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ACT OF THE GENERAL ASSEMBLY **2007-2008**

NO. 193. AN ACT RELATING TO PREVENTION OF LEAD POISONING BY EXPOSURE TO LEAD IN CONSUMER PRODUCTS.

(S.152)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Lead is highly toxic to humans, particularly to young children.

(2) Exposure to lead can cause irreversible damage that results in long−lasting, permanent neurological damage, such as decreases in I.Q. scores.

(3) Lead exposure has also been shown to be associated with school failure, delinquency, and criminal behavior.

(4) There is no safe level of lead for humans. Recent medical evidence has demonstrated that serious adverse health effects appear at extremely low blood levels. Moreover, the effects of lead exposure are cumulative, and exposure to a very small amount of lead dust over time can cause a serious increase in lead levels in blood.

(5) There are multiple sources of lead exposure, including lead-based paint; soil; certain children's products; water fixtures; and certain occupational environments.

(6) Although federal law limits the amount of lead in residential paint and in surface coatings on children's products, it does not set specific caps on lead in children's products generally or in other consumer products.

(7) There is no reason for children's products made with lead to be sold or marketed in Vermont, or for not taking reasonable steps to reduce lead in all consumer products.

Sec. 2. 9 V.S.A. chapter 63, subchapter 1C is added to read:

Subchapter 1C. Lead in Consumer Products

§ 2470e. DEFINITIONS

As used in this subchapter:

(1) "Children's product" means any consumer product marketed for use by children under the age of 12, or whose substantial use or handling by children under 12 years of age is reasonably foreseeable, including toys, furniture, jewelry, vitamins and other supplements, personal care products, clothing, food, and food containers and packaging.

(2)(A) "Contain or containing lead," unaccompanied by a specific standard, means containing or having a surface coating containing the following amount of lead by weight of lead or lead compound, unless the commissioner of health, in consultation with the attorney general by rule, reduces this percentage generally or with respect to specific products:

(i) 0.06 percent as of October 1, 2008;

(ii) 0.03 percent as of July 1, 2009; and

(iii) 0.01 percent as of January 1, 2010.

(B) If the standard set under this subsection is preempted by a federal standard as to any class of products, then "contain (or containing) lead," unaccompanied by a specific standard, means the lowest such federal standards and federal effective dates applicable to such a class of products.

(3) "Nonresidential paints and primers" does not mean artists' supplies.

§ 2470f. PROHIBITION OF LEAD IN CHILDREN'S PRODUCTS

Except to the extent specifically preempted by federal law, no person shall manufacture, regardless of location, for sale in, offer for sale, sell in or into the stream of commerce, or otherwise introduce into the stream of commerce in Vermont any children's product any component part of which contains lead. This prohibition shall not apply to:

(1) any part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product.

A component part is not accessible under this section if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product, except that paint, coatings, and electroplating shall not be considered barriers that would render lead in the substrate inaccessible to a child under this subdivision;

(2) any component of a children's product that is intended for children age eight and under, that complies with any more stringent federal or European Union standard for lead in consumer products or

with a similar standard applicable in states with a total population of 25 million, and that is contained within a battery compartment that cannot be opened without a coin, screwdriver, or other common household tool; or

(3) any power cord, USB cable, audio-visual cable, jack, connector, or similar device or component used in connection with or attached to a children's product that:

(A) conducts electric current;

(B) is not a small part, as defined by the Consumer Product Safety Commission in 16 C.F.R. part 1501;

(C) does not have a casing or coating that contains lead; and

(D) complies with the most stringent standard for lead in consumer products adopted by federal law, by states with total population of at least 25 million, or by the European Union.

§ 2470g. PROHIBITION OF LEAD IN JEWELRY

Except to the extent specifically preempted by federal law and in addition to the prohibition in section 2470f of this subchapter, no person shall manufacture, regardless of location, for sale in, offer for sale, or sell in or into the stream of commerce, or otherwise introduce into the stream of commerce in Vermont any article of jewelry or other metal decorative item containing lead that is not a children's product as defined in section 2470e of this title, where the article, or any detachable part of the article, is the size of a small part as defined by the Consumer Product Safety Commission in 16 C.F.R. part 1501, unless the article is:

(1) expressly and prominently advertised as adult jewelry;

(2) not commonly understood to be an article for use by a child under age 12; and

(3) accompanied by a point-of-sale disclosure prescribed by the attorney general to the effect that the article may contain lead at or above the prevailing legal limit for lead in children's products, if that is true.

