

111TH CONGRESS
2D SESSION

H. R. 4428

To prohibit the manufacture, sale, or distribution in commerce of children's jewelry containing cadmium, barium, or antimony, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2010

Ms. SPEIER (for herself, Ms. DELAURO, Ms. SCHAKOWSKY, Mr. ISRAEL, Ms. SUTTON, and Mr. PERRIELLO) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the manufacture, sale, or distribution in commerce of children's jewelry containing cadmium, barium, or antimony, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Children's Toxic Met-
5 als Act".

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ANTIMONY.—The term “antimony” means
2 elemental antimony (Sb) and any compounds or al-
3 loys which contain antimony.

4 (2) BARIUM.—The term “barium” means ele-
5 mental barium (Ba) and any compounds or alloys
6 which contain barium.

7 (3) CADMIUM.—The term “cadmium” means
8 elemental cadmium (Cd) and any compounds or al-
9 loys which contain cadmium.

10 (4) CHILDREN’S JEWELRY.—

11 (A) IN GENERAL.—The term “children’s
12 jewelry” means any jewelry, including charms,
13 bracelets, pendants, necklaces, earrings, or
14 rings, that is designed or intended to be worn
15 or used by children 12 years of age or younger
16 and is sold or distributed at retail.

17 (B) DETERMINATION OF INTENTION FOR
18 WEAR OR USE BY CHILDREN.—In determining
19 under subparagraph (A) whether jewelry is de-
20 signed or intended for wear or use by children
21 12 years of age or younger, the following fac-
22 tors shall be considered:

23 (i) A statement by a manufacturer
24 about the intended use of the product if
25 such statement is reasonable.

1 (ii) Any label on the product.

2 (iii) Whether the product is rep-
3 resented in its packaging, display, pro-
4 motion, or advertising as appropriate for
5 children 12 years of age or younger.

6 (iv) Whether the product is commonly
7 recognized by consumers as being intended
8 for use by children 12 years of age or
9 younger.

10 (v) The Age Determination Guide-
11 lines: Relating Children's Ages to Toy
12 Characteristics and Play Behavior, issued
13 by the Commission in September 2002,
14 and any modifications to such Guidelines.

15 (5) COMMISSION.—The term “Commission”
16 means the Consumer Product Safety Commission.

17 (6) SOLD OR DISTRIBUTED AT RETAIL.—The
18 term “sold or distributed at retail” means sold or
19 distributed to a consumer, but does not include sell-
20 ing activity that is intermittent.

21 **SEC. 3. BAN ON CERTAIN PRODUCTS CONTAINING CAD-**
22 **MIUM, BARIUM OR ANTIMONY.**

23 (a) TREATMENT AS BANNED HAZARDOUS SUB-
24 STANCE.—Any children's jewelry that is composed in
25 whole or in part of cadmium, barium, or antimony shall

1 be treated as a banned hazardous substance under the
2 Federal Hazardous Substances Act (15 U.S.C. 1261 et
3 seq.).

4 (b) TREATMENT AS A REGULATION UNDER THE
5 FEDERAL HAZARDOUS SUBSTANCES ACT.—The ban im-
6 posed under subsection (a) shall be treated as regulations
7 of the Commission promulgated under or for the enforce-
8 ment of section 2(q) of the Federal Hazardous Substances
9 Act (15 U.S.C. 1261(q)).

10 (c) REGULATIONS.—The Commission may prescribe
11 regulations to carry out the provisions of this Act.

12 **SEC. 4. ENFORCEMENT.**

13 (a) PENALTIES.—

14 (1) IN GENERAL.—Any failure of a person sub-
15 ject to a requirement of section 3 to comply with
16 such requirement shall be treated as a violation of
17 section 4 of the Federal Hazardous Substances Act
18 (15 U.S.C. 1263) and subject to the penalties set
19 forth in section 5 of such Act (15 U.S.C. 1264).

20 (b) REPORTS.—

21 (1) IN GENERAL.—Not later than 1 year after
22 the date of the enactment of this Act, and annually
23 thereafter, the Commission shall submit to Congress
24 a report on the actions taken by the Commission to
25 enforce the provisions of this Act, including a sum-

1 mary of the criminal and civil penalties imposed
2 under subsection (a).

3 (2) HEAVY METALS.—Not later than 1 year
4 after the date of the enactment of this Act, the
5 Commission shall submit a report to Congress re-
6 garding heavy metals which should be banned from
7 children’s products.

8 **SEC. 5. EFFECT ON FEDERAL AND STATE LAW.**

9 (a) IN GENERAL.—Nothing in this Act or section
10 18(b)(1)(B) of the Federal Hazardous Substances Act (15
11 U.S.C. 1261 note) shall affect the authority of any State
12 or political subdivision of a State to establish or continue
13 in effect a provision of the law of a State or political sub-
14 division of a State relating to regulation of products con-
15 taining cadmium, barium, or antimony, except to the ex-
16 tent that compliance with both State and Federal law is
17 impossible. Nothing in this section shall be construed to
18 modify or affect any enforcement action or liability of any
19 person under the law of any State.

20 (b) PRESERVATION OF CERTAIN STATE LAW.—Noth-
21 ing in this Act shall be construed to preempt or otherwise
22 affect any warning requirement relating to consumer prod-
23 ucts or substances that is established pursuant to State
24 law that was in effect on August 31, 2003.

1 **SEC. 6. EFFECTIVE DATE.**

2 This Act shall take effect on the date of the enact-
3 ment of this Act and shall apply with respect to children's
4 jewelry manufactured on or after the date that is 90 days
5 after such date of enactment.

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