

1526--A

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. PERKINS, ADAMS, AVELLA, DIAZ, DUANE, HASSELL-THOMPSON, HUNTLEY, KRUEGER, MONTGOMERY, OPPENHEIMER, PARKER, SAVINO, SERRANO, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to regulation of toxic chemicals in children's products

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 37 of the environmental conservation law is amended by adding a new title 9 to read as follows:

TITLE IX

TOXIC CHEMICALS IN CHILDREN'S PRODUCTS

SECTION 37-0901. DEFINITIONS.

37-0903. CHEMICALS OF HIGH CONCERN.

37-0905. PRIORITY CHEMICALS.

37-0907. DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS.

37-0909. SALES PROHIBITION.

37-0911. APPLICABILITY.

37-0913. ENFORCEMENT AND IMPLEMENTATION.

37-0915. INTERSTATE CHEMICAL CLEARINGHOUSE.

37-0917. REGULATIONS.

S 37-0901. DEFINITIONS.

AS USED IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE INDICATES, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS.

1. "CHILDREN'S APPAREL" MEANS ANY ITEM OF CLOTHING THAT CONSISTS OF FABRIC OR RELATED MATERIAL INTENDED OR PROMOTED FOR USE IN CHILDREN'S CLOTHING. CHILDREN'S APPAREL DOES NOT MEAN PROTECTIVE EQUIPMENT DESIGNED TO PREVENT INJURY, INCLUDING, BUT NOT LIMITED TO, BICYCLE HELMETS, ATHLETIC SUPPORTERS, KNEE PADS OR ELBOW PADS.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 2. "CHEMICAL" MEANS A SUBSTANCE WITH A DISTINCT MOLECULAR COMPOSITION
2 OR A GROUP OF STRUCTURALLY RELATED SUBSTANCES AND INCLUDES THE BREAKDOWN
3 PRODUCTS OF THE SUBSTANCE OR SUBSTANCES THAT FORM THROUGH DECOMPOSITION,
4 DEGRADATION OR METABOLISM.

5 3. "CHEMICAL OF HIGH CONCERN" MEANS A CHEMICAL INCLUDED IN THE LIST OF
6 "CHEMICALS OF HIGH CONCERN" PUBLISHED IN JUNE 2009 PURSUANT TO CHAPTER
7 16-D OF TITLE 38 OF THE MAINE REVISED STATUTES ANNOTATED.

8 4. "CHILDREN" MEANS A PERSON OR PERSONS AGED TWELVE AND UNDER.

9 5. "CHILDREN'S PRODUCT" MEANS A PRODUCT PRIMARILY INTENDED FOR USE BY
10 CHILDREN, INCLUDING EXTERNAL COMPONENT PARTS AND PACKAGING, INCLUDING
11 BABY PRODUCTS, TOYS, CAR SEATS, PERSONAL CARE PRODUCTS, A PRODUCT
12 DESIGNED OR INTENDED BY THE MANUFACTURER TO HELP A CHILD WITH SUCKING OR
13 TEETHING, TO FACILITATE SLEEP, RELAXATION, OR THE FEEDING OF A CHILD,
14 JEWELRY, NOVELTY PRODUCTS, BEDDING, FURNITURE, FURNISHINGS, CHILDREN'S
15 APPAREL, AND THE HOUSING OF CONSUMER ELECTRONIC PRODUCTS. "CHILDREN'S
16 PRODUCT" DOES NOT INCLUDE (A) BATTERIES; OR (B) CONSUMER ELECTRONIC
17 PRODUCTS ENCLOSED WITHIN A SECURE HOUSING, INCLUDING BUT NOT LIMITED TO
18 PERSONAL COMPUTERS, AUDIO AND VIDEO EQUIPMENT, CALCULATORS, WIRELESS
19 PHONES, GAME CONSOLES, AND HANDHELD DEVICES INCORPORATING A VIDEO
20 SCREEN, USED TO ACCESS INTERACTIVE SOFTWARE AND THEIR ASSOCIATED PERIPH-
21 ERALS, EXCEPT FOR SAID SECURE HOUSING; OR (C) A FOOD OR BEVERAGE OR AN
22 ADDITIVE TO A FOOD OR BEVERAGE REGULATED BY THE UNITED STATES FOOD AND
23 DRUG ADMINISTRATION; OR (D) A TOBACCO PRODUCT OR PAPER OR FOREST PROD-
24 UCT; OR (E) A PESTICIDE REGULATED BY THE UNITED STATES ENVIRONMENTAL
25 PROTECTION AGENCY. CHILDREN'S PRODUCT ALSO DOES NOT INCLUDE A DRUG,
26 BIOLOGIC OR MEDICAL DEVICE REGULATED BY THE UNITED STATES FOOD AND DRUG
27 ADMINISTRATION OR THE PACKAGING OF SUCH DRUG, BIOLOGIC OR MEDICAL DEVICE
28 IF SUCH PACKAGING IS REGULATED BY THE UNITED STATES FOOD AND DRUG ADMIN-
29 ISTRATION.

