

1526--B

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 -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- 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:

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

3 TITLE IX

4 TOXIC CHEMICALS IN CHILDREN'S PRODUCTS

5 SECTION 37-0901. DEFINITIONS.

6 37-0903. CHEMICALS OF HIGH CONCERN.

7 37-0905. PRIORITY CHEMICALS.

8 37-0907. DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS.

9 37-0909. SALES PROHIBITION.

10 37-0911. APPLICABILITY.

11 37-0913. ENFORCEMENT AND IMPLEMENTATION.

12 37-0915. INTERSTATE CHEMICAL CLEARINGHOUSE.

13 37-0917. REGULATIONS.

14 S 37-0901. DEFINITIONS.

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

17 1. "CHILDREN'S APPAREL" MEANS ANY ITEM OF CLOTHING THAT CONSISTS OF
18 FABRIC OR RELATED MATERIAL INTENDED OR PROMOTED FOR USE IN CHILDREN'S

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

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1 CLOTHING. CHILDREN'S APPAREL DOES NOT MEAN PROTECTIVE EQUIPMENT DESIGNED
2 TO PREVENT INJURY, INCLUDING, BUT NOT LIMITED TO, BICYCLE HELMETS,
3 ATHLETIC SUPPORTERS, KNEE PADS OR ELBOW PADS.

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

8 3. "CHEMICAL OF HIGH CONCERN" MEANS A CHEMICAL INCLUDED IN THE LIST OF
9 "CHEMICALS OF HIGH CONCERN" PUBLISHED IN JUNE 2009 PURSUANT TO CHAPTER
10 16-D OF TITLE 38 OF THE MAINE REVISED STATUTES ANNOTATED.

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

12 5. "CHILDREN'S PRODUCT" MEANS A PRODUCT PRIMARILY INTENDED FOR, MADE
13 FOR OR MARKETING FOR USE BY CHILDREN, INCLUDING BABY PRODUCTS, TOYS, CAR
14 SEATS, PERSONAL CARE PRODUCTS, A PRODUCT DESIGNED OR INTENDED BY THE
15 MANUFACTURER TO HELP A CHILD WITH SUCKING OR TEETHING, TO FACILITATE
16 SLEEP, RELAXATION, OR THE FEEDING OF A CHILD, NOVELTY PRODUCTS, BEDDING,
17 FURNITURE, FURNISHINGS, AND CHILDREN'S APPAREL. "CHILDREN'S PRODUCT"
18 DOES NOT INCLUDE (A) BATTERIES; OR (B) CONSUMER ELECTRONIC PRODUCTS
19 INCLUDING BUT NOT LIMITED TO PERSONAL COMPUTERS, AUDIO AND VIDEO EQUIP-
20 MENT, CALCULATORS, WIRELESS PHONES, GAME CONSOLES, AND HANDHELD DEVICES
21 INCORPORATING A VIDEO SCREEN, USED TO ACCESS INTERACTIVE SOFTWARE AND
22 THEIR ASSOCIATED PERIPHERALS; OR (C) A FOOD OR BEVERAGE OR AN ADDITIVE
23 TO A FOOD OR BEVERAGE REGULATED BY THE UNITED STATES FOOD AND DRUG
24 ADMINISTRATION; OR (D) A TOBACCO PRODUCT OR PAPER OR FOREST PRODUCT; OR
25 (E) A PESTICIDE REGULATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION
26 AGENCY. CHILDREN'S PRODUCT ALSO DOES NOT INCLUDE A DRUG, BIOLOGIC OR
27 MEDICAL DEVICE REGULATED BY THE UNITED STATES FOOD AND DRUG ADMINIS-
28 TRATION.

