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An Act To Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA c. 16-D is enacted to read:

CHAPTER 16-D

TOXIC CHEMICALS IN CHILDREN'S PRODUCTS

§ 1691. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Alternative. "Alternative" means a substitute process, product, material, chemical, strategy or combination of these that serves a functionally equivalent purpose to a chemical in a children's product.

2. Chemical. "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. Chemical of high concern. "Chemical of high concern" means a chemical identified by an authoritative governmental entity on the basis of credible scientific evidence as being known to:

- A. Harm the normal development of a fetus or child or cause other developmental toxicity;
- B. Cause cancer, genetic damage or reproductive harm;
- C. Disrupt the endocrine or hormone system;
- D. Damage the nervous system, immune system or organs or cause other systemic toxicity;
- E. Be persistent, bioaccumulative and toxic; or
- F. Be very persistent and very bioaccumulative.

4. Chemical of low concern. "Chemical of low concern" means a chemical for which adequate toxicity and environmental data are available to determine that it is not a chemical of high concern, a chemical of moderate concern or a chemical of unknown concern.

5. Chemical of moderate concern. "Chemical of moderate concern" means a chemical identified by an authoritative governmental entity on the basis of credible scientific evidence as being suspected of causing an adverse health or environmental effect listed in subsection 3.

6. Chemical of unknown concern. "Chemical of unknown concern" means a chemical for which insufficient data are available to classify it as a chemical of high concern, a chemical of moderate concern or a chemical of low concern.

7. Children's product. "Children's product" means a consumer product intended for use by children, such as baby products, toys, car seats, personal care products and clothing, and any consumer product containing a chemical of high concern that when used or disposed of may result in a child's or a fetus's being exposed to that chemical.

8. Consumer product. "Consumer product" means any item sold for residential or commercial use, including any component parts and packaging. "Consumer product" does not include a drug or biologic regulated by the federal Food and Drug Administration, a food or beverage or an additive to a food or beverage, a tobacco product or a pesticide regulated by the federal Environmental Protection Agency, except that "consumer product" may include a container or packaging in which such an item is sold.

9. Distributor. "Distributor" means a person who sells consumer products to retail establishments on a wholesale basis.

10. Manufacturer. "Manufacturer" means any person who manufactured a final consumer product or whose brand name is affixed to the consumer product. In the case of a consumer product that was imported into the United States, "manufacturer" includes the importer or domestic distributor of the consumer product if the person who manufactured or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States.

11. Priority chemical. "Priority chemical" means a chemical identified as such by the commissioner pursuant to section 1692, subsection 1.

12. Safer alternative. "Safer alternative" means an alternative that, when compared to a priority chemical that it could replace, would reduce the potential for harm to human health or the environment or that has not been shown to pose the same or greater potential for harm to human health or the environment as that priority chemical.

§ 1692. Identification of priority chemicals

1. Process and criteria. Not later than January 1, 2011, the commissioner shall identify at least 100 chemicals of high concern as priority chemicals after consideration of the potential for exposure of a child or fetus to each chemical as determined on the basis of credible scientific evidence in accordance with one or more of the following criteria:

A. The chemical has been found through biomonitoring to be present in human blood, including umbilical cord blood, breast milk, urine or other bodily tissues or fluids;

B. 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;

C. The chemical has been added to or is present in a consumer product used or present in the home;
or

D. The chemical has been identified as a high production volume chemical by the federal Environmental Protection Agency.

2. Updates. The commissioner shall update the list of priority chemicals in this section at least every 3 years by adding additional chemicals of high concern after consideration of the criteria listed in this section.

§ 1693. Disclosure of information on priority chemicals

1. Reporting of chemical use. Not later than 180 days after a priority chemical is identified pursuant to section 1692, any person who is a manufacturer or distributor of a children's product for sale in the State that contains a priority chemical shall notify the department in writing unless waived by the commissioner pursuant to this section or exempt pursuant to section 1695. This written notice must identify the product, the number of units sold or distributed for sale in the State or nationally, the priority chemical or chemicals contained in the product, the amount of such chemicals in each unit of product and the intended purpose of the chemicals in the product.