30 6. "DISTRIBUTOR" MEANS A PERSON WHO SELLS CHILDREN'S PRODUCTS TO
31 RETAIL ESTABLISHMENTS ON A WHOLESALE BASIS.

32 7. "INTENTIONALLY ADDED" MEANS THE DELIBERATE USE IN THE FORMULATION
33 OF A PRODUCT OR SUBPART WHERE ITS CONTINUED PRESENCE IS DESIRED IN THE
34 FINAL PRODUCT OR SUBPART TO PROVIDE A SPECIFIC CHARACTERISTIC, APPEAR-
35 ANCE OR QUALITY.

36 8. "MANUFACTURER" MEANS ANY PERSON WHO CURRENTLY MANUFACTURES A FINAL
37 CHILDREN'S PRODUCT OR WHOSE BRAND NAME IS AFFIXED TO THE CHILDREN'S
38 PRODUCT. IN THE CASE OF A CHILDREN'S PRODUCT THAT WAS IMPORTED INTO THE
39 UNITED STATES, "MANUFACTURER" INCLUDES THE IMPORTER OR FIRST DOMESTIC
40 DISTRIBUTOR OF THE CHILDREN'S PRODUCT IF THE PERSON WHO CURRENTLY MANU-
41 FACTURES OR ASSEMBLES THE CHILDREN'S PRODUCT OR WHOSE BRAND NAME IS
42 AFFIXED TO THE CHILDREN'S PRODUCT DOES NOT HAVE A PRESENCE IN THE UNITED
43 STATES.

44 9. "NOVELTY PRODUCT" MEANS A PRODUCT INTENDED MAINLY FOR PERSONAL OR
45 HOUSEHOLD ENJOYMENT OR ADORNMENT. NOVELTY PRODUCTS INCLUDE, BUT ARE NOT
46 LIMITED TO, ITEMS INTENDED FOR USE AS PRACTICAL JOKES, FIGURINES, ADORN-
47 MENTS, TOYS, GAMES, CARDS, ORNAMENTS, YARD STATUES AND FIGURES, CANDLES,
48 JEWELRY, HOLIDAY DECORATIONS, OR SIMILAR PRODUCTS.

49 10. "PRIORITY CHEMICAL" MEANS (A) THE FOLLOWING CHEMICALS:

50 CASRN115-96-8	TRIS (2-CHLOROETHYL) PHOSPHATE
51 CASRN71-43-2	BENZENE
52 CASRN7439-92-1	LEAD AND COMPOUNDS (INORGANIC)
53 CASRN7439-97-6	MERCURY AND MERCURY COMPOUNDS, INCLUDING METHYL 54 MERCURY (CASRN 22967-92-6)
55 CASRN7439-98-7	MOLYBDENUM AND MOLYBDENUM COMPOUNDS
56 CASRN7440-36-0	ANTIMONY AND ANTIMONY COMPOUNDS

CASRN7440-38-2 ARSENIC AND ARSENIC COMPOUNDS INCLUDING ARSENIC
TRIOXIDE (CASRN 1327-53-3)
AND DIMETHYL ARSENIC (CASRN 75-60-5)

CASRN7440-41-7 BERYLLIUM AND BERYLLIUM COMPOUNDS

CASRN7440-43-9 CADMIUM

CASRN7440-48-4 COBALT AND COBALT COMPOUNDS AND

(B) A CHEMICAL ADOPTED BY THE DEPARTMENT PURSUANT TO SECTION 37-0505
OF THIS TITLE.