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

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

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

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

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

49 CASRN115-96-8	TRIS (2-CHLOROETHYL) PHOSPHATE
50 CASRN71-43-2	BENZENE
51 CASRN7439-92-1	LEAD AND COMPOUNDS (INORGANIC)
52 CASRN7439-97-6	MERCURY AND MERCURY COMPOUNDS, INCLUDING METHYL
53	MERCURY (CASRN 22967-92-6)
54 CASRN7439-98-7	MOLYBDENUM AND MOLYBDENUM COMPOUNDS
55 CASRN7440-36-0	ANTIMONY AND ANTIMONY COMPOUNDS
56 CASRN7440-38-2	ARSENIC AND ARSENIC COMPOUNDS INCLUDING ARSENIC

TRIOXIDE (CASRN 1327-53-3)
AND DIMETHYL ARSENIC (CASRN 75-60-5)
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 ACCESSIBLE TO THE PUBLIC IS ESTABLISHED THAT LISTS ALL CHEMICALS OF HIGH CONCERN.

2. PERIODIC REVIEW. (A) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH, MAY PERIODICALLY REVIEW THE LIST OF CHEMICALS OF HIGH CONCERN AND, THROUGH REGULATION, IDENTIFY ADDITIONAL CHEMICALS OF HIGH CONCERN, OR REMOVE A CHEMICAL FROM THE LIST OF CHEMICALS OF HIGH CONCERN BASED ON EVIDENCE THAT THE CHEMICAL DOES NOT MEET THE CRITERIA OF THIS SUBDIVISION. 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 CARCINOGENS" 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 CARCINOGENS" 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 ENVIRONMENTAL 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 OR AS A PERSISTENT BIOACCUMULATIVE TOXIC CHEMICAL BY THE STATE OF WASHINGTON DEPARTMENT OF

1 ECOLOGY, PURSUANT TO CHAPTER 70.240 OF THE REVISED CODE OF WASHINGTON OR
2 CHAPTER 173-333 OF THE STATE OF WASHINGTON ADMINISTRATIVE CODE;

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

6 (VII) CHEMICALS IDENTIFIED AS KNOWN OR LIKELY ENDOCRINE DISRUPTORS
7 THROUGH SCREENING OR TESTING CONDUCTED IN ACCORDANCE WITH PROTOCOLS
8 DEVELOPED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT
9 TO THE UNITED STATES FOOD, DRUG AND COSMETIC ACT, 21 UNITED STATES CODE,
10 346A(P), AS AMENDED BY THE FEDERAL FOOD QUALITY PROTECTION ACT (PUBLIC
11 LAW 104-170) OR THE FEDERAL SAFE DRINKING WATER ACT, 42 UNITED STATES
12 CODE, SECTION 300J-17;

13 (VIII) CHEMICALS LISTED ON THE BASIS OF ENDOCRINE-DISRUPTING PROPER-
14 TIES IN ANNEX XIV, LIST OF SUBSTANCES SUBJECT TO AUTHORISATION, REGU-
15 LATION (EC) NO 1907/2006 OF THE EUROPEAN PARLIAMENT CONCERNING THE
16 REGISTRATION, EVALUATION, AUTHORISATION AND RESTRICTION OF CHEMICALS;

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

19 (X) A VERY PERSISTENT, VERY BIOACCUMULATIVE CHEMICAL LISTED IN ANNEX
20 XIV, LIST OF SUBSTANCES SUBJECT TO AUTHORISATION, REGULATION (EC) NO
21 1907/2006 OF THE EUROPEAN PARLIAMENT CONCERNING THE REGISTRATION, EVALU-
22 ATION, AUTHORIZATION AND RESTRICTION OF CHEMICALS.

