STATE OF NEW YORK

7735

IN SENATE

February 12, 2020

Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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. Title 9 of article 37 of the environmental conservation law, as added by a chapter of the laws of 2019 amending the environmental conservation law relating to regulation of toxic chemicals in children's products, as proposed in legislative bills numbers S. 501-B and A. 6296-A, is amended to read as follows:

TITLE IX

TOXIC CHEMICALS IN CHILDREN'S PRODUCTS

Section 37-0901. Definitions.

37-0903. [~~Consumer notice~~] Applicability.

37-0905. Chemicals of concern and high-priority chemicals.

[~~37-0905.~~] 37-0907. Reporting on the use of chemicals.

[~~37-0907.~~] 37-0909. Sales prohibition.

[~~37-0909. Applicability.~~] 37-0911. Children's product safety council; established.

[~~37-0911. Enforcement and implementation~~] 37-0913. Notice to retailers and the public.

[~~37-0913. Regulations~~] 37-0915. Enforcement and implementation.

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.

LBD05551-13-0

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

3. "[~~Chemicals~~] **Chemical** 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) Perfluorooctanoic 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)~~] **means a chemical identified by the department by rule pursuant to subdivision one of section 37-0905 of this title.**

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

5. "Children's product" means a **consumer** product primarily intended for, made for or marketed for use by children, such as baby products, toys, car seats, school supplies, personal care products **as defined in section 37-0117 of this article**, 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 **as defined in section 37-0115 of this article**, children's bedding, furniture, furnishings, and apparel. "Children's product" does not include (a) batteries; [~~or~~] (b) consumer electronic products **and their component parts** including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, **video toys that can be connected to a video screen and are operated at a nominal voltage exceeding twenty-four volts** and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals**, accessories and peripherals to children's electronic products including plugs, keyboards and headphones, interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks**; 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~~] **sporting equipment including bicycles and tricycles, skis, snow boards, sleds, and roller skates; and hunting and fishing equipment or components thereof; (d) science kits including chemistry sets and model rockets; (e) toy engines and sets of darts with metallic points; (f) 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.**

6. "Consumer product" means any product that is regularly used or purchased to be used for personal, family or household purposes. Consumer product shall not mean: (a) a food or beverage or an additive to a food or beverage regulated by the United States Food and Drug Administration; or (b) a drug, biologic or medical device regulated by the United States Food and Drug Administration.

[~~6.~~] **7.** "Distributor" means a person who sells children's products to retail establishments on a wholesale basis.

[~~7.~~] **8.** "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.~~] 9. "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~~] 10. "High-priority 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~~] a chemical designated pursuant to paragraph (a) of subdivision two of section 37-0905 of this title; and

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

[~~10.~~] 11. "Intentionally added chemical" means a chemical in a product that serves an intended function in the product component.

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

13. "Trace contaminant" means a trace amount of a chemical or chemicals that is incidental to manufacturing, including an unintended by-product of chemical reactions during the manufacture of the children's product, a trace impurity in feed-stock, an incompletely reacted chemical mixture, or a degradation product.

14. "Very persistent" means having a half-life greater than or equal to one of the following: (a) a half-life in soil or sediment of greater than one hundred eighty days; (b) a half-life greater than or equal to sixty days in water or evidence of long-range transport.

15. "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow greater than 5.0.

§ 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.~~] Applicability.

1. New children's products. The provisions of this title shall apply to chemicals of concern and high-priority 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. Exceptions. (a) The requirements of this title shall not apply to high 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.

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

(c) Small business exception. The requirements of this title shall not apply to children's product manufacturers that employ five persons or fewer and are independently owned and operated.

(d) Retailers. A retailer is exempt from the requirements of this title unless that retailer knowingly sells a children's product containing a high-priority chemical after the effective date of its prohibition for which that retailer has received notification pursuant to section 37-0913 of this title.

§ 37-0905. Chemicals of concern and high-priority chemicals.

1. Chemicals of concern.

(a) Within two years of the effective date of this title, the department, in consultation with the department of health, shall promulgate a list of chemicals of concern. A chemical may be listed as a chemical of concern if it has been identified by a government entity and/or identified on the basis of credible scientific evidence as being:

(i) a carcinogen, reproductive or developmental toxicant, neurotoxicant, asthmagen, or endocrine disruptor;

(ii) persistent, bioaccumulative and toxic; or

(iii) very persistent and very bioaccumulative.

