

# 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:

1 Section 1. Article 37 of the environmental conservation law is amended  
2 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.

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

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

28 7. "Intentionally added" means the deliberate use in the formulation  
29 of a product or subpart where its continued presence is desired in the  
30 final product or subpart to provide a specific characteristic, appear-  
31 ance or quality.

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

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

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

46 CASRN115-96-8 Tris (2-chloroethyl) phosphate

47 CASRN71-43-2 Benzene

48 CASRN7439-92-1 lead and compounds (inorganic)

49 CASRN7439-97-6 Mercury and mercury compounds, including methyl  
50 mercury (CASRN 22967-92-6)

51 CASRN7439-98-7 Molybdenum and molybdenum compounds

52 CASRN7440-36-0 Antimony and antimony compounds

53 CASRN7440-38-2 Arsenic and arsenic compounds including arsenic  
54 trioxide (CASRN 1327-53-3)

55 and dimethyl arsenic (CASRN 75-60-5)

56 CASRN7440-43-9 Cadmium

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

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

6 § 37-0903. Chemicals of high concern.

7 1. Publishing of list. Within one hundred eighty days of the effective  
8 date of this title, the department shall ensure that a website accessi-  
9 ble to the public is established that lists all chemicals of high  
10 concern.

11 2. Periodic review. (a) The department, in consultation with the  
12 department of health, may periodically review the list of chemicals of  
13 high concern and, through regulation, identify additional chemicals of  
14 high concern, or remove a chemical from the list of chemicals of high  
15 concern based on evidence that the chemical does not meet the criteria  
16 of this subdivision. In the event that a new determination is made by a  
17 state, federal or international governmental entity that a chemical  
18 meets the high concern criteria, nothing herein shall prevent the  
19 department from acting to add such chemicals outside of the periodic  
20 review process.

21 (b) The department shall, upon this review, identify a chemical as a  
22 chemical of high concern if it determines that the chemical has been  
23 identified by a state, federal or international governmental entity on  
24 the basis of credible scientific evidence as:

25 (i) A carcinogen, a reproductive or developmental toxicant or an  
26 endocrine disruptor;

27 (ii) Persistent, bioaccumulative and toxic; or

28 (iii) Very persistent and very bioaccumulative.

29 (c) In making such determination, the department may consider but is  
30 not limited to considering:

31 (i) chemicals identified as "Group 1 carcinogens" or "Group 2A carci-  
32 nogens" by the World Health Organization, International Agency for  
33 Research on Cancer;

34 (ii) chemicals identified as "known to be a human carcinogen" and  
35 "reasonably anticipated to be a human carcinogen" by the Secretary of  
36 the United States Department of Health and Human Services pursuant to  
37 the Public Health Service Act, 42 United States Code, Section 241(b)(4),  
38 as amended;

39 (iii) chemicals identified as "Group A carcinogens" or "Group B carci-  
40 nogens" by the United States Environmental Protection Agency;

41 (iv) chemicals identified as reproductive or developmental toxicants  
42 by:

43 (A) the United States Department of Health and Human Services,  
44 National Toxicology Program, Center for the Evaluation of Risks to Human  
45 Reproduction; and

46 (B) the California Environmental Protection Agency, Office of Environ-  
47 mental Health Hazard Assessment pursuant to the California Health and  
48 Safety Code, Safe Drinking Water and Toxic Enforcement Act of 1986,  
49 Chapter 6.6, Section 25249.8;

50 (v) chemicals identified as a chemical of high concern for children or  
51 a high priority chemical of high concern for children or as a persistent  
52 bioaccumulative toxic chemical by the state of Washington department of  
53 ecology, pursuant to chapter 70.240 of the revised code of Washington or  
54 chapter 173-333 of the state of Washington administrative code;

1 (vi) chemicals of high concern as such chemicals are identified by the  
2 state of Maine's department of environmental conservation and appearing  
3 on such department's list of chemicals of high concern;

4 (vii) chemicals identified as known or likely endocrine disruptors  
5 through screening or testing conducted in accordance with protocols  
6 developed by the United States Environmental Protection Agency pursuant  
7 to the United States Food, Drug and Cosmetic Act, 21 United States Code,  
8 346a(p), as amended by the federal Food Quality Protection Act (Public  
9 Law 104-170) or the federal Safe Drinking Water Act, 42 United States  
10 Code, Section 300j-17;

11 (viii) chemicals listed on the basis of endocrine-disrupting proper-  
12 ties in Annex XIV, List of Substances Subject to Authorisation, Regu-  
13 lation (EC) No 1907/2006 of the European Parliament concerning the  
14 Registration, Evaluation, Authorisation and Restriction of Chemicals;

15 (ix) persistent, bioaccumulative and toxic chemicals identified by  
16 other states or the United States Environmental Protection Agency; and

17 (x) a very persistent, very bioaccumulative chemical listed in Annex  
18 XIV, List of Substances Subject to Authorisation, Regulation (EC) No  
19 1907/2006 of the European Parliament concerning the Registration, Evalu-  
20 ation, Authorisation and Restriction of Chemicals.

21 § 37-0905. Priority chemicals.

22 1. Publishing of list. Within one hundred eighty days of the effective  
23 date of this title, the department shall ensure that a website accessi-  
24 ble to the public is established that lists all priority chemicals.

25 2. Periodic review. (a) The department, in consultation with the  
26 department of health, may periodically review the list of priority chem-  
27 icals and, through regulation, identify additional priority chemicals or  
28 remove a chemical from the list of priority chemicals based on evidence  
29 that the chemical is not present in a children's product or otherwise  
30 should not be subject to the requirements of this title. In the event  
31 that a new determination is made by a state, federal or international  
32 governmental entity that a chemical meets the priority chemical crite-  
33 ria, nothing herein shall prevent the department from acting to add such  
34 chemicals outside of the periodic review process.

35 (b) The department, in consultation with the department of health, may  
36 identify a chemical as a priority chemical if, upon such review, it  
37 determines that a chemical of high concern meets any of the following  
38 criteria:

39 (i) The chemical or its metabolites have been found through biomon-  
40 itoring to be present in humans, including human blood, umbilical cord  
41 blood, breast milk, urine or other bodily tissues or fluids;

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

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

47 (iv) The chemical is present in a children's product used or present  
48 in the home, school, or childcare center; or

49 (v) The sale or use of the chemical or a product containing the chemi-  
50 cal has been banned in another state or states within the United States  
51 because of the health effects of such chemical.

52 (c) If a chemical is removed from the listing of chemicals of high  
53 concern, it shall also be undesignated as a priority chemical.

54 § 37-0907. Disclosure of information on priority chemicals.

55 1. Reporting of chemical use. No later than twelve months after a  
56 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.