



Environmental Health Committee

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LRB096 17893 RPM 38633 a

1 AMENDMENT TO HOUSE BILL 5040

2 AMENDMENT NO. _____. Amend House Bill 5040 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Cadmium-Free Kids Act.

6 Section 5. Legislative findings. The General Assembly
7 finds:

8 (1) Research shows that children's jewelry containing
9 cadmium has been shown to cause harm to children's health and
10 the environment. Cadmium has been linked to long-term health
11 impacts, including birth defects, reproductive harm, impaired
12 learning, liver toxicity, and cancer.

13 (2) The scientific literature provides extensive evidence
14 that cadmium is a dangerous neurotoxicant that can damage the
15 human brain, internal organs, and nervous system.

16 (3) Because children's bodies are growing and developing,

1 they are especially vulnerable to the effects of toxic
2 chemicals.

3 (4) To protect children's health, it is important to phase
4 out the use of cadmium in children's jewelry and to determine
5 whether further action is required.

6 Section 10. Definitions. In this Act:

7 "Agency" means the Illinois Environmental Protection
8 Agency.

9 "Children's jewelry" means jewelry that is made for,
10 marketed for use by, or marketed to children under the age of
11 12 and includes jewelry that meets any of the following
12 conditions:

13 (1) represented in its packaging, display, or
14 advertising as appropriate for use by children under the
15 age of 12;

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

19 (3) sized for children and not intended for use by
20 adults; or

21 (4) sold in any of the following:

22 (i) a vending machine;

23 (ii) a retail store, catalogue, or online web site,
24 in which a person exclusively offers for sale products
25 that are packaged, displayed, or advertised as

1 appropriate for use by children; or
2 (iii) a discrete portion of a retail store,
3 catalogue, or online web site, in which a person offers
4 for sale products that are packaged, displayed, or
5 advertised as appropriate for use by children.

6 "Children's jewelry" does not include any product category
7 for which an existing federal standard regulates cadmium
8 exposure in surface coatings and accessible substance
9 materials as required under ASTM International Consumer Safety
10 Specification for Toy Safety, ASTM Standard F-963, or
11 subsequent versions of this standard.

12 "Distributor" means a person who sells products to retail
13 establishments on a wholesale basis.

14 "Manufacturer" means the person who manufactured a final
15 product or whose brand name is affixed to the product. In the
16 case of a product that was imported into the United States,
17 "manufacturer" includes the importer or domestic distributor
18 of the product if the person who manufactured or assembled the
19 product or whose brand name is affixed to the product does not
20 have a presence in the United States.

21 Section 15. Regulation of cadmium in children's jewelry.
22 Beginning July 1, 2011, no person may manufacture, knowingly
23 sell, offer for sale, distribute for sale, or distribute for
24 use in this State children's jewelry containing cadmium at more
25 than 0.004 percent by weight (40 parts per million).

1 Section 20. Interstate clearinghouse. The Agency is
2 authorized to participate, along with other states and
3 governmental entities, in an interstate clearinghouse to
4 promote safer chemicals in consumer products. The Agency may
5 cooperate with the interstate clearinghouse to (i) organize and
6 manage available data on chemicals, including information on
7 uses, hazards, environmental concerns, safer alternatives, and
8 model policies and programs, (ii) provide technical assistance
9 regarding chemical safety to businesses, consumers, and policy
10 makers, and (iii) undertake other activities in support of
11 State programs to promote chemical safety.

12 Section 25. Implementation and exemption.

13 (a) A manufacturer of children's jewelry restricted under
14 this Act must notify persons that sell the manufacturer's
15 products in this State about the provisions of this Act no less
16 than 90 days before the effective date of the restrictions. A
17 manufacturer that sells or distributes children's jewelry
18 prohibited from sale or distribution under this Act shall
19 recall the product and reimburse the retailer or any other
20 purchaser for the product.

21 (b) A retailer who unknowingly sells a product that is
22 restricted from sale under this Act is not liable under this
23 Act.

1 Section 30. Enforcement and penalties.

2 (a) The Attorney General is responsible for administering
3 and ensuring compliance with this Act, including the
4 development and adoption of any rules, if necessary, for the
5 implementation and enforcement of this Act.

6 (b) The Attorney General shall develop and implement a
7 process for receiving and handling complaints from individuals
8 regarding possible violations of this Act.

9 (c) The Attorney General may conduct any investigation
10 deemed necessary regarding possible violations of this Act
11 including, without limitation, the issuance of subpoenas to:

12 (i) require the filing of a statement or report or answer
13 interrogatories in writing as to all information relevant to
14 the alleged violations; (ii) examine under oath any person who
15 possesses knowledge or information directly related to the
16 alleged violations; and (iii) examine any record, book,
17 document, account, or paper necessary to investigate the
18 alleged violation.

19 (d) Service by the Attorney General of any notice requiring
20 a person to file a statement or report, or of a subpoena upon
21 any person, shall be made:

22 (1) personally by delivery of a duly executed copy
23 thereof to the person to be served or, if a person is not a
24 natural person, in the manner provided in the Code of Civil
25 Procedure when a complaint is filed; or

26 (2) by mailing by certified mail a duly executed copy

1 thereof to the person to be served at his or her last known
2 abode or principal place of business within this State.

3 (e) If the Attorney General determines that there is a
4 reason to believe that a violation of the Act has occurred,
5 then the Attorney General may bring an action in the name of
6 the People of the State to obtain temporary, preliminary, or
7 permanent injunctive relief for any act, policy, or practice
8 that violates this Act.

9 (f) If any person fails or refuses to file any statement or
10 report, or obey any subpoena, issued pursuant to subsection (c)
11 of this Section, then the Attorney General may proceed to
12 initiate a civil action pursuant to subsection (e) of this
13 Section, or file a complaint in the circuit court for the
14 granting of injunctive relief, including restraining the
15 conduct that is alleged to violate this Act until the person
16 files the statement or report, or obeys the subpoena.

17 (g) Relief that may be granted.

18 (1) In any civil action brought pursuant to subsection
19 (e) of this Section, the Attorney General may obtain as a
20 remedy, equitable relief (including any permanent or
21 preliminary injunction, temporary restraining order, or
22 other order, including an order enjoining the defendant
23 from engaging in a violation or ordering any action as may
24 be appropriate). In addition, the Attorney General may
25 request and the Court may impose a civil penalty in an
26 amount not to exceed \$50,000 for each violation. For

1 purposes of this subsection, each item and each standard
2 constitutes a separate violation.

3 (2) A civil penalty imposed or a settlement or other
4 payment made pursuant to this Act shall be made payable to
5 the Attorney General's State Projects and Court Ordered
6 Distribution Fund, which is created as a special fund in
7 the State Treasury. Money in the Fund shall be used,
8 subject to appropriation, for the performance of any
9 function pertaining to the exercise of the duties of the
10 Attorney General including but not limited to enforcement
11 of any law of this State, product testing, and conducting
12 public education programs.

13 (3) Any funds collected under this Section in an action
14 in which the State's Attorney has prevailed shall be
15 retained by the county in which he or she serves.

16 (h) The penalties and injunctions provided in this Act are
17 in addition to any penalties, injunctions, or other relief
18 provided under any other law. Nothing in this Act shall bar a
19 cause of action by the State for any other penalty, injunction,
20 or relief provided by any other law.

21 Section 90. The State Finance Act is amended by adding
22 Section 5.756 as follows:

23 (30 ILCS 105/5.756 new)

24 Sec. 5.756. The Attorney General's State Projects and Court

1 Ordered Distribution Fund.

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.".