23 S 37-0905. PRIORITY CHEMICALS.

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

27 2. PERIODIC REVIEW. (A) THE DEPARTMENT, IN CONSULTATION WITH THE
28 DEPARTMENT OF HEALTH, MAY PERIODICALLY REVIEW THE LIST OF PRIORITY CHEM-
29 ICALS AND, THROUGH REGULATION, IDENTIFY ADDITIONAL PRIORITY CHEMICALS OR
30 REMOVE A CHEMICAL FROM THE LIST OF PRIORITY CHEMICALS BASED ON EVIDENCE
31 THAT THE CHEMICAL IS NOT PRESENT IN A CHILDREN'S PRODUCT OR OTHERWISE
32 SHOULD NOT BE SUBJECT TO THE REQUIREMENTS OF THIS TITLE. IN THE EVENT
33 THAT A NEW DETERMINATION IS MADE BY A STATE, FEDERAL OR INTERNATIONAL
34 GOVERNMENTAL ENTITY THAT A CHEMICAL MEETS THE PRIORITY CHEMICAL CRITE-
35 RIA, NOTHING HEREIN SHALL PREVENT THE DEPARTMENT FROM ACTING TO ADD SUCH
36 CHEMICALS OUTSIDE OF THE PERIODIC REVIEW PROCESS.

37 (B) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH, MAY
38 IDENTIFY A CHEMICAL AS A PRIORITY CHEMICAL IF, UPON SUCH REVIEW, IT
39 DETERMINES THAT A CHEMICAL OF HIGH CONCERN MEETS ANY OF THE FOLLOWING
40 CRITERIA:

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

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

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

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

51 (V) THE SALE OR USE OF THE CHEMICAL OR A PRODUCT CONTAINING THE CHEMI-
52 CAL HAS BEEN BANNED IN ANOTHER STATE OR STATES WITHIN THE UNITED STATES
53 BECAUSE OF THE HEALTH EFFECTS OF SUCH CHEMICAL.

54 (C) IF A CHEMICAL IS REMOVED FROM THE LISTING OF CHEMICALS OF HIGH
55 CONCERN, IT SHALL ALSO BE UNDESIGNATED AS A PRIORITY CHEMICAL.

56 S 37-0907. DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS.

1 1. REPORTING OF CHEMICAL USE. NO LATER THAN TWELVE MONTHS AFTER A
2 PRIORITY CHEMICAL IS LISTED ON THE LIST PUBLISHED PURSUANT TO SECTION
3 37-0905 OF THIS TITLE, EVERY MANUFACTURER WHO OFFERS A CHILDREN'S PROD-
4 UCT FOR SALE OR DISTRIBUTION IN THIS STATE THAT CONTAINS AN INTEN-
5 TIONALLY ADDED PRIORITY CHEMICAL SHALL REPORT SUCH CHEMICAL USE TO THE
6 DEPARTMENT IN A FORM PRESCRIBED BY THE DEPARTMENT. THE DEPARTMENT MAY
7 COLLABORATE WITH OTHER STATES AND AN INTERSTATE CHEMICALS CLEARINGHOUSE
8 IN DEVELOPING SUCH FORM.

9 (A) THIS REPORT MUST AT A MINIMUM IDENTIFY THE CHILDREN'S PRODUCT, THE
10 PRIORITY CHEMICAL OR CHEMICALS CONTAINED IN THE CHILDREN'S PRODUCT, AND
11 THE INTENDED PURPOSE OF THE CHEMICALS IN THE CHILDREN'S PRODUCT. THE
12 DEPARTMENT MAY ALSO REQUIRE REPORTING OF THE FOLLOWING INFORMATION:

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

15 (II) THE AMOUNT OF SUCH CHEMICAL IN EACH UNIT OF THE CHILDREN'S PROD-
16 UCT, EXPRESSED IN A RANGE;

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

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

23 (B) THE DEPARTMENT IS AUTHORIZED TO DIRECT SUBMISSION OF A COPY OF
24 SUCH REPORT TO THE INTERSTATE CHEMICALS CLEARINGHOUSE.

25 2. WAIVER OF REPORTING. UPON APPLICATION BY A MANUFACTURER, THE
26 COMMISSIONER MAY WAIVE ALL OR PART OF THE REPORTING REQUIREMENTS UNDER
27 SUBDIVISION ONE OF THIS SECTION FOR ONE OR MORE SPECIFIED USES OF A
28 PRIORITY CHEMICAL. IN MAKING SUCH DETERMINATION, THE COMMISSIONER MAY
29 CONSIDER: (A) IF SUBSTANTIALLY EQUIVALENT INFORMATION IS ALREADY PUBLIC-
30 LY AVAILABLE OR THAT THE INFORMATION IS NOT NEEDED FOR THE PURPOSES OF
31 THIS CHAPTER, (B) SIMILAR WAIVERS GRANTED BY OTHER STATES, AND (C)
32 WHETHER THE SPECIFIED USE OR USES ARE MINOR IN VOLUME.

