

# STATE OF NEW YORK

6151

2019-2020 Regular Sessions

## IN ASSEMBLY

February 28, 2019

Introduced by M. of A. ORTIZ, FAHY, JAFFEE, GOTTFRIED, NIOU, LUPARDO, SEAWRIGHT, RODRIGUEZ, ROZIC, JEAN-PIERRE, LAVINE, QUART, RICHARDSON, CARROLL, D'URSO, GALEF, L. ROSENTHAL, SANTABARBARA, DINOWITZ, PAULIN, ABINANTI, SIMOTAS, CAHILL, MAGNARELLI, CYMBROWITZ, SOLAGES, GLICK, PERRY, THIELE, O'DONNELL, STIRPE, PEOPLES-STOKES, PICHARDO, BARRON, D. ROSENTHAL, DICKENS, TAYLOR, COLTON, DE LA ROSA, HYNDMAN, MOSLEY, BLAKE, JONES, WEPRIN, ARROYO, BARNWELL, EPSTEIN, BICHOTTE, RIVERA, HUNTER, WOERNER, STERN, OTIS, ZEBROWSKI, BARRETT -- Multi-Sponsored by -- M. of A. BUCHWALD, BYRNE, COOK, HEVESI, McDONOUGH, M. L. MILLER, NOLAN, SIMON, STECK, WRIGHT -- read once and referred to the Committee on Consumer Affairs and 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:

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, 2020. Effective immediately,  
53 the addition, amendment and/or repeal of any rules or regulations neces-  
54 sary for the implementation of this act on its effective date are  
55 authorized and directed to be made and completed on or before such  
56 effective date.