

Product safety law casts gloom over businesses

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In early January, Mimi Sweeny began rising before dawn to wage an online battle from her office against a pending federal law she says will drive her children's apparel company out of business.

The owner of Baby Leo, a small, home-based San Francisco business that offers colorful satin and velvet-lined capes for children, is not alone. Joining her in virtual combat during those early hours are a cadre of other local "crafters" in the business of making children's clothing and accessories.

These entrepreneurs, many of them mothers running businesses from spare rooms or garages, fire off dozens of e-mails daily to politicians, in an attempt to win amendments to a federal law taking effect Feb. 10 that requires testing for lead, even in such products as organic cotton and recycled felt, which they say wouldn't contain lead. The daily deluge of e-mails challenging the Consumer Product Safety Improvement Act is followed by faxes, letters and phone calls to congressional staff members.

"We've all been up at 6, sending e-mails, writing letters," Sweeny said. "We're just bombarding politicians to look at what they signed."

Last summer, Congress overwhelmingly passed the act, and former President George W. Bush signed it Aug. 14. It mandates lab testing for lead in products intended for use by children age 12 and younger, and requires each product to bear a label stating how and where it was made. The law also sets strict limits on phthalate levels, all but eliminating the chemical from children's products, where it's been used to impart flexibility and durability in plastics.

It passed after the recall of some 40 million toys in 2007 for excess lead, most of which were made in China for large toy manufacturers.

Lead is a potent neurotoxin and in animal studies phthalates harm reproductive systems. They're particularly toxic in utero and during early child development.

But opponents of the law, as it's now written, say large toy makers are the true target, not small U.S. enterprises supporting a burgeoning demand for eco-friendly, locally made children's goods. These small-business owners are calling it the "National Bankruptcy Act." The law's broad language affects virtually every industry producing or selling goods designed for children. In addition to toys, books, posters, diapers, furniture, tableware, costumes, hair accessories, and sporting goods such as bicycles are among the affected products, if they're made solely for children's use.

Sweeney said it will cost at least \$800 to run lead tests on each of her 10 cape styles, and another \$2,400 each to test if they're phthalate free. When she sews up subsequent batches of the same design, or creates a new style, she'll need to repeat the tests.

Janelle Jones, owner of Abe Jones in Oakland, another home-based children's clothing firm, joins Sweeney in the early morning e-mail onslaught.

But last month, Jones took a full-time job, as she feared for her livelihood with the impending law. She said she'll close Abe Jones if the law takes effect without exemptions for businesses like hers.

Plum, a clothing manufacturer in Emeryville, plans to stop importing colorful "finger puppets" knitted by Peruvian village women, along with knit caps and mittens, if the law isn't amended to exempt them from lead testing.

Small U.S. toy makers, crafting such products as wood toys, dolls and puppets, were among the first "micro-producers" to grasp the reach of the new law, and they formed the Handmade Toy Alliance to seek exemptions for their goods.

Then in November, the publishing industry learned that children's books, along with such printed products as posters, also fell under the law's purview. Millions of books from schools, bookstores and warehouses may have to be dumped, said Chip Gibson, president and publisher of Random House Children's Books, in a Jan. 9 article in "Publishers Weekly." The law also increases fines to \$100,000 per violation, Gibson noted.

The Association of American Publishers petitioned the Consumer Product Safety Commission to exempt ordinary books, but in a Dec. 23 letter, the commission's general counsel declined the request. In addition to paint used to decorate books, the ink on pages might also contain lead, said Cheryl Falvey, the general counsel. However, a lawyer with the association pointed out that in 20 years, there has only been one report of excess lead linked to a book — due to the spiral metal binding.

Word trickled next to libraries that the law applied to their holdings. In a Dec. 8 letter to Congress, the American Library Association stated that under the new law, school and museum libraries would have to restrict children's access to books.

"If Congress does not act soon, libraries will be forced to remove books from their shelves," Jim Rettig, president of the library association, said earlier this month.

A group of Bay Area librarians is monitoring the situation through an online listserve. The Oakland Public Library's director, Carmen Martinez, declined to comment on the situation.

This month, thrift store officials nationwide realized that their children's goods would also have to comply with the law. Like all retailers, the thrift stores won't be required to test for lead, the product safety commission clarified in a Jan. 8 statement. But the commission offered scant comfort by reminding the shops that they are still legally liable for ensuring products sold are in compliance.

Goodwill Industries International is seeking an exemption for nonprofit social-service providers, said Charlene Sarmiento, a Goodwill spokeswoman.

Kimberly Scrafano, a senior director with Goodwill Industries of the Greater East Bay, said that without the exemption, it would have to discontinue accepting and selling children's goods, leading to more waste in landfills and decreasing sales by 9 percent, or \$1.8 million annually.

As the deadline draws near, the stakes are increasing. A class-action lawsuit against the Consumer Product Safety Commission seeking a temporary restraining order against the new law's implementation is expected to be filed soon, with two children's clothing makers as lead plaintiffs.

And grass-roots campaigns like Sweeney's are having some effect. In a Jan. 21 letter to a House committee urging a hearing on the matter, Reps. Joe Barton, R-Texas, and George Radanovich, R-Mariposa, wrote that e-mails, letters and phone calls to their offices about the new law "now number in the thousands." But Joseph Martyak, chief of staff for the product safety commission's acting chairman, said he has heard from Capitol Hill that no hearing to amend the law will be held. Congress members, he said, insist that the commission has sufficient regulatory flexibility to grant valid exemptions, an assertion with which Martyak strongly disagrees.

"We're looking at all the options that we have," Martyak said. "But with our hands tied tightly, and wiggling our fingers, we just can't make this happen by Feb. 10."

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About the law

WHAT: Consumer Product Safety Improvement Act

WHEN: Law takes effect

Feb 10.

WHAT IT DOES: Limits lead levels in children's products to 600 parts per million, dropping to 300 parts per million in August. It requires third-party testing to verify compliance.

PRODUCTS AFFECTED: Thousands of children's items including books, clothing, furniture and tableware, and toys.

EXEMPTIONS WANTED: A number of organizations, citing economically catastrophic effects, are pressuring for exemptions for products they say inherently wouldn't contain levels exceeding standards.

"This is a potential calamity like nothing I've ever seen. The implications are quite literally unimaginable."

-- Chip Gibson, president and publisher of Random House Children's Books

"If the (law) is applied to books and paper-based materials, public, school and museum libraries will have to either remove all their books or ban all children under 12 from visiting. This cannot be what Congress intended."

-- Emily Sheketoff, executive director of the American Library Association's Washington, D.C., office

"The effect on our business could be devastating, particularly in this economy, when more and more people are coming to us for help with job training and placement."

-- Kimberly Scrafano, a senior director with Goodwill Industries of the Greater East Bay