

MAINE STATE LEGISLATURE

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R.O.S.

L.D. 2048

Date: 4/2/8

(Filing No. H-898)

Majority
NATURAL RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1432, L.D. 2048, Bill, "An Act To Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 38 MRSA §1609, sub-§10, as enacted by PL 2007, c. 296, §1, is repealed.

Sec. 2. 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 the department pursuant to section 1693.

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

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1 chemical of high concern, a chemical of moderate concern or a chemical of unknown
2 concern.

3 **5. Chemical of moderate concern.** "Chemical of moderate concern" means a
4 chemical identified by an authoritative governmental entity on the basis of credible
5 scientific evidence as being suspected of causing an adverse health or environmental
6 effect listed in section 1693, subsection 1.

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

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

14 **8. Consumer product.** "Consumer product" means any item sold for residential or
15 commercial use, including any component parts and packaging. "Consumer product"
16 does not include a food or beverage or an additive to a food or beverage, a tobacco
17 product or a pesticide regulated by the federal Environmental Protection Agency.
18 "Consumer product" also does not include a drug or biologic regulated by the federal
19 Food and Drug Administration or the packaging of a drug or biologic regulated by the
20 federal Food and Drug Administration if the packaging is regulated by the federal Food
21 and Drug Administration.

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

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

30 **11. Priority chemical.** "Priority chemical" means a chemical identified as such by
31 the commissioner pursuant to section 1694, subsection 1.

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

36 **§1692. Declaration of policy**

37 It is the policy of the State, consistent with its duty to protect the health, safety and
38 welfare of its citizens, to reduce exposure of children and other vulnerable populations to
39 chemicals of high concern by substituting safer alternatives when feasible. By enactment
40 of this chapter, the Legislature confers upon the department the regulatory power to
41 collect information on chemical use and prohibit the sale of children's products containing

1 priority chemicals when safer alternatives are available. The policy represented in this
2 chapter is in furtherance of the toxics use reduction policies under chapter 26.

3 **§1693. Identification of chemicals of high concern**

4 **1. Criteria.** By January 1, 2010, the department, in consultation with the
5 Department of Health and Human Services, Maine Center for Disease Control and
6 Prevention, shall publish a list of chemicals of high concern. A chemical may be
7 included on the list only if it has been identified by an authoritative governmental entity
8 on the basis of credible scientific evidence as being known as:

9 A. A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor;

10 B. Persistent, bioaccumulative and toxic; or

11 C. Very persistent and very bioaccumulative.

12 **2. Revisions.** The department may periodically review and revise the list of
13 chemicals of high concern. The department may add chemicals to the list if, in the
14 judgment of the Department of Health and Human Services, Maine Center for Disease
15 Control and Prevention, the chemical meets one or more of the criteria in subsection 1.
16 The department may remove a chemical from the list of chemicals of high concern based
17 on evidence that the chemical is not present in a children's product or otherwise would
18 not be subject to the requirements of this chapter.

19 **§1694. Identification of priority chemicals**

20 **1. Designation.** The commissioner may designate a chemical of high concern as a
21 priority chemical if the commissioner finds:

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

25 B. The chemical has been found through sampling and analysis to be present in
26 household dust, indoor air, drinking water or elsewhere in the home environment;

27 C. The chemical has been found through monitoring to be present in fish, wildlife or
28 the natural environment;

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

31 E. The chemical has been identified as a high production volume chemical by the
32 federal Environmental Protection Agency; or

33 F. The sale or use of the chemical or a product containing the chemical has been
34 banned in another state within the United States.

35 The commissioner shall designate at least 2 priority chemicals by January 1, 2011.

36 **2. Updates.** The commissioner shall review the list of chemicals of high concern at
37 least every 3 years and may designate additional priority chemicals if the commissioner
38 finds that the chemicals meet one of the criteria listed in subsection 1.

1 3. Consultation. The commissioner shall consult with consumer product
2 manufacturers, chemical manufacturers, retailers, independent experts, other interested
3 parties and the Department of Health and Human Services, Maine Center for Disease
4 Control and Prevention prior to designating a priority chemical.

