



House of Representatives

File No. 899

General Assembly

January Session, 2015

(Reprint of File No. 318)

Substitute House Bill No. 6743
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 27, 2015

**AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE TASK
FORCE ON CADMIUM IN CHILDREN'S JEWELRY.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2015, and applicable to violations*
2 *occurring on or after said date*) (a) As used in this section:

3 (1) "Cadmium" means elemental cadmium and any compounds or
4 alloys which contain cadmium;

5 (2) "Children's jewelry" means any jewelry, including charms,
6 bracelets, pendants, necklaces, earrings or rings, and any component
7 thereof, that is designed or intended to be worn by children twelve
8 years of age or younger; and

9 (3) "Commissioner" means the Commissioner of Consumer
10 Protection.

11 (b) From the effective date of this section until October 1, 2020, each
12 person who manufactures children's jewelry for sale or distribution in

13 this state and each person who distributes children's jewelry in this
14 state shall register with the Department of Consumer Protection on a
15 form prescribed by the commissioner and pay an annual registration
16 fee of one hundred dollars. The commissioner shall develop a testing
17 compliance form to be completed by all such registered manufacturers
18 and distributors. Any registration fee collected by the department
19 under this subsection shall be paid to the State Treasurer and credited
20 to the account established pursuant to section 2 of this act.

21 (c) From the effective date of this section until October 1, 2020, no
22 person shall manufacture for sale in this state or distribute in this state
23 any children's jewelry that contains cadmium at more than the
24 amounts specified in subsection (d) or (e) of this section.

25 (d) From the effective date of this section until October 1, 2020, the
26 commissioner shall require manufacturers and distributors to certify in
27 writing on a compliance form developed by the commissioner that all
28 children's jewelry manufactured for distribution in this state or for sale
29 in this state has been tested for cadmium using a total content test. The
30 passing standard for such total content test shall be not more than .03
31 per cent by weight. Total content test methods shall be applied
32 separately to each component part of such jewelry and may include,
33 but shall not be limited to, x-ray fluorescence spectrometry analysis or
34 total digestion testing, as specified by the latest ASTM standards. The
35 commissioner shall not require leaching or extraction (solubility)
36 testing for children's jewelry that has not met the total content test
37 passing standard.

38 (e) From the effective date of this section until October 1, 2020, in
39 addition to the total content test required pursuant to subsection (d) of
40 this section, the commissioner, to ensure compliance with the
41 provisions of this act, shall require written verification from such
42 manufacturers and distributors of a surface coating test for cadmium
43 in children's jewelry that contains paint or any other surface coating
44 that is able to be removed or separated for testing. Such test may
45 include, but shall not be limited to, total digestion testing, as specified

46 by the latest ASTM standard. The passing standard for such surface
47 coating test shall be not more than .0075 per cent by weight.

48 (f) (1) (A) Except as provided in subparagraph (B) of this
49 subdivision, any person who violates subsection (c) of this section shall
50 be guilty of a class B misdemeanor.

51 (B) For any offense committed with intent to defraud or mislead, or
52 for any second or subsequent offense, any person who violates
53 subsection (c) of this section shall be guilty of a class A misdemeanor,
54 except that such person may be fined not more than five thousand
55 dollars.

56 (2) No person shall be subject to the penalties set forth in
57 subdivision (1) of this subsection if such person received, delivered or
58 proffered delivery of the children's jewelry in good faith. Any person
59 claiming a good faith defense under this subdivision shall furnish, on
60 request of an officer or employee duly designated by the
61 commissioner, the name and address of the individual or entity from
62 whom such person purchased or received such children's jewelry, and
63 shall also furnish copies of all documents in the possession of such
64 person, if any, pertaining to the delivery of the children's jewelry to
65 such person.

66 (g) A violation of subsection (c) of this section shall be an unfair or
67 deceptive act or practice in the conduct of trade or commerce pursuant
68 to subsection (a) of section 42-110b of the general statutes.

69 (h) Any person required by an order of the commissioner to pay a
70 fine, cease and desist from using any method, act or practice declared
71 unlawful pursuant to section 42-110b of the general statutes or to make
72 restitution may appeal from such order in accordance with the
73 provisions of section 4-183 of the general statutes. Any appeal brought
74 under this subsection shall be privileged with respect to assignment
75 for trial.