11. "TOY" MEANS A PRODUCT DESIGNED OR INTENDED BY THE MANUFACTURER TO
BE USED BY A CHILD AT PLAY.

S 37-0903. CHEMICALS OF HIGH CONCERN.

1. PUBLISHING OF LIST. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE
DATE OF THIS TITLE, THE DEPARTMENT SHALL ENSURE THAT A WEBSITE ACCESSI-
BLE TO THE PUBLIC IS ESTABLISHED WHICH LISTS ALL CHEMICALS OF HIGH
CONCERN.

2. PERIODIC REVIEW. (A) WITH RESOURCES MADE AVAILABLE THEREFOR, THE
DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH, MAY PERIOD-
ICALLY REVIEW THE LIST OF CHEMICALS OF HIGH CONCERN AND, THROUGH REGU-
LATION, IDENTIFY ADDITIONAL CHEMICALS OF HIGH CONCERN, OR REMOVE A CHEM-
ICAL FROM THE LIST OF CHEMICALS OF HIGH CONCERN BASED ON EVIDENCE THAT
THE CHEMICAL DOES NOT MEET THE CRITERIA OF THIS SUBDIVISION, INCLUDING,
BUT NOT LIMITED TO, PESTICIDES AND CONTROLLED SUBSTANCES. IN THE EVENT
THAT A NEW DETERMINATION IS MADE BY A STATE, FEDERAL OR INTERNATIONAL
GOVERNMENTAL ENTITY THAT A CHEMICAL MEETS THE HIGH CONCERN CRITERIA,
NOTHING HEREIN SHALL PREVENT THE DEPARTMENT FROM ACTING TO ADD SUCH
CHEMICALS OUTSIDE OF THE PERIODIC REVIEW PROCESS.

(B) THE DEPARTMENT SHALL, UPON THIS REVIEW, IDENTIFY A CHEMICAL AS A
CHEMICAL OF HIGH CONCERN IF IT DETERMINES THAT THE CHEMICAL HAS BEEN
IDENTIFIED BY A STATE, FEDERAL OR INTERNATIONAL GOVERNMENTAL ENTITY ON
THE BASIS OF CREDIBLE SCIENTIFIC EVIDENCE AS:

(I) A CARCINOGEN, A REPRODUCTIVE OR DEVELOPMENTAL TOXICANT OR AN
ENDOCRINE DISRUPTOR;

(II) PERSISTENT, BIOACCUMULATIVE AND TOXIC; OR

(III) VERY PERSISTENT AND VERY BIOACCUMULATIVE.

(C) IN MAKING SUCH DETERMINATION, THE DEPARTMENT MAY CONSIDER BUT IS
NOT LIMITED TO CONSIDERING:

(I) CHEMICALS IDENTIFIED AS "GROUP 1 CARCINOGENS" OR "GROUP 2A CARCI-
NOGENS" BY THE WORLD HEALTH ORGANIZATION, INTERNATIONAL AGENCY FOR
RESEARCH ON CANCER;

(II) CHEMICALS IDENTIFIED AS "KNOWN TO BE A HUMAN CARCINOGEN" AND
"REASONABLY ANTICIPATED TO BE A HUMAN CARCINOGEN" BY THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES PURSUANT TO
THE PUBLIC HEALTH SERVICE ACT, 42 UNITED STATES CODE, SECTION 241(B)(4),
AS AMENDED;

(III) CHEMICALS IDENTIFIED AS "GROUP A CARCINOGENS" OR "GROUP B CARCI-
NOGENS" BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY;

(IV) CHEMICALS IDENTIFIED AS REPRODUCTIVE OR DEVELOPMENTAL TOXICANTS
BY:

