STATE OF NEW YORK

6034

2017-2018 Regular Sessions

IN SENATE

May 10, 2017

Introduced by Sens. AVELLA, CARLUCCI, BOYLE, KAMINSKY, LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to chemicals of high concern to children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 391-u to read as follows:

§ 391-u. Chemicals of high concern to children. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Children's apparel" means any item of clothing, footwear or apparel, including, but not limited to, accessories that consist of fabric or related material intended or promoted for use in children's clothing. Children's apparel does not include protective equipment designed to prevent injury including, but not limited to, bicycle helmets, athletic supporters, knee pads or elbow pads.

(b) "Chemical" means any organic or inorganic substance of a particular molecular identity, including: (i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature; and (ii) any element or uncombined radical.

(c) "Chemical of high concern to children" means any chemical that has been identified by a state, federal or international governmental entity on the basis of credible scientific evidence or reliable information as: (i) a carcinogen, a reproductive or developmental toxicant, endocrine disruptor or asthmagen; (ii) persistent, bioaccumulative and toxic; or (iii) very persistent and very bioaccumulative.

(d) "Child or children" means a person or persons twelve years of age or younger.

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

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(e) "Children's product" means a product primarily intended for, made for or marketed for use by children, including but not limited to: baby products; toys; car seats; children's cosmetics; school supplies; 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; children's novelty products; children's jewelry; children's bedding, furniture and furnishings; and children's apparel. Such term shall not include: (i) batteries; (ii) consumer electronics; (iii) a supplement, food or beverage or an additive to a food or beverage regulated by the United States Food and Drug Administration; (iv) a drug, biologic or medical device regulated by the United States Food and Drug Administration; or (v) a pesticide product regulated by the United States Environmental Protection Agency and registered by the department of environmental conservation.

(f) "Component" means a uniquely identifiable or reasonably separate material that is intended to be included as a part of a finished children's product. A single chemical shall not be considered a "component" unless the entire material is composed of that single chemical.

(g) "Contaminant" means a trace amount of any chemical incidental to manufacturing, which serves no intended function in the finished children's product. A "contaminant" includes a chemical that is: an unintended byproduct of chemical reactions during the manufacture of the children's product; otherwise occurring in the environment; a trace impurity in feedstock; a component of incompletely reacted chemical mixtures; and/or a product of degradation.

(h) "Distributor" means a person who sells children's products to retail establishments.

(i) "Intentionally added" means the deliberate use of a chemical in the formulation of a product or component where its presence is desired in the final product or component to provide a specific characteristic, appearance or quality.

(j) "Manufacturer" means any person who manufactures a children's product or whose brand name is affixed to the children's product. In the case of a children's product that is imported into the United States, "manufacturer" includes the importer or first domestic distributor of the children's product if the person who 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.

(k) "Practical quantification limit" or "PQL" means an analysis to determine the practical quantification limit shall be performed in accordance with methods and procedures approved by the commissioners of health and environmental conservation.

(l) "Priority chemicals for disclosure" shall be determined by the department of health, in consultation with the department of environmental conservation. The list of priority chemicals for disclosure, as developed by the departments of health and environmental conservation, shall be reviewed by such departments on an ongoing and regular basis.

(m) "Retailer" means any person who sells or leases children's products in the state to consumers. Such term shall not include: (i) someone who purchased or acquired a product primarily for personal use and who subsequently resells the product; or (ii) any secondhand dealer.

2. Publishing lists. The department of state, department of environmental conservation and the department of health shall post the list of chemicals of high concern to children on their websites.

3. Disclosure of information. Reporting of chemical occurrence. Once the department of state, department of health and the department of

environmental conservation publish the list of chemicals to their websites, every manufacturer who sells or distributes a children's product in this state shall report to the department of health and the department of environmental conservation if any of the listed chemicals are present in a children's product component.

The department of state, in consultation with the department of environmental conservation and the department of health, shall promulgate rules and regulations regarding the notification format the manufacturers must comply with when disclosing information to consumers and the departments.