(b) The department shall review lists codified or promulgated in other states as chemicals of concern to determine if such chemicals meet the criteria of paragraph (a) of this subdivision. The department at a minimum shall consider:

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

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

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

(iv) 2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209 (CAS 1163-19-5)
(v) 2,4-Diaminotoluene (CAS 95-80-7)
(vi) 2-Aminotoluene (CAS 95-53-4)
(vii) 2-Ethylhexanoic acid (CAS 149-57-5)
(viii) 2-Ethyl-hexyl-2, 3, 4, 5 tetrabromobenzoate (TBB) (CAS 183658-27-7)
(ix) 2-Ethyl-hexyl-4-methoxycinnamate (CAS 5466-77-3)
(x) 2-Methoxyethanol (CAS 109-86-4)
(xi) 3,3'-Dimethylbenzidine and dyes metabolized to 3,3'-Dimethylbenzidine (CAS 119-93-7)
(xii) 4-Nonylphenol; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3 (CAS 104-40-5)
(xiii) Acetaldehyde (CAS 75-07-0)
(xiv) Acrylonitrile (CAS 107-13-1)
(xv) Aniline (CAS 62-53-3)
(xvi) Antimony & antimony compounds (CAS 7440-36-0)
(xvii) Arsenic & arsenic compounds (CAS 7440-38-2) including arsenic trioxide & dimethyl arsenic (CAS 75-60-5)
(xviii) Asbestos (CAS 1332-21-4)
(xix) Benzene (CAS 71-43-2)
(xx) Benzene, pentachloro (CAS 608-93-5)
(xxi) Benzophenone-2 (BP-2); 2,2',4,4'-tetrahydroxybenzophenone (CAS 131-55-5)
(xxii) Bis(2-ethylhexyl) tetrabromophtalate (TBPH) (CAS 26040-51-7)
(xxiii) Bis(chloromethyl) propane-1-3-diyltetrakis-(2-chloroethyl) bis(phosphate)(V6)(CAS 38051-10-4)
(xxiv) Bisphenol A (CAS 80-05-7)
(xxv) Bisphenol F (CAS 620-92-8)
(xxvi) Bisphenol S (CAS 80-09-1)
(xxvii) Butyl benzyl phthalate (BBP) (CAS 85-68-7)
(xxviii) Butylated Hydroxyanisole; (BHA) (CAS 25013-16-5)
(xxix) C.I. solvent yellow 14 (CAS 842-07-9)
(xxx) Cadmium & cadmium compounds (CAS 7440-43-9)
(xxxi) Carbon disulfide (CAS 75-15-0)
(xxxii) Chlorinated paraffins (CAS 108171-26-2)
(xxxiii) Cobalt & cobalt compounds (CAS 7440-48-4)
(xxxiv) Decabromodiphenyl ethane (DBPE) (CAS 84852-53-9)
(xxxv) Di-2-ethylhexyl phthalate (CAS 117-81-7)
(xxxvi) Di-(2-methoxyethyl) phthalate (DMEP) (CAS 117-82-8)
(xxxvii) Dicyclohexyl phthalate (DCHP) (CAS 84-61-7)
(xxxviii) Diethyl phthalate (CAS 84-66-2)
(xxxix) Diisobutyl phthalate (DIBP) (CAS 84-69-5)
(xl) Di-n-hexyl phthalate (CAS 84-75-3)
(xli) Di-n-octyl phthalate (DNOP) (CAS 117-84-0)
(xlii) Dipentyl phthalate (DPP) (CAS 131-18-0)
(xliii) Ethylene glycol (CAS 107-21-1)
(xliv) Ethylene glycol monoethyl ester (CAS 110-80-5)
(xlv) Ethyl hexyl d-phenol phosphate (EHDPP) (CAS 1241-94-7)
(xlvi) Formaldehyde (CAS 50-0-0)
(xlvii) Hexabromocyclododecane (HBCD) (CAS 25637-99-4)
(xlviii) Hexachlorobenzene (CAS 118-74-1)
(xlix) Hexachlorobutadiene (CAS 87-68-3)
(l) Isopropylated triphenyl phosphate (IPTPP) (CAS 68437-41-7)
(li) Mercury & mercury compounds (CAS 7439-97-6) including methyl mercury (CAS 22967-92-6)

