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I N S E N A T E

(PREFILED)

January 9, 2008

Introduced by Sens. ALESI, BONACIC, FLANAGAN, FUSCHILLO,
LARKIN,
LEIBELL, MALTESE, MORAHAN, PADAVAN, RATH, SEWARD, TRUNZO -- read
twice
and ordered printed, and when printed to be committed to the
Committee
on Environmental Conservation

AN ACT to amend the environmental conservation law and the general
busi-
ness law, in relation to jewelry containing lead

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND
ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature hereby
finds that
2 stringent controls on the amount of lead in jewelry are
necessary to
3 protect public health, especially the health of children.
Random
4 samples of jewelry in New York state have been found to contain
up to
5 60,000 parts per million of lead. To assure consistent
application of
6 these controls to all jewelry, specific technical standards and
controls
7 must be specified.

8 S 2. The environmental conservation law is amended by adding
a new

9 section 37-0113 to read as follows:
10 S 37-0113. LEAD-CONTAINING JEWELRY.
11 FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL
HAVE THE

12 FOLLOWING DEFINITIONS: 1. "BODY PIERCING JEWELRY" MEANS ANY
PART OF

13 JEWELRY THAT IS MANUFACTURED OR SOLD FOR PLACEMENT IN A NEW
PIERCING OR

14 A MUCOUS MEMBRANE, BUT DOES NOT INCLUDE ANY PART OF THAT JEWELRY
THAT IS

15 NOT PLACED WITHIN A NEW PIERCING OR A MUCOUS MEMBRANE.

16 2. "CHILDREN" MEANS CHILDREN AGED SIX AND YOUNGER.

17 3. "CHILDREN`S JEWELRY" MEANS JEWELRY THAT IS MADE FOR,
MARKETED FOR
18 USE BY, OR MARKETED TO, CHILDREN. CHILDREN`S JEWELRY INCLUDES,
BUT IS
19 NOT LIMITED TO, JEWELRY THAT MEETS ANY OF THE FOLLOWING
CONDITIONS:
20 (A) REPRESENTED IN ITS PACKAGING, DISPLAY, OR ADVERTISING, AS
APPRO-
21 PRIATE FOR USE BY CHILDREN.
22 (B) SOLD IN CONJUNCTION WITH, ATTACHED TO, OR PACKAGED
TOGETHER WITH
23 OTHER PRODUCTS THAT ARE PACKAGED, DISPLAYED, OR ADVERTISED AS
APPROPRI-
24 ATE FOR USE BY CHILDREN.
25 (C) SIZED FOR CHILDREN AND NOT INTENDED FOR USE BY ADULTS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in
brackets

{ } is old law to be omitted.

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1 (D) SOLD IN ANY OF THE FOLLOWING:
2 (1) A VENDING MACHINE.
3 (2) RETAIL STORE, CATALOGUE, OR ONLINE WEB SITE, IN WHICH A
PERSON
4 EXCLUSIVELY OFFERS FOR SALE PRODUCTS THAT ARE PACKAGED,
DISPLAYED, OR
5 ADVERTISED AS APPROPRIATE FOR USE BY CHILDREN.
6 (3) A DISCRETE PORTION OF A RETAIL STORE, CATALOGUE, OR
ONLINE WEB
7 SITE, IN WHICH A PERSON OFFERS FOR SALE PRODUCTS THAT ARE
PACKAGED,
8 DISPLAYED, OR ADVERTISED AS APPROPRIATE FOR USE BY CHILDREN.
9 4. "CLASS 1 MATERIAL" MEANS ANY OF THE FOLLOWING MATERIALS:
10 (A) STAINLESS OR SURGICAL STEEL;
11 (B) KARAT GOLD;
12 (C) STERLING SILVER;
13 (D) PLATINUM, PALLADIUM, IRIDIUM, RUTHENIUM, RHODIUM OR OSMIUM;
14 (E) NATURAL OR CULTURED PEARLS;
15 (F) GLASS, CERAMIC, OR CRYSTAL DECORATIVE COMPONENTS, INCLUDING
CAT`S
16 EYE, CUBIC ZIRCONIA, INCLUDING CUBIC ZIRCONIUM OR CZ,
RHINESTONES, AND
17 CLOISONNE;
18 (G) A GEMSTONE THAT IS CUT AND POLISHED FOR ORNAMENTAL PURPOSES;
19 (H) ELASTIC, FABRIC, RIBBON, ROPE, OR STRING, UNLESS IT
CONTAINS
20 INTENTIONALLY ADDED LEAD AND IS LISTED AS A CLASS 2 MATERIAL;
21 (I) ALL NATURAL DECORATIVE MATERIAL, INCLUDING AMBER, BONE,
CORAL,
22 FEATHERS, FUR, HORN, LEATHER, SHELL, WOOD, THAT IS IN ITS NATURAL
STATE
23 AND IS NOT TREATED IN A WAY THAT ADDS LEAD; AND
24 (J) ADHESIVE.

