7:00 PM Video Board of Legislators Regular Meeting

Submitted by COMMITTEES ON LEGISLATION, COMMUNITY SERVICES AND PUBLIC SAFETY

Ms. Perez, Ms. Williams and Mr. Gelfarb presented the report and the Local Law and moved that the report be received, filed and approved and the Local Law adopted, which motion was carried by the following vote.

RESULT: ADOPTED [UNANIMOUS]

AYES: Catherine Borgia, John G. Testa, Benjamin Boykin, Gordon A. Burrows, David B. Gelfarb, Peter Harckham, Kenneth W. Jenkins, James Maisano, Sheila Marcotte, Catherine Parker, Virginia Perez, Mary Jane Shimsky, Michael J. Smith, Bernice Spreckman, Alfreda Williams, Lyndon Williams, Michael Kaplowitz

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