



Legislation Text

File #: Int 0396-2004, **Version:** A

Int. No. 396-A

By Council Member Fidler and The Speaker (Council Member Miller), and Council Members Reyna, Dilan, Gonzalez, Martinez, Baez, Rivera, Monserrate, Lopez, Palma, Quinn, Stewart, Oddo, Recchia, Boyland, Comrie, James, Koppell, Gerson, Addabbo, Vann, McMahon, Weprin, Gennaro, Vallone, Reed, Jennings, Felder, Clarke, Avella, Seabrook, Gioia, Barron, Perkins, Gentile, Brewer, Provenzano, DeBlasio, Lanza, Gallagher, Sanders, Yassky, Jackson, Sears, Foster, Liu, Nelson, Katz and Moskowitz

A Local Law to amend the administrative code of the city of New York, in relation to banning the sale of certain substances containing lead.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. Lead is a highly toxic substance that has been found to cause permanent neurological damage in children. Lead poisoning is linked to many adverse health effects among children, including learning disabilities, behavioral problems, seizures, coma and sometimes death.

According to the Food and Drug Administration (“FDA”), litargirio is a yellow or peach colored powder, manufactured by certain laboratories outside of the United States, that has no proven health benefits and, because of its high lead content, poses health risks, especially for children, when used in contact with the skin or ingested. This powder has been used, among other things, as a deodorant, a foot fungicide and a treatment for burns and wounds. Because of the serious health risks associated with this powder, the FDA has issued a warning to the public not to use litargirio for any health-related or personal purposes.

In addition, certain candy products have been discovered to contain dangerously high levels of lead. For example, the FDA has warned consumers to avoid purchasing or consuming certain candies and snack products containing chili or products such as tamarind candies sold in clay pots and often manufactured outside of the United States. Some of these products have been found to contain high levels of lead and can increase the chances of lead poisoning in children. In addition, the risk of lead poisoning may also arise from the use of

certain candy wrappers.

Accordingly, as a result of the proven toxicity of lead and the above-mentioned FDA warnings, the Council finds that litargirio and certain candy products containing lead are dangerous substances, the sale of which should be prohibited in order to protect the public health.

§2. Chapter one of title seventeen of the administrative code of the city of New York is amended by adding a new section 17-187 to read as follows:

§17-187 Prohibition on sale of certain substances containing lead. a. For purposes of this section, the following terms shall have the following meanings:

1. “Candy products containing lead” shall mean any confection containing lead which the department, pursuant to rules promulgated hereunder, determines to present a risk to public health or a nuisance as defined in § 17-142 of this code.

2. “Litargirio” shall mean any powder containing lead intended for sale for personal use, including, but not limited to, use as an anti-perspirant, deodorant, foot fungicide or as a treatment for burns and wounds.

3. “Person” shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association or other entity or business organization.

b. No person shall sell or offer for sale, or cause any person to sell or offer for sale, candy products containing lead or products containing litargirio.

c. Violations and penalties. 1. Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two hundred and fifty dollars for each violation, provided that for a first such violation, such person may be issued a written warning in lieu of such civil penalty.

2. Notwithstanding any provision of law to the contrary, any person who intentionally or knowingly violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than two hundred and fifty dollars for each violation and/or a prison term of not more than six months, and a civil penalty of not more than two hundred and fifty dollars for each violation.

d. Enforcement. The department and the department of consumer affairs shall enforce the provisions of this section. A proceeding to recover any civil penalty authorized pursuant to subdivision c of this section shall be commenced by the service of a notice of violation returnable to the administrative tribunal established by the board of health where the department issues such a notice or to the adjudication division of the department of consumer affairs where such department issues such a notice. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged. The administrative tribunal of the board of health and the adjudication division of the department of consumer affairs shall have the power to render decisions and to impose the remedies and penalties provided for in subdivision c of this section, in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

e. Rules. The commissioner shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this section.

§3. Severability. If any subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall remain in full force and effect.

§4. This local law shall take effect one hundred and eighty days after its enactment into law.

LS #3533
5/03/05
BK/DB/GRS