25 (K) THE FOLLOWING GEMSTONES ARE NOT CLASS 1 MATERIALS:
ARAGONITE,
26 BAYLDONITE, BOLEITE, CERUSSITE, CROCOITE, EKANITE, LINARITE,
MIMETITE,
27 PHOSGENITE, SAMARSKITE, VANADINITE, AND WULFENITE.
28 5. "CLASS 2 MATERIAL" MEANS ANY OF THE FOLLOWING MATERIALS:
29 (A) ELECTROPLATED METAL THAT MEETS THE FOLLOWING STANDARDS:
30 (1) ON AND BEFORE AUGUST 30, 2010, A METAL ALLOY WITH LESS
THAN TEN
31 PERCENT LEAD BY WEIGHT THAT IS ELECTROPLATED WITH SUITABLE
UNDER AND
32 FINISH COATS.
33 (2) ON AND AFTER AUGUST 31, 2010, A METAL ALLOY WITH LESS
THAN SIX
34 PERCENT LEAD BY WEIGHT THAT IS ELECTROPLATED WITH SUITABLE
UNDER AND
35 FINISH COATS; OR
36 (B) UNPLATED METAL WITH LESS THAN 1.5 PERCENT LEAD THAT IS NOT
OTHER-
37 WISE LISTED AS A CLASS 1 MATERIAL; OR
38 (C) PLASTIC OR RUBBER, INCLUDING ACRYLIC, POLYSTYRENE, PLASTIC
BEADS
39 AND STONES, AND POLYVINYL CHLORIDE (PVC) THAT MEETS THE FOLLOWING
STAND-
40 ARDS:
41 (1) ON AND BEFORE AUGUST 30, 2010, LESS THAN 0.06 PERCENT (SIX
HUNDRED
42 PARTS PER MILLION) LEAD BY WEIGHT; AND
43 (2) ON AND AFTER AUGUST 31, 2010, LESS THAN 0.02 PERCENT (TWO
HUNDRED
44 PARTS PER MILLION) LEAD BY WEIGHT; OR
45 (D) A DYE OR SURFACE COATING CONTAINING LESS THAN 0.06
PERCENT (SIX
46 HUNDRED PARTS PER MILLION) LEAD BY WEIGHT.
47 6. "CLASS 3 MATERIAL" MEANS ANY PORTION OF JEWELRY THAT MEETS
BOTH OF
48 THE FOLLOWING CRITERIA:
49 (A) IS NOT A CLASS 1 OR CLASS 2 MATERIAL; AND
50 (B) CONTAINS LESS THAN 0.06 PERCENT (SIX HUNDRED PARTS PER
MILLION)
51 LEAD BY WEIGHT.
52 7. "COMPONENT" MEANS ANY PART OF JEWELRY.
53 8. "EPA REFERENCE METHODS 3050B (ACID DIGESTION OF SEDIMENTS,
SLUDGES
54 AND SOILS) OR 3051 (MICROWAVE ASSISTED DIGESTION/SLUDGE, SOILS)"
MEANS
55 THOSE TEST METHODS INCORPORATED BY REFERENCE IN PARAGRAPH
ELEVEN OF

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1 SUBDIVISION (A) OF SECTION 260.11 OF TITLE 40 OF THE CODE OF
FEDERAL
2 REGULATIONS.
3 9. "JEWELRY" MEANS:
4 (A) ANY OF THE FOLLOWING ORNAMENTS WORN BY A PERSON: AN
ANKLET, ARM