(A) THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
NATIONAL TOXICOLOGY PROGRAM, CENTER FOR THE EVALUATION OF RISKS TO HUMAN
REPRODUCTION; AND

(B) THE CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF ENVIRON-
MENTAL HEALTH HAZARD ASSESSMENT PURSUANT TO THE CALIFORNIA HEALTH AND
SAFETY CODE, SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986,
CHAPTER 6.6, SECTION 25249.8;

(V) CHEMICALS IDENTIFIED AS A CHEMICAL OF HIGH CONCERN FOR CHILDREN OR A HIGH PRIORITY CHEMICAL OF HIGH CONCERN FOR CHILDREN BY THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY, PURSUANT TO CHAPTER 70.240 OF THE REVISED CODE OF WASHINGTON;

(VI) CHEMICALS OF HIGH CONCERN AS SUCH CHEMICALS ARE IDENTIFIED BY THE STATE OF MAINE'S DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND APPEARING ON SUCH DEPARTMENT'S LIST OF CHEMICALS OF HIGH CONCERN;

(VII) CHEMICALS IDENTIFIED AS KNOWN OR LIKELY ENDOCRINE DISRUPTORS THROUGH SCREENING OR TESTING CONDUCTED IN ACCORDANCE WITH PROTOCOLS DEVELOPED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO THE UNITED STATES FOOD, DRUG AND COSMETIC ACT, 21 UNITED STATES CODE, 346A(P), AS AMENDED BY THE FEDERAL FOOD QUALITY PROTECTION ACT (PUBLIC LAW 104-170) OR THE FEDERAL SAFE DRINKING WATER ACT, 42 UNITED STATES CODE, SECTION 300J-17;

(VIII) CHEMICALS LISTED ON THE BASIS OF ENDOCRINE-DISRUPTING PROPERTIES IN ANNEX XIV, LIST OF SUBSTANCES SUBJECT TO AUTHORISATION, REGULATION (EC) NO 1907/2006 OF THE EUROPEAN PARLIAMENT CONCERNING THE REGISTRATION, EVALUATION, AUTHORISATION AND RESTRICTION OF CHEMICALS;

(IX) PERSISTENT, BIOACCUMULATIVE AND TOXIC CHEMICALS IDENTIFIED BY OTHER STATES OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY;

(X) A VERY PERSISTENT, VERY BIOACCUMULATIVE CHEMICAL LISTED IN ANNEX XIV, LIST OF SUBSTANCES SUBJECT TO AUTHORISATION, REGULATION (EC) NO 1907/2006 OF THE EUROPEAN PARLIAMENT CONCERNING THE REGISTRATION, EVALUATION, AUTHORIZATION AND RESTRICTION OF CHEMICALS; AND

(XI) A PERSISTENT BIOACCUMULATIVE TOXIC CHEMICAL AS DEFINED IN CHAPTER 173-333 OF THE STATE OF WASHINGTON ADMINISTRATIVE CODE.

S 37-0905. PRIORITY CHEMICALS.

1. PUBLISHING OF LIST. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS TITLE, THE DEPARTMENT SHALL ENSURE THAT A WEBSITE ACCESSIBLE TO THE PUBLIC IS ESTABLISHED WHICH LISTS ALL PRIORITY CHEMICALS.

2. PERIODIC REVIEW. (A) WITH RESOURCES MADE AVAILABLE THEREFOR, THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH, MAY PERIODICALLY REVIEW THE LIST OF PRIORITY CHEMICALS AND, THROUGH REGULATION, IDENTIFY ADDITIONAL PRIORITY CHEMICALS OR REMOVE A CHEMICAL FROM THE LIST OF PRIORITY CHEMICALS BASED ON EVIDENCE THAT THE CHEMICAL IS NOT PRESENT IN A CHILDREN'S PRODUCT OR OTHERWISE SHOULD NOT BE SUBJECT TO THE REQUIREMENTS OF THIS TITLE. IN THE EVENT THAT A NEW DETERMINATION IS MADE BY A STATE, FEDERAL OR INTERNATIONAL GOVERNMENTAL ENTITY THAT A CHEMICAL MEETS THE PRIORITY CHEMICAL CRITERIA, NOTHING HEREIN SHALL PREVENT THE DEPARTMENT FROM ACTING TO ADD SUCH CHEMICALS OUTSIDE OF THE PERIODIC REVIEW PROCESS.

