

3585--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 27, 2015

Introduced by M. of A. TITONE, GOTTFRIED, McDONOUGH, RA, GALEF, ZEBROWSKI, O'DONNELL, DINOWITZ, MOSLEY, CUSICK, COLTON, STECK, COOK, CORWIN, ARROYO, KEARNS -- Multi-Sponsored by -- M. of A. BRENNAN, CERETTO, GLICK, LAWRENCE, LUPARDO, MAGEE, MALLIOTAKIS, MARKEY, McLAUGHLIN, PERRY, SOLAGES, STIRPE, THIELE -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- 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 pet products

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

1 Section 1. The title heading of title 9 of article 37 of the environ-  
2 mental conservation law, as added by section 1 of a chapter of the laws  
3 of 2016, amending the environmental conservation law relating to regu-  
4 lation of toxic chemicals in children's products, as proposed in legis-  
5 lative bills numbers A.5612-A and S.7507, is amended to read as follows:

6 TOXIC CHEMICALS IN CHILDREN'S PRODUCTS AND PET PRODUCTS

7 S 2. Subdivisions 7 and 9 of section 37-0901 of the environmental  
8 conservation law, as added by section 1 of a chapter of the laws of  
9 2016, amending the environmental conservation law relating to regulation  
10 of toxic chemicals in children's products, as proposed in legislative  
11 bills numbers A.5612-A and S.7507, are amended and four new subdivisions  
12 14, 15, 16 and 17 are added to read as follows:

13 7. "Distributor" means a person who sells children's products OR PET  
14 PRODUCTS to retail establishments on a wholesale basis.

15 9. "Manufacturer" means any person who currently manufactures a chil-  
16 dren's product OR PET PRODUCT or whose brand name is affixed to the  
17 children's product OR PET PRODUCT. In the case of a children's product  
18 OR PET PRODUCT that was imported into the United States, "manufacturer"

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

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1 includes the importer or first domestic distributor of the children's  
2 product OR PET PRODUCT if the person who currently manufactures or  
3 assembles the children's product OR PET PRODUCT or whose brand name is  
4 affixed to the children's product OR PET PRODUCT does not have a pres-  
5 ence in the United States.

6 14. "PET" MEANS ANY DOMESTICATED ANIMAL NORMALLY MAINTAINED IN OR NEAR  
7 THE HOUSEHOLD OF THE OWNER OR PERSON WHO CARES FOR SUCH DOMESTICATED  
8 ANIMAL. "PET" SHALL NOT INCLUDE A "FARM ANIMAL" AS DEFINED BY SUBDIVI-  
9 SION FOUR OF SECTION THREE HUNDRED FIFTY OF THE AGRICULTURE AND MARKETS  
10 LAW.

11 15. "PET APPAREL" MEANS ANY ITEM OF CLOTHING THAT CONSISTS OF FABRIC  
12 OR RELATED MATERIAL INTENDED OR PROMOTED FOR USE IN PET CLOTHING.

13 16. "PET PRODUCT" MEANS A PRODUCT PRIMARILY INTENDED FOR, MADE FOR OR  
14 MARKETED FOR USE BY A PET, SUCH AS PET TOYS, CAR SEATS, BEDDING,  
15 PERSONAL CARE PRODUCTS, A PRODUCT DESIGNED OR INTENDED BY THE MANUFAC-  
16 Turer TO BE CHEWED BY THE PET, AND PET APPAREL. "PET PRODUCT" DOES NOT  
17 INCLUDE A FOOD OR BEVERAGE OR AN ADDITIVE TO A FOOD OR BEVERAGE REGU-  
18 LATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

19 17. "PET TOY" MEANS A PRODUCT DESIGNED OR INTENDED BY THE MANUFACTURER  
20 TO BE USED BY A PET AT PLAY.