5 CUFF, BRACELET, BROOCH, CHAIN, CROWN, CUFF LINK, DECORATED HAIR
ACCESSO-
6 RIES, EARRING, NECKLACE, PIN, RING, OR BODY PIERCING JEWELRY; OR
7 (B) ANY BEAD, CHAIN, LINK, PENDANT, OR OTHER COMPONENT OF
SUCH AN
8 ORNAMENT.
9 10. (A) "SURFACE COATING" MEANS A FLUID, SEMIFLUID, OR OTHER
MATERIAL,
10 WITH OR WITHOUT A SUSPENSION OF FINELY DIVIDED COLORING
MATTER, THAT
11 CHANGES TO A SOLID FILM WHEN A THIN LAYER IS APPLIED TO A METAL,
WOOD,
12 STONE, PAPER, LEATHER, CLOTH, PLASTIC, OR OTHER SURFACE.
13 (B) "SURFACE COATING" DOES NOT INCLUDE A PRINTING INK OR A
MATERIAL
14 THAT ACTUALLY BECOMES A PART OF THE SUBSTRATE, INCLUDING, BUT NOT
LIMIT-
15 ED TO, PIGMENT IN A PLASTIC ARTICLE, OR A MATERIAL THAT IS
ACTUALLY
16 BONDED TO THE SUBSTRATE, SUCH AS BY ELECTROPLATING OR CERAMIC
GLAZING.
17 11. ON OR AFTER MARCH 1, 2009, NO PERSON SHALL ADVERTISE,
MANUFACTURE,
18 OFFER FOR SALE, SELL, OR DISTRIBUTE FOR PROMOTIONAL PURPOSES
IN THIS
19 STATE, OR IMPORT FOR DISTRIBUTION OR SALE IN THIS STATE, ANY
JEWELRY
20 UNLESS THE JEWELRY IS MADE ENTIRELY FROM A CLASS 1, CLASS 2, OR
CLASS 3
21 MATERIAL, OR ANY COMBINATION THEREOF.
22 12. NOTWITHSTANDING SUBDIVISION ELEVEN OF THIS SECTION, ON OR
AFTER
23 JANUARY 1, 2009, NO PERSON SHALL ADVERTISE, MANUFACTURE, OFFER FOR
SALE,
24 SELL, OR DISTRIBUTE FOR PROMOTIONAL PURPOSES IN THIS STATE, OR
IMPORT
25 FOR DISTRIBUTION OR SALE IN THIS STATE, ANY CHILDREN`S JEWELRY
UNLESS
26 THE CHILDREN`S JEWELRY IS MADE ENTIRELY FROM ONE OR MORE OF THE
FOLLOW-
27 ING MATERIALS:
28 (A) A NONMETALLIC MATERIAL THAT IS A CLASS 1 MATERIAL;
29 (B) A NONMETALLIC MATERIAL THAT IS A CLASS 2 MATERIAL;
30 (C) A METALLIC MATERIAL THAT IS EITHER A CLASS 1 MATERIAL OR
CONTAINS
31 LESS THAN 0.06 PERCENT (SIX HUNDRED PARTS PER MILLION) LEAD BY
WEIGHT;
32 (D) GLASS OR CRYSTAL DECORATIVE COMPONENTS THAT WEIGH IN TOTAL
NO MORE
33 THAN ONE GRAM, EXCLUDING ANY GLASS OR CRYSTAL DECORATIVE
COMPONENT THAT
34 CONTAINS LESS THAN 0.02 PERCENT (TWO HUNDRED PARTS PER MILLION)
LEAD BY
35 WEIGHT AND HAS NO INTENTIONALLY ADDED LEAD;
36 (E) PRINTING INK OR CERAMIC GLAZE THAT CONTAINS LESS THAN 0.06
PERCENT
37 (SIX HUNDRED PARTS PER MILLION) LEAD BY WEIGHT; OR

