

STATE OF NEW YORK

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IN ASSEMBLY

May 23, 2017

Introduced by M. of A. ORTIZ, FAHY, JAFFEE, GOTTFRIED, NIOU, SEPULVEDA, LUPARDO, SEAWRIGHT, RODRIGUEZ, ROZIC, JEAN-PIERRE, LAVINE, QUART, RICHARDSON, CARROLL, D'URSO, GALEF, L. ROSENTHAL, LIFTON, SANTABARBARA, HARRIS, DINOWITZ, PAULIN, ABINANTI, SIMOTAS, CAHILL, MAGNARELLI, CYMBROWITZ, SOLAGES, GLICK, PERRY, THIELE, JENNE, O'DONNELL, STIRPE, PEOPLES-STOKES -- Multi-Sponsored by -- M. of A. BUCHWALD, COOK, MAYER, McDONOUGH, SIMON, STECK, TITONE -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection 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 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:

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

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1 (i) a carcinogen, a reproductive or developmental toxicant, neurotoxi-
2 cant, endocrine disruptor or asthmagen; (ii) persistent, bioaccumulative
3 and toxic; or (iii) very persistent and very bioaccumulative.

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

6 (e) "Children's product" means a product primarily intended for, made
7 for or marketed for use by children, including but not limited to: baby
8 products; toys; car seats; children's cosmetics; school supplies; a
9 product designed or intended by the manufacturer to help a child with
10 sucking or teething, to facilitate sleep, relaxation or the feeding of a
11 child; children's novelty products; children's jewelry; children's
12 bedding, furniture and furnishings; and children's apparel. Such term
13 shall not include: (i) batteries; (ii) consumer electronics; (iii) a
14 supplement, food or beverage or an additive to a food or beverage regu-
15 lated by the United States Food and Drug Administration; (iv) a drug,
16 biologic or medical device regulated by the United States Food and Drug
17 Administration; or (v) a pesticide product regulated by the United
18 States Environmental Protection Agency and registered by the department
19 of environmental conservation.

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

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

26 (h) "Manufacturer" means any person who manufactures a children's
27 product or whose brand name is affixed to the children's product. In the
28 case of a children's product that is imported into the United States,
29 "manufacturer" includes the importer or first domestic distributor of
30 the children's product if the person who manufactures or assembles the
31 children's product or whose brand name is affixed to the children's
32 product does not have a presence in the United States.

33 (i) "Priority chemicals for disclosure" means chemicals of high
34 concern to children that are designated for disclosure by the department
35 of health, in consultation with the department of environmental conser-
36 vation.

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

41 2. Publishing lists. The department of state, department of environ-
42 mental conservation and the department of health shall post the list of
43 chemicals of high concern to children and priority chemicals for disclo-
44 sure on their websites.

45 3. Disclosure of information. Reporting of chemical occurrence. Chem-
46 icals of high concern to children and priority chemicals for disclosure
47 shall be determined by the department of health, in consultation with
48 the department of environmental conservation. Once the department of
49 state, department of health and the department of environmental conser-
50 vation publish the list of chemicals to their websites, every manufac-
51 turer who sells or distributes a children's product in this state shall
52 report to the department of state if any of the priority chemicals for
53 disclosure are present in a children's product. The list of priority
54 chemicals for disclosure, as developed by the department of health and
55 environmental conservation, shall be reviewed by such departments on an
56 ongoing and regular basis and reported to the department of state.

1 The department of state, in consultation with the department of envi-
2 ronmental conservation and the department of health, shall promulgate
3 rules and regulations regarding the notification format the manufactur-
4 ers must comply with when disclosing information to consumers and the
5 departments.

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

13 4. Waiver of reporting. Upon application by a manufacturer, the
14 commissioner of health may waive all or part of the disclosure require-
15 ments. In making such determination, such commissioner may consider:

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

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

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

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

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

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

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

47 8. Applicability. The provisions of this section shall apply to chem-
48 icals in children's products sold or distributed as new. It shall not
49 apply to used children's products that are sold or distributed for free
50 at secondhand stores, yard sales, on the internet or donated to chari-
51 ties.

52 9. Transportation. The requirements of this section shall not apply
53 to motor vehicles or their component parts, watercraft or their compo-
54 nent parts, all-terrain vehicles or their component parts, or off-high-
55 way motorcycles or their component parts, except that the presence of

1 priority chemicals for disclosure in detachable car seats shall not be
2 exempt.

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

6 11. Industry. The requirements of this section shall not apply to
7 priority chemicals for disclosure used in or for industry or manufactur-
8 ing, including chemicals processed or otherwise used in or for indus-
9 trial or manufacturing processes and not present in the final product.

10 12. Statement of compliance. If the department of environmental
11 conservation suspects that a children's product is being offered or sold
12 in violation of this section, such department may request the manufac-
13 turer of the children's product to provide within thirty days of receipt
14 of a request from the department of environmental conservation, a state-
15 ment of compliance on a form provided by the department of environmental
16 conservation. The statement of compliance shall: (a) attest that the
17 children's product does not contain the priority chemical for disclo-
18 sure; or (b) attest and provide the department of state with documenta-
19 tion that notification of the presence of a priority chemical for
20 disclosure was provided to the department pursuant to this section; or
21 (c) attest that the manufacturer has notified retailers of the presence
22 of the priority chemical for disclosure pursuant to this section.

23 13. Unauthorized sales. The commissioner of environmental conserva-
24 tion may issue an order directing the cessation of the sale or distrib-
25 ution by manufacturers, distributors or retailers of any children's
26 product being distributed, sold, leased or otherwise offered for sale in
27 this state that is in violation of this section. In the instance of
28 non-compliance with such order, the department of environmental conser-
29 vation shall provide the attorney general any information on the sale,
30 lease, or distribution of prohibited children's products.

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

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

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

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

52 § 3. This act shall take effect July 1, 2019; provided, however, that
53 effective immediately, the addition, amendment and/or repeal of any
54 rules or regulations necessary for the implementation of this act on its
55 effective date are authorized and directed to be made and completed on
56 or before such effective date.