76 (i) The commissioner, after consultation with the Commissioner of

77 Public Health, shall develop and provide information to the public on
78 the Department of Consumer Protection's Internet web site regarding
79 safety issues related to cadmium in children's jewelry and
80 recommended precautions parents may take to reduce or eliminate
81 such safety issues.

82 Sec. 2. (NEW) (*Effective October 1, 2015*) There is established a
83 cadmium in children's jewelry administration account which shall be a
84 separate, nonlapsing account within the General Fund. The account
85 shall contain any civil penalties paid to the state pursuant to the
86 enforcement of subsection (g) of section 1 of this act and any fees
87 collected pursuant to subsection (b) of section 1 of this act and any
88 other moneys required by law to be deposited in the account, and shall
89 be held in trust separate and apart from all other moneys, funds and
90 accounts. Any balance remaining in the account at the end of any fiscal
91 year shall be carried forward in the account for the fiscal year next
92 succeeding. Investment earnings credited to the account shall become
93 part of the account. Amounts in the account shall be expended only for
94 the purpose of providing funds to the Department of Consumer
95 Protection for administering the provisions of section 1 of this act.

96 Sec. 3. (NEW) (*Effective October 1, 2015*) When considering whether
97 to extend the provisions of section 1 of this act beyond October 1, 2020,
98 the General Assembly, after consulting with the joint standing
99 committees of the General Assembly having cognizance of matters
100 relating to children and consumer protection, shall consider the
101 effectiveness of the registration requirements, manufacturer and
102 distributor prohibitions and testing requirements and penalties
103 contained in section 1 of this act.

104 Sec. 4. (NEW) (*Effective October 1, 2015*) On or before December 31,
105 2016, and annually thereafter until December 31, 2020, the joint
106 standing committees of the General Assembly having cognizance of
107 matters relating to children and consumer protection in consultation
108 with the Commissioner of Consumer Protection and the results-based
109 accountability subcommittee of the joint standing committee of the

110 General Assembly having cognizance of matters relating to
 111 appropriations and the budgets of state agencies, shall report to the
 112 General Assembly, using a results-based accountability framework,
 113 regarding the effectiveness of the registration requirements,
 114 manufacturer and distributor prohibitions, testing requirements and
 115 penalties contained in section 1 of this act. Such report shall include,
 116 but not be limited to: (1) The number of tests performed; (2) the results
 117 of such tests; (3) the total percentage of children's jewelry distributed
 118 and sold in this state that was tested; and (4) the annual number of
 119 reported cases in this state of children who have suffered adverse
 120 medical effects relating to the ingestion or exposure to cadmium.

121 Sec. 5. Section 21a-12d of the general statutes is repealed. (*Effective*
 122 *October 1, 2015*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015, and applicable to violations occurring on or after said date</i>	New section
Sec. 2	<i>October 1, 2015</i>	New section
Sec. 3	<i>October 1, 2015</i>	New section
Sec. 4	<i>October 1, 2015</i>	New section
Sec. 5	<i>October 1, 2015</i>	Repealer section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Consumer Protection, Dept.	GF, Cadmium in Children's Jewelry Administration Account - Cost	70,980	60,230
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	23,086	23,086
Cadmium in Children's Jewelry Administration Account	Cadmium in Children's Jewelry Administration Account - Potential Revenue Gain	Less than 45,000	Less than 45,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost to the state of \$94,066 in FY 16 and \$83,316 in FY 17 due to the need of a Consumer Protection Product Safety Inspector (AR-21) within the Department of Consumer Protection. Additionally the bill results in a potential revenue gain to the Cadmium in Children's Jewelry Administration Account of less than \$45,000 in both FY 16 and FY 17.

Costs in FY 16 include a salary of \$59,730; fringe benefits of \$23,086; \$1,000 for field equipment; \$500 in Other Expenses; \$9,000 for testing

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

costs and \$750 to calibrate an x-ray fluorescence spectrometer. The Consumer Product Safety Inspector will regulate the registrations and compliance forms, produce the fact sheets, investigate complaints, perform investigations and field testing.

The bill changes the standards for cadmium in children's jewelry and also starts the requirements ten months earlier than under current statute. This results in the cost for the testing and spectrometer calibration in FY 16 which would have otherwise not have occurred until FY 17. It is anticipated that 75 tests at a cost of \$150 per test would occur yearly.

The bill creates a new misdemeanor for the manufacturing for sale or distribution of children's jewelry that contains more than the allowable cadmium levels. It is anticipated that less than 10 violations will occur, resulting in a revenue gain through fines of \$10,000 - \$35,000.