5 Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act does
6 not apply to this section.

7 **§1695. Disclosure of information on priority chemicals**

8 1. Reporting of chemical use. Not later than 180 days after a priority chemical is
9 identified pursuant to section 1694, a person who is a manufacturer or distributor of a
10 children's product for sale in the State that contains a priority chemical shall notify the
11 department in writing unless waived by the commissioner pursuant to this section or
12 exempt from this chapter pursuant to section 1697. This written notice must identify the
13 children's product, the number of units sold or distributed for sale in the State or
14 nationally, the priority chemical or chemicals contained in the children's product, the
15 amount of such chemicals in each unit of children's product and the intended purpose of
16 the chemicals in the children's product.

17 2. Supplemental information. The manufacturer or distributor of a children's
18 product that contains a priority chemical shall provide the following additional
19 information if requested by the department:

20 A. Information on the likelihood that the chemical will be released from the
21 children's product to the environment during the children's product's life cycle and the
22 extent to which users of the children's product are likely to be exposed to the
23 chemical;

24 B. Information on the extent to which the chemical is present in the environment or
25 human body; and

26 C. An assessment of the availability, cost, feasibility and performance, including
27 potential for harm to human health and the environment, of alternatives to the priority
28 chemical and the reason the priority chemical is used in the manufacture of the
29 children's product in lieu of identified alternatives. If an assessment acceptable to the
30 department is not timely submitted, the department may assess a fee on the
31 manufacturer or distributor to cover the costs to prepare an independent report on the
32 availability of safer alternatives by a contractor of the department's choice.

33 3. Waiver of reporting; fee; extension of deadline. The commissioner may waive
34 all or part of the notification requirement under subsection 1 for one or more specified
35 uses of a priority chemical if the commissioner determines that substantially equivalent
36 information is already publicly available, that the information is not needed for the
37 purposes of this chapter or that the specified use or uses are minor in volume. The
38 department may assess a fee payable by the manufacturer or distributor upon submission
39 of the notification to cover the department's reasonable costs in managing the information
40 collected. The department may extend the deadline for submission of the information
41 required under subsection 1 for one or more specified uses of a priority chemical in a
42 children's product if it determines that more time is needed by the manufacturer or

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1 distributor to comply with the submission requirement or if the information is not needed
2 at that time.

3 **§1696. Sales prohibition; rules; safer alternatives to priority chemicals**

4 **1. Authority.** The board may adopt rules prohibiting the manufacture, sale or
5 distribution in the State of a children's product containing a priority chemical if the board
6 finds, after consideration of information filed under section 1695 and other relevant
7 information submitted to or obtained by the board, that:

8 A. Distribution of the children's product directly or indirectly exposes children and
9 vulnerable populations to the priority chemical; and

10 B. One or more safer alternatives to the priority chemical are available.

11 If there are several available safer alternatives to a priority chemical, the board may
12 prohibit the sale of children's products that do not contain the safer alternative that is least
13 toxic to human health or least harmful to the environment.

14 A rule established pursuant to this subsection must specify the effective date of the
15 prohibition, which may not be sooner than 12 months after notice of the proposed rule is
16 published as required under Title 5, section 8053, subsection 5. Rules adopted pursuant
17 to this subsection are major substantive rules as defined in Title 5, chapter 375,
18 subchapter 2-A.

19 **2. Alternatives assessment; presumptions.** For the purpose of determining
20 whether a safer alternative is available under subsection 1, paragraph B, the board may, in
21 the absence of persuasive evidence to the contrary:

22 A. Presume that an alternative is a safer alternative if the alternative is not a chemical
23 of high concern;

24 B. Presume that a safer alternative is available if the sale of the children's product
25 containing the priority chemical has been banned by another state within the United
26 States;

27 C. Presume that a safer alternative is available if the children's product containing the
28 priority chemical is an item of apparel or a novelty; and

29 D. Presume that a safer alternative is available if the alternative is sold in the United
30 States.

31 **3. Implementation.** No later than 180 days prior to the effective date of a
32 prohibition adopted under subsection 1, the manufacturer or distributor of a children's
33 product that contains the priority chemical and that is subject to the prohibition at the
34 time of adoption shall file a compliance plan with the commissioner or seek a waiver
35 under subsection 5. A compliance plan must:

36 A. Identify the children's product that contains the priority chemical;

37 B. Specify whether compliance will be achieved by discontinuing the sale of the
38 children's product in the State or by substituting a safer alternative in the product; and

39 C. If compliance is achieved by substitution of a safer alternative in the product,
40 identify the safer alternative and the timetable for substitution.

