STATE OF NEW YORK

501--B

Cal. No. 457

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. KAMINSKY, ADDABBO, BOYLE, GAUGHRAN, KRUEGER, METZGER, SERRANO -- 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 -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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. 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

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

LBD05551-08-9

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.

3. "Chemicals of concern" means:

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

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

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

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

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

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

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

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

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

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

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

(f-1) 2-Ethyl-hexyl-2, 3, 4, 5 tetrabromobenzoate (TBB) (CAS 183658-27-7)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(t-1) Bis(2-ethylhexyl) tetrabromophtalate (TBPH) (CAS 26040-51-7)

(t-2) Bis(chloromethyl) propane-1-3-diyltetrakis-(2-chloroethyl) bis(phosphate)(V6)(CAS 38051-10-4)

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

(u-1) Bisphenol F (CAS 620-92-8)

(u-2) Bisphenol S (CAS 80-09-1)

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

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

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

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

(z) Cadmium & cadmium compounds (CAS 7440-43-9)
(aa) Carbon disulfide (CAS 75-15-0)
(aa-1) Chlorinated paraffins (CAS 108171-26-2)
(bb) Cobalt & cobalt compounds (CAS 7440-48-4)
(bb-1) Decabromodiphenyl ethane (DBPE) (CAS 84852-53-9)
(bb-2) Decabromodiphenyl ether (CAS 163-19-5)
(cc) Di-2-ethylhexyl phthalate (CAS 117-81-7)
(cc-1) Di-(2-methoxyethyl) phthalate (DMEP) (CAS 117-82-8)
(dd) Dibutyl phthalate (CAS 84-74-2)
(dd-1) Dicyclohexyl phthalate (DCHP) (CAS 84-61-7)
(ee) Diethyl phthalate (CAS 84-66-2)
(ee-1) Diisobutyl phthalate (DIBP) (CAS 84-69-5)
(ff) Diisodecyl phthalate (DIDP) (CAS 26761-40-0)
(gg) Diisononyl phthalate (DINP) (CAS 28553-12-0)
(hh) Di-n-hexyl phthalate (CAS 84-75-3)
(ii) Di-n-octyl phthalate (DNOP) (CAS 117-84-0)
(ii-1) Dipentyl phthalate (DPP) (CAS 131-18-0)
(ii-2) Epichlorohydrin (CAS 106-98-9)
(jj) Estragole (CAS 140-67-0)
(kk) Ethyl paraben (CAS 120-47-8)
(ll) Ethylbenzene (CAS 100-41-4)
(mm) Ethylene glycol (CAS 107-21-1)
(nn) Ethylene glycol monoethyl ester (CAS 110-80-5)
(nn-1) Ethyl hexyl d-phenol phosphate (EHDPP) (CAS 1241-94-7)
(oo) Formaldehyde (CAS 50-0-0)
(pp) Hexabromocyclododecane (HBCD) (CAS 25637-99-4)
(qq) Hexachlorobenzene (CAS 118-74-1)
(rr) Hexachlorobutadiene (CAS 87-68-3)
(rr-1) Isopropylated triphenyl phosphate (IPTPP) (CAS 68437-41-7)
(ss) Lead & lead compounds (CAS 7439-92-1)
(tt) Mercury & mercury compounds (CAS 7439-97-6) including methyl mercury (CAS 22967-92-6)
(uu) Methyl ethyl ketone (CAS 78-93-3)
(vv) Methyl paraben (CAS 99-76-3)
(ww) Methylene chloride (CAS 75-09-2)
(ww-1) Methyl tert-butyl ether (MTBE) (CAS 1634-04-4)
(xx) Molybdenum & molybdenum compounds (CAS 7439-98-7)
(xx-1) Mono-n-butylphthalate (CAS 131-70-4)
(yy) N-methylpyrrolidone (CAS 872-50-4)
(yy-1) Nickel and nickel compounds (CAS N/A)
(zz) N-nitrosodimethylamine (CAS 62-75-9)
(aaa) N-nitrosodiphenylamine (CAS 86-30-6)
(bbb) Nonylphenol (CAS 25154-52-3)
(ccc) Para-chloroaniline (CAS 106-47-3)
(ddd) Perchloroethylene (CAS 127-18-4)
(ddd-1) Perflurooctanoic acid (PFOA & related substances) (CAS 335-67-1)
(eee) Perfluorooctanyl sulphonic acid and its salts (PFOS) (CAS 1763-23-1)
(fff) Phenol (CAS 108-95-2)
(ggg) Phenol, 4-octyl- (CAS 1806-26-4)
(hhh) P-hydroxybenzoic acid (CAS 99-96-7)
(iii) Propyl paraben (CAS 94-13-3)
(iii-1) Short chain chlorinated paraffins (SCCP) (CAS 85535-84-8)
(jjj) Silica, crystalline (in the form of quartz or cristabolite dust) (CAS 14808-60-7)

