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AMENDED IN ASSEMBLY JUNE 1, 2005

AMENDED IN ASSEMBLY APRIL 19, 2005

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1681

**Introduced by Assembly Member Pavley
(Coauthors: Assembly Members Chan and Goldberg)**

February 22, 2005

An act to add Article 10.1.1 (commencing with Section 25214.1) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to toxic substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 1681, as amended, Pavley. Lead-containing jewelry.

Existing hazardous waste control laws regulate the disposal of discarded appliances, lead acid batteries, small household batteries, recyclable latex paint, and household hazardous waste, except as provided in the hazardous waste control laws and regulations. The Department of Toxic Substances Control (*department*) is required to enforce those hazardous waste *control* laws. *Existing law provides for the Hazardous Waste Control Account in the General Fund and authorizes the funds deposited in that account to be expended, upon appropriation by the Legislature, for specified purposes, including the*

administration and implementation of the hazardous waste control laws by the department.

This bill would prohibit a person, on and after March 1, 2008, from manufacturing, shipping, selling, or offering for sale jewelry for retail sale in the state, unless the jewelry is made entirely from specified materials. The bill would also prohibit any person, on and after September 1, 2007, from taking those actions with regard to children’s jewelry, as defined, unless the children’s jewelry is made entirely from certain specified materials.

The bill would also prohibit a person, on and after March 1, 2008, from manufacturing, shipping, selling, or offering for sale body piercing jewelry, as defined, for retail sale in the state unless it is made from specified materials.

The bill would provide that a party to a specified amended consent judgment or to a consent judgment entered in a specified consolidated action is deemed to be in compliance with the bill’s provisions, and would require any action brought against that party to be subject to the amended consent judgment.

The bill would exclude a person who violates these prohibitions from the criminal penalties imposed pursuant to the hazardous waste control laws and would instead provide that a person who violates those prohibitions would be liable for a civil penalty not to exceed \$2,500 per day for each violation. The bill would require all civil penalties collected be deposited in the ~~Safe Drinking Water and Toxic Enforcement Fund~~ *Hazardous Waste Control Account*, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce those prohibitions.

The bill would specify the testing methods and protocols for determining compliance with these prohibitions and would authorize the ~~Office of Environmental Health Hazard Assessment~~ *department* to adopt regulations that modify these testing protocols as it deems necessary to further the purposes of the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 10.1.1 (commencing with Section
- 2 25214.1) is added to Chapter 6.5 of Division 20 of the Health and
- 3 Safety Code, to read:

1 Article 10.1.1. Lead-Containing Jewelry

2
3 25214.1. For purposes of this article, the following definitions
4 shall apply:

5 (a) *“Amended consent judgment” means the amended consent*
6 *judgment in the consolidated action entitled People vs.*
7 *Burlington Coat Factory Warehouse Corporation, et al.*
8 *(Alameda Superior Court Lead Case No. RG 04-162075) that*
9 *was entered by the court on June 15, 2006.*

10 ~~(a)~~

11 (b) *“Body piercing jewelry” means any part of jewelry that is*
12 *manufactured or sold for placement in a new piercing or a*
13 *mucous membrane, but does not include any part of that jewelry*
14 *that is not placed within a new piercing or a mucous membrane.*

15 ~~(b)~~

16 (c) *“Children” means children aged six and younger.*

17 ~~(c)~~

18 (d) *“Children’s jewelry” means jewelry that is made for,*
19 *marketed for use by, or marketed to, children. For purposes of*
20 *this article, children’s jewelry includes, but is not limited to,*
21 *jewelry that meets any of the following conditions:*

22 (1) *Represented in its packaging, display, or advertising, as*
23 *appropriate for use by children.*

24 (2) *Sold in conjunction with, attached to, or packaged together*
25 *with other products that are packaged, displayed, or advertised as*
26 *appropriate for use by children.*

27 (3) *Sized for children and not intended for use by adults.*

28 (4) *Sold in any of the following:*

29 (A) *A vending machine.*

30 (B) *Retail store, catalogue, or online Web site, in which a*
31 *person exclusively offers for sale products that are packaged,*
32 *displayed, or advertised as appropriate for use by children.*