1 4. Responsibility. A manufacturer or distributor of a children's product containing a
2 priority chemical shall notify persons that offer the product for sale or distribution in the
3 State of the requirements of this chapter.

4 5. Waiver for specific uses. The manufacturer or distributor of a children's product
5 that contains a priority chemical and that is subject to a prohibition adopted pursuant to
6 subsection 1 may apply to the commissioner for a waiver for one or more specific uses of
7 the priority chemical. The waiver application must, at a minimum:

8 A. Identify the specific children's product use or uses for which the waiver is sought;

9 B. Identify the alternatives considered for substitution of the priority chemical;

10 C. Explain the basis for concluding that the use of an alternative is not feasible; and

11 D. Identify the steps that have and will be taken to minimize the use of the priority
12 chemical.

13 The commissioner may grant a waiver with or without conditions upon finding that there
14 is a need for the children's product in which the priority chemical is used and there are no
15 technically or economically feasible alternatives for the use of the priority chemical in the
16 children's product. Waivers may be granted for a term not to exceed 5 years and may be
17 renewed for one or more additional 5-year terms upon written application demonstrating
18 that technically or economically feasible alternatives remain unavailable. The
19 commissioner shall deny or grant waiver requests within 60 days after receipt of a
20 completed waiver application.

21 6. Petitions. If rulemaking to prohibit the sale of a children's product containing a
22 priority chemical is initiated by petition under Title 5, section 8055, the department shall
23 consider the information submitted in support of the petition but is not obligated to
24 conduct a search of other sources of information on the chemical or its uses. The
25 petitioner bears the burden of demonstrating that the criteria under subsection 1 for
26 adoption of rules are met.

27 **§1697. Applicability**

28 1. Used products. This chapter does not apply to chemicals in used products.

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

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

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

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

40 6. Mercury-added products. The commissioner may designate mercury or a
41 mercury compound as a priority chemical for the purpose of adopting rules under section

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COMMITTEE AMENDMENT "A" to H.P. 1432, L.D. 2048

1 1696 to prohibit the manufacture, sale or distribution of a mercury-added product that is
2 not regulated under section 1661-C or 1667 prior to the effective date of this section. The
3 disclosure requirements of section 1695 do not apply to the manufacturer or distributor of
4 a children's product that contains the designated mercury or mercury compound if the
5 manufacturer has complied with the notification requirement under section 1661-A.

6 **§1698. Interstate clearinghouse to promote safer chemicals**

7 The department is authorized to participate in an interstate clearinghouse to promote
8 safer chemicals in consumer products in cooperation with other states and governmental
9 entities. The department may cooperate with the interstate clearinghouse to classify
10 existing chemicals in commerce into one of 4 categories: chemicals of high concern,
11 chemicals of moderate concern, chemicals of unknown concern and chemicals of low
12 concern.

13 The department may also cooperate with the interstate clearinghouse in order to
14 organize and manage available data on chemicals, including information on uses, hazards
15 and environmental concerns; to produce and inventory information on safer alternatives
16 to specific uses of chemicals of concern and on model policies and programs; to provide
17 technical assistance to businesses and consumers related to safer chemicals; and to
18 undertake other activities in support of state programs to promote safer chemicals.

19 **§1699. Education and assistance**

20 As resources allow, the department shall develop a program to educate and assist
21 consumers and retailers in identifying children's products that may contain priority
22 chemicals.

23 **§1699-A. Enforcement and implementation**

24 **1. Failure to provide notice.** A children's product containing a priority chemical
25 may not be sold, offered for sale or distributed for sale in this State if the manufacturer or
26 distributor has failed to provide information required under section 1695 by the date
27 required in that section. The commissioner shall exempt a children's product from this
28 prohibition if, in the commissioner's judgment, the lack of availability of the children's
29 product could pose an unreasonable risk to public health, safety or welfare.

