

AMENDED IN SENATE APRIL 6, 2011

SENATE BILL

No. 646

Introduced by Senator Pavley

February 18, 2011

An act to amend Section 25214.3 of the Health and Safety Code, relating to toxics.

LEGISLATIVE COUNSEL'S DIGEST

SB 646, as amended, Pavley. Toxics: enforcement: lead jewelry.

Existing law prohibits, on and after March 1, 2008, the manufacturing, shipping, selling, or offering for sale of jewelry, as defined, for retail sale in the state, unless the jewelry is made entirely from specified materials. Existing law also prohibits any person, on or after September 1, 2007, from taking those actions with regard to children's jewelry, as defined, unless the children's jewelry is made entirely of specified materials.

Existing law excludes a person who violates those prohibitions from the criminal penalties otherwise imposed pursuant to the hazardous waste control laws and instead provides that a person who violates those prohibitions is liable for a civil penalty not to exceed \$2,500 per day for each violation. Existing law specifies that a party that is a signatory to an amended consent judgment, or a party to a consent judgment entered in a specified consolidation action that contains certain terms is deemed to be in compliance with those provisions. Existing law requires these collected civil penalties to be deposited in the Hazardous Waste Control Account, for expenditure by the Department of Toxic Substances Control, upon appropriation by the Legislature, to implement and enforce those prohibitions.

This bill would ~~revise~~ *delete* those provisions ~~to specify~~ *specifying* that a party that is a signatory ~~as of January 1, 2012,~~ to the above-described amended consent judgment, or consent judgment enacted in a specified consolidation action ~~that contains certain terms is deemed to be in compliance with those provisions regulating the manufacturing, shipping, selling, or offering for sale of lead jewelry is deemed to be in compliance with those provisions.~~

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

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

1 SECTION 1. Section 25214.3 of the Health and Safety Code
2 is amended to read:
3 25214.3. (a) Except as provided in Sections 25214.3.3 and
4 25214.3.4, a person who violates this article shall not be subject
5 to criminal penalties imposed pursuant to this chapter and shall
6 only be subject to the administrative or civil penalty specified in
7 subdivision (b).
8 (b) (1) A person who violates this article shall be liable for an
9 administrative or a civil penalty not to exceed two thousand five
10 hundred dollars (\$2,500) per day for each violation. That
11 administrative or civil penalty may be assessed and recovered in
12 an administrative action filed with the Office of Administrative
13 Hearings or in a civil action brought in any court of competent
14 jurisdiction.
15 (2) In assessing the amount of an administrative or a civil
16 penalty for a violation of this article, the presiding officer or the
17 court, as applicable, shall consider all of the following:
18 (A) The nature and extent of the violation.
19 (B) The number of, and severity of, the violations.
20 (C) The economic effect of the penalty on the violator.
21 (D) Whether the violator took good faith measures to comply
22 with this article and the time these measures were taken.
23 (E) The willfulness of the violator's misconduct.
24 (F) The deterrent effect that the imposition of the penalty would
25 have on both the violator and the regulated community as a whole.
26 (G) Any other factor that justice may require.
27 (c) Administrative and civil penalties collected pursuant to this
28 article shall be deposited in the Toxic Substances Control Account,

1 for expenditure by the department, upon appropriation by the
2 Legislature, to implement and enforce this article, except as
3 provided in Section 25192.

4 ~~(d) (1) Notwithstanding subdivision (b), a party that is a~~
5 ~~signatory as of January 1, 2012, to the amended consent judgment,~~
6 ~~or a party that is a signatory as of January 1, 2012, to a consent~~
7 ~~judgment entered in the consolidated action entitled People vs.~~
8 ~~Burlington Coat Factory Warehouse Corporation, et al. (Alameda~~
9 ~~Superior Court Lead Case No. RG 04-162075) that contains~~
10 ~~identical or substantially identical terms as provided in Sections~~
11 ~~2, 3, and 4 of the amended consent judgment, shall not be subject~~
12 ~~to enforcement pursuant to this article, and an action brought to~~
13 ~~enforce this article against the party shall be subject to Section 4~~
14 ~~of the amended consent judgment.~~

15 ~~(2) The Legislature finds and declares that the amendment of~~
16 ~~this subdivision by Chapter 575 of the Statutes of 2008 is~~
17 ~~declaratory of existing law.~~

18 ~~(e)~~

19 *(d)* (1) For the purpose of administering and enforcing this
20 article, an authorized representative of the department, upon
21 obtaining consent or after obtaining an inspection warrant pursuant
22 to Title 13 (commencing with Section 1822.50) of Part 3 of the
23 Code of Civil Procedure, may, upon presenting appropriate
24 credentials and at a reasonable time, do any of the following:

25 (A) Enter a factory, warehouse, or establishment where jewelry
26 is manufactured, packed, held, or sold; enter a vehicle that is being
27 used to transport, hold, or sell jewelry; or enter a place where
28 jewelry is being held or sold.

29 (B) Inspect a factory, warehouse, establishment, vehicle, or
30 place described in subparagraph (A), and all pertinent equipment,
31 raw material, finished and unfinished materials, containers, and
32 labeling in the factory, warehouse, establishment, vehicle, or place.
33 In the case of a factory, warehouse, or establishment where jewelry
34 is manufactured, packed, held, or sold, this inspection shall include
35 any record, file, paper, process, control, and facility that has a
36 bearing on whether the jewelry is being manufactured, packed,
37 held, transported, sold, or offered for sale or for promotional
38 purposes in violation of this article.

39 (2) (A) An authorized representative of the department may
40 secure a sample of jewelry when taking an action authorized

1 pursuant to this subdivision. If the representative obtains a sample
2 prior to leaving the premises, he or she shall leave a receipt
3 describing the sample obtained.

4 (B) The department shall return, upon request, a sample that is
5 not destroyed during testing when the department no longer has
6 any purpose for retaining the sample.

7 (C) A sample that is secured in compliance with this section
8 and found to be in compliance with this article that is destroyed
9 during testing shall be subject to a claim for reimbursement.

10 (3) An authorized representative of the department shall have
11 access to all records of a carrier in commerce relating to the
12 movement in commerce of jewelry, or the holding of that jewelry
13 during or after the movement, and the quantity, shipper, and
14 consignee of the jewelry. A carrier shall not be subject to the other
15 provisions of this article by reason of its receipt, carriage, holding,
16 or delivery of jewelry in the usual course of business as a carrier.

17 (4) An authorized representative of the department shall be
18 deemed to have received implied consent to enter a retail
19 establishment, for purposes of this section, if the authorized
20 representative enters the location of that retail establishment where
21 the public is generally granted access.