S T A T E O F N E W Y O R K

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2015-2016 Regular Sessions

I N S E N A T E

April 6, 2015

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- 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 pet products

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

Section 1. The title heading of title 9 of article 37 of the environmental conservation law, as added by section 1 of a chapter of the laws of 2016, amending the environmental conservation law relating to regulation of toxic chemicals in children's products, as proposed in legislative bills numbers A.5612-A and S.7507, is amended to read as follows:

TOXIC CHEMICALS IN CHILDREN'S PRODUCTS AND PET PRODUCTS

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

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

9. "Manufacturer" means any person who currently manufactures a children's product OR PET PRODUCT or whose brand name is affixed to the children's product OR PET PRODUCT. In the case of a children's product OR PET PRODUCT that was imported into the United States, "manufacturer" includes the importer or first domestic distributor of the children's product OR PET PRODUCT if the person who currently manufactures or assembles the children's product OR PET PRODUCT or whose brand name is

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

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affixed to the children's product OR PET PRODUCT does not have a presence in the United States.

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

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

16. "PET PRODUCT" MEANS A PRODUCT PRIMARILY INTENDED FOR, MADE FOR OR MARKETED FOR USE BY A PET, SUCH AS PET TOYS, CAR SEATS, BEDDING, PERSONAL CARE PRODUCTS, A PRODUCT DESIGNED OR INTENDED BY THE MANUFACTURER TO BE CHEWED BY THE PET, AND PET APPAREL. "PET PRODUCT" DOES NOT INCLUDE A FOOD OR BEVERAGE OR AN ADDITIVE TO A FOOD OR BEVERAGE REGULATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

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

S 3. Paragraph (b) of subdivision 2 of section 37-0903 of the environmental conservation law, as added by section 1 of a chapter of the laws of 2016, amending the environmental conservation law relating to regulation of toxic chemicals in children's products, as proposed in legislative bills numbers A.5612-A and S.7507, is amended to read as follows:

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

(i) The chemical or its metabolites have been found through biomonitoring to be present in humans;

(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; or

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

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

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

(a) This report must at a minimum identify the children's product OR PET PRODUCT category, the priority chemical or chemicals contained in the children's product OR PET PRODUCT category, and the intended purpose of the chemicals in the children's product OR PET PRODUCT category. The department may also require reporting of the following information:

(i) the potential for harm to human OR ANIMAL 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 OR PET PRODUCT category, expressed in a range. When the chemical is used in more than one product within a product category, the highest amount must be reported;

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

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

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

3. Notice. (a) A manufacturer of a children's product OR PET PRODUCT containing a priority chemical shall notify persons that offer the children's product OR PET PRODUCT for sale or distribution in the state, in a form prescribed by the department, of the presence of such priority chemical, and provide such persons with information regarding the toxicity of such chemical.

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

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

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

S 37-0907. Sales prohibition.

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

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

S 6. Subdivisions 1, 5 and 6 of section 37-0909 of the environmental conservation law, as added by section 1 of a chapter of the laws of 2016, amending the environmental conservation law relating to regulation of toxic chemicals in children's products, as proposed in legislative bills numbers A.5612-A and S.7507, are amended to read as follows:

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

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

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

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

S 37-0911. Enforcement and implementation.

1. Failure to provide notice. A children's product OR PET PRODUCT containing a priority chemical may not be sold, offered for sale or distributed for sale in this state unless the manufacturer has provided the notification required under section 37-0905 of this title by the date required in such section. The commissioner may exempt a children's product OR PET PRODUCT from this prohibition if, in the commissioner's judgment, the lack of availability of the children's product OR PET 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 OR PET PRODUCT is being offered for sale in violation of this title, the department may request the manufacturer of the children's product OR PET 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 OR PET 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 37-0905 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 OR PET PRODUCT is prohibited.

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

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

2. Such clearinghouse is authorized to maintain information on behalf of the state of New York, including, but not limited to, information regarding chemicals contained in children's products OR PET PRODUCTS disclosed pursuant to section 37-0905 of this title.

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