2. Waiver of reporting; fee; extension of deadline. The commissioner may waive the notification requirement under subsection 1 for one or more specified uses of a priority chemical if the commissioner determines that substantially equivalent information is already publicly available or that the specified use or uses are minor in volume or not likely to result in exposure of a child or fetus to the chemical. The department may assess a fee payable by the manufacturer or distributor upon submission of the notification to cover the department's reasonable costs in managing the information collected. The department may extend the deadline for submission of the required information for one or more specified uses of a priority chemical in a children's product if it determines that more time is needed by the manufacturer or distributor to comply or if the information will not be needed until a later time in accordance with the schedule adopted pursuant to section 1694, subsection 1.

§ 1694. Safer alternatives to priority chemicals

1. Determination process. Not later than January 1, 2012, the department shall make a determination as to the availability of safer alternatives for one or more specific uses of at least one priority chemical in a children's product. Not later than January 1, 2013, the department shall adopt a schedule for completion of the review and determination of the availability of safer alternatives for the major uses in children's products of all priority chemicals identified pursuant to section 1692, subsection 1. This schedule must include goals and a timeline established at the discretion of the department to complete the review and determination and must be updated periodically to account for priority chemicals identified pursuant to section 1692, subsection 2.

2. Safer alternative required. The department shall require a manufacturer or distributor to replace a priority chemical in a children's product sold in the State with a safer alternative whenever the department determines that a safer alternative is available for the specified use of the priority chemical in that product. Upon making such a determination, the department shall specify a reasonably expeditious timeline, not to exceed 3 years, by which date the priority chemical in the children's product sold in the State must be replaced with a safer alternative. The manufacturer or distributor subject to a requirement under this section must comply with the requirement or be subject to the prohibition specified in section 1698, subsection 2. An alternative to a priority chemical is presumed to be a safer alternative if it is not a chemical of high concern.

3. Compliance plan. Not later than 180 days prior to the date specified by the department under subsection 2 to replace a priority chemical with a safer alternative, the manufacturer or distributor of a children's product containing that chemical shall submit a compliance plan acceptable to the department. The compliance plan must identify the means of compliance, the safer alternative that will replace the priority chemical and a means to educate and assist retailers to ensure timely compliance.

4. Responsibility. A manufacturer or distributor of a children's product containing a priority chemical shall notify persons that sell the product of the requirements of this chapter.

5. Authority granted. The department has the authority to take actions under this subsection.

A. The department has the authority to require that the safer alternative required under this section to replace a priority chemical in a children's product be the least toxic to human health or least harmful to the environment of several available safer alternatives to the priority chemical in question.

B. The department has the authority to require that a manufacturer or distributor of a children's product containing a priority chemical prepare and submit a report acceptable to the department that assesses the availability of safer alternatives to that chemical as long as reasonable time is provided to complete the report. If a report acceptable to the department is not timely submitted, the department may assess a fee on the manufacturer or distributor to cover the costs to prepare an independent report on the availability of safer alternatives by a contractor of the department's choice.

6. Petitions. Any person may petition the department in writing to make a determination as to whether a safer alternative is available for a specified use of a priority chemical in a children's product. The department shall make its determination within 180 days after the department concludes that the petitioner has submitted enough information to establish a reasonable basis for informing the determination of the department. The petitioner bears the burden of proof in establishing the availability of a safer alternative.

§ 1695. Exemptions

1. Small quantities. The disclosure requirements of section 1693 do not apply to a manufacturer that produces and sells its product at retail in the State in small quantities.

2. Industry. The requirements of this chapter do not apply to uses of priority chemicals for industrial or manufacturing purposes.