(lii) Methyl ethyl ketone (CAS 78-93-3)
(liii) Methyl paraben (CAS 99-76-3)
(liv) Methylene chloride (CAS 75-09-2)
(lv) N-methylpyrrolidone (CAS 872-50-4)
(lvi) Nickel and nickel compounds (CAS N/A)
(lvii) N-nitrosodimethylamine (CAS 62-75-9)
(lviii) N-nitrosodiphenylamine (CAS 86-30-6)
(lvix) Perchloroethylene (CAS 127-18-4)
(lx) Perfluorooctanoic acid (PFOA & related substances) (CAS 335-67-1)
(lxi) Perfluorooctanyl sulphonic acid and its salts (PFOS) (CAS 1763-23-1)
(lxii) Phenol (CAS 108-95-2)
(lxiii) Phenol, 4-octyl- (CAS 1806-26-4)
(lxiv) P-hydroxybenzoic acid (CAS 99-96-7)
(lxv) Propyl paraben (CAS 94-13-3)
(lxvi) Styrene (CAS 100-42-5)
(lxvii) Tetrabromobisphenol A (CAS 79-94-7)
(lxviii)Tetrachloroethene (CAS 127-18-4)
(lxix) Toluene (CAS 108-88-3)
(lxx) Tricresyl phosphate (TCP) (CAS 1330-78-5)
(lxxi) Tri-n-butyl phosphate (TNBP) (CAS 126-73-8)
(lxxii) Triphenyl phosphate (TPP) (CAS 115-86-6)
(lxxiii) Tris(1-chloro-2-propyl) phosphate (TCPP) (CAS 13674-84-5)
(lxxiv) Tris(2-chloroethyl) phosphate (CAS 115-96-8)
(lxxv) Tris(2,3-dibromopropylphosphate) (CAS 126-72-7)
(lxxvi) Vinyl chloride (CAS 75-01-4)
(lxxvii) Organohalogen flame retardants

(c) The department, in consultation with the department of health, shall periodically review the list of chemicals of concern and may through regulation add or remove a chemical from the list on the basis of credible scientific evidence. The department may remove a chemical from the list of chemicals of concern if, upon review, it determines on the basis of credible scientific evidence that such chemical no longer meets the criteria for listing under paragraph (a) of this subdivision.

2. High-priority chemicals. (a) The following chemicals are designated high priority chemicals for purposes of this title:
(i) Tris (1, 3 dichloro-2-propyl) phosphate (CAS 13674-87-8)
(ii) Benzene (CAS 71-43-2)
(iii) Mercury and mercury compounds, including methyl mercury (CAS 7439-97-6)
(iv) Asbestos (CAS 1332-21-4)
(v) Arsenic and arsenic compounds (CAS 7440-38-2) including arsenic trioxide (CASRN 1327-53-3) and dimethyl arsenic (CASRN 75-60-5)
(vi) Cadmium (CAS 7440-43-9) (other than toy coatings)
(vii) Organohalogen flame retardants in upholstered bedding or furniture

(b) The department shall periodically review the list of high priority chemicals and may by rule add to the list of high-priority chemicals if the criteria of paragraph (a) of subdivision one of this section are met and the chemical 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 or the children's product safety council established pursuant to section 37-0911 of this title has recommended the chemical be listed as a high-priority chemical. The department shall, as part of its periodic review, consider whether the sale or use of a chemical or a children's product containing the chemical has been banned in another state or 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 high priority chemicals if it determines on the basis of credible scientific evidence that such chemical no longer meets the criteria of paragraph (b) of this subdivision.

§ [~~37-0905.~~] 37-0907. Reporting on the use of chemicals.

1. Reporting of chemical use. No later than twelve months after a [~~dangerous~~] chemical of concern or high-priority chemical appears on the [~~list published~~] lists promulgated pursuant to section [~~37-0903~~] 37-0905 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 or a high-priority chemical shall report such chemical use at or above practical quantification limits to the department, provided however, that the department may, through regulation, establish an alternative threshold for the reporting of trace contaminants.

(a) This report must at a minimum identify the children's product, the [~~dangerous~~] high-priority 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 and may otherwise provide for reciprocal data sharing with other states which require reporting of the same information.

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~~] high-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. (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.~~] **37-0909.** 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~~] **in which** tris (1, 3 dichloro-2-propyl) phosphate **(CAS 13674-87-8)**, benzene **(CAS 71-43-2)**, [~~formaldehyde (other than in textiles)~~], **or** asbestos[~~, and organohalogen flame retardents~~] **(CAS 1332-21-4) is intentionally added**. 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**; (c) where the chemical is present as a trace contaminant; or (d) to an inaccessible component of a children's product that during reasonable, foreseeable use and abuse of the product would not come into direct contact with a child's skin or mouth, as determined by the department**. 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~~] **(a) To the extent allowed by federal law, the department may, by regulation, prohibit the distribution, sale, or offer for sale in this state of a children's product that contains a chemical added to the high-priority chemicals list pursuant to section 37-0905 of this title, or a chemical recommended for prohibition by the children's product safety council pursuant to paragraph (b) of subdivision five of section 37-0911 of this title.**

(b) In developing rules to prohibit a chemical pursuant to this subdivision, the department shall rely on credible scientific evidence and consider information relevant to the hazards based on the quantitative extent of potential exposures to the chemical under its intended or reasonably anticipated conditions of use.

