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LAWS GOVERNING LEAD IN CHILDREN'S TOYS

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You asked whether Connecticut has a law banning or regulating lead in children's toys and if so, for a description of it. If not, you want to know if any such legislation has been introduced. You also asked whether other states have laws prohibiting or regulating lead in children's toys. You referenced the recent Mattel toy recalls.

SUMMARY

Connecticut does not have a law specifically banning or regulating lead in children's toys. But the State Child Protection Act, the state's counterpart to the Federal Hazardous Substances Act (FHSA), governs hazardous substances in consumer products, including toys, and generally bans them (CGS 21a-335 *et seq.*). It gives the state the authority to enforce the sale and distribution of products containing toxic substances. In fact, in response to the recent toy recalls, Attorney General Blumenthal sent a letter to Mattel indicating that companies distributing toys in Connecticut with excessive levels of lead may be in violation of the State Child Protection Act.

We found two states, California and Illinois, that have enacted consumer protection laws targeting lead. Both ban certain products if they contain 0.06% (600 parts per million) lead by weight or more. (California's law also bans certain other products containing 0.02% (200 parts per million) lead by weight or more.) While FHSA does not currently specify a maximum allowable concentration for lead in consumer products, the U. S. Consumer Product Safety Commission (CPSC) recently began the rule-making process to ban children's jewelry containing more than 0.06% lead by weight.

Several other states, including Colorado, Illinois, Massachusetts, Michigan, North Dakota, Rhode Island, South Carolina, and Texas, have adopted laws under FHSA. They are substantially similar to Connecticut's State Child Protection Act.

We searched bills for the last 20 years and did not find any banning or regulating lead in children's toys. Several enacted bills amend the public health code to address, among other things, Connecticut's lead poisoning prevention program or lead abatement in residential housing (CGS §§ 19a-111a and 19a-111c).

FEDERAL HAZARDOUS SUBSTANCES ACT

FHSA establishes CPSC and authorizes it to identify hazardous and potentially hazardous substances, ban certain toys and articles marketed for use by children, require certain substances and toys to be labeled, and set conditions and standards for that labeling. It allows states to (1) adopt identical requirements, thereby gaining enforcement authority and (2) supplement federal law in areas the CPSC does not regulate. States are prohibited from adopting different requirements protecting against the same risk of illness or injury already regulated by CPSC action.

STATE CHILD PROTECTION ACT

Connecticut adopted the State Child Protection Act in 1971. Among other things, it prohibits the "introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance," (CGS § 21a-337). The act defines a "banned hazardous substance," in part, as a toy or other article intended for use by children that is, or contains, a hazardous substance in such manner as to be susceptible to access by a child to whom the toy or article is entrusted. It defines "hazardous substance," in part, as any toxic substance or mixture of substances. A substance is "toxic" if it has the capacity to produce personal injury or illness to people through ingestion, inhalation, or absorption through any body surface.

Connecticut's Response to Toy Recalls

In an August 17, 2007 letter to Mattel concerning a voluntary recall of certain Fisher-Price and Mattel toys in cooperation with the CPSC, Attorney General Blumenthal indicates that the company's distribution of toys containing excessive levels of lead may violate state law. He writes, "[t]o the extent that Mattel distributed these toys in Connecticut, its conduct could be deemed to violate the Child Protection Act. Continued violations of the Act would constitute unfair and deceptive trade practices pursuant to the Connecticut Unfair Trade Practices Act," (CGS § 42-110a *et seq.*). By law, anyone who violates the State Child Protection Act is guilty of a class C misdemeanor. But if the violation is committed with intent to defraud or mislead, or it is a subsequent violation, it is an unclassified misdemeanor and punishable by up to one year in prison, a fine of up to \$ 3,000, or both (CGS § 21a-338).

Connecticut Unfair Trade Practices Act

Under the Connecticut Unfair Trade Practices Act (CUTPA), businesses may not engage in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$ 5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. CUTPA also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$ 5,000 for willful violations and \$ 25,000 for violation of a restraining order.

CALIFORNIA

In January 2006, California's attorney general announced a settlement with 71 retailers

and distributors to reduce the levels of lead in costume jewelry under Proposition 65, California's right-to-know law. The legislature subsequently passed Assembly Bill 1681 regulating lead in jewelry for retail sale, which the governor signed on September 22, 2006.

The law regulates all jewelry for retail sale, but contains provisions that apply to children's jewelry specifically. Beginning September 1, 2007, it (1) creates standards for lead content based on products' materials and whether they are for children (i. e. , age six and younger) and (2) prohibits individuals from manufacturing, shipping, selling, or offering for sale children's jewelry in California, unless it meets or exceeds the standards. Under the law, certain metallic components used in children's jewelry must contain less than 0.06% lead by weight and certain other materials must contain less than 0.02% lead by weight. Rubber and plastic must contain less than 0.06% by September 1, 2007 and less than 0.02% by August 31, 2009. Glass and crystal decorative components cannot weigh more than one gram, unless they contain less than 0.02% lead by weight and have no "intentionally-added" lead. Printing ink and ceramic glaze must contain less than 0.06% lead by weight. Violators of the law are subject to a civil penalty of up to \$ 2,500 per day for each violation.

ILLINOIS

In 2006, Illinois enacted PA 094-0879, amending the Illinois Lead Poisoning Prevention Act. The act redefines "lead bearing substance" to include any item containing, or coated with, lead such that the lead content is more than 0.06% lead by total weight. It prohibits any person from using or applying lead bearing substances "in or upon any items, including, but not limited to, clothing, accessories, jewelry, decorative objects, edible items, candy, food, dietary supplements, toys, furniture, or other articles used by or intended to be chewable by children." It also bans the sale of items, including those intended for use by children, containing a lead bearing substance. The act covers children age six and younger.

BACKGROUND

Consumer Product Safety Commission Action

In April 2006, the Sierra Club petitioned the CPSC to use its authority under FHSA and ban lead in toy jewelry ([Petition No. HP 06-1](#)). Specifically, the Sierra Club asked the commission to adopt regulations declaring that, among other things, "any toy jewelry containing more than 0.06% lead by weight for which there is a reasonably foreseeable possibility that children could ingest," be classified as a banned hazardous substance. In the petition, the Sierra Club noted that it was recommending 0.06% because that cutoff was already established as the concentration cutoff for paint on consumer products, but that it should only be considered an interim step. It indicated that it does not believe that 0.06% lead by weight is low enough to protect children.

After analyzing the Sierra Club's request and assessing the currently available information on lead's toxicity, CPSC staff recommended that the commission grant the petition. According Maryanne McGerty-Sieber, spokesperson for the commission, it has begun the rule-making process (*San Francisco Chronicle*, August 15, 2007).

HYPERLINKS

United States Consumer Product Safety Commission, Petition for Ban on Lead Toy Jewelry, HP 06-1: <http://www.cpsc.gov/LIBRARY/FOIA/FOIA07/brief/LeadToyJewelry.pdf>, last visited August 30, 2007.

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