38 (F) CLASS 3 MATERIAL THAT CONTAINS LESS THAN 0.02 PERCENT (TWO
HUNDRED
39 PARTS PER MILLION) LEAD BY WEIGHT.
40 13. NOTWITHSTANDING SUBDIVISION 11 OF THIS SECTION, ON OR AFTER
MARCH
41 1, 2009, NO PERSON SHALL ADVERTISE, MANUFACTURE, OFFER FOR SALE,
SELL,
42 OR DISTRIBUTE FOR PROMOTIONAL PURPOSES IN THIS STATE, OR
IMPORT FOR
43 DISTRIBUTION OR SALE IN THIS STATE, ANY BODY PIERCING JEWELRY
UNLESS THE
44 BODY PIERCING JEWELRY IS MADE OF ONE OR MORE OF THE FOLLOWING
MATERIALS:
45 SURGICAL IMPLANT STAINLESS STEEL, SURGICAL IMPLANT GRADE OF
TITANIUM,
46 NIOBIUM (NB), SOLID FOURTEEN KARAT OR HIGHER WHITE OR YELLOW
NICKEL-FREE
47 GOLD, SOLID PLATINUM, OR A DENSE LOW-POROSITY PLASTIC,
INCLUDING, BUT
48 NOT LIMITED TO, TYGON OR POLYTETRAFLUOROETHYLENE (PTFE), IF THE
PLASTIC
49 CONTAINS NO INTENTIONALLY ADDED LEAD.
50 S 3. The environmental conservation law is amended by adding
a new
51 section 37-0115 to read as follows:
52 S 37-0115. TESTING METHODS FOR DETERMINING COMPLIANCE WITH
SECTION
53 37-0113.
54 1. THE TESTING METHODS FOR DETERMINING COMPLIANCE WITH SECTION
37-0113
55 OF THIS TITLE SHALL BE CONDUCTED USING THE EPA REFERENCE METHODS
3050B
56 OR 3051 FOR THE MATERIAL BEING TESTED, EXCEPT AS OTHERWISE
PROVIDED IN

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1 SUBPARAGRAPHS 5 AND 6 OF PARAGRAPH (E) OF SUBDIVISION 2 OF THIS
SECTION,
2 AND IN ACCORDANCE WITH ALL OF THE FOLLOWING PROCEDURES:
3 (A) WHEN PREPARING A SAMPLE, THE LABORATORY SHALL MAKE EVERY
EFFORT TO
4 ASSURE THAT THE SAMPLE REMOVED FROM A JEWELRY PIECE IS
REPRESENTATIVE OF
5 THE COMPONENT TO BE TESTED, AND IS FREE OF CONTAMINATION FROM
EXTRANEIOUS
6 DIRT AND MATERIAL NOT RELATED TO THE JEWELRY COMPONENT TO BE
TESTED.
7 (B) ALL JEWELRY COMPONENT SAMPLES SHALL BE WASHED PRIOR TO
TESTING
8 USING STANDARD LABORATORY DETERGENT, RINSED WITH LABORATORY
REAGENT
9 GRADE DEIONIZED WATER, AND DRIED IN A CLEAN AMBIENT ENVIRONMENT.
10 (C) IF A COMPONENT IS REQUIRED TO BE CUT OR SCRAPED TO
OBTAIN A
11 SAMPLE, THE METAL SNIPS, SCISSORS, OR OTHER CUTTING TOOLS USED
FOR THE

