

# STATE OF NEW YORK

5176

2017-2018 Regular Sessions

## IN SENATE

March 10, 2017

Introduced by Sens. BAILEY, ADDABBO, AVELLA, BRESLIN, DIAZ, DILAN, GIANARIS, HOYLMAN, KENNEDY, KRUEGER, MONTGOMERY, PARKER, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

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.

##### § 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.

LBD08193-01-7

2. "Chemical" means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation or metabolism.

3. "Chemical of high concern" means a chemical included in the list of "Chemicals of High Concern" published in June 2009 pursuant to chapter 16-D of title 38 of the Maine revised statutes annotated.

4. "Children" means a person or persons aged twelve and under.

5. "Children's product" means a product primarily intended for, made for or marketed for use by children, including baby products, toys, car seats, personal care products, a product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, novelty products, bedding, furniture, furnishings, and children's apparel. "Children's product" does not include (a) batteries; or (b) consumer electronic products including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals; or (c) a food or beverage or an additive to a food or beverage regulated by the United States Food and Drug Administration; or (d) a tobacco product or paper or forest product; or (e) a pesticide regulated by the United States Environmental Protection Agency. Children's product also does not include a drug, biologic or medical device regulated by the United States Food and Drug Administration.

6. "Distributor" means a person who sells children's products to retail establishments on a wholesale basis.

7. "Intentionally added" means the deliberate use in the formulation of a product or subpart where its continued presence is desired in the final product or subpart to provide a specific characteristic, appearance or quality.

8. "Manufacturer" means any person who currently manufactures a final children's product or whose brand name is affixed to the children's product. In the case of a children's product that was imported into the United States, "manufacturer" includes the importer or first domestic distributor of the children's product if the person who currently manufactures or assembles the children's product or whose brand name is affixed to the children's product does not have a presence in the United States.

9. "Novelty product" means a product intended mainly for personal or household enjoyment or adornment. Novelty products include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, or similar products.

10. "Priority chemical" means (a) the following chemicals:

CASRN115-96-8	Tris (2-chloroethyl) phosphate
CASRN71-43-2	Benzene
CASRN7439-92-1	lead and compounds (inorganic)
CASRN7439-97-6	Mercury and mercury compounds, including methyl mercury (CASRN 22967-92-6)
CASRN7439-98-7	Molybdenum and molybdenum compounds
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)
CASRN7440-43-9	Cadmium

CASRN7440-48-4 Cobalt and cobalt compounds and  
(b) a chemical adopted by the department pursuant to section 37-0905  
of this title.

11. "Toy" means a product designed or intended by the manufacturer to  
be used by a child at play.

§ 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 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 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 or as a persistent  
bioaccumulative toxic chemical by the state of Washington department of  
ecology, pursuant to chapter 70.240 of the revised code of Washington or  
chapter 173-333 of the state of Washington administrative code;

(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; and

(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, Authorisation and Restriction of Chemicals.

§ 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 that lists all priority chemicals.

2. Periodic review. (a) 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, 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 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; or

(v) 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.

§ 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

1 37-0905 of this title, every manufacturer who offers a children's prod-  
2 uct for sale or distribution in this state that contains an inten-  
3 tionally added priority chemical shall report such chemical use to the  
4 department in a form prescribed by the department. The department may  
5 collaborate with other states and an interstate chemicals clearinghouse  
6 in developing such form.

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

11 (i) the potential for harm to human health and the environment from  
12 specific uses of the priority chemical;

13 (ii) the amount of such chemical in each unit of the children's prod-  
14 uct, expressed in a range;

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

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

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

23 2. Waiver of reporting. Upon application by a manufacturer, the  
24 commissioner may waive all or part of the reporting requirements under  
25 subdivision one of this section for one or more specified uses of a  
26 priority chemical. In making such determination, the commissioner may  
27 consider: (a) if substantially equivalent information is already public-  
28 ly available or that the information is not needed for the purposes of  
29 this chapter, (b) similar waivers granted by other states, and (c)  
30 whether the specified use or uses are minor in volume.