§ 37-0911. Children's product safety council; established. 1. There shall be established, within the department, the children's product safety council. Such council shall be composed of ten members as follows:

(a) the commissioner, or the commissioner's designee, who shall be the chair of the council;

(b) the commissioner of health or his or her designee;

(c) a designee of the commissioner with expertise in epidemiology, toxicology or health risk assessment;

(d) a designee of the commissioner of health with expertise in epidemiology, toxicology or health risk assessment; and

(e) six members appointed by the governor, two of whom shall be recommended by the temporary president of the senate, and two by the speaker of the assembly.

2. (a) Of the four members appointed to the children's product safety council and recommended by the temporary president of the senate and the

speaker of the assembly, the temporary president of the senate and the speaker of the assembly shall each recommend:

(i) one member who has expertise in pediatrics; and

(ii) one member who has a background or expertise in toxicology or health risk assessment.

(b) Of the two additional members appointed to the children's product safety council, the governor shall appoint members who have a background in environmental health and safety, risk assessment or medicine.

(c) The members of such council appointed pursuant to paragraph (e) of subdivision one of this section shall serve terms of two years.

(d) The members appointed pursuant to paragraph (e) of subdivision one of this section shall each serve his or her term of office or until his or her successor is appointed; provided that any vacancy in the position of an appointed member shall be filled in the same manner as the original appointment and only for the unexpired term of the vacancy.

3. The members of the children's product safety council shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this title.

4. The children's product safety council shall meet at such times and places as may be determined by its chair. The council shall meet at a minimum of two times per year. All meetings shall be open to the public pursuant to article seven of the public officers law. A majority of the members of such council shall constitute a quorum for the transaction of business. Action may be taken, and motions and resolutions adopted, at any meeting by the affirmative vote of a majority of the full membership of the council.

5. (a) The council shall make recommendations to the department relating to those chemicals, which the department may list as high-priority chemicals pursuant to section 37-0905 of this title. The council shall provide the department with its first list of recommended high-priority chemicals no later than one year from the initial meeting of the council, and the council shall update the list annually thereafter. In determining what chemicals shall be recommended as high-priority chemicals the council shall, at a minimum, consider the criteria of paragraph (b) of subdivision two of section 37-0905 of this title;

(b) The council shall make recommendations to the department relating to those chemicals which should be prohibited by the department pursuant to subdivision two of section 37-0909 of this title.

(i) In determining what chemicals shall be recommended for prohibition, the council shall, at a minimum, consider those chemicals listed as high-priority chemicals pursuant to section 37-0905 of this title.

(ii) The council shall provide the department with its first list of such chemicals no later than two years from the initial meeting of the council. The council shall update the list, including a review of the chemicals listed as high-priority chemicals pursuant to section 37-0905 of this title, annually thereafter.

6. The children's product safety council shall be entitled to request and receive information from any state, municipal department, board, commission or agency that may be required or are deemed necessary for the purposes of such council.

7. Before the council advances any recommendation to the department, the council shall provide an opportunity for public and stakeholder comments. Final recommendations of the council shall be posted on the department's website within thirty days after the council adopts such recommendations.

[~~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.~~] **§ 37-0913. Notice to retailers and the public.**

1. A manufacturer of a children's product containing a high-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 use of such high-priority chemical and provide such persons with information regarding the toxicity of such chemical, except that this subdivision shall apply to trace contaminants in a manner consistent with section 37-0907 of this title.

2. The department shall provide information to the public about children's products containing chemicals of concern or high priority chemicals by posting such information as reported by the manufacturers on the department's website, provided however, that the department shall not be held liable for the accuracy of a manufacturer's report.

§ [~~37-0911.~~] **37-0915.** Enforcement and implementation.

1. Failure to provide notice. A children's product containing a [~~dangerous~~] **high-priority** chemical may not be sold, offered for sale or distributed for sale in this state unless the manufacturer has provided [~~the notification~~] **a report to the department** required under section [~~37-0905~~] **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~~] **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~~] **fifteen** 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~~] **high-priority** 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~~] **required by section 37-0913 of this title has been provided**; [~~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**;**

(d) attest that the presence of a high-priority chemical is only as a trace contaminant; or

(e) attest that the chemical prohibited pursuant to subdivision two of section 37-0909 of this title is only present in an inaccessible component of the children's product.

§ [~~37-0913.~~] **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 same date and in the same manner as a chapter of the laws of 2019 amending the environmental conservation law relating to regulation of toxic chemicals in children's products, as proposed in legislative bills numbers S. 501-B and A. 6296-A, takes effect.