12 CUTTING OR SCRAPING SHALL BE MADE OF STAINLESS STEEL AND
WASHED AND
13 RINSED BEFORE EACH USE AND BETWEEN SAMPLES.
14 (D) A SAMPLE SHALL BE DIGESTED IN A CONTAINER THAT IS KNOWN TO
BE FREE
15 OF LEAD AND WITH THE USE OF AN ACID THAT IS NOT CONTAMINATED BY
LEAD,
16 INCLUDING ANALYTICAL REAGENT GRADE DIGESTION ACIDS AND REAGENT
GRADE
17 DEIONIZED WATER.
18 (E) METHOD BLANKS, CONSISTING OF ALL REAGENTS USED IN SAMPLE
PREPARA-
19 TION HANDLED, DIGESTED, AND MADE TO VOLUME IN THE SAME EXACT
MANNER AND
20 IN THE SAME CONTAINER TYPE AS SAMPLES, SHALL BE TESTED WITH EACH
GROUP
21 OF TWENTY OR FEWER SAMPLES TESTED.
22 (F) THE RESULTS FOR THE METHOD BLANKS SHALL BE REPORTED
WITH EACH
23 GROUP OF SAMPLE RESULTS, AND SHALL BE BELOW THE STATED REPORTING
LIMIT
24 FOR SAMPLE RESULTS TO BE CONSIDERED VALID.
25 2. IN ADDITION TO THE REQUIREMENTS OF SUBDIVISION 1 OF THIS
SECTION,
26 THE FOLLOWING PROCEDURES SHALL BE USED FOR TESTING THE FOLLOWING
MATE-
27 RIALS:
28 (A) FOR TESTING A METAL PLATED WITH SUITABLE UNDERCOATS AND
FINISH
29 COATS, THE FOLLOWING PROTOCOLS SHALL BE OBSERVED:
30 (1) DIGESTION SHALL BE CONDUCTED USING HOT CONCENTRATED NITRIC
ACID
31 WITH THE OPTION OF USING HYDROCHLORIC ACID OR HYDROGEN PEROXIDE.
32 (2) THE SAMPLE SIZE SHALL BE 0.050 GRAM TO ONE GRAM.
33 (3) THE DIGESTED SAMPLE MAY REQUIRE DILUTION PRIOR TO ANALYSIS.
34 (4) THE DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED
DETECTION
35 LIMIT NO GREATER THAN 0.1 PERCENT FOR SAMPLES.
36 (5) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT
MEASUREMENTS
37 ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.
38 (B) FOR TESTING UNPLATED METAL AND METAL SUBSTRATES THAT ARE
NOT A
39 CLASS 1 MATERIAL THE FOLLOWING PROTOCOLS SHALL BE OBSERVED:
40 (1) DIGESTION SHALL BE CONDUCTED USING HOT CONCENTRATED NITRIC
ACID
41 WITH THE OPTION OF USING HYDROCHLORIC ACID AND HYDROGEN PEROXIDE.
42 (2) THE SAMPLE SIZE SHALL BE 0.050 GRAM TO ONE GRAM.
43 (3) THE DIGESTED SAMPLE MAY REQUIRE DILUTION PRIOR TO ANALYSIS.
44 (4) THE DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED
DETECTION
45 LIMIT NO GREATER THAN 0.01 PERCENT FOR SAMPLES.
46 (5) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT
MEASUREMENTS
47 ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.
48 (C) FOR TESTING POLYVINYL CHLORIDE (PVC), THE FOLLOWING
PROTOCOLS

49 SHALL BE OBSERVED:
50 (1) THE DIGESTION SHALL BE CONDUCTED USING HOT CONCENTRATED
NITRIC
51 ACID WITH THE OPTION OF USING HYDROCHLORIC ACID AND HYDROGEN
PEROXIDE.
52 (2) THE SAMPLE SIZE SHALL BE A MINIMUM OF 0.05 GRAM IF USING
MICROWAVE
53 DIGESTION OR 0.5 GRAM IF USING HOTPLATE DIGESTION, AND SHALL BE
CHOPPED
54 OR COMMINUTED PRIOR TO DIGESTION.
55 (3) DIGESTED SAMPLES MAY REQUIRE DILUTION PRIOR TO ANALYSIS.