31 3. Notice to retailers. A manufacturer or distributor of a children's  
32 product containing a priority chemical shall notify persons that offer  
33 the children's product for sale or distribution in the state, in a form  
34 prescribed by the department, of the presence of such priority chemical,  
35 and provide such persons with information regarding the toxicity of such  
36 chemical.

37 4. Fees. The manufacturer or distributor shall pay a fee upon  
38 submission of a report of chemical use pursuant to subdivision one of  
39 this section or a waiver request pursuant to subdivision two of this  
40 section to cover the department's reasonable costs in the amount of six  
41 hundred dollars per chemical.

42 § 37-0909. Sales prohibition.

43 Effective January first, two thousand twenty-two, no person shall  
44 distribute, sell or offer for sale in this state a children's product  
45 containing a priority chemical that has been listed for at least one  
46 year. This provision shall not apply to a children's product solely  
47 based on its containing an enclosed battery or enclosed electronic  
48 components. The commissioner may exempt a children's product from this  
49 prohibition if, in the commissioner's judgment, the lack of availability  
50 of the children's product could pose an unreasonable risk to public  
51 health, safety or welfare.

52 § 37-0911. Applicability.

53 1. New children's products. The provisions of this title shall apply  
54 to chemicals in children's products sold or distributed as new and does  
55 not apply to used children's products that are sold or distributed for



1 free at secondhand stores, yard sales, on the internet or donated to  
2 charities.

3 2. Industry. The requirements of this title shall not apply to priori-  
4 ty chemicals used in or for industry or manufacturing, including chemi-  
5 cals processed or otherwise used in or for industrial or manufacturing  
6 processes and not included in the final product.

7 3. Transportation. The requirements of this title shall not apply to  
8 motor vehicles or their component parts, watercraft or their component  
9 parts, all terrain vehicles or their component parts, or off-highway  
10 motorcycles or their component parts, except that the use of priority  
11 chemicals in detachable car seats is not exempt.

12 4. Combustion. The requirements of this title shall not apply to  
13 priority chemicals generated solely as combustion by-products or that  
14 are present in combustible fuels.

15 5. Retailers. A retailer is exempt from the requirements of this title  
16 unless that retailer knowingly sells a children's product containing a  
17 priority chemical after the effective date of its prohibition for which  
18 that retailer has received prior notification from a manufacturer,  
19 distributor or the state.

20 § 37-0913. Enforcement and implementation.

21 1. Failure to provide notice. A children's product containing a prior-  
22 ity chemical may not be sold, offered for sale or distributed for sale  
23 in this state unless the manufacturer or distributor has provided the  
24 notification required under section 37-0907 of this title by the date  
25 required in such section. The commissioner may exempt a children's prod-  
26 uct from this prohibition if, in the commissioner's judgment, the lack  
27 of availability of the children's product could pose an unreasonable  
28 risk to public health, safety or welfare.

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

35 (a) attest that the children's product does not contain the priority  
36 chemical; or

37 (b) attest and provide the department with documentation that notifi-  
38 cation of the presence of the priority chemical has been provided to the  
39 department or provide notice as required by section 37-0907 of this  
40 title; or

41 (c) attest that the manufacturer has notified persons who sell the  
42 product in this state that the sale of the children's product is prohib-  
43 ited.

44 § 37-0915. Interstate chemical clearinghouse.

45 1. The department is authorized to participate in an interstate chemi-  
46 cals clearinghouse to assist in carrying out the requirements of this  
47 title. The department shall work in collaboration with other states and  
48 an interstate chemicals clearinghouse for the purpose of, including but  
49 not limited to:

50 (a) collection and dissemination of information regarding chemical  
51 hazards;

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

54 (c) assessment of alternatives to chemicals and their use in products;  
55 and

56 (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     § 37-0917. Regulations.

6     The department may adopt any rules and regulations it deems necessary  
7     to implement the provisions of this title.

8     § 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.