(B) THE DEPARTMENT MAY IDENTIFY A CHEMICAL AS A PRIORITY CHEMICAL IF, UPON SUCH REVIEW, IT DETERMINES THAT A CHEMICAL OF HIGH CONCERN MEETS ANY OF THE FOLLOWING CRITERIA:

(I) THE CHEMICAL OR ITS METABOLITES HAVE BEEN FOUND THROUGH BIOMONITORING TO BE PRESENT IN HUMANS, INCLUDING HUMAN BLOOD, UMBILICAL CORD BLOOD, BREAST MILK, URINE OR OTHER BODILY TISSUES OR FLUIDS;

(II) THE CHEMICAL HAS BEEN FOUND THROUGH SAMPLING AND ANALYSIS TO BE PRESENT IN HOUSEHOLD DUST, INDOOR AIR, DRINKING WATER OR ELSEWHERE IN THE HOME ENVIRONMENT;

(III) THE CHEMICAL HAS BEEN FOUND THROUGH MONITORING TO BE PRESENT IN FISH, WILDLIFE OR THE NATURAL ENVIRONMENT;

(IV) THE CHEMICAL IS PRESENT IN A CHILDREN'S PRODUCT USED OR PRESENT IN THE HOME, SCHOOL, OR CHILDCARE CENTER;

(V) THE CHEMICAL HAS BEEN IDENTIFIED AS A HIGH PRODUCTION VOLUME CHEMICAL BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; OR

(VI) THE SALE OR USE OF THE CHEMICAL OR A PRODUCT CONTAINING THE CHEMICAL HAS BEEN BANNED IN ANOTHER STATE OR STATES WITHIN THE UNITED STATES BECAUSE OF THE HEALTH EFFECTS OF SUCH CHEMICAL.

(C) IF A CHEMICAL IS REMOVED FROM THE LISTING OF CHEMICALS OF HIGH CONCERN, IT SHALL ALSO BE UNDESIGNATED AS A PRIORITY CHEMICAL. S 37-0907. DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS.

1. REPORTING OF CHEMICAL USE. NO LATER THAN TWELVE MONTHS AFTER A PRIORITY CHEMICAL IS LISTED ON THE LIST PUBLISHED PURSUANT TO SECTION 37-0905 OF THIS TITLE, EVERY MANUFACTURER WHO OFFERS A CHILDREN'S PRODUCT FOR SALE OR DISTRIBUTION IN THIS STATE THAT CONTAINS AN INTENTIONALLY ADDED PRIORITY CHEMICAL SHALL NOTIFY THE DEPARTMENT IN A FORM PRESCRIBED BY THE DEPARTMENT, DEVELOPED IN COLLABORATION WITH OTHER STATES AND AN INTERSTATE CHEMICALS CLEARINGHOUSE AS PROVIDED IN SECTION 37-0915 OF THIS TITLE.

(A) THIS NOTICE MUST AT A MINIMUM IDENTIFY THE CHILDREN'S PRODUCT, THE PRIORITY CHEMICAL OR CHEMICALS CONTAINED IN THE CHILDREN'S PRODUCT, AND THE INTENDED PURPOSE OF THE CHEMICALS IN THE CHILDREN'S PRODUCT. ALL INFORMATION SUBMITTED PURSUANT TO THIS SUBDIVISION SHALL BE SUBJECT TO DISCLOSURE TO THE PUBLIC. CONSISTENT WITH NOTIFICATION REQUIRED BY OTHER STATES, THE DEPARTMENT MAY ALSO REQUIRE REPORTING OF THE FOLLOWING INFORMATION:

