

# MAINE STATE LEGISLATURE

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1 MAJORITY

L.D. 1181

2 Date: 6/18/2013

(Filing No. S-310)

3 ENVIRONMENT AND NATURAL RESOURCES

4 Reproduced and distributed under the direction of the Secretary of the Senate.

5 STATE OF MAINE

6 SENATE

7 126TH LEGISLATURE

8 FIRST REGULAR SESSION

9 COMMITTEE AMENDMENT "A" to S.P. 418, L.D. 1181, Bill, "An Act To  
10 Further Strengthen the Protection of Pregnant Women and Children from Toxic  
11 Chemicals"

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

14 'Sec. 1. 38 MRSA §1691, sub-§8-A, as enacted by PL 2011, c. 319, §2, is  
15 amended to read:

16 **8-A. Credible scientific evidence.** "Credible scientific evidence" means the results  
17 of a study, the experimental design and conduct of which have undergone independent  
18 scientific peer review, that are published in a peer-reviewed journal or publication of an  
19 authoritative state, federal or international governmental agency, including but not limited  
20 to the United States Department of Health and Human Services, National Toxicology  
21 Program, Food and Drug Administration and Centers for Disease Control and Prevention;  
22 the United States Environmental Protection Agency; the World Health Organization; and  
23 the European Union, European Chemicals Agency.

24 **Sec. 2. 38 MRSA §1691, sub-§10-A,** as enacted by PL 2011, c. 319, §2, is  
25 repealed and the following enacted in its place:

26 **10-A. Practical quantification limit.** "Practical quantification limit" means:

27 A. The lowest concentration of a chemical that can be reliably measured within  
28 specified limits of precision, accuracy, representativeness, completeness and  
29 comparability during routine laboratory operating conditions; or

30 B. The concentration of a chemical determined by the department pursuant to section  
31 1693-B.

32 The practical quantification limit is based on scientifically defensible, standard analytical  
33 methods. The practical quantification limit for a given chemical may be different  
34 depending on the matrix and the analytical method used.

**COMMITTEE AMENDMENT**

1           **Sec. 3. 38 MRSA §1693, sub-§2**, as repealed and replaced by PL 2011, c. 319,  
2 §3, is repealed and the following enacted in its place:

3           **2. Revisions.** The list of chemicals of concern may be revised.

4           By July 1, 2015 and every 3 years thereafter, the department may review any new  
5 credible scientific evidence submitted to the department pertaining to the list and may  
6 revise the list based on the review. The department may add a chemical to the list if, in  
7 the judgment of the Department of Health and Human Services, Maine Center for Disease  
8 Control and Prevention, the chemical meets one or more of the criteria in subsection 1.

9           A person may submit recommendations with supporting credible scientific evidence to  
10 the department to consider a chemical for addition to the list. By July 1, 2015, and  
11 annually thereafter, the department shall publish a list of chemicals recommended for  
12 consideration pursuant to this subsection and any changes made to the list of chemicals of  
13 concern.

14           **Sec. 4. 38 MRSA §1693, sub-§3, ¶A**, as enacted by PL 2011, c. 319, §3, is  
15 amended to read:

16           A. Does not meet the criteria for listing pursuant to subsection 1 ~~;~~.

17           **Sec. 5. 38 MRSA §1693, sub-§3, ¶B**, as enacted by PL 2011, c. 319, §3, is  
18 repealed.

19           **Sec. 6. 38 MRSA §1693-A, sub-§3**, as enacted by PL 2011, c. 319, §4, is  
20 amended to read:

21           **3. Updates.** ~~The~~ By January 1, 2015, and every 3 years thereafter, the commissioner  
22 shall review the list published pursuant to subsection 1 at least every 3 years. The  
23 commissioner shall remove any chemical from the list of chemicals of high concern that  
24 has been designated as a priority chemical pursuant to section 1694 or that no longer  
25 meets any of the criteria of subsection 2. The commissioner may identify additional  
26 chemicals of high concern according to the criteria and requirements of this section. The  
27 list of chemicals of high concern may not consist of more than 70 or fewer than 10  
28 chemicals of high concern, unless fewer than 10 chemicals of high concern meet any of  
29 the criteria under subsection 2.

