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AB-847 Electrically conductive balloons. (2021-2022)

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Assembly Bill No. 847

CHAPTER 401

An act to amend Section 22942 of, and to add Section 22942.5 to, the Business and Professions Code, relating to business.

[Approved by Governor September 18, 2022. Filed with Secretary of State September 18, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 847, Quirk. Electrically conductive balloons.

Existing law requires a person who manufactures a balloon in this state that is constructed of electrically conductive material to permanently mark each balloon with, among other things, a statement warning consumers about the dangerous risk of fire if the balloon comes in contact with an electrical power line. Existing law also imposes specified requirements on a person who sells or distributes a balloon constructed of electrically conductive material that is filled with lighter-than-air gas, including prohibiting the person from attaching the balloon to an electrically conductive object.

This bill would require a person, as defined, who manufactures a foil balloon to permanently mark the balloon with additional specified information, including the dangers of releasing foil balloons that may come into contact with overhead power lines and that the balloon is in compliance with the provisions of this bill, as specified. The bill would define a "foil balloon" to mean a balloon that is constructed of electrically conductive material.

This bill would require a person who sells, offers for sale, or manufactures for sale any foil balloon to ensure that those foil balloons are manufactured to meet certain requirements, including passing a standard test that is approved by the Institute of Electrical and Electronics Engineers. The bill would require foil balloons to become compliant with that requirement pursuant to a prescribed phase-in period. The bill, following completion of the phase-in period, would prohibit a person from selling, offering for sale, or manufacturing for sale, a foil balloon, unless the balloon complies with these provisions. The bill would toll specified dates and time periods when a serious development, manufacturing, production, or supply chain issue, or force majeure, occurs.

This bill would define various terms for these purposes.

This bill would make a person who violates, or who attempts to violate, these provisions subject to liability for injunction and a civil penalty of \$50 per noncompliant balloon, not to exceed \$2,500 per day for a totality of violations. The bill would authorize the penalty to be assessed and recovered in a civil action brought in any court of competent jurisdiction by the Attorney General or local officials, as specified. The bill would require the civil penalties to be collected and retained by the office that brought the action.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22942 of the Business and Professions Code is amended to read:

22942. (a) A person who manufactures a foil balloon in this state shall comply with all of the following:

(1) Permanently mark each foil balloon with a printed statement, written in a legible font size and located in a conspicuous area on the foil balloon, that warns the consumer of at least one of the following:

(A) The dangers of releasing balloons that may come into contact with overhead power lines.

(B) If the foil balloon is manufactured to meet the requirements described in subdivision (d), the consumer's responsibilities when disposing of foil balloons.

(2) Permanently mark each foil balloon with the identity of the manufacturer.

(3) Permanently mark each foil balloon that it is in compliance with this section if the foil balloon is manufactured to meet the requirements described in subdivision (d). Markings prescribed under the final standard by the Institute of Electrical and Electronics Engineers (IEEE) shall be considered a suitable mark.

(b) A person who sells or distributes a foil balloon that is filled with lighter-than-air gas in this state shall comply with both of the following:

(1) The person shall affix an object of sufficient weight to each foil balloon or its appurtenance to counter the lift capability of the foil balloon.

(2) The person shall not attach the foil balloon to an electrically conductive string, tether, or streamer, to a balloon constructed of electrically conductive material, or to any other electrically conductive object.

(c) This section shall not apply to manned hot air balloons or to balloons used in governmental or scientific research projects.

(d) A person that sells, offers for sale, or manufactures for sale, in this state, any foil balloon shall ensure that those foil balloons pass a standard test, as determined by an accredited testing facility capable of high-voltage testing.

(1) (A) The standard test shall be the IEEE 2845 standard when that standard is approved by the IEEE.

(B) The standard test shall be approved when the IEEE does all of the following:

(i) Publishes an interim standard.

(ii) Completes its trial of the interim standard.

(iii) Publishes the final approved standard, following materially substantive adjustments, if any, to the interim standard.

(2) This requirement is subject to the following phase-in period:

(A) At least 25 percent of the person's foil balloons shall comply no later than one year from the commencement date.

(B) At least 55 percent of the person's foil balloons shall comply no later than two years from the commencement date.

(C) At least 80 percent of the person's foil balloons shall comply no later than three years from the commencement date.

(D) One hundred percent of the person's foil balloons shall comply no later than four years from the commencement date.

(e) Following the completion of the phase-in period outlined in subdivision (d) and notwithstanding any other law, a person shall not sell, offer for sale, or manufacture for sale, in this state, any foil balloon, unless the balloon complies with this section.

(f) (1) All of the following dates and time periods shall be tolled when a serious development, manufacturing, production, or supply chain issue, or force majeure, occurs:

(A) The commencement date.

(B) The phase-in period outlined in paragraph (2) of subdivision (d).

(C) The prohibition against selling, offering for sale, and manufacturing for sale outlined in subdivision (e).

(2) Tolling shall last for a period of 24 months or until the serious development, manufacturing, production, or supply chain issue, or force majeure, is resolved, whichever occurs first.

(3) A serious development, manufacturing, production, or supply chain issue, or force majeure, shall be deemed to have occurred if both of the following are satisfied:

(A) The issue is outside of the control of the business that develops, manufactures, produces, or sells foil balloons.

(B) The issue makes it infeasible to develop, manufacture, produce, or sell foil balloons that otherwise would be subject to the requirement of paragraph (1) of subdivision (a).

(g) For the purposes of this section, the following terms apply:

(1) "Commencement date" means the date on which the IEEE approves the final standard for testing foil balloons at a level of electric distribution voltages without causing an electrical fault and all of the requirements of subparagraph (B) of paragraph (1) of subdivision (d) are met, or January 1, 2027, whichever is later.

(2) "Foil balloon" means a balloon that is constructed of electrically conductive material.

(3) "Infeasible" means incapable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(4) "Phase-in period" means the gradual phase in of the restrictions on the sale, offer for sale, and manufacture for sale, in this state, of a foil balloon following the commencement date, as set forth in subdivision (d).

(5) "Person" means any individual, association, organization, partnership, business trust, limited liability company, corporation, or other entity.

SEC. 2. Section 22942.5 is added to the Business and Professions Code, to read:

22942.5. (a) A person who violates or attempts to violate Section 22942 may be enjoined in any court of competent jurisdiction.

(b) (1) A person who has violated Section 22942 is liable for a civil penalty in the amount of fifty dollars (\$50) for each foil balloon that was sold, offered for sale, manufactured for sale, or distributed in violation of Section 22942. This civil penalty shall not exceed two thousand five hundred dollars (\$2,500) per day for a totality of violations of Section 22942, in addition to any other penalty established by law. This civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following:

(A) The nature and extent of the violation.

(B) The number and severity of the violations.

(C) The economic effect of the penalty on the person who violated Section 22942.

(D) The person's annual revenue in both balloon sales and total sales.

(E) Whether the person who violated Section 22942 took good faith measures to comply with Section 22942 and when these measures were taken.

(F) The deterrent effect that the imposition of the penalty would have on both the person who violated Section 22942 and the regulated community as a whole.

(G) The willfulness of the persons responsible for the violation.

(H) Any other factors that justice may require.

(c) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the state, by a district attorney, by a city attorney, or by a city prosecutor in a city or city and county having a full-time city prosecutor.

(d) Civil penalties collected pursuant to this section shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action.