The department of state, department of health and the department of environmental conservation are authorized to participate in an interstate chemicals clearinghouse to assist in carrying out the requirements of this section. Such departments may also enter into reciprocal data-sharing agreements with other states in which a manufacturer of children's products is required to disclose information related to chemicals of high concern to children in children's products.

4. Waiver of reporting. Upon application by a manufacturer, the commissioner of health may waive all or part of the disclosure requirements. In making such determination, such commissioner may consider:

(a) whether substantially equivalent information is already publicly available or such information is not needed for the purposes of this article;

(b) whether similar waivers have been granted by other states;

(c) whether the specified use or uses are minor in volume; or

(d) whether the manufacturer either individually or jointly submits the information required in a notice under this section to: (i) a state with which the department of state has entered a reciprocal data-sharing agreement; or (ii) a trade association, the Interstate Chemicals Clearinghouse, a federal governmental agency, or other independent third party, who makes that data available to the department of health on behalf of the manufacturer.

5. Notice to retailers. A manufacturer of a children's product containing a priority chemical for disclosure shall notify, in a form prescribed by the department of state, retailers that offer the children's product for sale or distribution in the state of the presence of such priority chemical for disclosure and any other information the departments of state and health deem appropriate.

6. Notice to consumers. The department of state shall notify consumers about children's products containing priority chemicals for disclosure. The notification shall link chemical disclosure to known and potential health impacts, and shall be published on the department of health's and department of environmental conservation's websites in a form and manner determined by the commissioners of such departments.

7. Certificate of compliance. A manufacturer required to submit notice pursuant to this section to the commissioners of health and environmental conservation may rely on a certificate of compliance, data or information from suppliers for determining reporting obligations. A certificate of compliance provided by a supplier under this subdivision shall be solely for the purpose of compliance with the requirements of this section.

8. Applicability. The provisions of this section shall apply to chemicals in children's products sold or distributed as new. It shall 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.

9. Transportation. The requirements of this section 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 presence of priority chemicals for disclosure in detachable car seats shall not be exempt.

10. Combustion. The requirements of this section shall not apply to chemicals generated solely as combustion byproducts or that are present in combustible fuels.

11. Industry. The requirements of this section shall not apply to priority chemicals for disclosure used in or for industry or manufacturing, including chemicals processed or otherwise used in or for industrial or manufacturing processes and not present in the final product.

12. Statement of compliance. If the department of environmental conservation suspects that a children's product is being offered or sold in violation of this section, such department may request the manufacturer of the children's product to provide within thirty days of receipt of a request from the department of environmental conservation, a statement of compliance on a form provided by the department of environmental conservation. The statement of compliance shall: (a) attest that the children's product does not contain the priority chemical for disclosure; or (b) attest and provide the department of state with documentation that notification of the presence of a priority chemical for disclosure was provided to the department pursuant to this section; or (c) attest that the manufacturer has notified retailers of the presence of the priority chemical for disclosure pursuant to this section.

13. Unauthorized sales. The commissioner of environmental conservation may issue an order directing the cessation of the sale or distribution by manufacturers, distributors or retailers of any children's product being distributed, sold, leased or otherwise offered for sale in this state that is in violation of this section. In the instance of non-compliance with such order, the department of environmental conservation shall provide the attorney general any information on the sale, lease, or distribution of prohibited children's products.

14. Enforcement. Where it is determined, following a hearing, that a manufacturer has violated one or more provisions of this section, the commissioner of environmental conservation may assess a civil penalty no greater than five thousand dollars per violation. Upon the occasion of a second violation, or subsequent violations of this section, a civil penalty of no greater than fifty thousand dollars may be assessed.

Any proceeding conducted pursuant to this subdivision shall be subject to the state administrative procedure act. The hearing officer shall consider whether a retailer knowingly offered such items for sale as a defense to violations of this section.

15. Regulations. The department of state, department of health and the department of environmental conservation may adopt such rules and regulations as shall be necessary to implement the provisions of this section.

§ 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 3. This act shall take effect July 1, 2018; provided, however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.