33 (C) *A discrete portion of a retail store, catalogue, or online*
34 *Web site, in which a person offers for sale products that are*
35 *packaged, displayed, or advertised as appropriate for use by*
36 *children.*

37 ~~(d)~~

38 (e) (1) *“Class 1 material” means any of the following*
39 *materials:*

40 (A) *Stainless or surgical steel.*

- 1 (B) Karat gold.
- 2 (C) Sterling silver.
- 3 (D) Platinum, palladium, iridium, ruthenium, rhodium, or
- 4 osmium.
- 5 (E) Natural or cultured pearls.
- 6 (F) Glass, ceramic, or crystal decorative components,
- 7 including cat's eye, cubic zirconia, including cubic zirconium or
- 8 CZ, rhinestones, and cloisonne.
- 9 (G) A gemstone that is cut and polished for ornamental
- 10 purposes, except as provided in paragraph (2).
- 11 (H) Elastic, fabric, ribbon, rope, or string, unless it contains
- 12 intentionally added lead and is listed as a class 2 material.
- 13 (I) All natural decorative material, including amber, bone,
- 14 coral, feathers, fur, horn, leather, shell, wood, that is in its natural
- 15 state and is not treated in a way that adds lead.
- 16 (J) Adhesive.
- 17 (2) The following gemstones are not class 1 materials:
- 18 aragonite, bayldonite, boleite, cerussite, crocoite, ekanite,
- 19 linarite, mimetite, phosgenite, samarskite, vanadinite, and
- 20 wulfenite.
- 21 (e)
- 22 (f) "Class 2 material" means any of the following materials:
- 23 (1) Electroplated metal that meets the following standards:
- 24 (A) On and before August 30, 2009, a metal alloy with less
- 25 than 10 percent lead by weight that is electroplated with suitable
- 26 under and finish coats.
- 27 (B) On and after August 31, 2009, a metal alloy with less than
- 28 6 percent lead by weight that is electroplated with suitable under
- 29 and finish coats.
- 30 (2) Unplated metal with less than 1.5 percent lead that is not
- 31 otherwise listed as a class 1 material.
- 32 (3) Plastic or rubber, including acrylic, polystyrene, plastic
- 33 beads and stones, and polyvinyl chloride (PVC) that meets the
- 34 following standards:
- 35 (A) On and before August 30, 2009, less than 0.06 percent
- 36 (600 parts per million) lead by weight.
- 37 (B) On and after August 31, 2009, less than 0.02 percent (200
- 38 parts per million) lead by weight.
- 39 (4) A dye or surface coating containing less than 0.06 percent
- 40 (600 parts per million) lead by weight.

- 1 ~~(f)~~
2 (g) “Class 3 material” means any portion of jewelry that meets
3 both of the following criteria:
4 (1) Is not a class 1 or class 2 material.
5 (2) Contains less than 0.06 percent (600 parts per million) lead
6 by weight.
7 ~~(g)~~
8 (h) “Component” means any part of jewelry.
9 ~~(h)~~
10 (i) “EPA reference methods 3050B (Acid Digestion of
11 Sediments, ~~sludges and soils~~ *Sludges and Soils*) or 3051
12 (Microwave Assisted Digestion/ Sludge, Soils)” means those test
13 methods incorporated by reference in paragraph (11) of
14 subdivision (a) of Section 260.11 of Title 40 of the Code of
15 Federal Regulations.
16 ~~(i)~~
17 (j) “Jewelry” means any of the following:
18 (1) Any of the following ornaments worn by a person:
19 (A) An anklet.
20 (B) Arm cuff.
21 (C) Bracelet.
22 (D) Brooch.
23 (E) Chain.
24 (F) Crown.
25 (G) Cuff link.
26 (H) Decorated hair accessories.
27 (I) Earring.
28 (J) Necklace.
29 (K) Pin.
30 (L) Ring.
31 (M) Body piercing jewelry.
32 (2) Any bead, chain, link, pendant, or other component of an
33 ornament specified in paragraph (1).
34 ~~(j)~~
35 (k) (1) “Surface coating” means a fluid, semifluid, or other
36 material, with or without a suspension of finely divided coloring
37 matter, that changes to a solid film when a thin layer is applied to
38 a metal, wood, stone, paper, leather, cloth, plastic, or other
39 surface.