(I) THE POTENTIAL FOR HARM TO HUMAN HEALTH AND THE ENVIRONMENT FROM SPECIFIC USES OF THE PRIORITY CHEMICAL;

(II) THE AMOUNT OF SUCH CHEMICAL IN EACH UNIT OF THE CHILDREN'S PRODUCT, EXPRESSED IN A RANGE;

(III) INFORMATION ON THE LIKELIHOOD THAT THE CHEMICAL WILL BE RELEASED FROM THE CHILDREN'S PRODUCT TO THE ENVIRONMENT DURING THE PRODUCT'S LIFE CYCLE AND THE EXTENT TO WHICH USERS OF THE PRODUCT ARE LIKELY TO BE EXPOSED TO THE CHEMICAL;

(IV) INFORMATION ON THE EXTENT TO WHICH THE CHEMICAL IS PRESENT IN THE ENVIRONMENT OR HUMAN BODY.

(B) IN LIEU OF PROVIDING THIS NOTICE TO THE DEPARTMENT, THE DEPARTMENT IS AUTHORIZED TO DIRECT SUBMISSION OF SUCH NOTICE TO THE INTERSTATE CHEMICALS CLEARINGHOUSE PURSUANT TO SECTION 37-0915 OF THIS TITLE.

2. ASSESSMENT OF ALTERNATIVE CHEMICALS. IN ADDITION, CONSISTENT WITH OTHER STATES, THE DEPARTMENT MAY REQUIRE THAT THE MANUFACTURER PROVIDE AN ASSESSMENT OF THE AVAILABILITY, COST, FEASIBILITY AND PERFORMANCE, INCLUDING POTENTIAL FOR HARM TO HUMAN HEALTH AND THE ENVIRONMENT, OF ALTERNATIVES TO THE PRIORITY CHEMICAL AND THE REASON THE PRIORITY CHEMICAL IS USED IN THE MANUFACTURE OF THE CHILDREN'S PRODUCT IN LIEU OF IDENTIFIED ALTERNATIVES. THE DEPARTMENT SHALL HOLD CONFIDENTIAL ANY INFORMATION DISCLOSED PURSUANT TO THIS SUBDIVISION CONCERNING THE CHEMICAL OR CONSUMER PRODUCT THAT IF MADE PUBLIC, WOULD DIVULGE CONFIDENTIAL BUSINESS INFORMATION, METHODS OR PROCESSES ENTITLED TO PROTECTION AS TRADE SECRETS, EXCEPT THAT SUCH INFORMATION MAY BE DISCLOSED TO ANY OFFICERS, EMPLOYEES OR AUTHORIZED REPRESENTATIVES OF THE STATE CONCERNED WITH CARRYING OUT THE PROVISIONS OF THIS TITLE.

3. WAIVER OF REPORTING. UPON APPLICATION BY A MANUFACTURER, THE COMMISSIONER MAY WAIVE ALL OR PART OF THE NOTIFICATION REQUIREMENT UNDER SUBDIVISION ONE OF THIS SECTION FOR ONE OR MORE SPECIFIED USES OF A PRIORITY CHEMICAL. IN MAKING SUCH DETERMINATION, THE COMMISSIONER MAY CONSIDER: (A) SIMILAR WAIVERS GRANTED BY OTHER STATES, AND (B) WHETHER THE SPECIFIED USE OR USES ARE MINOR IN VOLUME.

4. NOTICE TO RETAILERS. A MANUFACTURER OR DISTRIBUTOR OF A CHILDREN'S PRODUCT CONTAINING A PRIORITY CHEMICAL SHALL NOTIFY PERSONS THAT OFFER THE CHILDREN'S PRODUCT FOR SALE OR DISTRIBUTION IN THE STATE OF THE

1 PRESENCE OF SUCH PRIORITY CHEMICAL, AND PROVIDE SUCH PERSONS WITH INFOR-
2 MATION REGARDING THE TOXICITY OF SUCH CHEMICAL.