33 3. NOTICE TO RETAILERS. A MANUFACTURER OR DISTRIBUTOR OF A CHILDREN'S
34 PRODUCT CONTAINING A PRIORITY CHEMICAL SHALL NOTIFY PERSONS THAT OFFER
35 THE CHILDREN'S PRODUCT FOR SALE OR DISTRIBUTION IN THE STATE, IN A FORM
36 PRESCRIBED BY THE DEPARTMENT, OF THE PRESENCE OF SUCH PRIORITY CHEMICAL,
37 AND PROVIDE SUCH PERSONS WITH INFORMATION REGARDING THE TOXICITY OF SUCH
38 CHEMICAL.

39 4. FEES. THE MANUFACTURER OR DISTRIBUTOR SHALL PAY A FEE UPON
40 SUBMISSION OF A REPORT OF CHEMICAL USE PURSUANT TO SUBDIVISION ONE OF
41 THIS SECTION OR A WAIVER REQUEST PURSUANT TO SUBDIVISION TWO OF THIS
42 SECTION TO COVER THE DEPARTMENT'S REASONABLE COSTS IN THE AMOUNT OF SIX
43 HUNDRED DOLLARS PER CHEMICAL.

44 S 37-0909. SALES PROHIBITION.

45 EFFECTIVE JANUARY 1, 2016, NO PERSON SHALL DISTRIBUTE, SELL OR OFFER
46 FOR SALE IN THIS STATE A CHILDREN'S PRODUCT CONTAINING A PRIORITY CHEMI-
47 CAL THAT HAS BEEN LISTED FOR AT LEAST ONE YEAR. THIS PROVISION SHALL
48 NOT APPLY TO A CHILDREN'S PRODUCT SOLELY BASED ON ITS CONTAINING AN
49 ENCLOSED BATTERY OR ENCLOSED ELECTRONIC COMPONENTS. THE COMMISSIONER MAY
50 EXEMPT A CHILDREN'S PRODUCT FROM THIS PROHIBITION IF, IN THE COMMISSION-
51 ER'S JUDGMENT, THE LACK OF AVAILABILITY OF THE CHILDREN'S PRODUCT COULD
52 POSE AN UNREASONABLE RISK TO PUBLIC HEALTH, SAFETY OR WELFARE.

53 S 37-0911. APPLICABILITY.

54 1. NEW CHILDREN'S PRODUCTS. THE PROVISIONS OF THIS TITLE SHALL APPLY
55 TO CHEMICALS IN CHILDREN'S PRODUCTS SOLD OR DISTRIBUTED AS NEW AND DOES
56 NOT APPLY TO USED CHILDREN'S PRODUCTS THAT ARE SOLD OR DISTRIBUTED FOR

FREE AT SECONDHAND STORES, YARD SALES, ON THE INTERNET OR DONATED TO CHARITIES.

2. INDUSTRY. THE REQUIREMENTS OF THIS TITLE SHALL NOT APPLY TO PRIORITY CHEMICALS USED IN OR FOR INDUSTRY OR MANUFACTURING, INCLUDING CHEMICALS PROCESSED OR OTHERWISE USED IN OR FOR INDUSTRIAL OR MANUFACTURING PROCESSES AND NOT INCLUDED IN THE FINAL PRODUCT.

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

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

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

S 37-0913. ENFORCEMENT AND IMPLEMENTATION.

