

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2210

H.P. 1577

House of Representatives, February 12, 2008

An Act To Promote the Use of Safer Chemicals in Consumer Products

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative KOFFMAN of Bar Harbor. (GOVERNOR'S BILL)
Cosponsored by Senator DOW of Lincoln and
Representatives: BARSTOW of Gorham, CAMPBELL of Newfield, CONNOR of Kennebunk,
HINCK of Portland, PINGREE of North Haven, SIMPSON of Auburn, Senators: BENOIT of
Sagadahoc, MARRACHÉ of Kennebec.

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

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

3 **CHAPTER 16-D**

4 **CHEMICAL SAFETY IN CONSUMER PRODUCTS**

5 **§1691. Definitions**

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

8 **1. Alternative.** "Alternative" means a chemical, material, technology or method of
9 equivalent function that can be substituted for the use of a priority chemical.

10 **2. Chemical of high concern.** "Chemical of high concern" means a substance
11 included on published government lists of chemicals that are recognized as:

12 A. Carcinogens, reproductive or developmental toxicants or endocrine disruptors;

13 B. Persistent, bioaccumulative and toxic; or

14 C. Very persistent and very bioaccumulative.

15 **3. Distributor.** "Distributor" means a person who sells products to retail
16 establishments on a wholesale basis.

17 **4. Manufacturer.** "Manufacturer" means a person who manufactures a product or
18 whose brand or label appears on the product or product packaging; if that person does not
19 have a presence in the United States, the importer of the product also is a "manufacturer."

20 **5. Novelty.** "Novelty" means a product intended mainly for personal or household
21 enjoyment or adornment. "Novelty" includes, but is not limited to, items intended for use
22 in practical jokes, figurines, toys, games, cards, ornaments, candles, jewelry and
23 decorations.

24 **6. Priority chemical.** "Priority chemical" means a substance designated as a priority
25 chemical by the board under section 1693.

26 **7. Safer alternative.** "Safer alternative" means an alternative that, if adopted to
27 substitute for the use of a priority chemical, would reduce the potential for harm to human
28 health or the environment.

29 **§1692. Declaration of policy**

30 It is the policy of the State, consistent with its duty to protect the health, safety and
31 welfare of its citizens, to reduce exposure of children and other vulnerable populations to
32 chemicals of high concern by substituting safer alternatives when feasible. By enactment
33 of this chapter, the Legislature confers upon the department the regulatory power to

1 collect information on chemical use and prohibit the sale of products containing
2 chemicals of high concern when safer alternatives are available. The policy represented
3 in this chapter is in furtherance of the toxics use reduction policies under chapter 26.
4 Nothing in chapter 26 may be interpreted to contravene action taken by the department
5 under this chapter.

6 **§1693. Identification of priority chemicals**

7 The board may adopt rules designating a chemical of high concern as a priority
8 chemical if the board has reason to suspect, based on information in the public domain,
9 that the chemical is being used in the manufacture of toys, clothing, child care products,
10 cosmetics, furniture, electronic devices or any other consumer product intended for use in
11 the home and the board determines, based on monitoring data, that significant amounts of
12 the chemical are present in humans or the environment.

13 Prior to initiating rulemaking under this section, the board shall conduct a search of
14 public sources of information on the chemical it proposes to designate as a priority
15 chemical. Public sources include public and electronically searchable databases
16 maintained by the Federal Government, state governments and intergovernmental
17 organizations.

18 If rulemaking to designate a priority chemical under this section is initiated by
19 petition under Title 5, section 8055, the commissioner shall consider the information
20 submitted in support of the petition but is not obligated to conduct a search of other
21 sources of information on the chemical. The petitioner bears the burden of demonstrating
22 that the chemical meets the criteria for designation as a priority chemical.

23 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,
24 chapter 375, subchapter 2-A.

25 **§1694. Collection of information on products containing priority chemicals**

26 **1. Disclosure of chemical use required.** No later than 120 days after the effective
27 date of a rule adopted pursuant to section 1693, and every 3 years thereafter, a
28 manufacturer or distributor of a product in the State that contains the priority chemical
29 identified in that rule shall file a notice with the department unless this requirement is
30 waived by the board or the commissioner as provided under subsection 4. The notice
31 must identify the product, the approximate number of units distributed in the State, the
32 estimated amount of the priority chemical in each unit and the purpose for including the
33 chemical in the product. The department shall provide a form for filing the notice and a
34 means of filing the notice electronically.