1 (2) “Surface coating” does not include a printing ink or a
2 material that actually becomes a part of the substrate, including,
3 but not limited to, pigment in a plastic article, or a material that is
4 actually bonded to the substrate, such as by electroplating or
5 ceramic glazing.

6 25214.2. (a) On and after March 1, 2008, a person shall not
7 manufacture, ship, sell, or offer for sale jewelry for retail sale in
8 the state unless the jewelry is made entirely from a class 1, class
9 2, or class 3 material, or any combination thereof.

10 (b) Notwithstanding subdivision (a), on and after September 1,
11 2007, a person shall not manufacture, ship, sell, or offer for sale
12 children’s jewelry for retail sale in the state unless the children’s
13 jewelry is made entirely from one or more of the following
14 materials:

15 (1) A nonmetallic material that is a class 1 material.

16 (2) A nonmetallic material that is a class 2 material.

17 (3) A metallic material that is either a class 1 material or
18 contains less than 0.06 percent (600 parts per million) lead by
19 weight.

20 (4) Glass or crystal decorative components that weigh in total
21 no more than one gram, excluding any glass or crystal decorative
22 component that contains less than 0.02 percent (200 parts per
23 million) lead by weight and has no intentionally added lead.

24 (5) Printing ink or ceramic glaze that contains less than 0.06
25 percent (600 parts per million) lead by weight.

26 (6) Class 3 material that contains less than 0.02 percent (200
27 parts per million) lead by weight.

28 (c) Notwithstanding subdivision (a), on and after March 1,
29 2008, a person shall not manufacture, ship, sell, or offer for sale
30 body piercing jewelry for retail sale in the state unless the body
31 piercing jewelry is made of one or more of the following
32 materials:

33 (1) Surgical implant stainless steel.

34 (2) Surgical implant grade of titanium.

35 (3) Niobium (Nb).

36 (4) Solid 14 karat or higher white or yellow nickel-free gold.

37 (5) Solid platinum.

38 (6) A dense ~~low-porosity~~ *low-porosity* plastic, including, but
39 not limited to, Tygon or Polytetrafluoroethylene (PTFE), if the
40 plastic contains no intentionally added lead.

1 25214.3. (a) Notwithstanding this chapter, a person who
2 violates this article shall not be subject to any criminal penalties
3 imposed pursuant to this chapter and shall only be subject to the
4 civil penalty specified in subdivision (b).

5 (b) (1) A person who violates this article shall be liable for a
6 civil penalty not to exceed two thousand five hundred dollars
7 (\$2,500) per day for each violation. That civil penalty may be
8 assessed and recovered in a civil action brought in any court of
9 competent jurisdiction.

10 (2) In assessing the amount of a civil penalty for a violation of
11 this article, the court shall consider all of the following:

12 (A) The nature and extent of the violation.

13 (B) The number of, and severity of, the violations.

14 (C) The economic effect of the penalty on the violator.

15 (D) Whether the violator took good faith measures to comply
16 with this article and the time these measures were taken.

17 (E) The willfulness of the violator's misconduct.

18 (F) The deterrent effect that the imposition of the penalty
19 would have on both the violator and the regulated community as
20 a whole.

21 (G) Any other factor that justice may require.

22 (c) All civil penalties collected pursuant to this article shall be
23 ~~deposited in the Safe Drinking Water and Toxic Enforcement~~
24 ~~Fund, created pursuant to Section 25249.12, for expenditure by~~
25 ~~deposited in the Hazardous Waste Control Account, for~~
26 ~~expenditure by the department, upon appropriation by the~~
27 ~~Legislature, to implement and enforce this article.~~

28 *(d) Notwithstanding subdivision (b), a party to the amended*
29 *consent judgment, or a party to a consent judgment entered in*
30 *the consolidated action entitled People vs. Burlington Coat*
31 *Factory Warehouse Corporation, et al. (Alameda Superior Court*
32 *Lead Case No. RG 04-162075) that contains identical or*
33 *substantially identical terms as provided in Sections 2, 3, and 4*
34 *of the amended consent judgment, shall be deemed to be in*
35 *compliance with this article, and any action brought to enforce*
36 *this article against the party shall be subject to Section 4 of the*
37 *amended consent judgment.*

