

STATE OF NEW YORK

1454--A

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

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

37-0905. Reporting on the use of chemicals.

37-0907. Sales prohibition.

37-0909. Applicability.

37-0911. Enforcement and implementation.

37-0913. 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.

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.

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

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1 3. "Chemicals of concern" means:

2 (a) 1,1,2,2-Tetrachloroethane (CAS 79-34-5)

3 (a-1) 1,2-Dibromoethane (CAS 106-93-4)

4 (a-2) 1,1,3,3-Tetramethyl-4-butylphenol; 4-tert-octylphenol (CAS 140-
5 66-9)

6 (a-3) (1,1,3,3 - Tetramethylbutyl) Phenol; Octylphenol (CAS
7 27193-28-8)

8 (a-4) 1,3-Butadiene (CAS 106-99-0)

9 (b) 1,4-Dioxane (CAS 123-91-1)

10 (c) 2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209 (CAS
11 1163-19-5)

12 (d) 2,4-Diaminotoluene (CAS 95-80-7)

13 (d-1) 2,4-Dihydroxybenzophenone; resbenzophenone (CAS 131-56-6)

14 (e) 2-Aminotoluene (CAS 95-53-4)

15 (f) 2-Ethylhexanoic acid (CAS 149-57-5)

16 (g) 2-Ethyl-hexyl-4-methoxycinnamate (CAS 5466-77-3)

17 (g-1) 2-Napthylamine (CAS 91-59-8)

18 (h) 2-Methoxyethanol (CAS 109-86-4)

19 (i) 3,3'-Dimethylbenzidine and dyes metabolized to
20 3,3'-Dimethylbenzidine (CAS 119-93-7)

21 (i-1) 4-Hydroxybiphenol (CAS 92-69-3)

22 (j) 4-Nonylphenol; 4-NP and its isomer mixtures including CAS
23 84852-15-3 and CAS 25154-52-3 (CAS 104-40-5)

24 (j-1) 4,4-methylenebis(2-chloroaniline) (CAS 101-14-4)

25 (k) 4-Tert-octylphenol; 1,1,3,3-Tetramethyl-4-butylphenol (CAS
26 140-66-9)

27 (l) Acetaldehyde (CAS 75-07-0)

28 (m) Acrylonitrile (CAS 107-13-1)

29 (n) Aniline(CAS 62-53-3)

30 (o) Antimony & antimony compounds (CAS 7440-36-0)

31 (p) Arsenic & arsenic compounds (CAS 7440-38-2) including arsenic
32 trioxide & dimethyl arsenic (CAS 75-60-5)

33 (q) Asbestos (CAS 1332-21-4)

34 (r) Benzene (CAS 71-43-2)

35 (s) Benzene, pentachloro (CAS 608-93-5)

36 (s-1) Benzidine and its salts (CAS 92-87-5)

37 (t) Benzophenone-2 (BP-2); 2,2',4,4'-tetrahydroxybenzophenone (CAS
38 131-55-5)

39 (u) Bisphenol A (CAS 80-05-7)

40 (v) Butyl benzyl phthalate (BBP) (CAS 85-68-7)

41 (w) Butyl paraben (CAS 94-28-6)

42 (x) Butylated Hydroxyanisole; (BHA) (CAS 25013-16-5)

43 (y) C.I. solvent yellow 14 (CAS 842-07-9)

44 (z) Cadmium & cadmium compounds (CAS 7440-43-9)

45 (aa) Carbon disulfide (CAS 75-15-0)

46 (bb) Cobalt & cobalt compounds (CAS 7440-48-4)

47 (cc) Di-2-ethylhexyl phthalate (CAS 117-81-7)

48 (dd) Dibutyl phthalate (CAS 84-74-2)

49 (dd-1) Dicyclohexyl phthalate (DCHP) (CAS 84-61-7)

50 (ee) Diethyl phthalate (CAS 84-66-2)

51 (ff) Diisodecyl phthalate (DIDP) (CAS 26761-40-0)