30 **2. Certificate of compliance.** If there are grounds to suspect that a children's
31 product is being offered for sale in violation of this chapter, the department may request
32 the manufacturer or distributor of the product to provide a certificate of compliance with
33 the provisions of this chapter. Within 10 days of receipt of a request under this
34 subsection, the manufacturer or distributor shall:

35 A. Provide the department with the certificate attesting that the children's product
36 does not contain the priority chemical; or

37 B. Notify persons who sell the product in this State that the sale of the children's
38 product is prohibited and provide the department with a list of the names and
39 addresses of those notified.

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1 **§1699-B. Donations to the State**

2 The department, through the Governor, may accept donations, grants and other funds
3 to carry out the purposes of this chapter.

4 **Sec. 3. Initial list of chemicals of high concern.** By January 1, 2010, the
5 Department of Environmental Protection, in consultation with the Department of Health
6 and Human Services, Maine Center for Disease Control and Prevention, shall identify an
7 initial list of chemicals of high concern in accordance with the Maine Revised Statutes,
8 Title 38, section 1693. In developing the list, the departments may consider:

9 1. Chemicals identified as "Group 1 carcinogens" or "Group 2A carcinogens" by the
10 World Health Organization, International Agency for Research on Cancer;

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

15 3. Chemicals identified as "Group A carcinogens" or "Group B carcinogens" by the
16 United States Environmental Protection Agency;

17 4. Chemicals identified as reproductive or developmental toxicants by:

18 A. The United States Department of Health and Human Services, National
19 Toxicology Program, Center for the Evaluation of Risks to Human Reproduction; and

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

23 5. Chemicals identified as known or likely endocrine disruptors through screening or
24 testing conducted in accordance with protocols developed by the United States
25 Environmental Protection Agency pursuant to the Federal Food, Drug and Cosmetic Act,
26 21 United States Code, 346a(p), as amended by the federal Food Quality Protection Act
27 (Public Law 104-170) or the federal Safe Drinking Water Act, 42 United States Code,
28 Section 300j-17;

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

33 7. Persistent, bioaccumulative and toxic chemicals identified by:

34 A. The State of Washington Department of Ecology in Washington Administrative
35 Code, Chapter 173-333; or

36 B. The United States Environmental Protection Agency in 40 Code of Federal
37 Regulations, Part 372; and

38 8. A very persistent, very bioaccumulative chemical listed in Annex XIV, List of
39 Substances Subject to Authorisation, Regulation (EC) No 1907/2006 of the European
40 Parliament concerning the Registration, Evaluation, Authorisation and Restriction of
41 Chemicals.'

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SUMMARY

This amendment is the majority report. The amendment adds a declaration of policy. The amendment deletes the requirement to identify 100 priority chemicals of high concern, replacing it with an unspecified number. The amendment adds a provision authorizing the Department of Environmental Protection to include on the list of chemicals of high concern chemicals identified by specified entities. Prior to designating priority chemicals, the Department of Environmental Protection is required to consult with affected industries, independent experts and other interested parties and with the Department of Health and Human Services, Maine Center for Disease Control and Prevention. The amendment replaces a mandatory review and determination of safer alternatives by the Commissioner of Environmental Protection with authority granted to the Board of Environmental Protection to adopt rules restricting the sale of children's products containing priority chemicals if safer alternatives are available. The amendment authorizes the Commissioner of Environmental Protection to designate mercury or a mercury compound as a priority chemical for the purpose of adopting rules to prohibit the sale of a mercury-added product that is not currently regulated under the Maine Revised Statutes, Title 38, section 1661-C or 1667. The amendment repeals the biennial reporting requirement on brominated flame retardants for the purpose of freeing up existing resources to implement this chapter.

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FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



123rd MAINE LEGISLATURE

LD 2048

LR 2877(02)

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

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Natural Resources

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Additional costs associated with this legislation can be absorbed by the Department of Environmental Protection utilizing existing budgeted resources.