§ 2470h. CONSUMER WARNINGS; NOTIFICATION; PHASE-OUTS

Except to the extent specifically preempted by federal law:

(1) Wheel weights. Beginning January 1, 2010, the state of Vermont shall not use wheel weights containing lead in vehicles owned by the state or vehicles operated by the state under a long-term lease.

Beginning September 1, 2011, no person shall sell or offer for sale in or into the state of Vermont a new motor vehicle with wheel weights containing lead.

(2)(A) Plumbing fixtures and related supplies. As prescribed by the attorney general, beginning January 1, 2009, and ending December 31, 2009, any person who sells or offers for sale in or into the state of Vermont plumbing fixtures whose wetted surfaces contain more than a weighted average of 0.25 percent lead, shall clearly and conspicuously post a warning at the point of sale, stating that these products contain lead and shall also provide to each buyer prior to sale information on the risks of lead exposure.

(B) Beginning January 1, 2010, no person shall sell or offer for sale in or into the state of Vermont, or use in the state of Vermont, solder or flux for plumbing containing more than 0.2 percent lead, or plumbing fixtures whose wetted surfaces contain more than a weighted average of 0.25 percent lead.

(C) As prescribed by the attorney general, beginning January 1, 2009, any person who sells or offers for sale in or into the state of Vermont solder or flux containing more than 0.2 percent lead shall clearly and conspicuously post a warning at the point of sale, stating that these products contain lead and shall also provide to each buyer prior to sale information on the risks of lead exposure.

(D) For the purpose of subdivision (2) of this section:

(i) the term "plumbing fixtures" means pipes, pipe and plumbing fittings, and fixtures used to convey or dispense water for human consumption;

(ii) the "weighted average" lead content shall be calculated by using the following formula: the percentage of lead content within each component that comes into contact with water shall be multiplied by the percent of the total wetted surface of the entire pipe and pipe fitting, plumbing fitting, or fixture represented in each component containing lead; these percentages shall be added; and the sum shall constitute the weighted average lead content of the pipe and pipe fitting, plumbing fitting, or fixture.

(3) Nonresidential paints and primers. As prescribed by the attorney general, beginning January 1, 2009, and ending December 31, 2010, any person who sells or offers for sale in or into the state of Vermont nonresidential paints and primers containing lead shall clearly and conspicuously post a

warning at the point of sale, stating that these products contain lead and shall also provide to each buyer prior to sale information on the risks of lead exposure. Beginning January 1, 2011, no person shall sell or offer for sale in or into the state of Vermont nonresidential paints or primers containing lead. Beginning January 1, 2012, no person shall use nonresidential paints or primers containing lead in the state of Vermont.

(4) Salvage building materials. As prescribed by the attorney general, beginning January 1, 2009, any person in commerce who sells or offers for sale in or into the state of Vermont salvage building materials made prior to 1978 shall clearly and conspicuously post a warning at the point of sale, stating that these products may contain lead and shall also provide to each buyer prior to sale information on the risks of lead exposure.

(5) Other. The attorney general, in consultation with the commissioner of health, may by rule require warnings, notifications, or a combination of these relating to other products containing lead.

§ 2470i. PROHIBITION ON REMOVAL OF LABELS

No person in commerce shall remove from a consumer product any warning label affixed to it that relates in whole or part to lead or lead hazards and which label is required by this state, the federal government, or any other state or country.

§ 2470j. PROHIBITION ON PROVIDING SUBSTANTIAL ASSISTANCE

No person shall provide substantial assistance to a person in violation of section 2470f, 2470g, 2470h, or 2470i of this section with knowledge or reason to know of the violation.

§ 2470k. VIOLATIONS

(a) A violation of this subchapter is deemed to be a violation of section 2453 of this title.

(b) The attorney general has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and private parties have the same rights and remedies, as provided under subchapter 1 of this chapter.

§ 2470l. SCOPE

(a) Nothing in this act shall be construed to regulate firearms, ammunition or components thereof, hunting or fishing equipment or components thereof, lead pellets from air rifles, shooting ranges or circumstances resulting from shooting, handling, storing, casting, or reloading ammunition.

(b) Nothing in this act shall be construed to alter the existing authority of the agency of natural resources to regulate the lead content of products used in connection with fishing and hunting.

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