52 (gg) Diisononyl phthalate (DINP) (CAS 28553-12-0)

53 (hh) Di-n-hexyl phthalate (CAS 84-75-3)

54 (ii) Di-n-octyl phthalate (DNOP) (CAS 117-84-0)

55 (ii-1) Epichlorohydrin (CAS 106-98-9)

56 (jj) Estragole (CAS 140-67-0)

- 1 (kk) Ethyl paraben (CAS 120-47-8)
2 (ll) Ethylbenzene (CAS 100-41-4)
3 (mm) Ethylene glycol (CAS 107-21-1)
4 (nn) Ethylene glycol monoethyl ester (CAS 110-80-5)
5 (oo) Formaldehyde (CAS 50-0-0)
6 (pp) Hexabromocyclododecane (HBCD) (CAS 25637-99-4)
7 (qq) Hexachlorobenzene (CAS 118-74-1)
8 (rr) Hexachlorobutadiene (CAS 87-68-3)
9 (ss) Lead & lead compounds (CAS 7439-92-1)
10 (tt) Mercury & mercury compounds (CAS 7439-97-6) including methyl
11 mercury (CAS 22967-92-6)
12 (uu) Methyl ethyl ketone (CAS 78-93-3)
13 (vv) Methyl paraben (CAS 99-76-3)
14 (ww) Methylene chloride (CAS 75-09-2)
15 (ww-1) Methyl tert-butyl ether (MTBE) (CAS 1634-04-4)
16 (xx) Molybdenum & molybdenum compounds (CAS 7439-98-7)
17 (xx-1) Mono-n-butylphthalate (CAS 131-70-4)
18 (yy) N-methylpyrrolidone (CAS 872-50-4)
19 (yy-1) Nickel and nickel compounds (CAS N/A)
20 (zz) N-nitrosodimethylamine (CAS 62-75-9)
21 (aaa) N-nitrosodiphenylamine (CAS 86-30-6)
22 (bbb) Octamethylcyclotetrasiloxane (CAS 556-67-2)
23 (ccc) Para-chloroaniline (CAS 106-47-3)
24 (ddd) Perchloroethylene (CAS 127-18-4)
25 (eee) Perfluorooctanyl sulphonic acid and its salts (PFOS) (CAS 1763-
26 23-1)
27 (fff) Phenol (CAS 108-95-2)
28 (ggg) Phenol, 4-octyl- (CAS 1806-26-4)
29 (hhh) Phthalic anhydride (CAS 85-44-9)
30 (iii) P-hydroxybenzoic acid (CAS 99-96-7)
31 (jjj) Propyl paraben (CAS 94-13-3)
32 (jjj-1) Silica, crystalline (in the form of quartz or cristabolite
33 dust) (CAS 14808-60-7)
34 (kkk) Styrene (CAS 100-42-5)
35 (lll) Tetrabromobisphenol A (CAS 79-94-7)
36 (mmm) Toluene (CAS 108-88-3)
37 (nnn) Tris(1,3-dichloro-2-propyl) phosphate (CAS 13674-87-3)
38 (ooo) Tris(2-chloroethyl) phosphate (CAS 115-96-8)
39 (ppp) Vinyl chloride (CAS 75-01-4)
40 4. "Children" means a person or persons aged twelve and under.
41 5. "Children's product" means a product primarily intended for, made
42 for or marketed for use by children, such as baby products, toys, car
43 seats, school supplies, personal care products, a product designed or
44 intended by the manufacturer to help a child with sucking or teething,
45 to facilitate sleep, relaxation, or the feeding of a child, and chil-
46 dren's novelty products, children's jewelry, children's bedding, furni-
47 ture, furnishings, and apparel. "Children's product" does not include
48 (a) batteries; or (b) consumer electronic products including but not
49 limited to personal computers, audio and video equipment, calculators,
50 wireless phones, game consoles, and handheld devices incorporating a
51 video screen, used to access interactive software and their associated
52 peripherals; or (c) a food or beverage or an additive to a food or
53 beverage regulated by the United States Food and Drug Administration; or
54 (d) a tobacco product; or (e) a pesticide regulated by the United States
55 Environmental Protection Agency. "Children's product" also does not

1 include a drug, biologic or medical device regulated by the United
2 States Food and Drug Administration.

