

Government Services & Administration
LAID ON DESKS 8/10/15
DISCUSSION ONLY 9/8/15

RESOLUTION NO. 2015216

RE: LOCAL LAW NO. OF 2015, THE CHILDREN'S PRODUCT SAFETY ACT OF
2015

Legislators TYNER, MACAVERY, FARLEY, STRAWINSKI, JETER-JACKSON,
IGNAFFO, and PERKINS offer the following and move its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No. of
2015, which has been submitted this day for consideration by said Legislature.

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 13TH day of October 2015, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 13th day of October 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

LOCAL LAW NO. OF 2015

RE: A LOCAL LAW AUTHORIZING THE CHILDREN'S PRODUCT SAFETY ACT OF 2015

BE IT ENACTED BY the County Legislature of the County of Dutchess, as follows:

Section 1. Legislative Intent.

The Legislature hereby finds and determines that there are chemicals of high concern for the environment and human health, as have been determined by many authorities, including the state of Maine Article 38 MRSA Chapter 16-D, *Toxic Chemicals in Children's Products*, as of September 1, 2011.

The Legislature finds that within this list of chemicals of high concern, several are known to be toxic and carcinogenic, including antimony, arsenic, benzene, cadmium, formaldehyde, lead, and mercury.

This Legislature finds and determines that many common children's products contain these toxic chemicals and known carcinogens.

The Legislature finds that antimony can cause respiratory and cardiovascular damage, skin disorders, and gastrointestinal disorders.

The Legislature finds that arsenic can cause skin lesion, cancer, developmental delays, neurotoxicity, diabetes, cardiovascular disease, and lung cancer.

The Legislature finds that exposure to benzene can cause harmful effects to the blood, a decrease in red blood cells, and causes cancer in humans.

The Legislature finds that cadmium can result in kidney disease, bronchiolitis, emphysema, and damage to the liver, lungs, bone, immune system, blood, and nervous system.

The Legislature finds that formaldehyde can cause respiratory damage, lung and nasopharyngeal cancer, nasal squamous cell cancer, gastrointestinal disorders, inflammation, and ulceration of the mouth, esophagus, and stomach.

The Legislature finds that lead can contaminate drinking water supplies and cause brain damage, hyperactivity, anemia, liver and kidney damage, developmental delays, and even death.

The Legislature finds that mercury can contaminate fish and other wildlife and cause damage to brain development, impacts on cognitive thinking, a decrease in fine motor and visual special skills, and muscle weakness.

This Legislature further finds and determines that several states, localities and the federal government are considering a ban on these seven chemicals in children's products; Westchester, Suffolk, Rockland, and Albany counties have already banned toxic toys.

This Legislature finds that, in the absence of such Federal and New York State enacted laws, Dutchess County 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.

Therefore, the purpose of this local law is to protect infants and young children from their harmful health effects.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

A) "Children's Apparel" means any item of clothing that consists of fabric or related material intended or promoted for use in children's clothing. Children's apparel does not mean protective equipment designed to prevent injury, including, but not limited to, bicycle helmets, knee pads, or elbow pads.

B) "Children's Product" means any product primarily intended for, made for, or marketed for use by children. Children's product does not mean batteries, consumer electronics, paper products, or a drug, biologic, medical device, food, food additive regulated by the US Food and Drug Administration, or pesticide regulated by the United States Environmental Protection Agency.

C) "Children" means a person or persons aged twelve and under.

D) "Person" means any individual, public or private corporation, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

Section 3. Prohibitions.

A) No person shall distribute, sell, or offer for sale in the County of Dutchess a children's product or children's apparel containing mercury, antimony, or arsenic above 40 parts per million of total content per chemical.

B) No person shall distribute, sell, or offer for sale in the County of Dutchess a children's product or children's apparel containing lead above 100 parts per million of total lead content in accessible parts or above 90 parts per million in paint or any similar surface coating. This provision shall not apply to a children's product solely based on its containing an enclosed battery or enclosed electronic components.

C) No person shall distribute, sell or offer for sale in the County of Dutchess a children's product or children's apparel containing cadmium above 75 parts per million of total cadmium content.

D) No person shall distribute, sell or offer for sale in the County of Dutchess a children's product or children's apparel containing over a practical quantification limit of formaldehyde, as determined by the Dutchess County Health Commissioner.

Section 4. Enforcement.

This law shall be enforced by the Dutchess County Department of Health in accordance with the provisions of the Dutchess County Charter and Code.

Section 5. Authority to Promulgate Rules and Regulations.

The Commissioner of the Dutchess County Department of Health is hereby authorized and empowered to promulgate such rules and regulations as he or she deems necessary to implement this law. The Dutchess County Health Department shall initiate educational programs for consumers and retailers about the provisions of this law.

Section 6. Penalties.

Any person who knowingly violates the provisions of this law or reasonably should know that he/she is in violation of the provisions of this law shall be subject to an initial civil penalty of five hundred dollars (\$500) per violation of the law and a subsequent penalty of one thousand dollars (\$1,000) per violation.

No penalties shall be imposed by the Dutchess County 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.

Section 7. Applicability.

A) The provisions of this title shall apply to chemicals in children's products sold or distributed as new and does not apply to used children's products that are sold or distributed for free at secondhand stores, yard sales, on the internet, or donated to charities.

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 requirements of this law shall apply to motor vehicles or their component parts, or off-highway motorcycles or their component parts, except that the sale of detachable car seats containing the chemicals antimony, arsenic, benzene, cadmium, formaldehyde, lead, or mercury, is not exempt.

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

Section 8. 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 9. Reverse Preemption.

This article shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Dutchess. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Section 10. State Environmental Quality Review Act compliance.

This County Legislature determines that the foregoing action constitutes a "Type II action" as said term is defined in the State Environmental Quality Review Act ("SEQRA"), and that no further action with respect to same is required under SEQRA.

Section 11. Effective Date.

This law shall take effect one year following its filing in the Office of the New York State Secretary of State.

CHILDREN'S PRODUCT SAFETY ACT OF 2015

(to ban toxic toys)

No Fiscal Impact

FISCAL IMPACT STATEMENT

APPROPRIATION RESOLUTIONS

Total Current Year Cost (annual) \$ \$50,000 (note: not to be implemented until 2016!)
 Total Current Year Revenue and Source: \$ \$50,000 (savings/revenue from Medicaid (tourism))
 Source of County Funds (check one): Existing Appropriations

- Contingency
- Transfer of Existing Appropriations
- Additional Appropriations
- Other (explain)

Identify Line Item (s):
 Related Expenses:

DC90H

P-210 A. 4010. 29 line 4117 Environmental Supplies
 (1010 line) toys to test = \$50,000
 XRF Analyzer, staffing
 \$35,000 + \$10,000 + \$5,000

Nature of Expenses:

Anticipated Savings to County:

\$50,000

(revenue savings from less Medicaid costs, increased sales tax revenue from tourism)

Net county Cost (this year):

\$ 0

(over five years):

\$ 0

\$25,000

\$25,000

Additional comments:

COST
REvenue
NEUTRAL!

Fact: The Westchester, Rockland, and Suffolk County legislatures all voted unanimously this year to ban toxic toys - Albany County too (even Rob Astorino signed this into law in Westchester) - let's not hold progress back in Dutchess!