38 25214.4. The testing methods for determining compliance
39 with this article shall be conducted using the EPA reference
40 methods 3050B or 3051 for the material being tested, except as

1 otherwise provided in Sections 24214.4.1 and 25214.4.2, and in
2 accordance with all of the following procedures:

3 (a) When preparing a sample, the laboratory shall make every
4 effort to assure that the sample removed from a jewelry piece is
5 representative of the component to be tested, and is free of
6 contamination from extraneous dirt and material not related to
7 the jewelry component to be tested.

8 (b) All jewelry component samples shall be washed prior to
9 testing using standard laboratory detergent, rinsed with
10 laboratory reagent grade deionized water, and dried in a clean
11 ambient environment.

12 (c) If a component is required to be cut or scraped to obtain a
13 sample, the metal snips, scissors, or other cutting tools used for
14 the cutting or scraping shall be made of stainless steel and
15 washed and rinsed before each use and between samples.

16 ~~(d) Except for glass, ceramic, and crystal in children's jewelry,~~
17 a

18 (d) A sample shall be digested in a container that is known to
19 be free of lead and with the use of an acid that is not
20 contaminated by lead, including analytical reagent grade
21 digestion acids and reagent grade deionized water.

22 ~~(f)~~

23 (e) Method blanks, consisting of all reagents used in sample
24 preparation handled, digested, and made to volume in the same
25 exact manner and in the same container type as samples, shall be
26 tested with each group of 20 or fewer samples tested.

27 ~~(g)~~

28 (f) The results for the method blanks shall be reported with
29 each group of sample results, and shall be below the stated
30 reporting limit for sample results to be considered valid.

31 25214.4.1. In addition to the requirements of Section
32 25214.4, the following procedures shall be used for testing the
33 following materials:

34 (a) For testing a metal plated with suitable undercoats and
35 finish coats, the following protocols shall be observed:

36 (1) Digestion shall be conducted using hot concentrated nitric
37 acid with the option of using hydrochloric acid or hydrogen
38 peroxide.

39 (2) The sample size shall be 0.050 gram to one gram.

40 (3) The digested sample may require dilution prior to analysis.

1 (4) The digestion and analysis shall achieve a reported
2 detection limit no greater than 0.1 percent for samples.

3 (5) All necessary dilutions shall be made to ~~assure~~ *ensure* that
4 measurements are made within the calibrated range of the
5 analytical instrument.

6 (b) For testing unplated metal and metal substrates that ~~is~~ *are*
7 not a class 1 material the following protocols shall be observed:

8 (1) Digestion shall be conducted using hot concentrated nitric
9 acid with the option of using hydrochloric acid and hydrogen
10 peroxide.

11 (2) The sample size shall be 0.050 gram to one gram.

12 (3) The digested sample may require dilution prior to analysis.

13 (4) The digestion and analysis shall achieve a reported
14 detection limit no greater than 0.01 percent for samples.

15 (5) All necessary dilutions shall be made to ~~assure~~ *ensure* that
16 measurements are made within the calibrated range of the
17 analytical instrument.

18 (c) For testing polyvinyl chloride (PVC), the following
19 protocols shall be observed:

20 (1) The digestion shall be conducted using hot concentrated
21 nitric acid with the option of using hydrochloric acid and
22 hydrogen peroxide.

23 (2) The sample size shall be a minimum of 0.05 gram if using
24 microwave digestion or 0.5 gram if using hotplate digestion, and
25 shall be chopped or comminuted prior to digestion.

26 (3) Digested samples may require dilution prior to analysis.

27 (4) Digestion and analysis shall achieve a reported detection
28 limit no greater than 0.001 percent (10 parts per million) for
29 samples.

30 (5) All necessary dilutions shall be made to ~~assure~~ *ensure* that
31 measurements are made within the calibrated range of the
32 analytical instrument.

