

MAINE STATE LEGISLATURE

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Date: 4/4/18

L.D. 2053
(Filing No. H-930)

HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1437, L.D. 2053, Bill, "An Act To Ensure That Children's Toys and Products Are Free of Lead"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'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.

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- 1 D. "Children's lunch box" means a fabricated container marketed or intended for use
2 to carry food or drink for consumption by a child.
- 3 E. "Children's product" means a product that is marketed for use by a child or the use
4 of which by a child is foreseeable, including but not limited to a toy, child care
5 article, children's lunch box or children's jewelry.
- 6 F. "Lead-containing children's product" means a children's product that:
- 7 (1) Contains lead in the aggregate, excluding lead in a paint or surface coating, at
8 more than .009% of the total weight or is made with a product component
9 containing lead at more than .009% of the total weight of the product component,
10 except that if the product or product component lead level is preempted by
11 federal law then the federal standard for lead level governs; or
- 12 (2) Is coated with a paint or surface coating with a lead content that exceeds the
13 Consumer Product Safety Commission safety rule as established in 16 Code of
14 Federal Regulations, Part 1303, as amended.
- 15 G. "Toy" means a product designed and made for the amusement of a child or for the
16 child's use in play.
- 17 **2. Restriction.** Beginning July 1, 2009, a person may not manufacture, or
18 knowingly sell, distribute or offer for sale or distribution, a lead-containing children's
19 product except as provided in subsection 3.
- 20 **3. Exception.** The restrictions imposed in subsection 2 do not apply to consumer
21 electronic products in which the lead-containing component is inaccessible to children,
22 including but not limited to electronic toys, personal computers, audio and video
23 equipment, calculators, wireless telephones, game consoles and hand-held electronic and
24 electrical devices that incorporate a video screen used to access interactive software, and
25 their related devices.
- 26 **4. Enforcement.** This section may be enforced in a civil action brought by the
27 Attorney General under the Maine Unfair Trade Practices Act, except that the following
28 provisions apply as penalties for violations of this section.
- 29 A. For the first violation by a manufacturer a warning must be given instead of an
30 enforcement by the Attorney General if the employer has the equivalent of 25 or
31 fewer full-time, year-round employees.
- 32 B. For all other violations the following provisions apply as penalties for violations
33 of this section.
- 34 (1) For the first violation of this section, the penalty is not more than \$100 per
35 children's product manufactured, sold, distributed or offered for sale or
36 distribution, with the total penalty not to exceed \$5,000.
- 37 (2) For a 2nd violation of this section, the penalty is not more than \$500 per
38 children's product manufactured, sold, distributed or offered for sale or
39 distribution, with the total penalty not to exceed \$25,000.

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1 (3) For a 3rd or subsequent violation of this section, the penalty is not more than
2 \$1,000 per children's product manufactured, sold, distributed or offered for sale
3 or distribution, with the total penalty not to exceed \$50,000.

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

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

10 **Sec. 2. Report.** The Department of Health and Human Services, Maine Center for
11 Disease Control and Prevention shall report to the joint standing committee of the
12 Legislature having jurisdiction over health and human services matters by January 15,
13 2010 regarding lead in children's toys and products. The report must include
14 developments on the federal level and in other states with regard to protecting children
15 from lead poisoning from children's toys and products, thresholds for lead in children's
16 toys and products and a summary of literature on lead poisoning from children's toys and
17 products. The joint standing committee may submit a bill to the Second Regular Session
18 of the 124th Legislature based on the report.

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

20 **SUMMARY**

21 This amendment replaces the bill. It restricts the manufacture and knowing sale and
22 distribution of lead-containing children's products through use of the federal performance
23 standard for paintings and coatings and a content lead level established at .009% of the
24 total weight or the federal standard if state law is preempted by federal law. It provides
25 an exception for consumer electronic products in which the lead-containing component is
26 inaccessible to children. It states that a first violation by a manufacturer that is a small
27 employer is enforced through a warning. It provides for enforcement by the Attorney
28 General and penalties that are to be paid to the Lead Poisoning Prevention Fund. The
29 amendment requires a report on children's lead poisoning from toys and products by
30 January 15, 2010 and authorizes the joint standing committee of the Legislature having
31 jurisdiction over health and human services matters to submit a bill to the Second Regular
32 Session of the 124th Legislature. It provides an effective date of July 1, 2009.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



Approved: 04/03/08 *MAC*

123rd MAINE LEGISLATURE

LD 2053

LR 2746(02)

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

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Maine Center for Disease Control and Prevention in the Department of Health and Human Services and the Department of the Attorney General can be absorbed utilizing existing budgeted resources.