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

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

9 8. "Manufacturer" means any person who currently manufactures a chil-
10 dren's product or whose brand name is affixed to the children's product.
11 In the case of a children's product that was imported into the United
12 States, "manufacturer" includes the importer or first domestic distribu-
13 tor of the children's product if the person who currently manufactures
14 or assembles the children's product or whose brand name is affixed to
15 the children's product does not have a presence in the United States.

16 9. "Dangerous chemical" means (a) the following chemicals:

17 CASRN13674-87-8 Tris (1, 3 dichloro-2-propyl) phosphate

18 CASRN71-43-2 Benzene

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

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

22 CASRN7440-36-0 Antimony and antimony compounds

23 CASRN50-00-0 Formaldehyde

24 CASRN1332-21-4 Asbestos

25 CASRN7440-38-2 Arsenic and arsenic compounds including arsenic
26 trioxide (CASRN 1327-53-3)
27 and dimethyl arsenic (CASRN 75-60-5)

28 CASRN7440-43-9 Cadmium

29 CASRN7440-48-4 Cobalt and cobalt compounds and

30 (b) a chemical adopted by the department pursuant to section 37-0903
31 of this title.

32 10. "Toy" means a product designed or intended by the manufacturer to
33 be used by children at play.

34 § 37-0903. Consumer notice.

35 1. Publishing of lists. Within one hundred eighty days of the effec-
36 tive date of this title, the department shall post lists of dangerous
37 chemicals and chemicals of concern on the department's website.

38 2. Periodic review. (a) The department, in consultation with the
39 department of health, may periodically review the list of dangerous
40 chemicals and, through regulation, add or remove dangerous chemicals or
41 chemicals of concern from such lists.

42 (b) The department, in consultation with the department of health, may
43 identify a chemical as a dangerous chemical if, upon such review, it is
44 present in a children's product and meets any of the following criteria:

45 (i) The chemical or its metabolites have been found through biomon-
46 itoring to be present in humans;

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

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

52 (iv) The sale or use of the chemical or a children's product contain-
53 ing the chemical has been banned in another state or states within the
54 United States because of the health effects of such chemical.

55 (c) The department, in consultation with the department of health, may
56 remove a chemical from the list of dangerous chemicals if, upon review,

1 it determines on the basis of credible scientific evidence that such
2 chemical no longer meets the criteria for listing under paragraph (b) of
3 this subdivision.

4 (d) The department, in consultation with the department of health
5 shall identify a chemical as a chemical of concern if, upon review, it
6 determines that the chemical has been identified by a state, federal or
7 international governmental entity on the basis of credible scientific
8 evidence as:

9 (i) A carcinogen, reproductive or developmental toxicant, neurotoxi-
10 cant, asthmagen, or endocrine disruptor;

11 (ii) Persistent, bioaccumulative and toxic; or

12 (iii) Very persistent and very bioaccumulative.

13 § 37-0905. Reporting on the use of chemicals.

14 1. Reporting of chemical use. No later than twelve months after a
15 dangerous chemical appears on the list published pursuant to section
16 37-0903 of this title, every manufacturer who offers a children's prod-
17 uct for sale or distribution in this state that contains a dangerous
18 chemical or chemical of concern shall report such chemical use to the
19 department.

20 (a) This report must at a minimum identify the children's product
21 category, the dangerous chemical or chemicals of concern contained in
22 the children's product and the intended purpose of such chemicals. The
23 department may also require reporting of the following information:

24 (i) the amount of such chemical in the children's product; or

25 (ii) information on the likelihood that the chemical will be released
26 from the children's product to the environment during the product's life
27 cycle and the extent to which users of the product category are likely
28 to be exposed to the chemical.