Additionally the bill sets a fee of \$100 for manufacturers and distributors of children's jewelry. There are an estimated 100 such entities, therefore the bill results in a revenue gain of \$10,000 in FY 16 and FY 17.

Finally the bill establishes a new nonlapsing account in the General Fund to be known as the Cadmium in Children's Jewelry Administration Account. It requires that all fees and fines related to cadmium in children's jewelry established within the bill be deposited in such fund.

House "A" (LCO 7855) created the Cadmium in Children's Jewelry Administration Account. Additionally it increased the fee for manufacturers and distributors from \$50 to \$100 which increased revenue by \$5,000.

The Out Years

The annualized ongoing fiscal impact identified in FY 17 above

would continue into the future subject to inflation, the number of manufacturers and distributors and the number of violations.

OLR Bill Analysis**sHB 6743 (as amended by House "A")******AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE TASK FORCE ON CADMIUM IN CHILDREN'S JEWELRY.*****SUMMARY:**

This bill:

1. increases, from .0075% to .03% (by weight), the maximum amount of cadmium allowed in children's jewelry that is manufactured for sale in Connecticut or distributed in the state and
2. caps, at .0075% (by weight), the amount of cadmium allowed in the jewelry's surface coating.

It does so by repealing the current .0075% total cadmium limit that takes effect July 1, 2016 and replacing it with the new thresholds, which sunset October 1, 2020 unless extended. The bill generally makes manufacturers and distributors who violate the cadmium limits subject to civil and criminal penalties. Cadmium includes elemental cadmium and any compounds or alloys containing it.

The bill requires those who manufacture children's jewelry for sale or distribution, or who actually distribute the jewelry, to register with the Department of Consumer Protection (DCP) and pay an annual \$100 fee.

It also sets cadmium content testing requirements. Manufacturers and distributors must (1) certify that they tested their children's jewelry for cadmium using a total content test and (2) provide a written verification of a surface coating test. The registration and

testing requirements, unless extended, also sunset on October 1, 2020.

Lastly, the bill:

1. requires the DCP commissioner to develop and make available safety information about cadmium in children's jewelry;
2. establishes a Cadmium in Children's Jewelry Administration Account to fund administration of the bill's requirements; and
3. requires (a) annual reporting on the effectiveness of the registration and testing requirements, manufacturer and distributor prohibitions, and penalties and (b) the General Assembly to consider the effectiveness when deciding whether to extend the bill's requirements beyond the sunset date.

*House Amendment "A" (1) sets October 1, 2020 as the sunset date for the bill's requirements; (2) requires written verification of surface coating testing and specifies that the testing may include total digestion testing; (3) increases, from \$50 to \$100, the registration fee and credits the fees to the Cadmium in Children's Jewelry Administration Account; and (4) adds the provisions (a) establishing the administration account, (b) requiring annual reporting on the effectiveness of the bill's requirements, and (c) prescribing what the legislature must consider to extend the bill's requirements beyond the sunset date.

EFFECTIVE DATE: October 1, 2015, and the ban, registration and testing requirements, and penalties apply to violations occurring on or after that date.

CHILDREN'S JEWELRY AFFECTED

The bill covers jewelry designed or intended to be worn by children under age 13. It includes charms, bracelets, pendants, necklaces, earrings, rings, and any of their components.

REGISTRATION

The bill requires, until October 1, 2020, anyone who manufactures children's jewelry for sale or distribution in Connecticut or anyone who distributes the jewelry in the state to (1) register with DCP on a form the DCP commissioner prescribes and (2) pay annually a \$100 registration fee. The registration fee must be paid to the State Treasurer and credited to the Cadmium in Children's Jewelry Administration Account (see below).

TESTING REQUIREMENTS

Testing Compliance

Under the bill, until October 1, 2020, the DCP commissioner must require registered manufacturers and distributors to certify, in writing, on a testing compliance form he develops, that all children's jewelry manufactured for distribution or sale in Connecticut was tested for cadmium using a total content test. To pass the test, the jewelry cannot have more than .03% (by weight) of cadmium.

The commissioner must also require manufacturers and distributors to provide written verification of a surface coating test for cadmium in children's jewelry with a removable or separable painted or coated surface. The passing standard for the surface coating test is .0075% (by weight).