30           A person may submit recommendations with supporting credible scientific evidence to  
31 the department to consider a chemical for addition to the list of chemicals of high  
32 concern. By January 1, 2015, and annually thereafter, the department shall publish a list  
33 of chemicals recommended for consideration pursuant to this subsection and any changes  
34 made to the list of chemicals of high concern.

35           **Sec. 7. 38 MRSA §1693-A, sub-§3-A** is enacted to read:

36           **3-A. Reporting of chemical use; rules.** Within existing resources, the department  
37 may adopt rules that apply the reporting requirements of section 1695, subsection 1 to a  
38 person who is a manufacturer or distributor of a children's product for sale in the State  
39 that contains a chemical of high concern in an amount greater than a de minimis level.

40           **Sec. 8. 38 MRSA §1693-B** is enacted to read:

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**§1693-B. Practical quantification limit rules**

The department may adopt rules to specify a practical quantification limit for a specific chemical in a specific matrix if the department finds based on credible scientific evidence that the use of a specific, relevant standard analytical method is the dominant industry practice. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 9. 38 MRSA §1694, sub-§2**, as amended by PL 2011, c. 319, §5, is further amended to read:

**2. Designation.** The commissioner shall designate at least 2 priority chemicals by January 1, 2011. The commissioner may designate additional priority chemicals if the commissioner finds that the chemicals meet one of the criteria listed in subsection 1.

A person may submit recommendations with supporting credible scientific evidence to the department to consider a chemical for designation as a priority chemical. By January 1, 2015, and annually thereafter, the department shall publish a list of chemicals recommended for consideration as priority chemicals pursuant to this subsection and any changes made to the list of chemicals designated as priority chemicals.

**Sec. 10. 38 MRSA §1695, sub-§§2 and 4**, as enacted by PL 2007, c. 643, §2, are amended to read:

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

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

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

C. An assessment of the availability, cost, feasibility and performance, including potential for harm to human health and the environment, of alternatives to the priority chemical and the reason the priority chemical is used in the manufacture of the children's product in lieu of identified alternatives. ~~If an assessment 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.~~

If an assessment acceptable to the department is not timely submitted or if the department determines the preparation of such an assessment by an independent contractor will be more expeditious, cost-effective or comprehensive, 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.

1 The manufacturer or distributor of a children's product that contains a priority chemical  
2 may provide additional information to the department regarding the potential for harm to  
3 human health and the environment from specific uses of the priority chemical.

4 **4. Rulemaking to determine fees.** If the department assesses a fee pursuant to  
5 subsection 2, paragraph C or subsection 3, the department shall determine the appropriate  
6 fee through ~~major substantive~~ routine technical rulemaking, as defined in Title 5, chapter  
7 375, subchapter 2-A.

8 **Sec. 11. 38 MRSA §1696, sub-§2,** as amended by PL 2011, c. 319, §8, is further  
9 amended to read:

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

13 A. Presume that an alternative is a safer alternative if the alternative is not a chemical  
14 of concern;

15 B. Presume that a safer alternative is available if the sale of the children's product  
16 containing the priority chemical has been banned by another state within the United  
17 States based on the availability of a safer alternative;

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

20 D. Presume that a safer alternative is available if the alternative is sold in the United  
21 States.

22 **Sec. 12. 38 MRSA §1697, sub-§8,** as enacted by PL 2007, c. 643, §2, is repealed  
23 and the following enacted in its place:

24 **8. Food and beverage packaging.** The following provisions govern the  
25 applicability of this chapter to food and beverage product containers and packaging.

26 A. A container or packaging for a food or beverage product is exempt from the  
27 requirements of this chapter, unless that product is intentionally marketed or intended  
28 for use by children under 3 years of age.

29 B. Notwithstanding paragraph A, by January 1, 2014 and by January 1st every year  
30 thereafter, a person who is a manufacturer or distributor of a children's product that is  
31 a food or beverage product for sale in the State that contains a priority chemical in an  
32 amount greater than a de minimis level shall submit to the department written notice  
33 required by this paragraph, if:

34 (1) The priority chemical is present in the product's container or packaging; and

35 (2) The manufacturer or distributor has annual aggregate gross sales of food and  
36 beverage products, including sales both within and outside the State, of more than  
37 \$1,000,000,000, based on the most recently published industry sales data as of  
38 the date of submittal of the written notice.