3. Vehicles. The requirements of this chapter do not apply to motor vehicles as defined in Title 29-A, section 101, subsection 42 or their component parts, except that the use of priority chemicals in detachable car seats is not exempt.

4. Combustion. The requirements of this chapter do 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 chapter, unless that retailer knowingly sells a consumer 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.

6. Exemption process. A manufacturer or distributor may apply to the commissioner for an exemption for one or more specific uses of a priority chemical subject to a requirement of replacement with a safer alternative adopted under section 1694. The written application for exemption must identify the specific consumer product use or uses for which the exemption is sought. The application must document the alternatives evaluated and the basis for concluding that alternatives are not feasible.

The commissioner may grant an exemption for a term not to exceed 5 years upon finding that there is no feasible alternative to the use or uses of a priority chemical in a consumer product.

§ 1696. Interstate clearinghouse to promote safer chemicals

The department is authorized to participate in an interstate clearinghouse to promote safer chemicals in consumer products in cooperation with other states and governmental entities. The department may cooperate with the interstate clearinghouse to classify existing chemicals in commerce into one of 4 categories: chemicals of high concern, chemicals of moderate concern, chemicals of unknown concern and chemicals of low concern; to organize and manage available data on chemicals, including information on uses, hazards and environmental concerns; to produce and inventory information on safer alternatives to specific uses of chemicals of concern and on model policies and programs; to provide technical assistance to business and consumers related to safer chemicals; and to undertake other activities in support of state programs to promote safer chemicals.

§ 1697. Education and assistance

The department shall develop a program to educate and assist consumers and retailers in identifying children's products that may contain priority chemicals.

§ 1698. Enforcement and implementation

1. General. If a manufacturer or distributor fails to comply with a requirement of this chapter within 90 days of the effective date of the requirement, unless otherwise provided in this chapter, the department may take enforcement action under section 347-A, may assess penalties under section 349 and may request the Attorney General to initiate immediate injunction proceedings to prevent the sale of the product.

2. Restriction on sale. A manufacturer or distributor who fails to comply with the safer alternatives requirements of section 1694 by the effective date specified by the department is prohibited from selling or distributing for sale in the State a children's product containing the priority chemical subject to the requirement.

3. Certificate of compliance. If there are grounds to suspect that a consumer product is being offered for sale in violation of this chapter, the commissioner may request the manufacturer or distributor of the product to provide a certificate of compliance. Within 10 days of receipt of a request, the manufacturer or distributor shall:

A. Provide the commissioner with the certificate attesting that the consumer product complies with the requirements of this chapter; or

B. Notify persons who sell the consumer product in this State that the sale of the product is prohibited and provide the commissioner with a list of the names and addresses of those notified.

§ 1699. Rulemaking

The department may adopt rules to facilitate implementation of the authority granted in and requirements of this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Report to the Legislature. Not later than January 15, 2009, the Department of Environmental Protection shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters that details the department's plans for implementing the requirements of the Maine Revised Statutes, Title 38, chapter 16-D and that analyzes options and makes recommendations for funding implementation of that chapter. The committee is authorized to introduce legislation related to this matter based on consideration of the report of the department to the First Regular Session of the 124th Legislature.

SUMMARY

This bill requires manufacturers of children's products that contain chemicals of high concern to disclose information to the Department of Environmental Protection on their chemical use if the department designates the chemical as a priority chemical based on potential exposure of a child or fetus to that chemical. The bill authorizes the department to require replacement of a priority chemical in children's products with a safer alternative whenever it determines that a safer alternative is available for a specified use. The bill exempts use of priority chemicals for industrial or manufacturing purposes, in motor vehicles and components, as fuels or that are generated as combustion by-products. The bill authorizes the department to participate in an interstate clearinghouse to share information and cooperate

with other states to promote safer chemicals in consumer products. The bill requires the department to report to the Legislature on implementation plans and related issues.