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1 (4) DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED DETECTION
LIMIT NO
2 GREATER THAN 0.001 PERCENT (TEN PARTS PER MILLION) FOR SAMPLES.
3 (5) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT
MEASUREMENTS
4 ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.
5 (D) FOR TESTING PLASTIC OR RUBBER THAT IS NOT POLYVINYL
CHLORIDE
6 (PVC), INCLUDING ACRYLIC, POLYSTYRENE, PLASTIC BEADS, OR PLASTIC
STONES,
7 THE FOLLOWING PROTOCOLS SHALL BE OBSERVED:
8 (1) THE DIGESTION SHALL BE CONDUCTED USING HOT CONCENTRATED
NITRIC
9 ACID WITH THE OPTION OF USING HYDROCHLORIC ACID OR HYDROGEN
PEROXIDE.
10 (2) THE SAMPLE SIZE SHALL BE A MINIMUM OF 0.05 GRAM IF USING
MICROWAVE
11 DIGESTION OR 0.5 GRAM IF USING HOTPLATE DIGESTION, AND SHALL BE
CHOPPED
12 OR COMMINUTED PRIOR TO DIGESTION.
13 (3) PLASTIC BEADS OR STONES SHALL BE CRUSHED PRIOR TO DIGESTION.
14 (4) DIGESTED SAMPLES MAY REQUIRE DILUTION PRIOR TO ANALYSIS.
15 (5) DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED DETECTION
LIMIT NO
16 GREATER THAN 0.001 PERCENT (TEN PARTS PER MILLION) FOR SAMPLES.
17 (6) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT
MEASUREMENTS
18 ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.
19 (E) FOR TESTING COATINGS ON GLASS AND PLASTIC PEARLS, THE
FOLLOWING
20 PROTOCOLS SHALL BE OBSERVED:
21 (1) THE COATING OF GLASS OR PLASTIC BEADS SHALL BE SCRAPED
ONTO A
22 SURFACE FREE OF DUST, INCLUDING A CLEAN WEIGHING PAPER OR PAN,
USING A
23 CLEAN STAINLESS STEEL RAZOR BLADE OR OTHER CLEAN SHARP
INSTRUMENT THAT
24 WILL NOT CONTAMINATE THE SAMPLE WITH LEAD. THE SUBSTRATE PEARL
MATERIAL
25 SHALL NOT BE INCLUDED IN THE SCRAPINGS.
26 (2) THE RAZOR BLADE OR SHARP INSTRUMENT SHALL BE RINSED WITH
DEIONIZED

27 WATER, WIPE TO REMOVE PARTICULATE MATTER, RINSED AGAIN, AND
DRIED
28 BETWEEN SAMPLES.
29 (3) THE SCRAPINGS SHALL BE WEIGHED AND NOT LESS THAN FIFTY
MICROGRAMS
30 OF SCRAPED COATING SHALL BE USED FOR ANALYSIS. IF LESS THAN FIFTY
MICRO-
31 GRAMS OF SCRAPED COATING IS OBTAINED FROM AN INDIVIDUAL PEARL,
MULTIPLE
32 PEARLS FROM THAT SAMPLE SHALL BE SCRAPED AND COMPOSITED TO
OBTAIN A
33 SUFFICIENT SAMPLE AMOUNT.
34 (4) THE NUMBER OF PEARLS USED TO MAKE THE COMPOSITE SHALL BE
NOTED.
35 (5) THE SCRAPINGS SHALL BE DIGESTED ACCORDING TO EPA REFERENCE
METHOD
36 3050B OR 3051 OR AN EQUIVALENT PROCEDURE FOR HOT ACID DIGESTION IN
PREP-
37 ARATION FOR TRACE LEAD ANALYSIS.
38 (6) THE DIGESTATE SHALL BE DILUTED IN THE MINIMUM VOLUME
PRACTICAL FOR
39 ANALYSIS.
40 (7) THE DIGESTED SAMPLE SHALL BE ANALYZED ACCORDING TO
SPECIFICATION
41 OF AN APPROVED AND VALIDATED METHODOLOGY FOR INDUCTIVELY COUPLED
PLASMA
42 MASS SPECTROMETRY.
43 (8) A REPORTING LIMIT OF 0.001 PERCENT (TEN PARTS PER MILLION)
IN THE
44 COATING SHALL BE OBTAINED FOR THE ANALYSIS.
45 (9) THE SAMPLE RESULT SHALL BE REPORTED WITHIN THE CALIBRATED
RANGE OF
46 THE INSTRUMENT. IF THE INITIAL TEST OF THE SAMPLE IS ABOVE THE
HIGHEST
47 CALIBRATION STANDARD, THE SAMPLE SHALL BE DILUTED AND REANALYZED
WITHIN
48 THE CALIBRATED RANGE OF THE INSTRUMENT.
49 (F) FOR TESTING DYES, PAINTS, COATINGS, VARNISH, PRINTING INKS,
CERAM-
50 IC GLAZES, GLASS, OR CRYSTAL, THE FOLLOWING TESTING PROTOCOLS
SHALL BE
51 OBSERVED:
52 (1) THE DIGESTION SHALL USE HOT CONCENTRATED NITRIC ACID
WITH THE
53 OPTION OF USING HYDROCHLORIC ACID OR HYDROGEN PEROXIDE.
54 (2) THE SAMPLE SIZE SHALL BE NOT LESS THAN 0.050 GRAM, AND
SHALL BE
55 CHOPPED OR COMMINUTED PRIOR TO DIGESTION.
56 (3) THE DIGESTED SAMPLE MAY REQUIRE DILUTION PRIOR TO ANALYSIS.