39 The written notice to the department must identify the food or beverage product  
40 container or packaging containing the priority chemical, the number of units sold or

1 distributed for sale both in the State and nationally, the priority chemical or chemicals  
 2 contained in the food or beverage product container or packaging, the amount of  
 3 priority chemical in each unit and the intended purpose of the priority chemical in the  
 4 product. The department may approve similar information submitted to other entities  
 5 for the purpose of meeting the requirements of this paragraph.

6 The department shall implement this paragraph within existing resources or may  
 7 assess a fee payable by the manufacturer or distributor upon submission of the written  
 8 notice to cover the department's reasonable costs of implementation. The department  
 9 may not consider information submitted under this paragraph in place of any  
 10 information required to be submitted under section 1695.

11 **Sec. 13. 38 MRSA §1699**, as enacted by PL 2007, c. 643, §2, is repealed and the  
 12 following enacted in its place:

13 **§1699. Education and assistance**

14 **1. Education and assistance.** As resources allow, the department shall develop a  
 15 program to educate and assist consumers and retailers in identifying children's products  
 16 that may contain priority chemicals.

17 **2. Citizen participation.** Once every year, beginning in 2015, the department shall  
 18 establish a 30-day period during which any person may submit information, in summary  
 19 form, on the topic of toxic chemicals in children's products and the effectiveness of this  
 20 chapter. The summary must be limited to the concise key points related to the products  
 21 or chemicals. The department may request additional information based on the summary  
 22 provided.

23 **3. Information.** Beginning January 1, 2014 and annually by January 1st thereafter,  
 24 the department shall publish on the department's publicly accessible website the list of  
 25 chemicals of high concern under section 1693-A, subsection 1 and the types of products  
 26 that contain each chemical on the list.

27 **4. Online list.** The department may publish in electronic format on the department's  
 28 publicly accessible website a list of children's products that do not contain priority  
 29 chemicals or chemicals of high concern. The list may provide links to websites of  
 30 manufacturers of the children's products. A manufacturer may petition the department to  
 31 include a children's product on the list and must submit a sworn affidavit declaring that  
 32 the product does not contain a priority chemical or a chemical of high concern.

33 **Sec. 14. Progress report.** By January 3, 2014, the Department of Environmental  
 34 Protection shall consult with the Department of Health and Human Services, Maine  
 35 Center for Disease Control and Prevention to review relevant available information  
 36 regarding chemicals in children's products and consider appropriate actions under the  
 37 Maine Revised Statutes, Title 38, chapter 16-D. Upon request by the Joint Standing  
 38 Committee on Environment and Natural Resources, the department shall provide a  
 39 briefing on the department's implementation of Title 38, chapter 16-D to the joint  
 40 standing committee. The joint standing committee may report out a bill relating to the  
 41 briefing to the Second Regular Session of the 126th Legislature.

42 **Sec. 15. Appropriations and allocations.** The following appropriations and  
 43 allocations are made.

1 **ENVIRONMENTAL PROTECTION, DEPARTMENT OF**  
 2 **Administration - Environmental Protection 0251**

3 Initiative: Provides Other Special Revenue Funds allocations for technology costs related  
 4 to implementing changes in the toxic chemicals in children's products program.

5	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2013-14</b>	<b>2014-15</b>
6	All Other	\$586	\$781
7			
8	<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<u>\$586</u>	<u>\$781</u>

9 **Administration - Environmental Protection 0251**

10 Initiative: Provides funding for technology costs related to implementing changes in the  
 11 toxic chemicals in children's products program.

12	<b>GENERAL FUND</b>	<b>2013-14</b>	<b>2014-15</b>
13	All Other	\$665	\$886
14			
15	<b>GENERAL FUND TOTAL</b>	<u>\$665</u>	<u>\$886</u>

16 **Remediation and Waste Management 0247**

17 Initiative: Provides funding for one Environmental Specialist IV position and one  
 18 Toxicologist position and associated administrative and technology costs related to  
 19 implementing changes in the toxic chemicals in children's products program.

