126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document	**No. 1181**
S.P. 418	In Senate, March 26, 2013

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

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

DAREK M. GRANT
Secretary of the Senate

Presented by Senator GOODALL of Sagadahoc.
Cosponsored by Speaker EVES of North Berwick and
Senators: President ALFOND of Cumberland, GRATWICK of Penobscot, Representatives: DORNEY of Norridgewock, GIDEON of Freeport, GRAHAM of North Yarmouth, GRANT of Gardiner, PRINGLE of Windham, SANBORN of Gorham.

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

Sec. 1. 38 MRSA §1691, sub-§7-A is enacted to read:

7-A. Contaminant. "Contaminant" means a chemical that is present in a product or product component but is not an intentionally added chemical. "Contaminant" includes, but is not limited to, a chemical present in ambient airborne dust that settles on the surface of a product or product component or a chemical present in the influent water supply used to make up a formulated product or product component. "Contaminant" does not include a chemical that is a monomer, reactant or other substance present in a polymer added during the manufacture of a product or product component.

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

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

Sec. 3. 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 shall designate at least 2 additional priority chemicals by January 1, 2014 and at least 2 additional priority chemicals by January 1st every year thereafter unless the criteria for that designation are not met. The commissioner may designate additional priority chemicals if the commissioner finds that the chemicals meet one of the criteria listed in subsection 1.

Sec. 4. 38 MRSA §1695, as amended by PL 2011, c. 319, §6, is further amended to read:

§1695. Disclosure of information on chemicals of high concern and priority chemicals

1. Reporting of chemical use. Not later than ~~180 days after a priority chemical is identified pursuant to section 1694,~~ January 1, 2014, the department shall adopt rules that require a person who is a manufacturer or distributor of a children's product for sale in the State that contains a ~~priority~~ chemical of high concern in an amount greater than a de minimis level ~~shall~~ to notify the department in writing on an annual basis unless waived by the commissioner pursuant to this section or exempt from this chapter pursuant to section 1697. This written notice must identify the children's product, the number of units sold or distributed for sale in the State or nationally, the ~~priority~~ chemical or chemicals of high concern contained in the children's product, the amount of such

chemicals in each unit of children's product and the intended purpose of the chemicals in the children's product.

The rules adopted pursuant to this subsection may phase in the effective date of the notice requirement in tiers that take into account the size of the manufacturer and the exposure potential of the product, as long as the rules require that the initial notices be submitted within 180 days and all notices be submitted within 5 years of the effective date of the rule. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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; and

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.~~

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

2-A. Alternatives assessment. The manufacturer or distributor of a children's product that contains a priority chemical shall provide 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 or an equivalent assessment is not available from another authority, 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.

3. Waiver of reporting; fee; extension of deadline. The commissioner may waive all or part of 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~~, that the information is not needed for the purposes of this chapter~~ or that the specified use or uses are minor in volume. 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 information required under subsection 1 for one or more specified uses of a ~~priority~~ chemical of high concern in a children's product if it determines that more time is needed by the manufacturer or distributor to comply with the submission requirement ~~or if the information is not needed at that time~~.

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

Sec. 5. 38 MRSA §1696, sub-§1-A is enacted to read:

1-A. Labeling. If the board, after consideration of information filed under section 1695 and other relevant information submitted to or obtained by the board, finds that exposure has been established pursuant to subsection 1, paragraph A, but that a finding of safer alternatives cannot be made pursuant to subsection 1, paragraph B, then the board shall adopt rules prohibiting the manufacture, sale or distribution in the State of a children's product containing a priority chemical in an amount greater than a de minimis level unless that product or its packaging is clearly labeled to inform the consumer that the product contains a priority chemical identified by the State and provide the common name of that chemical.

Sec. 6. 38 MRSA §1696, sub-§2, as amended by PL 2011, c. 319, §8, is further amended to read:

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

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

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

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

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

Sec. 7. 38 MRSA §1697, sub-§8, as enacted by PL 2007, c. 643, §2, is repealed.

Sec. 8. Alternatives assessments. Not later than January 1, 2014, the Department of Environmental Protection shall amend its Chapter 883 rule to require manufacturers who reported use of the priority chemical nonylphenol ethoxylates to submit an assessment of the availability of safer alternatives, consistent with the requirements of the Maine Revised Statutes, Title 38, section 1695.

Not later than January 1, 2014, the Department of Environmental Protection shall amend its Chapter 882 rule to require manufacturers of food products packaged in metal cans to disclose their use of the priority chemical bisphenol A in the packaging of those products, consistent with the requirements of Title 38, section 1695.

SUMMARY

This bill amends the laws governing toxic chemicals in children's products, commonly referred to as the "Kid-Safe Products Act." The bill defines "contaminant" and adds a publication of an authoritative state agency to the definition of "credible scientific evidence." The bill requires the Commissioner of Environmental Protection to name 2 additional priority chemicals annually beginning January 1, 2014, unless the criteria for such designation is not met. The bill requires reporting of chemical use for chemicals of high concern in children's products. The bill requires assessments of safer alternatives to priority chemicals in children's products by manufacturers or distributors. The bill repeals the exemption of food and beverage packaging not intended for children under 3 years of age. The bill authorizes the Board of Environmental Protection to require product labeling if it cannot make the findings necessary to prohibit sale of a children's product containing a priority chemical. The bill requires the department to amend its existing priority chemical rules to require alternatives assessments for reported uses of nonylphenol ethoxylates, and to require reporting of bisphenol A use in food can packaging.