21 S 3. Paragraph (b) of subdivision 2 of section 37-0903 of the environ-  
22 mental conservation law, as added by section 1 of a chapter of the laws  
23 of 2016, amending the environmental conservation law relating to regu-  
24 lation of toxic chemicals in children's products, as proposed in legis-  
25 lative bills numbers A.5612-A and S.7507, is amended to read as follows:

26 (b) The department, in consultation with the department of health, may  
27 identify a chemical as a priority chemical if, upon such review, it  
28 determines that a chemical of high concern is present in a children's  
29 product OR PET PRODUCT and meets any of the following criteria:

30 (i) The chemical or its metabolites have been found through biomon-  
31 itoring to be present in humans;

32 (ii) The chemical has been found through sampling and analysis to be  
33 present in household dust, indoor air, drinking water or elsewhere in  
34 the home environment;

35 (iii) The chemical has been found through monitoring to be present in  
36 fish, wildlife or the natural environment; or

37 (iv) The sale or use of the chemical or a children's product OR PET  
38 PRODUCT containing the chemical has been banned in another state or  
39 states within the United States because of the health effects of such  
40 chemical.

41 S 4. Subdivisions 1 and 3 of section 37-0905 of the environmental  
42 conservation law, as added by section 1 of a chapter of the laws of  
43 2016, amending the environmental conservation law relating to regulation  
44 of toxic chemicals in children's products, as proposed in legislative  
45 bills numbers A.5612-A and S.7507, are amended to read as follows:

46 1. Reporting of chemical use. No later than twelve months after a  
47 priority chemical appears on the list published pursuant to section  
48 37-0903 of this title, every manufacturer who offers a children's prod-  
49 uct OR PET PRODUCT for sale or distribution in this state that contains  
50 a priority chemical shall report such chemical use to the department, at  
51 practical quantification limits (PQLS). The department may collaborate  
52 with other states and an interstate chemicals clearinghouse in develop-  
53 ing such form.

54 (a) This report must at a minimum identify the children's product OR  
55 PET PRODUCT category, the priority chemical or chemicals contained in  
56 the children's product OR PET PRODUCT category, and the intended purpose

1 of the chemicals in the children's product OR PET PRODUCT category. The  
2 department may also require reporting of the following information:

3 (i) the potential for harm to human OR ANIMAL health and the environ-  
4 ment from specific uses of the priority chemical;

5 (ii) the amount of such chemical in each unit of the children's prod-  
6 uct OR PET PRODUCT category, expressed in a range. When the chemical is  
7 used in more than one product within a product category, the highest  
8 amount must be reported;

9 (iii) information on the likelihood that the chemical will be released  
10 from the children's product OR PET PRODUCT category to the environment  
11 during the product category's life cycle and the extent to which users  
12 of the product category are likely to be exposed to the chemical; or

13 (iv) information on the extent to which the chemical is present in the  
14 environment or human OR ANIMAL body.

15 (b) The department is authorized to direct submission of such report  
16 to the interstate chemicals clearinghouse.

17 3. Notice. (a) A manufacturer of a children's product OR PET PRODUCT  
18 containing a priority chemical shall notify persons that offer the chil-  
19 dren's product OR PET PRODUCT for sale or distribution in the state, in  
20 a form prescribed by the department, of the presence of such priority  
21 chemical, and provide such persons with information regarding the toxic-  
22 ity of such chemical.

23 (b) All retailers in this state offering for sale children's products  
24 OR PET PRODUCTS containing priority chemicals shall conspicuously post  
25 notice to consumers identifying such products and the priority chemicals  
26 they contain.

27 (c) The department shall notify consumers about children's products OR  
28 PET PRODUCTS containing chemicals of high concern and priority chemi-  
29 cals. The notification shall be published on the department's website.

30 S 5. Section 37-0907 of the environmental conservation law, as added  
31 by section 1 of a chapter of the laws of 2016, amending the environ-  
32 mental conservation law relating to regulation of toxic chemicals in  
33 children's products, as proposed in legislative bills numbers A.5612-A  
34 and S.7507, is amended to read as follows:

35 S 37-0907. Sales prohibition.

36 1. Effective January first, two thousand nineteen, no person shall  
37 distribute, sell or offer for sale in this state a children's product OR  
38 PET PRODUCT containing tris (1, 3 dichloro-2-propyl) phosphate, benzene,  
39 lead and compounds (inorganic), mercury and mercury compounds including  
40 methyl mercury, antimony and antimony compounds, formaldehyde, asbestos,  
41 arsenic and arsenic compounds including arsenic trioxide and dimethyl  
42 arsenic, cadmium, and cobalt and cobalt compounds. This provision shall  
43 not apply to a children's product OR PET PRODUCT solely based on its  
44 containing an enclosed battery or enclosed electronic components. The  
45 commissioner may exempt a children's product OR PET PRODUCT from this  
46 prohibition if, in the commissioner's judgment, the lack of availability  
47 of the children's product OR PET PRODUCT could pose an unreasonable risk  
48 to public health, safety or welfare.