1. FAILURE TO PROVIDE NOTICE. A CHILDREN'S PRODUCT CONTAINING A PRIORITY CHEMICAL MAY NOT BE SOLD, OFFERED FOR SALE OR DISTRIBUTED FOR SALE IN THIS STATE UNLESS THE MANUFACTURER OR DISTRIBUTOR HAS PROVIDED THE NOTIFICATION REQUIRED UNDER SECTION 37-0907 OF THIS TITLE BY THE DATE REQUIRED IN SUCH SECTION. THE COMMISSIONER MAY EXEMPT A CHILDREN'S PRODUCT FROM THIS PROHIBITION IF, IN THE COMMISSIONER'S JUDGMENT, THE LACK OF AVAILABILITY OF THE CHILDREN'S PRODUCT COULD POSE AN UNREASONABLE RISK TO PUBLIC HEALTH, SAFETY OR WELFARE.

2. STATEMENT OF COMPLIANCE. IF THERE ARE GROUNDS TO SUSPECT THAT A CHILDREN'S PRODUCT IS BEING OFFERED FOR SALE IN VIOLATION OF THIS TITLE, THE DEPARTMENT MAY REQUEST THE MANUFACTURER OR DISTRIBUTOR OF THE CHILDREN'S PRODUCT TO PROVIDE A STATEMENT OF COMPLIANCE ON A FORM PROVIDED BY THE DEPARTMENT, WITHIN TEN DAYS OF RECEIPT OF A REQUEST FROM THE DEPARTMENT. THE STATEMENT OF COMPLIANCE SHALL:

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

(B) ATTEST AND PROVIDE THE DEPARTMENT WITH DOCUMENTATION THAT NOTIFICATION OF THE PRESENCE OF THE PRIORITY CHEMICAL HAS BEEN PROVIDED TO THE DEPARTMENT OR PROVIDE NOTICE AS REQUIRED BY SECTION 37-0907 OF THIS TITLE; OR

(C) ATTEST THAT THE MANUFACTURER HAS NOTIFIED PERSONS WHO SELL THE PRODUCT IN THIS STATE THAT THE SALE OF THE CHILDREN'S PRODUCT IS PROHIBITED.

S 37-0915. INTERSTATE CHEMICAL CLEARINGHOUSE.

1. THE DEPARTMENT IS AUTHORIZED TO PARTICIPATE IN AN INTERSTATE CHEMICALS CLEARINGHOUSE TO ASSIST IN CARRYING OUT THE REQUIREMENTS OF THIS TITLE. THE DEPARTMENT SHALL WORK IN COLLABORATION WITH OTHER STATES AND AN INTERSTATE CHEMICALS CLEARINGHOUSE FOR THE PURPOSE OF, INCLUDING BUT NOT LIMITED TO:

(A) COLLECTION AND DISSEMINATION OF INFORMATION REGARDING CHEMICAL HAZARDS;

(B) COLLECTION AND DISSEMINATION OF INFORMATION REGARDING THE USE OF CHEMICALS IN CHILDREN'S PRODUCTS;

(C) ASSESSMENT OF ALTERNATIVES TO CHEMICALS AND THEIR USE IN PRODUCTS; AND

(D) PUBLIC EDUCATION.

1 2. SUCH CLEARINGHOUSE IS AUTHORIZED TO MAINTAIN INFORMATION ON BEHALF
2 OF THE STATE OF NEW YORK, INCLUDING, BUT NOT LIMITED TO, INFORMATION
3 REGARDING CHEMICALS CONTAINED IN CHILDREN'S PRODUCTS DISCLOSED PURSUANT
4 TO SECTION 37-0907 OF THIS TITLE.

5 S 37-0917. REGULATIONS.

6 THE DEPARTMENT MAY ADOPT ANY RULES AND REGULATIONS IT DEEMS NECESSARY
7 TO IMPLEMENT THE PROVISIONS OF THIS TITLE.

8 S 2. This act shall take effect on the one hundred twentieth day after
9 it shall have become a law. Effective immediately, the department of
10 environmental conservation is authorized to implement rules and regu-
11 lations for the timely implementation of this act on its effective date.