

Proposed Local Law No. 3 Of 2016

County Of Ulster

A Local Law Protecting Children From Exposure To Toxic Chemicals (“The Children’s Product Safety Act”)

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. TITLE.

This Local Law shall be known by and may be cited as “The Children’s Product Safety Act.”

SECTION 2. LEGISLATIVE INTENT AND FINDINGS.

The County of Ulster strives to be a leader in protecting the health and safety of its residents, particularly children, who are the most vulnerable in our communities.

The Ulster County Legislature hereby finds and determines that there are chemicals of high concern for the environment and human health that can be found in everyday products, as has been determined by numerous authoritative government bodies, including the state of Maine, Article 38 MRSA Chapter 16-D, Toxic Chemicals in Children’s Products. Several of the chemicals of high concern listed in Maine’s law are known to be toxic and carcinogenic, including benzene, lead, mercury, antimony, arsenic, cobalt and cadmium. Several states, localities and the federal government are considering a ban on these seven chemicals in children’s products.

Many common children’s products contain one or more of the above named toxic and carcinogenic chemicals.

- Exposure to benzene can cause harmful effects to the blood and a decrease in red blood cells, and can cause cancer in humans.
- 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.
- 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.
- Antimony can cause respiratory and cardiovascular damage, skin disorders, and gastrointestinal disorders.

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- Arsenic is known to cause skin lesions, developmental delays, neurotoxicity, diabetes, and cardiovascular disease, as well as lung and other cancers.
- Cobalt, while an essential element as a constituent of vitamin B12, can cause cardiomyopathy and gastrointestinal effects from chronic exposure.
- Cadmium exposure can result in kidney disease, bronchiolitis, emphysema, and damage to the liver, lungs, bone, immune system, blood, and nervous system.

The Ulster County Legislature 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 adequate State or federal regulation on this subject.

The purpose of this law is to ban the sale of children’s products which contain certain levels of benzene, lead, mercury, antimony, arsenic, cadmium, or cobalt in the County of Ulster.

SECTION 3. 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 Ulster that sells children’s products.

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SECTION 4. TOXIC CONTENT RESTRICTIONS.

Upon the effective date of this Local Law, no retailer shall:

- A. Knowingly distribute, sell or offer for sale in the County of Ulster a children’s product containing benzene above 50 PPM of total content.
- B. Knowingly distribute, sell or offer for sale in the County of Ulster a children’s product containing mercury, antimony, arsenic or cobalt above 40 PPM of total content.
- C. Knowingly distribute, sell or offer for sale in the County of Ulster 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.
- D. Knowingly distribute, sell or offer for sale in the County of Ulster a children’s product containing cadmium above 75 PPM of total content.

SECTION 5. 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 6. ENFORCEMENT.

- A. This law shall be enforced by the Department of Health.

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B. Beginning on the effective date of this Local Law, the Department of Health 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 June 1, 2017. At each retailer, the Department will select no more than 10 children’s products for toxic content screening using an x-ray fluorescence analyzer.

D. 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 citation.

SECTION 7. RULES AND REGULATIONS.

A. The Commissioner of the Department of Health 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 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 8. PENALTIES.

A. Any retailer who knowingly violates the provisions of this law shall be subject to an initial civil penalty of five hundred dollars (\$500.00) per violation, with all subsequent violations subject to a civil penalty of one thousand dollars (\$1,000.00) per violation. Each violation shall constitute a separate and distinct offense.

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B. No penalties shall be imposed by the Department of Health 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 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 9. APPLICABILITY.

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

SECTION 10. 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 11. REVERSE PREEMPTION.

Whenever the Federal Government under the Consumer Product Safety Improvement Act, the Federal Hazardous Substances Act, or the Consumer Product Safety Act has issued a final rule setting a children’s product safety standard prescribing any requirements as to the performance, composition, contents, design finish, construction, packaging, or labeling that is in effect and enforceable and that applies to a risk of injury associated with such children’s

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product, including the presence of a specific chemical in a children’s product or the test methods required to be used determine conformance with the standard, the applicable Federal standard shall be used in lieu of the standards set forth in this Section for the specific chemical or product, unless the State of New York or the County of Ulster, as a political subdivision of the State, obtains a ruling from the Consumer Product Safety Commission that the standards established by the State or by the County in this section are exempt pursuant to the Consumer Product Safety Act, Title 15, Chapter 47, Section 2075 from the requirement of identity with the Federal standards.

SECTION 12. EFFECTIVE DATE.

This local law shall take effect nine months after its filing in the Office of the Secretary of State. Upon the date of filing in the Office of the Secretary of State, the Department of Health is authorized to implement rules and regulations for the timely implementation of this act on its effective date.