(kkk) Styrene (CAS 100-42-5)
(lll) Tetrabromobisphenol A (CAS 79-94-7)
(lll-1) Tetrachloroethene (CAS 127-18-4)
(mmm) Toluene (CAS 108-88-3)
(mmm-1) Tricresyl phosphate (TCP) (CAS 1330-78-5)
(mmm-2) Tri-n-butyl phosphate (TNBP) (CAS 126-73-8)
(mmm-3) Triphenyl phosphate (TPP) (CAS 115-86-6)
(nnn) Tris(1,3-dichloro-2-propyl) phosphate (CAS 13674-87-3)
(nnn-1) Tris(1-chloro-2-propyl) phosphate (TCPP) (CAS 13674-84-5)
(ooo) Tris(2-chloroethyl) phosphate (CAS 115-96-8)
(ooo-1) Tris(2,3-dibromopropylphosphate) (CAS 126-72-7)
(ppp) Vinyl chloride (CAS 75-01-4)

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, such as baby products, toys, car seats, school supplies, 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, and children's novelty products, children's jewelry, children's bedding, furniture, furnishings, and 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. "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. "Manufacturer" means any person who currently 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 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.

8. "Practical quantification limit" means the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions.

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

CASRN13674-87-8	Tris (1, 3 dichloro-2-propyl) 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)
CASRN50-00-0	Formaldehyde
CASRN1332-21-4	Asbestos
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
CASRN Assorted	Organohalogen flame retardants

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

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

§ 37-0903. Consumer notice.

1. Publishing of lists. Within one hundred eighty days of the effective date of this title, the department shall post lists of dangerous chemicals and chemicals of concern on the department's website.

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

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

(i) The chemical or its metabolites have been found through biomonitoring to be present in humans;

(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; or

(iv) The sale or use of the chemical or a children's 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) The department, in consultation with the department of health, may remove a chemical from the list of dangerous chemicals if, upon review, it determines on the basis of credible scientific evidence that such chemical no longer meets the criteria for listing under paragraph (b) of this subdivision.

(d) The department, in consultation with the department of health shall identify a chemical as a chemical of concern if, upon review, 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, reproductive or developmental toxicant, neurotoxicant, asthmagen, or endocrine disruptor;

(ii) Persistent, bioaccumulative and toxic; or

(iii) Very persistent and very bioaccumulative.

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

1. Reporting of chemical use. No later than twelve months after a dangerous chemical appears on the list published pursuant to section 37-0903 of this title, every manufacturer who offers a children's product for sale or distribution in this state that contains a dangerous chemical or chemical of concern shall report such chemical use at practical quantification limits to the department.

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

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

(ii) 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.

(b) The department is authorized to direct submission 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 dangerous 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. (a) A manufacturer of a children's product containing a dangerous 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 dangerous chemical, and provide such persons with information regarding the toxicity of such chemical.

(b) The department shall notify consumers about children's products containing chemicals of concern and dangerous chemicals. The notification shall be published on the department's website.

4. Fees. The manufacturer 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 administration and enforcement of this title. Exclusive of fines and penalties, the state shall only recover its actual cost of administration and enforcement.

§ 37-0907. Sales prohibition.

1. Effective January first, two thousand twenty-three, no person shall distribute, sell or offer for sale in this state a children's product containing tris (1, 3 dichloro-2-propyl) phosphate, benzene, formaldehyde (other than in textiles), asbestos, and organohalogen flame retardents. This provision shall not apply: (a) to a children's product solely based on its containing an enclosed battery or enclosed electronic components and (b) where state regulation of children's products is preempted by federal law. 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. Effective three years after being added to the dangerous chemicals list, no person shall distribute, sell, or offer for sale in this state a children's product that contains a chemical added to the dangerous chemicals list pursuant to section 37-0903 of this title. This provision shall not apply: (a) to a children's product solely based on its containing an enclosed battery or enclosed electronic components and (b) where state regulation of children's products is preempted by federal law. 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.

§ 37-0909. 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 chemicals 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 dangerous chemicals in detachable car seats is not exempt.

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

5. Exceptions. The requirements of this title shall not apply to children's product makers that employ five persons or fewer, and are independently owned and operated.

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

§ 37-0911. Enforcement and implementation.

1. Failure to provide notice. A children's product containing a dangerous chemical may not be sold, offered for sale or distributed for sale in this state unless the manufacturer has provided the notification required under section 37-0905 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 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 dangerous chemical; or

(b) attest and provide the department with documentation that notification of the presence of the dangerous chemical has been provided to the department or provide notice as required by section 37-0905 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.

§ 37-0913. Regulations.

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

§ 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 March 1, 2020. 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.