33 (d) For testing plastic or rubber that is not polyvinyl chloride
34 (PVC), including acrylic, polystyrene, plastic beads, or plastic
35 stones, the following protocols shall be observed:

36 (1) The digestion shall be conducted using hot concentrated
37 nitric acid with the option of using hydrochloric acid or hydrogen
38 peroxide.

- 1 (2) The sample size shall be a minimum of 0.05 ~~grams~~ *gram* if
2 using microwave digestion or 0.5 gram if using hotplate
3 digestion, and shall be chopped or comminuted prior to digestion.
- 4 (3) Plastic beads or stones shall be crushed prior to digestion.
- 5 (4) Digested samples may require dilution prior to analysis.
- 6 (5) Digestion and analysis shall achieve a reported detection
7 limit no greater than 0.001 percent (10 parts per million) for
8 samples.
- 9 (6) All necessary dilutions shall be made to ~~assure~~ *ensure* that
10 measurements are made within the calibrated range of the
11 analytical instrument.
- 12 (e) For testing coatings on glass and plastic pearls, the
13 following protocols shall be observed:
- 14 (1) The coating of glass or plastic beads shall be scraped onto
15 a surface free of dust, including a clean weighing paper or pan,
16 using a clean stainless steel razor blade or other clean sharp
17 instrument that will not contaminate the sample with lead. The
18 substrate pearl material shall not be included in the scrapings.
- 19 (2) The razor blade or sharp instrument shall be rinsed with
20 deionized water, wiped to remove particulate matter, rinsed
21 again, and dried between samples.
- 22 (3) The scrapings shall be weighed and not less than 50
23 micrograms of scraped coating shall be used for analysis. If less
24 than 50 micrograms of scraped coating is obtained from an
25 individual pearl, multiple pearls from that sample shall be
26 scraped and composited to obtain a sufficient sample amount.
- 27 (4) The number of pearls used to make the composite shall be
28 noted.
- 29 (5) The scrapings shall be digested according to EPA
30 reference method 3050B or 3051 or an equivalent procedure for
31 hot acid digestion in preparation for trace lead analysis.
- 32 (6) The digestate shall be diluted in the minimum volume
33 practical for analysis.
- 34 (7) The digested sample shall be analyzed according to
35 specification of an approved and validated methodology for
36 inductively coupled plasma mass spectrometry.
- 37 (8) A reporting limit of 0.001 percent (10 parts per million) in
38 the coating shall be obtained for the analysis.
- 39 (9) The sample result shall be reported within the calibrated
40 range of the instrument. If the initial test of the sample is above

1 the highest calibration standard, the sample shall be diluted and
2 reanalyzed within the calibrated range of the instrument.

3 (f) For testing dyes, paints, coatings, varnish, printing inks,
4 ceramic glazes, glass, or crystal, the following testing protocols
5 shall be observed:

6 (1) The digestion shall use hot concentrated nitric acid with
7 the option of using hydrochloric acid or hydrogen peroxide.

8 (2) The sample size shall be not less than 0.050 gram, and
9 shall be chopped or comminuted prior to digestion.

10 (3) The digested sample may require dilution prior to analysis.

11 (4) The digestion and analysis shall achieve a reported
12 detection limit no greater than 0.001 percent (10 parts per
13 million) for samples.

14 (5) All necessary dilutions shall be made to ~~assure~~ *ensure* that
15 measurements are made within the calibrated range of the
16 analytical instrument.

17 (g) For testing glass and crystal used in children's jewelry, the
18 following testing protocols for determining weight shall be used:

19 (1) A component shall be free of any extraneous material,
20 including adhesive, before it is weighed.

21 (2) The scale used to weigh a component shall be calibrated
22 immediately before the components are weighed using S-class
23 weights of one and two grams, as certified by the National
24 Institute of Standards and Technology (NIST) of the Department
25 of Commerce.

26 (3) The calibration of the scale shall be accurate to within 0.01
27 gram.

28 25214.4.2. ~~The Office of Environmental Health Hazard~~
29 ~~Assessment~~ *department* may adopt regulations that modify the
30 testing protocols specified in Sections 25214.4 and 25214.4.1, as
31 it deems necessary to further the purposes of this article.