

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2297

Introduced by Assembly Member Vargas

February 19, 2004

~~An act to add Chapter 5.5 (commencing with Section 105320) to Part 5 of Division 103 of the Health and Safety Code, relating to lead contamination of candy. An act to add a heading as Article 1 (commencing with Section 105275) to, and to add Article 2 (commencing with Section 105312) to, Chapter 5 of Part 5 of Division 102 of the Health and Safety Code, relating to imported candy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2297, as amended, Vargas. ~~Candy: maximum allowable lead levels~~ *Imported candy: lead contamination.*

Existing law, the Sherman Food, Drug, and Cosmetic Law, requires the State Department of Health Services to regulate manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act.

Under existing law, the State Department of Health Services is responsible for administering the Childhood Lead Poisoning Prevention Act of 1991. Existing law requires the department to establish a childhood lead poisoning prevention program to identify and conduct medical followup of high-risk children, and to establish procedures for environmental abatement and followup designed to reduce the incidence of excessive childhood lead exposures. Existing law requires the department to assess a fee for these purposes against persons who contributed to sources of lead contamination.

~~This bill would, in addition, require the department to monitor lead levels in candy sold or distributed in the state to determine the lead levels contained in the candy. The bill would require the department to establish maximum allowable lead levels for candy.~~

~~This bill would require the department, if it tests candy and determines that the candy exceeds the maximum allowable lead level, to issue health advisory notices to county health departments alerting them to the dangers posed by consumption of the candy, and to notify the manufacturer and distributor of the candy that the candy exceeds the maximum allowable lead level and that the candy may not be sold or distributed in the state unless further testing proves that the candy is in compliance with the maximum allowable lead level.~~

This bill would amend the Childhood Lead Poisoning Prevention Act of 1991 to require the department to use those fees, upon appropriation by the Legislature, to regulate the lead content of imported candy. The bill would require the department to test imported candy to determine the presence of lead, to issue related health advisories, to order removal of, and to embargo, imported candy found to contain lead. The bill would require the department to adopt related regulations and to form an interagency collaborative. The bill would authorize the department to enter into contracts with county health officers and to provide grants to environmental justice organizations.

By requiring enforcement of these provisions in part by county health officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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



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

1 ~~SECTION 1. The Legislature finds and declares that~~

2 SECTION 1. A heading is added as Article 1 (commencing
3 with Section 105275) to Chapter 5 of Part 5 of Division 102 of the
4 Health and Safety Code, to read:

5
6 Article 1. General

7
8 SEC. 2. Article 2 (commencing with Section 105312) is added
9 to Chapter 5 of Part 5 of Division 102 of the Health and Safety
10 Code, to read:

11
12 Article 2. Imported Candy

13
14 105312. (a) The department, as a component of its other
15 regulatory duties pursuant to this chapter, shall have jurisdiction
16 over the regulation of imported candy to ensure that the candy is
17 lead free.

18 (b) For the purposes of this chapter “candy” includes only
19 candy imported from a foreign country and its packaging or
20 wrapper.

21 (c) Funds deposited into the Childhood Lead Poisoning
22 Prevention Fund established pursuant to Section 105310 shall,
23 upon appropriation by the Legislature, be available to the
24 department for the purposes of this article.

25 105313. The department shall do all of the following:

26 (a) Establish a lead content standard of zero, or the lowest
27 detection limit, for imported candy.

28 (b) Establish a collaborative as set forth in Section 105314.

29 (c) Require the testing of imported candy to determine its lead
30 content. Priority shall be given to testing samples of imported
31 candy received by community-based organizations.

32 (d) Issue health advisories when candy has been found to
33 contain any detectible level of lead.

34 (e) Order local health officers to remove from selves of
35 retailers, any candy found to contain lead.

36 (f) Order an embargo against a manufacturer of candy that is
37 found to contain lead, until the manufacturer demonstrates that the
38 lead contamination no longer exists.

1 (g) Promote enforcement of this article by making the
2 elimination of lead in imported candy a major goal of its
3 Childhood Lead Poisoning Prevention Branch.

4 (h) Through its Childhood Lead Poisoning Prevention Branch,
5 enter into contracts with county health officers and county
6 environmental health officers to collect samples of imported candy
7 for submission to the Food and Drug Branch of the department for
8 testing pursuant to this article.

9 (i) Through its Food and Drug Branch, test the samples of
10 imported candy collected pursuant to this article.