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

31 2. Waiver of reporting. Upon application by a manufacturer, the
32 commissioner may waive all or part of the reporting requirements under
33 subdivision one of this section for one or more specified uses of a
34 dangerous chemical. In making such determination, the commissioner may
35 consider: (a) if substantially equivalent information is already public-
36 ly available or that the information is not needed for the purposes of
37 this chapter, (b) similar waivers granted by other states, and (c)
38 whether the specified use or uses are minor in volume.

39 3. Notice. (a) A manufacturer of a children's product containing a
40 dangerous chemical shall notify persons that offer the children's prod-
41 uct for sale or distribution in the state, in a form prescribed by the
42 department, of the presence of such dangerous chemical, and provide such
43 persons with information regarding the toxicity of such chemical.

44 (b) The department shall notify consumers about children's products
45 containing chemicals of concern and dangerous chemicals. The notifica-
46 tion shall be published on the department's website.

47 4. Fees. The manufacturer shall pay a fee upon submission of a report
48 of chemical use pursuant to subdivision one of this section or a waiver
49 request pursuant to subdivision two of this section to cover the depart-
50 ment's reasonable costs in the amount of five hundred dollars per
51 reported product category.

52 § 37-0907. Sales prohibition.

53 1. Effective January first, two thousand twenty, no person shall
54 distribute, sell or offer for sale in this state a children's product
55 containing tris (1, 3 dichloro-2-propyl) phosphate, benzene, lead and
56 compounds (inorganic), mercury and mercury compounds including methyl

1 mercury, antimony and antimony compounds, formaldehyde, asbestos, arsenic
2 and arsenic compounds including arsenic trioxide and dimethyl arsenic,
3 cadmium, and cobalt and cobalt compounds. This provision shall not
4 apply to a children's product solely based on its containing an enclosed
5 battery or enclosed electronic components. The commissioner may exempt a
6 children's product from this prohibition if, in the commissioner's judgment,
7 the lack of availability of the children's product could pose an
8 unreasonable risk to public health, safety or welfare.

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

13 § 37-0909. Applicability.

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

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

23 3. Transportation. The requirements of this title shall not apply to
24 motor vehicles or their component parts, watercraft or their component
25 parts, all terrain vehicles or their component parts, or off-highway
26 motorcycles or their component parts, except that the use of dangerous
27 chemicals in detachable car seats is not exempt.

28 4. Combustion. The requirements of this title shall not apply to
29 dangerous chemicals generated solely as combustion by-products or that
30 are present in combustible fuels.

31 5. Exceptions. The requirements of this title shall not apply to chil-
32 dren's product makers that employ five persons or fewer, and are inde-
33 pendently owned and operated.

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

39 § 37-0911. Enforcement and implementation.

40 1. Failure to provide notice. A children's product containing a
41 dangerous chemical may not be sold, offered for sale or distributed for
42 sale in this state unless the manufacturer has provided the notification
43 required under section 37-0905 of this title by the date required in
44 such section. The commissioner may exempt a children's product from this
45 prohibition if, in the commissioner's judgment, the lack of availability
46 of the children's product could pose an unreasonable risk to public
47 health, safety or welfare.

48 2. Statement of compliance. If there are grounds to suspect that a
49 children's product is being offered for sale in violation of this title,
50 the department may request the manufacturer of the children's product to
51 provide a statement of compliance on a form provided by the department,
52 within ten days of receipt of a request from the department. The state-
53 ment of compliance shall:

54 (a) attest that the children's product does not contain the dangerous
55 chemical; or

1 (b) attest and provide the department with documentation that notifi-
2 cation of the presence of the dangerous chemical has been provided to
3 the department or provide notice as required by section 37-0905 of this
4 title; or

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

8 § 37-0913. Regulations.

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

11 § 2. This act shall take effect on the one hundred twentieth day after
12 it shall have become a law. Effective immediately, the department of
13 environmental conservation is authorized to implement rules and regu-
14 lations for the timely implementation of this act on its effective date.