49 2. Effective three years after being added to the priority chemicals  
50 list, no person shall distribute, sell, or offer for sale in this state  
51 a children's product OR PET PRODUCT that contains a chemical added to  
52 the priority chemicals list pursuant to section 37-0903 of this title.

53 S 6. Subdivisions 1, 5 and 6 of section 37-0909 of the environmental  
54 conservation law, as added by section 1 of a chapter of the laws of  
55 2016, amending the environmental conservation law relating to regulation

1 of toxic chemicals in children's products, as proposed in legislative  
2 bills numbers A.5612-A and S.7507, are amended to read as follows:

3 1. New children's products OR PET PRODUCTS. The provisions of this  
4 title shall apply to chemicals in children's products OR PET PRODUCTS  
5 sold or distributed as new and does not apply to used children's  
6 products OR PET PRODUCTS that are sold or distributed for free at  
7 secondhand stores, yard sales, on the internet or donated to charities.

8 5. Exceptions. The requirements of this title shall not apply to chil-  
9 dren's product OR PET PRODUCT makers that employ five persons or fewer,  
10 and are independently owned and operated.

11 6. Retailers. A retailer is exempt from the requirements of this title  
12 unless that retailer knowingly sells a children's product OR PET PRODUCT  
13 containing a priority chemical after the effective date of its prohibi-  
14 tion for which that retailer has received notification pursuant to  
15 subdivision three of section 37-0905 of this title.

16 S 7. Section 37-0911 of the environmental conservation law, as added  
17 by section 1 of a chapter of the laws of 2016, amending the environ-  
18 mental conservation law relating to regulation of toxic chemicals in  
19 children's products, as proposed in legislative bills numbers A.5612-A  
20 and S.7507, is amended to read as follows:

21 S 37-0911. Enforcement and implementation.

22 1. Failure to provide notice. A children's product OR PET PRODUCT  
23 containing a priority chemical may not be sold, offered for sale or  
24 distributed for sale in this state unless the manufacturer has provided  
25 the notification required under section 37-0905 of this title by the  
26 date required in such section. The commissioner may exempt a children's  
27 product OR PET PRODUCT from this prohibition if, in the commissioner's  
28 judgment, the lack of availability of the children's product OR PET  
29 PRODUCT could pose an unreasonable risk to public health, safety or  
30 welfare.

31 2. Statement of compliance. If there are grounds to suspect that a  
32 children's product OR PET PRODUCT is being offered for sale in violation  
33 of this title, the department may request the manufacturer of the chil-  
34 dren's product OR PET PRODUCT to provide a statement of compliance on a  
35 form provided by the department, within ten days of receipt of a request  
36 from the department. The statement of compliance shall:

37 (a) attest that the children's product OR PET PRODUCT does not contain  
38 the priority chemical; or

39 (b) attest and provide the department with documentation that notifi-  
40 cation of the presence of the priority chemical has been provided to the  
41 department or provide notice as required by section 37-0905 of this  
42 title; or

43 (c) attest that the manufacturer has notified persons who sell the  
44 product in this state that the sale of the children's product OR PET  
45 PRODUCT is prohibited.

46 S 8. Paragraph (b) of subdivision 1 and subdivision 2 of section  
47 37-0913 of the environmental conservation law, as added by section 1 of  
48 a chapter of the laws of 2016, amending the environmental conservation  
49 law relating to regulation of toxic chemicals in children's products, as  
50 proposed in legislative bills numbers A.5612-A and S.7507, are amended  
51 to read as follows:

52 (b) collection and dissemination of information regarding the use of  
53 chemicals in children's products AND PET PRODUCTS;

54 2. Such clearinghouse is authorized to maintain information on behalf  
55 of the state of New York, including, but not limited to, information

1 regarding chemicals contained in children's products OR PET PRODUCTS  
2 disclosed pursuant to section 37-0905 of this title.

3 S 9. This act shall take effect on the same date and in the same  
4 manner as a chapter of the laws of 2016, amending the environmental  
5 conservation law relating to regulation of toxic chemicals in children's  
6 products, as proposed in legislative bills numbers A.5612-A and S.7507,  
7 takes effect.