11 (j) Through its Childhood Lead Poisoning Prevention Branch,
12 provide grants to between 5 and 10 environmental justice
13 organizations throughout the state to identify retail establishments
14 and imported candy for obtaining test samples. Pursuant to these
15 grants, the organization shall conduct inspections of retail
16 establishments to determine the presence of imported candy and
17 shall report its findings to the county health officer for the
18 collection and testing of samples pursuant to this chapter, and for
19 enforcement actions if banned candy is found. The organizations
20 shall conduct a media campaign as a central part of their public
21 education and outreach efforts under this article.

22 (k) Through its Childhood Lead Poisoning Prevention Branch,
23 draft, periodically update, and distribute a community flyer that
24 identifies all imported candy found to contain lead pursuant to this
25 article, for use by the department and by environmental justice
26 organizations to inform the public and to educate retailers.

27 (l) Adopt regulations necessary for the enforcement of this
28 article. Evaluate the regulatory process, identify problems, and
29 report to the Legislature, as necessary.

30 105314. (a) The department shall establish an interagency
31 collaborative on the lead content of imported candy to be
32 composed of the following members:

33 (1) The department, including its Childhood Lead Poisoning
34 Branch and its Food and Drug Branch.

35 (2) County health officers.

36 (3) Environmental health organizations receiving grants
37 pursuant to this article.

38 (4) Health ministers of affected foreign governments.

39 (5) Manufacturers of imported candy.

40 (6) Community-based organizations.



1 (b) The department, in consultation with its partners in the
2 collaborative, shall do all of the following:

3 (1) Identify the reasons for, and problems associated with, lead
4 contamination of imported candy.

5 (2) Identify obstacles to removal of lead from imported candy,
6 and develop strategies for overcoming the obstacles.

7 (3) Develop recommended feasible manufacturing process
8 shifts designed to result in lead-free candy.

9 SEC. 3. Notwithstanding Section 17610 of the Government
10 Code, if the Commission on State Mandates determines that this
11 act contains costs mandated by the state, reimbursement to local
12 agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code. If the statewide cost of the
15 claim for reimbursement does not exceed one million dollars
16 (\$1,000,000), reimbursement shall be made from the State
17 Mandates Claims Fund.

18 ~~dangerous lead levels have been found in candy.~~

19 ~~SEC. 2. Chapter 5.5 (commencing with Section 105320) is~~
20 ~~added to Part 5 of Division 103 of the Health and Safety Code, to~~
21 ~~read:~~

22
23 CHAPTER 5.5. LEAD IN CANDY

24
25 ~~105320. (a) The department shall monitor lead levels in all~~
26 ~~candy sold or distributed in the state. Monitoring shall include~~
27 ~~sampling and testing to determine the lead levels contained in the~~
28 ~~candy.~~

29 ~~(b) The department shall establish maximum allowable lead~~
30 ~~levels for all candy sold or distributed in the state. In establishing~~
31 ~~these levels, the department shall consider any relevant standards,~~
32 ~~guidelines, and information available from the federal Food and~~
33 ~~Drug Administration and the federal Centers for Disease Control~~
34 ~~and Prevention, and any other source that the department deems~~
35 ~~appropriate.~~

36 ~~(c) If the lead level in a candy that is tested by the department~~
37 ~~pursuant to subdivision (a) exceeds the maximum allowable lead~~
38 ~~level, the department shall do both of the following:~~

39 ~~(1) Issue health advisory notices to county health departments~~
40 ~~alerting them to the danger posed by consumption of the candy.~~



1 ~~(2) Notify the manufacturer and the distributor of the candy~~
2 ~~that the candy exceeds the maximum allowable lead level, and that~~
3 ~~the candy may not be sold or distributed in the state until further~~
4 ~~testing proves that the candy is in compliance with the maximum~~
5 ~~allowable lead level.~~
6 ~~(d) (1) If a candy exceeds the maximum allowable lead level,~~
7 ~~the manufacturer or distributor may correct the problem and~~
8 ~~resubmit the candy to the department for further testing.~~
9 ~~(2) If the lead content of the candy is below the maximum~~
10 ~~allowable lead level when it is retested, the department shall~~
11 ~~provide the manufacturer or distributor and the county health~~
12 ~~department with a letter stating that the candy has been retested and~~
13 ~~determined to contain less than the maximum allowable lead level~~
14 ~~established by the department, and that the sale and distribution of~~
15 ~~the candy in the state may resume.~~
16 ~~(3) If the candy still exceeds the maximum allowable lead level~~
17 ~~after it has been retested, the manufacturer or distributor may take~~
18 ~~corrective measures and continue to resubmit samples for testing~~
19 ~~until the candy's lead content is below the maximum allowable~~
20 ~~lead level if the manufacturer or distributor wishes to sell or~~
21 ~~distribute the candy in the state.~~

