STATE OF NEW YORK

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2019-2020 Regular Sessions

IN SENATE

January 23, 2019

Introduced by Sens. BAILEY, ADDABBO, BRESLIN, GIANARIS, HOYLMAN, KENNEDY, KRUEGER, MONTGOMERY, PARKER, SERRANO, 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:

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

2. "Chemical" means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown

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

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products of the substance or substances that form through decomposition, degradation or metabolism.

3. "Chemical of high concern" means a chemical included in the list of "Chemicals of High Concern" published in June 2009 pursuant to chapter 16-D of title 38 of the Maine revised statutes annotated.

4. "Children" means a person or persons aged twelve and under.

5. "Children's product" means a product primarily intended for, made for or marketed for use by children, including baby products, toys, car seats, personal care products, 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, novelty products, bedding, furniture, furnishings, and children's apparel. "Children's product" does not include (a) batteries; or (b) consumer electronic products including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals; or (c) a food or beverage or an additive to a food or beverage regulated by the United States Food and Drug Administration; or (d) a tobacco product or paper or forest product; or (e) a pesticide regulated by the United States Environmental Protection Agency. "Children's product" also does not include a drug, biologic or medical device regulated by the United States Food and Drug Administration.

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

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

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

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

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

CASRN115-96-8	Tris (2-chloroethyl) phosphate
CASRN71-43-2	Benzene
CASRN7439-92-1	Lead and compounds (inorganic)
CASRN7439-97-6	Mercury and mercury compounds, including methyl mercury (CASRN 22967-92-6)
CASRN7439-98-7	Molybdenum and molybdenum compounds
CASRN7440-36-0	Antimony and antimony compounds
CASRN7440-38-2	Arsenic and arsenic compounds including arsenic trioxide (CASRN 1327-53-3) and dimethyl arsenic (CASRN 75-60-5)
CASRN7440-43-9	Cadmium
CASRN7440-48-4	Cobalt and cobalt compounds and

(b) a chemical adopted by the department pursuant to section 37-0905 of this title.

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

§ 37-0903. Chemicals of high concern.

1. Publishing of list. Within one hundred eighty days of the effective date of this title, the department shall ensure that a website accessible to the public is established that lists all chemicals of high concern.

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

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

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

(ii) Persistent, bioaccumulative and toxic; or

(iii) Very persistent and very bioaccumulative.

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

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

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

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

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

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

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

(v) chemicals identified as a chemical of high concern for children or a high priority chemical of high concern for children or as a persistent bioaccumulative toxic chemical by the state of Washington Department of Ecology, pursuant to chapter 70.240 of the revised code of Washington or chapter 173-333 of the state of Washington administrative code;

(vi) chemicals of high concern as such chemicals are identified by the state of Maine's Department of Environmental Conservation and appearing on such department's list of chemicals of high concern;

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

(viii) chemicals listed on the basis of endocrine-disrupting properties in Annex XIV, List of Substances Subject to Authorisation, Regulation (EC) No 1907/2006 of the European Parliament concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals;

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

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

§ 37-0905. Priority chemicals.

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

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

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

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

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

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

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

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

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

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

1. Reporting of chemical use. No later than twelve months after a priority chemical is listed on the list published pursuant to section 37-0905 of this title, every manufacturer who offers a children's product for sale or distribution in this state that contains an intentionally added priority chemical shall report such chemical use to the

department in a form prescribed by the department. The department may collaborate with other states and an interstate chemicals clearinghouse in developing such form.

(a) This report must at a minimum identify the children's product, the priority chemical or chemicals contained in the children's product, and the intended purpose of the chemicals in the children's product. The department may also require reporting of the following information:

(i) the potential for harm to human health and the environment from specific uses of the priority chemical;

(ii) the amount of such chemical in each unit of the children's product, expressed in a range;

(iii) information on the likelihood that the chemical will be released from the children's product to the environment during the product's life cycle and the extent to which users of the product are likely to be exposed to the chemical; or

(iv) information on the extent to which the chemical is present in the environment or human body.

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

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

3. Notice to retailers. A manufacturer or distributor of a children's product containing a priority chemical shall notify persons that offer the children's product for sale or distribution in the state, in a form prescribed by the department, of the presence of such priority chemical, and provide such persons with information regarding the toxicity of such chemical.

4. Fees. The manufacturer or distributor shall pay a fee upon submission of a report of chemical use pursuant to subdivision one of this section or a waiver request pursuant to subdivision two of this section to cover the department's reasonable costs in the amount of six hundred dollars per chemical.

§ 37-0909. Sales prohibition.

Effective January first, two thousand twenty-four, no person shall distribute, sell or offer for sale in this state a children's product containing a priority chemical that has been listed for at least one year. This provision shall not apply to a children's product solely based on its containing an enclosed battery or enclosed electronic components. The commissioner may exempt a children's product from this prohibition if, in the commissioner's judgment, the lack of availability of the children's product could pose an unreasonable risk to public health, safety or welfare.

§ 37-0911. Applicability.

1. New children's products. The provisions of this title shall apply to chemicals in children's products sold or distributed as new and does 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.

2. Industry. The requirements of this title shall not apply to priority chemicals used in or for industry or manufacturing, including chemi-

cals processed or otherwise used in or for industrial or manufacturing processes and not included in the final product.

3. Transportation. The requirements of this title 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 use of priority chemicals in detachable car seats is not exempt.

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

5. Retailers. A retailer is exempt from the requirements of this title unless that retailer knowingly sells a children's product containing a priority chemical after the effective date of its prohibition for which that retailer has received prior notification from a manufacturer, distributor or the state.

§ 37-0913. Enforcement and implementation.

1. Failure to provide notice. A children's product containing a priority chemical may not be sold, offered for sale or distributed for sale in this state unless the manufacturer or distributor has provided the notification required under section 37-0907 of this title by the date required in such section. The commissioner may exempt a children's product from this prohibition if, in the commissioner's judgment, the lack of availability of the children's product could pose an unreasonable risk to public health, safety or welfare.

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

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

(b) attest and provide the department with documentation that notification of the presence of the priority chemical has been provided to the department or provide notice as required by section 37-0907 of this title; or

(c) attest that the manufacturer has notified persons who sell the product in this state that the sale of the children's product is prohibited.

§ 37-0915. Interstate chemical clearinghouse.

1. The department is authorized to participate in an interstate chemicals clearinghouse to assist in carrying out the requirements of this title. The department shall work in collaboration with other states and an interstate chemicals clearinghouse for the purpose of, including but not limited to:

(a) collection and dissemination of information regarding chemical hazards;

(b) collection and dissemination of information regarding the use of chemicals in children's products;

(c) assessment of alternatives to chemicals and their use in products; and

(d) public education.

2. Such clearinghouse is authorized to maintain information on behalf of the state of New York, including, but not limited to, information regarding chemicals contained in children's products disclosed pursuant to section 37-0907 of this title.

§ 37-0917. Regulations.

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

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