3 5. FEES. THE MANUFACTURER OR DISTRIBUTOR SHALL PAY A FEE UPON
4 SUBMISSION OF A REPORT OF CHEMICAL USE OR A WAIVER REQUEST TO COVER THE
5 DEPARTMENT'S REASONABLE COSTS IN MANAGING THE INFORMATION COLLECTED OR
6 IN MAKING A WAIVER DETERMINATION, IN THE AMOUNT OF SIX HUNDRED DOLLARS
7 PER CHEMICAL.

8 S 37-0909. SALES PROHIBITION.

9 UPON TWO YEARS AFTER THE EFFECTIVE DATE OF THIS TITLE, NO PERSON SHALL
10 DISTRIBUTE, SELL OR OFFER FOR SALE IN THIS STATE AN ITEM OF CHILDREN'S
11 APPAREL OR A CHILDREN'S NOVELTY PRODUCT CONTAINING A PRIORITY CHEMICAL.
12 THIS PROVISION SHALL NOT APPLY TO AN ITEM OF CHILDREN'S APPAREL OR CHIL-
13 DREN'S NOVELTY SOLELY BASED ON ITS CONTAINING AN ENCLOSED BATTERY OR
14 ENCLOSED ELECTRONIC COMPONENTS.

15 S 37-0911. APPLICABILITY.

16 1. NEW CHILDREN'S PRODUCTS. THE PROVISIONS OF THIS TITLE SHALL APPLY
17 TO CHEMICALS IN CHILDREN'S PRODUCTS SOLD OR DISTRIBUTED AS NEW AND DOES
18 NOT APPLY TO USED CHILDREN'S PRODUCTS THAT ARE SOLD OR DISTRIBUTED FOR
19 FREE AT SECONDHAND STORES, YARD SALES, ON THE INTERNET OR DONATED TO
20 CHARITIES.

21 2. INDUSTRY. THE REQUIREMENTS OF THIS TITLE SHALL NOT APPLY TO PRIORI-
22 TY CHEMICALS USED IN OR FOR INDUSTRY OR MANUFACTURING, INCLUDING CHEMI-
23 CALS PROCESSED OR OTHERWISE USED IN OR FOR INDUSTRIAL OR MANUFACTURING
24 PROCESSES AND NOT INCLUDED IN THE FINAL PRODUCT.

25 3. TRANSPORTATION. THE REQUIREMENTS OF THIS TITLE SHALL NOT APPLY TO
26 MOTOR VEHICLES OR THEIR COMPONENT PARTS, WATERCRAFT OR THEIR COMPONENT
27 PARTS, ALL TERRAIN VEHICLES OR THEIR COMPONENT PARTS, OR OFF-HIGHWAY
28 MOTORCYCLES OR THEIR COMPONENT PARTS, EXCEPT THAT THE USE OF PRIORITY
29 CHEMICALS IN DETACHABLE CAR SEATS IS NOT EXEMPT.

30 4. COMBUSTION. THE REQUIREMENTS OF THIS TITLE SHALL NOT APPLY TO
31 PRIORITY CHEMICALS GENERATED SOLELY AS COMBUSTION BY-PRODUCTS OR THAT
32 ARE PRESENT IN COMBUSTIBLE FUELS.

33 5. RETAILERS. A RETAILER IS EXEMPT FROM THE REQUIREMENTS OF THIS TITLE
34 UNLESS THAT RETAILER KNOWINGLY SELLS A CHILDREN'S PRODUCT CONTAINING A
35 PRIORITY CHEMICAL AFTER THE EFFECTIVE DATE OF ITS PROHIBITION FOR WHICH
36 THAT RETAILER HAS RECEIVED PRIOR NOTIFICATION FROM A MANUFACTURER,
37 DISTRIBUTOR OR THE STATE.