20	<b>GENERAL FUND</b>	<b>2013-14</b>	<b>2014-15</b>
21	POSITIONS - LEGISLATIVE COUNT	2,000	2,000
22	Personal Services	\$121,721	\$173,121
23	All Other	\$57,784	\$19,045
24			
25	<b>GENERAL FUND TOTAL</b>	<u>\$179,505</u>	<u>\$192,166</u>

26 **ENVIRONMENTAL PROTECTION,**  
 27 **DEPARTMENT OF**  
 28 **DEPARTMENT TOTALS**

29		<b>2013-14</b>	<b>2014-15</b>
30	<b>GENERAL FUND</b>	<b>\$180,170</b>	<b>\$193,052</b>
31	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$586</b>	<b>\$781</b>
32			
33	<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<u><b>\$180,756</b></u>	<u><b>\$193,833</b></u>
34			

**SUMMARY**

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This amendment is the majority report of the committee and replaces the bill. The amendment does the following.

1. It adds a publication of an authoritative state agency to the definition of "credible scientific evidence."

2. It authorizes the Department of Environmental Protection to specify by rule the practical quantification limit for a chemical based on standard industry practice and credible scientific evidence.

3. It establishes a process for considering revisions to the lists of chemicals of concern, chemicals of high concern and priority chemicals.

4. It authorizes the Department of Environmental Protection to adopt rules to require reporting of chemical use for chemicals of high concern in children's products.

5. It authorizes the Department of Environmental Protection to contract for an independent alternatives assessment for priority chemicals without first requesting one from manufacturers or distributors of children's products.

6. It requires manufacturers and distributors of food and beverage products with annual sales greater than \$1,000,000,000 to report their use of priority chemicals in containers and packaging to the Department of Environmental Protection by January 1, 2014 and annually thereafter.

7. It directs the Department of Environmental Protection to establish a 30-day period each year during which persons may submit information on the topic of toxic chemicals in children's products.

8. It requires the annual publication of the list of chemicals of high concern on the Department of Environmental Protection's publicly accessible website.

9. It authorizes the Department of Environmental Protection to publish on the department's publicly accessible website a list of children's products that do not contain priority chemicals or chemicals of high concern.

10. It directs the Department of Environmental Protection to consult with the Department of Health and Human Services, Maine Center for Disease Control and Prevention by January 3, 2014 to review information regarding chemicals in children's products and consider appropriate actions. It also authorizes the Joint Standing Committee on Environment and Natural Resources to report out a bill relating to a briefing by the department on the laws governing toxic chemicals in children's products.

11. It adds an appropriations and allocations section.

**FISCAL NOTE REQUIRED**

**(See attached)**





# 126th MAINE LEGISLATURE

LD 1181

LR 1627(02)

## An Act To Further Strengthen the Protection of Pregnant Women and Children from Toxic Chemicals

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-310)

Committee: Environment and Natural Resources

Fiscal Note Required: Yes

### Fiscal Note

	FY 2013-14	FY 2014-15	Projections FY 2015-16	Projections FY 2016-17
<b>Net Cost (Savings)</b>				
General Fund	\$180,170	\$193,052	\$198,246	\$203,595
<b>Appropriations/Allocations</b>				
General Fund	\$180,170	\$193,052	\$198,246	\$203,595
Other Special Revenue Funds	\$586	\$781	\$781	\$781

#### Fiscal Detail and Notes

The bill includes General Fund appropriations of \$180,170 in fiscal year 2013-14 and \$193,052 in fiscal year 2014-15 to the Department of Environmental Protection to fund one full-time Environmental Specialist IV position and one full-time Toxicologist position along with the associated administrative and technology costs related to implementing changes in the toxic chemicals in children's products program. It also includes related Other Special Revenue Funds allocations to the department of \$586 and \$781 in fiscal years 2013-14 and 2014-15, respectively. This estimate is based on fully implementing all the authorized changes detailed in the bill.