Test Methods

The bill requires the total content test methods to be applied separately to each jewelry component. The methods may include x-ray fluorescence spectrometry analysis (i.e., analysis of chemical composition using x-rays and wave length measurement) or total digestion testing (i.e., breakdown of a sample into its component parts, typically through acid immersion), as specified by the latest ASTM standards (see BACKGROUND). The bill prohibits the commissioner from requiring leaching or extraction (i.e., solubility) testing for children's jewelry that has not met the total content standard.

The bill specifies that the test for surface coating may include total digestion, as specified by the latest ASTM standard.

PENALTIES

Criminal

Under the bill, anyone who manufactures for sale or distributes in Connecticut children's jewelry with more than the allowable cadmium commits a class B misdemeanor (punishable by up to six months in prison, up to a \$1,000 fine, or both). A subsequent violation, or one committed with the intent to defraud or mislead, is a class A misdemeanor (punishable by up to one year in prison, up to a \$2,000 fine, or both), except the bill caps the fine for this offense at \$5,000.

The bill's criminal penalties do not apply to anyone who receives, delivers, or offers for delivery the children's jewelry in good faith. The person must provide, at DCP's request, (1) the name and address of the individual or entity who sold or provided the children's jewelry and (2) copies of all documents related to the delivery of the jewelry.

Connecticut Unfair Trade Practices Act (CUTPA)

The bill makes it an unfair or deceptive trade practice, in violation of CUTPA, to manufacture for sale or distribute in this state children's jewelry with cadmium over the allowed thresholds.

Under the bill, a person can appeal, under the Uniform Administrative Procedure Act, if the DCP commissioner requires the person to (1) pay a fine; (2) cease and desist from using any method, act, or practice deemed unlawful under CUTPA; or (3) make restitution. The bill gives these appeals priority in trial assignment.

PUBLIC INFORMATION

The bill requires the DCP commissioner to, after consulting the public health commissioner, develop and make publicly available on DCP's website, information on (1) safety issues about cadmium in children's jewelry and (2) recommended precautions parents can take

to reduce or eliminate the safety issues.

CADMIUM IN CHILDREN'S JEWELRY ADMINISTRATION ACCOUNT

The bill establishes a separate, nonlapsing account in the General Fund to contain (1) the annual registration fees, (2) any civil penalties paid to the state for committing an unfair or deceptive act or practice, and (3) any other money required by law to be deposited. The account must be held in trust, separate from all other moneys, funds, and accounts, and any investment earnings credited to the account must become part of the account. Funds remaining in the account at the end of a fiscal year must be carried forward for the next fiscal year.

The bill limits use of the account's funds to administration by DCP of the bill's registration and testing requirements and ban on noncompliant jewelry.

ANNUAL REPORTS

Under the bill, by the end of 2016, the Children's and General Law committees must submit the first of five annual reports to the General Assembly on the effectiveness of the bill's registration and testing requirements, manufacturer and distributor prohibitions, and penalties. They must (1) make the report in consultation with the DCP commissioner and the Appropriations Committee's results-based accountability (RBA) subcommittee and (2) use an RBA framework.

The bill requires the report to include the:

1. number of tests performed and their results,
2. total percentage of children's jewelry distributed and sold in Connecticut that was tested, and
3. annual number of reported cases in the state of children with adverse effects from ingesting or being exposed to cadmium.

The final report is due by December 31, 2020.

SUNSET DATE EXTENSION

The bill requires the General Assembly, after consulting with the Children's and General Law committees, to consider the effectiveness of the bill's registration and testing requirements, manufacturer and distributor prohibitions, and penalties when deciding to extend them beyond October 1, 2020.

BACKGROUND

Cadmium

Cadmium is a natural metallic element found in the earth's crust. The U. S. Department of Health and Human Services has determined that cadmium and its compounds are human carcinogens. Some animal studies indicate that the young (1) absorb more cadmium than adults and (2) are more susceptible than adults to bone loss and decreased bone strength from cadmium exposure.

ASTM

ASTM International, formerly known as the American Society for Testing and Materials, is a non-profit, international organization that provides a forum to develop and publish voluntary consensus standards for materials, products, systems, and services.

CUTPA

The law prohibits businesses from engaging 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. It 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.

Related Bill

sHB 6741, File 55, favorably reported by the Children's Committee, contains similar requirements but has a lower total content standard (.01%) and an unspecified registration fee.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/12/2015)

Judiciary Committee

Joint Favorable

Yea 42 Nay 0 (04/20/2015)