35 **2. Supplemental information.** The manufacturer or distributor of a product that
36 contains a priority chemical shall provide the following information to the department if
37 requested by the commissioner:

38 A. Information on the likelihood that the priority chemical will be released from the
39 product to the environment during the product's life cycle and the extent to which
40 users of the product are likely to be exposed to the chemical;

1 B. Information on the extent to which the priority chemical is present in the
2 environment or human body; and

3 C. An assessment of the availability, cost, feasibility and performance, including
4 potential for harm to human health and the environment, of alternatives to the priority
5 chemical and the reason the priority chemical is used in the manufacture of the
6 product in lieu of identified alternatives.

7 **3. Failure to provide notice.** A product containing a priority chemical may not be
8 sold, offered for sale or distributed for sale in this State if the information required under
9 subsection 1 has not been submitted to the department within 120 days after the effective
10 date of the rule designating the chemical as a priority chemical or has not been obtained
11 from other sources. The commissioner shall exempt a product from this prohibition if, in
12 the commissioner's judgment, the lack of availability of the product could pose an
13 unreasonable risk to public health, safety or welfare.

14 If there are grounds to suspect that a product is being sold, offered for sale or distributed
15 in violation of this subsection, the commissioner may request the manufacturer or
16 distributor to provide a certificate of compliance. Within 10 days of receiving the
17 request, the manufacturer or distributor shall:

18 A. Provide the department with a certificate attesting that the product does not
19 contain the priority chemical;

20 B. File the notice required under subsection 1; or

21 C. Stop the sale of the product in the State by:

22 (1) Notifying retailers and wholesalers in the State to whom the product has been
23 distributed that the sale of the product is prohibited by law;

24 (2) Repossessing unsold units of the product;

25 (3) Compensating retailers and wholesalers for the full price paid for repossessed
26 units; and

27 (4) Providing the department with a list of the names and addresses of the
28 retailers and wholesalers that were contacted.

29 **4. Waiver of distributor or manufacturer disclosure.** The board may waive the
30 notice requirement of subsection 1 in whole or part by including a statement to that effect
31 in the rule designating the chemical as a priority chemical. The commissioner also may
32 wave the notice requirement of subsection 1 in whole or part upon determining that the
33 information is already available or otherwise not needed for the purposes of this chapter.

34 **5. Trade secrets.** If a manufacturer believes that information required to be
35 submitted to the department under this section involves the release of a trade secret, the
36 manufacturer shall provide the information to the commissioner and may designate the
37 portion of the information that it believes is a trade secret. The designation must be
38 clearly indicated on each page or other portion of information. The commissioner shall
39 segregate the designated information from public records of the department in the same
40 manner as required under section 1310-B and may release the information to the public
41 only as provided under that section.

1 **§1695. Authority to restrict the sale of products containing a priority chemical**

2 **1. Authority.** The board may adopt rules prohibiting the manufacture, sale or
3 distribution in the State of a product containing a priority chemical if the board finds,
4 after consideration of information filed under section 1694 and other relevant information
5 submitted to or obtained by the board, that:

6 A. Distribution of the product directly or indirectly exposes humans to the priority
7 chemical; and

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

9 The rule must specify the effective date of the prohibition, which may not be sooner than
10 12 months after notice of the proposed rule is published as required under Title 5, section
11 8053, subsection 5. Rules adopted pursuant to this subsection are major substantive rules
12 as defined in Title 5, chapter 375, subchapter 2-A.

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

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

18 B. Presume that a safer alternative is available if the product containing the priority
19 chemical is an item of apparel or a novelty; and

20 C. Presume that an alternative is available if the alternative is sold in the United
21 States.

22 **3. Implementation.** No later than 180 days prior to the effective date of a
23 prohibition adopted under subsection 1, the manufacturer or distributor of a product that
24 contains the priority chemical at the time of adoption shall file a compliance plan with the
25 commissioner or seek an exemption under subsection 4. A compliance plan must:

26 A. Identify the product that contains the priority chemical;

27 B. Specify whether compliance will be achieved by removing the product from the
28 state market or by substituting a safer alternative; and

29 C. If compliance is achieved by substitution of a safer alternative, identify the safer
30 alternative and the timetable for substitution.

31 **4. Exemption.** The manufacturer or distributor of a priority chemical subject to a
32 prohibition adopted under subsection 1 may apply to the commissioner for an exemption
33 for one or more particular uses of the priority chemical. The exemption application must,
34 at a minimum:

35 A. Identify the particular product uses for which the exemption is sought;

36 B. Identify the alternatives considered;

37 C. Explain the basis for concluding that substitution of the alternatives is not
38 technically or economically feasible; and

