

Intro. Res. No. 1682-2017
Introduced by Legislator Hahn

Laid on Table 7/25/2017

**RESOLUTION NO. 884 -2017, ADOPTING LOCAL LAW
NO. 26 -2017, A LOCAL LAW TO AMEND THE TOXIC FREE
TOYS ACT**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on July 25, 2017, a proposed local law entitled, "**A LOCAL LAW TO AMEND THE TOXIC FREE TOYS ACT**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 26 -2017, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO AMEND THE TOXIC FREE TOYS ACT

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that in 2015, Suffolk County enacted the Local Law No. 22-2015 (the "Toxic Free Toys Act"), codified in Chapter 704 of the SUFFOLK COUNTY CODE, to protect children from high levels of hazardous substances in children's products.

This Legislature finds that the County has confronted problems implementing Local Law No. 22-2015 associated with the standards set forth in the law. These problems should be corrected to ensure the testing is done accurately and effectively.

Therefore, the purpose of this law is to amend Chapter 704 of the SUFFOLK COUNTY CODE to improve the effectiveness of the Toxic Free Toys Act.

Section 2. Amendments.

Chapter 704 of the SUFFOLK COUNTY CODE is hereby amended as follows:

**CHAPTER 704
RETAIL SALES**

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**Article X.
Toxic Children's Products**

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§ 704-73. Definitions.

As used in this article, the following terms shall have the meaning indicated:

ACCESSIBLE - Susceptible of access by children in the course of customary or reasonably foreseeable handling or use.

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PPM - Parts per million [total content].

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§ 704-74. Toxic content restrictions.

Effective [July 1, 2016] November 1, 2017[, no retailer shall]:

I. No retailer shall:

A. Knowingly distribute, sell or offer for sale in the County of Suffolk a children's product containing [mercury, antimony, arsenic or cobalt above 40 PPM of total content per chemical.] the following metals above the levels indicated that are accessible:

1. 60 PPM of mercury or antimony, or
2. 25 PPM of arsenic.

B. Knowingly distribute, sell or offer for sale in the County of Suffolk a children's product containing lead above 100 PPM of [total lead] accessible content [in accessible parts] or above 90 PPM in paint or any similar surface coating.

C. Knowingly distribute, sell or offer for sale in the County of Suffolk a children's product containing cadmium above 75 PPM of [total cadmium] accessible content.

II. In the event that federal laws on the chemical content of children's products are amended to include additional metals beyond those enumerated in this law, no retailer shall knowingly distribute, sell or offer for sale in the County of Suffolk a children's product containing such additional metals above the federally prescribed levels as determined by Consumer Product Safety Commission test methods. The Department of Health Services shall automatically incorporate those metals into its testing regimen at the federally prescribed levels and test methods.

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§ 704-76. Enforcement.

A. This article shall be enforced by the Department of Health Services.

B. Beginning on [January 1, 2016] October 15, 2017, the Department of Health Services will inform retailers selling children's products of the requirements of this article.

C. Enforcement of the article through the random inspection of at least 10 retailers per quarter shall commence on December 1, [2016] 2017.

- (1) At each retailer inspected, the Department will select no more than 10 children's products for [on-site toxic content screening using an x-ray fluorescence analyzer] purchase and subsequent off-site content screening using an x-ray fluorescence analyzer. If the x-ray fluorescence analyzer indicates that a children's product may have toxic accessible material contents in excess of the limits stated in this law, the Department shall send the children's product for independent testing per Consumer Product Safety Commission designated test methods at a federal Consumer Product Safety Commission certified laboratory.
- (2) The Department shall inform the retailer of products [screened] tested that exceed the toxic accessible content levels in this article as determined by such certified laboratory. That determination shall be considered a final determination, unless within ten (10) business days of notification by the Department, the retailer submits a written request explaining, in full detail, the reasons for contesting the determination. Within 20 days of receipt of a request, the Department shall inform the retailer of the Department's final determination. A retailer that continues to offer for sale a children's product found by the Department to violate this article shall be issued a notice of violation.
- (3) The Department shall maintain a list on a dedicated webpage of all children's products that are tested and found by a Consumer Product Safety Commission certified laboratory per Consumer Product Safety Commission designated testing methods to be above the accessible PPM limits set forth in this law. Posting of a product on the webpage list shall only occur after there is a final determination made on a children's product in accordance with paragraph (2) of this Section. The Department shall update the list at least quarterly each year. Retailers shall be deemed to have notice of a children's product that violates this law at such time as it is posted on the Department's webpage.

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[§ 704-80. Reverse preemption.

This article shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this article, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.]

Section 3. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or

unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 6. Effective Date.

This law shall take effect immediately upon its filing in the Office of the Secretary of State.

[] Brackets denote deletion of existing language
___ Underlining denotes addition of new language

DATED: October 3, 2017

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: October 23, 2017

After a public hearing duly held on October 17, 2017
Filed with the Secretary of State on November 6, 2017