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1 (4) THE DIGESTION AND ANALYSIS SHALL ACHIEVE A REPORTED
DETECTION
2 LIMIT NO GREATER THAN 0.001 PERCENT (TEN PARTS PER MILLION) FOR
SAMPLES.

3 (5) ALL NECESSARY DILUTIONS SHALL BE MADE TO ENSURE THAT
MEASUREMENTS
4 ARE MADE WITHIN THE CALIBRATED RANGE OF THE ANALYTICAL INSTRUMENT.
5 (G) FOR TESTING GLASS AND CRYSTAL USED IN CHILDREN'S
JEWELRY, THE
6 FOLLOWING TESTING PROTOCOLS FOR DETERMINING WEIGHT SHALL BE USED:
7 (1) A COMPONENT SHALL BE FREE OF ANY EXTRANEOUS MATERIAL,
INCLUDING
8 ADHESIVE, BEFORE IT IS WEIGHED.
9 (2) THE SCALE USED TO WEIGH A COMPONENT SHALL BE CALIBRATED
IMMEDIATE-
10 LY BEFORE THE COMPONENTS ARE WEIGHED USING S-CLASS WEIGHTS OF
ONE AND
11 TWO GRAMS, AS CERTIFIED BY THE NATIONAL INSTITUTE OF STANDARDS AND
TECH-
12 NOLOGY (NIST) OF THE DEPARTMENT OF COMMERCE.
13 (3) THE CALIBRATION OF THE SCALE SHALL BE ACCURATE TO
WITHIN 0.01
14 GRAM.
15 3. THE COMMISSIONER MAY PROMULGATE RULES AND/OR REGULATIONS
MODIFYING
16 THE TESTING PROTOCOLS SPECIFIED IN SUBDIVISIONS ONE AND TWO
OF THIS
17 SECTION, AS SUCH COMMISSIONER DEEMS NECESSARY TO FURTHER THE
PURPOSES OF
18 THIS SECTION.
19 S 4. The environmental conservation law is amended by adding
a new
20 section 71-3711 to read as follows:
21 S 71-3711. ENFORCEMENT OF SECTION 37-0113.
22 1. ANY PERSON WHO VIOLATES ANY PROVISION OF OR FAILS TO
PERFORM ANY
23 DUTY IMPOSED BY SECTION 37-0113 OF THIS CHAPTER SHALL UPON THE
FIRST
24 FINDING OF SUCH A VIOLATION BE LIABLE FOR A CIVIL PENALTY NOT TO
EXCEED
25 FIVE HUNDRED DOLLARS FOR EACH VIOLATION. ANY PERSON
CONVICTED OF A
26 SECOND OR SUBSEQUENT VIOLATION SHALL BE LIABLE FOR A CIVIL
PENALTY NOT
27 TO EXCEED TWENTY-FIVE HUNDRED DOLLARS FOR EACH VIOLATION.
28 2. PENALTIES UNDER THIS SECTION SHALL BE ASSESSED BY THE
COMMISSIONER
29 AFTER A HEARING PURSUANT TO THE PROVISIONS OF SECTION 71-1709 OF
THIS
30 ARTICLE. IN ASSESSING THE PENALTY UNDER THIS SECTION, THE
COMMISSIONER
31 SHALL CONSIDER: THE NATURE AND EXTENT OF THE VIOLATION; THE
NUMBER AND
32 SEVERITY OF THE VIOLATIONS; THE ECONOMIC EFFECT OF THE PENALTY
ON THE
33 VIOLATOR; WHETHER THE VIOLATOR TOOK GOOD FAITH MEASURES TO COMPLY
WITH
34 THIS CHAPTER; THE WILLFULNESS OF THE VIOLATOR'S MISCONDUCT; THE
DETER-
35 RENT EFFECT THAT THE IMPOSITION OF THE PENALTY WOULD HAVE ON
BOTH THE