38 S 37-0913. ENFORCEMENT AND IMPLEMENTATION.

39 1. FAILURE TO PROVIDE NOTICE. A CHILDREN'S PRODUCT CONTAINING A PRIOR-
40 ITY CHEMICAL MAY NOT BE SOLD, OFFERED FOR SALE OR DISTRIBUTED FOR SALE
41 IN THIS STATE IF THE MANUFACTURER OR DISTRIBUTOR HAS FAILED TO PROVIDE
42 THE NOTIFICATION REQUIRED UNDER SECTION 37-0907 OF THIS TITLE BY THE
43 DATE REQUIRED IN SUCH SECTION. THE COMMISSIONER MAY EXEMPT A CHILDREN'S
44 PRODUCT FROM THIS PROHIBITION IF, IN THE COMMISSIONER'S JUDGMENT, THE
45 LACK OF AVAILABILITY OF THE CHILDREN'S PRODUCT COULD POSE AN UNREASON-
46 ABLE RISK TO PUBLIC HEALTH, SAFETY OR WELFARE.

47 2. CERTIFICATE OF COMPLIANCE. IF THERE ARE GROUNDS TO SUSPECT THAT A
48 CHILDREN'S PRODUCT IS BEING OFFERED FOR SALE IN VIOLATION OF THIS TITLE,
49 THE DEPARTMENT MAY REQUEST THE MANUFACTURER OR DISTRIBUTOR OF THE CHIL-
50 DREN'S PRODUCT TO PROVIDE A CERTIFICATE OF COMPLIANCE WITH THE
51 PROVISIONS OF THIS TITLE, WITHIN TEN DAYS OF RECEIPT OF A REQUEST FROM
52 THE DEPARTMENT. THE CERTIFICATE OF COMPLIANCE SHALL:

53 (A) ATTEST THAT THE CHILDREN'S PRODUCT DOES NOT CONTAIN THE PRIORITY
54 CHEMICAL; OR

55 (B) ATTEST AND PROVIDE THE DEPARTMENT WITH DOCUMENTATION THAT NOTIFI-
56 CATION OF THE PRESENCE OF THE PRIORITY CHEMICAL HAS BEEN PROVIDED TO THE

1 DEPARTMENT OR PROVIDE NOTICE AS REQUIRED BY SECTION 37-0907 OF THIS
2 TITLE; OR
3 (C) ATTEST THAT THE MANUFACTURER HAS NOTIFIED PERSONS WHO SELL THE
4 PRODUCT IN THIS STATE THAT THE SALE OF THE CHILDREN'S PRODUCT IS PROHIB-
5 ITED.
6 S 37-0915. INTERSTATE CHEMICAL CLEARINGHOUSE.
7 1. THE DEPARTMENT IS AUTHORIZED TO PARTICIPATE IN AN INTERSTATE CHEMI-
8 CALS CLEARINGHOUSE TO ASSIST IN CARRYING OUT THE REQUIREMENTS OF THIS
9 TITLE. THE DEPARTMENT SHALL WORK IN COLLABORATION WITH OTHER STATES AND
10 AN INTERSTATE CHEMICALS CLEARINGHOUSE FOR THE PURPOSE OF, INCLUDING BUT
11 NOT LIMITED TO:
12 (A) COLLECTION AND DISSEMINATION OF INFORMATION REGARDING CHEMICAL
13 HAZARDS;
14 (B) COLLECTION AND DISSEMINATION OF INFORMATION REGARDING THE USE OF
15 CHEMICALS IN CHILDREN'S PRODUCTS;
16 (C) ASSESSMENT OF ALTERNATIVES TO CHEMICALS AND THEIR USE IN PRODUCTS;
17 AND
18 (D) PUBLIC EDUCATION.
19 2. SUCH CLEARINGHOUSE IS AUTHORIZED TO MAINTAIN INFORMATION ON BEHALF
20 OF THE STATE OF NEW YORK, INCLUDING, BUT NOT LIMITED TO, INFORMATION
21 REGARDING CHEMICALS CONTAINED IN CHILDREN'S PRODUCTS DISCLOSED PURSUANT
22 TO SECTION 37-0907 OF THIS TITLE.
23 S 37-0917. REGULATIONS.
24 THE DEPARTMENT MAY ADOPT ANY RULES AND REGULATIONS IT DEEMS NECESSARY
25 TO IMPLEMENT THE PROVISIONS OF THIS TITLE.
26 S 2. This act shall take effect on the one hundred twentieth day after
27 it shall have become a law.