36 VIOLATOR AND THE REGULATED COMMUNITY AS A WHOLE; AND OTHER
FACTORS THAT
37 THE COMMISSIONER DEEMS APPROPRIATE AND RELEVANT. ANY PERSON
FOUND TO
38 HAVE VIOLATED SECTION 37-0113 OF THIS CHAPTER MAY BE
ENJOINED FROM
39 CONTINUING SUCH VIOLATION.
40 3. ALL CIVIL PENALTIES AND FINES COLLECTED FOR ANY
VIOLATION OF
41 SECTION 37-0113 OF THIS CHAPTER SHALL BE PAID OVER TO THE
COMMISSIONER
42 FOR DEPOSIT IN THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED BY
SECTION
43 NINETY-TWO-S OF THE STATE FINANCE LAW.
44 4. (A) NO CHARGE OF A VIOLATION OF THE PROVISIONS OF, OR
FAILURE TO
45 PERFORM A DUTY IMPOSED BY SECTION 37-0113 OF THIS CHAPTER SHALL BE
BASED
46 UPON EXCESSIVE LEAD CONTENT EXCEPT UPON A SHOWING THAT THE
LABORATORY
47 TESTS ESTABLISHING SUCH EXCESSIVE LEAD CONTENT WERE PERFORMED BY A
LABO-
48 RATORY THAT COMPLIES WITH THE TESTING REQUIREMENTS
ESTABLISHED BY
49 SECTION 37-0115 OF THIS CHAPTER.
50 (B) A PERSON CHARGED WITH A VIOLATION OF THE PROVISIONS OF, OR
FAILURE
51 TO PERFORM A DUTY IMPOSED BY SECTION 37-0113 OF THIS CHAPTER
SHALL BE
52 PROVIDED WITH ALL SUPPORTING DOCUMENTATION RELATED TO THE TESTING
OF THE
53 JEWELRY, INCLUDING, BUT NOT LIMITED TO, DOCUMENTATION OF THE
PROCEDURES
54 UTILIZED BY THE LABORATORY, COPIES OF ALL TEST RESULTS, EXEMPLARS
OF THE
55 PRODUCTS TESTED TO THE EXTENT PRACTICABLE, AND SUCH OTHER
DOCUMENTATION

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1 AND EVIDENCE WHICH SHALL REASONABLY BE REQUIRED TO VERIFY THE
ACCURACY
2 OF THE TEST RESULTS.
3 S 5. The general business law is amended by adding a new
section 399-
4 gg to read as follows:
5 S 399-GG. LABELING OF JEWELRY. 1. NO PERSON, FIRM OR CORPORATION
SHALL
6 SELL OR OFFER FOR SALE ANY JEWELRY, AS DEFINED BY SECTION 37-0113
OF THE
7 ENVIRONMENTAL CONSERVATION LAW, UNLESS THERE IS PRINTED ON THE
PACKAGE
8 IN WHICH SUCH JEWELRY IS SOLD OR OFFERED FOR SALE A CONSPICUOUS
NOTICE
9 STATING THE PERCENTAGE OF LEAD CONTAINED IN SUCH JEWELRY. ANY
JEWELRY

10 CONTAINING MORE THAN 0.02 PERCENT (TWO HUNDRED PARTS PER
MILLION) LEAD
11 BY WEIGHT SHALL CONTAIN A WARNING LABEL, PROMINENTLY DISPLAYED,
WHICH
12 STATES, "CONTAINS LEAD WHICH MAY BE HARMFUL TO YOUR HEALTH. NOT
TO BE
13 USED BY CHILDREN UNDER THE AGE OF SIX."
14 2. ANY VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL
PENAL-
15 TY NOT TO EXCEED FIVE HUNDRED DOLLARS.
16 S 6. This act shall take effect immediately; provided, however
that
17 section five of this act shall take effect March 1, 2009.