

SB2868



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2868

Introduced 2/15/2008, by Sen. Dan Kotowski

SYNOPSIS AS INTRODUCED:

New Act

Creates the Child-Safe Chemicals Act. Regulates the sale and distribution of children's products or product components containing lead or other specified chemicals. Designates priority chemicals of high concern. Requires manufacturers and trade associations to report to the Environmental Protection Agency. Sets forth the responsibilities of the Agency. Provides for exemptions. Requires the Agency to create an interstate clearinghouse. Contains provisions for implementation and enforcement. Contains other provisions. Effective immediately.

LRB095 19854 RCE 46349 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Child-Safe Chemicals Act.

6 Section 5. Legislative findings. The General Assembly
7 finds:

8 (1) Research shows that many toys, children's products, and
9 other consumer products contain lead, cadmium, phthalates,
10 bisphenol A, and other chemicals that have been shown to cause
11 harm to children's health and the environment. These chemicals,
12 and others like them, have been linked to long-term health
13 impacts such as birth defects, reproductive harm, impaired
14 learning, liver toxicity, and cancer.

15 (2) The scientific literature provides extensive evidence
16 that bisphenol-A and pththalates are hormone-disrupting
17 chemicals, that these chemicals are found in humans at levels
18 associated with adverse effects, and that lead and cadmium are
19 dangerous neurotoxicants that can damage the human brains,
20 internal organs, and nervous systems.

21 (3) Because children's bodies are growing and developing,
22 they are especially vulnerable to the effects of toxic
23 chemicals.

1 (4) To protect children's health, it is important to phase
2 out the use of lead, cadmium, phthalates, and bisphenol A in
3 children's toys and to collect information on other hazardous
4 chemicals that are present in toys and other products to
5 determine whether further action is required.

6 Section 10. Definitions. In this Act:

7 "Agency" means the Illinois Environmental Protection
8 Agency.

9 "Alternative" means a substitute process, product,
10 material, chemical, strategy, or combination of these that
11 serves a functionally equivalent purpose to a chemical in a
12 consumer product.

13 "Children's jewelry" means jewelry that is made for,
14 marketed for use by, or marketed to children under the age of
15 12 and includes jewelry that meets any of the following
16 conditions:

17 (1) represented in its packaging, display, or
18 advertising as appropriate for use by children under the
19 age of 12;

20 (2) sold in conjunction with, attached to, or packaged
21 together with other products that are packaged, displayed,
22 or advertised as appropriate for use by children;

23 (3) sized for children and not intended for use by
24 adults; or

25 (4) sold in any of the following:

- 1 (i) a vending machine;
- 2 (ii) a retail store, catalogue, or online web site,
3 in which a person exclusively offers for sale products
4 that are packaged, displayed, or advertised as
5 appropriate for use by children; or
- 6 (iii) a discrete portion of a retail store,
7 catalogue, or online web site, in which a person offers
8 for sale products that are packaged, displayed, or
9 advertised as appropriate for use by children.

10 "Children's product" includes any of the following:

- 11 (1) toys;
- 12 (2) cosmetics intended for children under the age of
13 12;
- 14 (3) children's jewelry;
- 15 (4) a product designed or intended by the manufacturer
16 to help a child with sucking or teething, to facilitate
17 sleep, relaxation, or the feeding of a child, or to be worn
18 as clothing by children; or
- 19 (5) child car seats.

20 "Chemical of high concern" means a chemical identified by
21 an authoritative government entity on the basis of credible
22 scientific evidence as known to:

- 23 (1) harm the normal development of a fetus or child or
24 cause other developmental toxicity;
- 25 (2) cause cancer, genetic damage, or reproductive
26 harm;

- 1 (3) disrupt the endocrine or hormone system;
- 2 (4) damage the nervous system, immune system, or organs
- 3 or cause other systemic toxicity;
- 4 (5) be persistent, bioaccumulative, and toxic; or
- 5 (6) be very persistent and very bioaccumulative.

6 "Chemical of low concern" means a chemical for which

7 adequate toxicity and environmental data are available to

8 determine that it is not a chemical of high concern, a chemical

9 of moderate concern, or a chemical of unknown concern.

10 "Chemical of moderate concern" means a chemical identified

11 by an authoritative governmental entity on the basis of

12 credible scientific evidence as being suspected of causing an

13 adverse health or environmental effect listed in the definition

14 of "chemicals of high concern."

15 "Chemical of unknown concern" means a chemical for which

16 insufficient data are available to classify it as a chemical of

17 high concern, a chemical of moderate concern, or a chemical of

18 low concern.

19 "Consumer product" means any item sold for residential or

20 commercial use, including any component parts and packaging.

21 For purposes of this Act, a consumer product does not include a

22 drug or biologic regulated by the U.S. Food and Drug

23 Administration, a food or beverage or additives thereto,

24 tobacco products, or a pesticide regulated by the U.S.

25 Environmental Protection Agency, except that a consumer

26 product may include a container or packaging in which those

1 products are sold.

2 "Cosmetics" includes articles intended to be rubbed,
3 poured, sprinkled, or sprayed on, introduced into, or otherwise
4 applied to the human body or any part thereof for cleansing,
5 beautifying, promoting attractiveness, or altering the
6 appearance, and articles intended for use as a component of
7 such an article.

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

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

17 "Priority chemical" means a chemical designated as such
18 pursuant to Section 20 of this Act.

19 "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP),
20 dibutyl 34 phthalate (DBP), benzyl butyl phthalate (BBP),
21 diisonoyl phthalate 35 (DINP), diisodecyl phthalate (DIDP), or
22 di-n-octyl phthalate (DnOP).

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

1 greater potential for harm to human health or the environment
2 as that priority chemical.

3 "Toy" means a product designed or intended by the
4 manufacturer to be used by a child at play.

5 "Trade association" means a membership organization of
6 persons engaging in a similar or related line of commerce,
7 organized to promote and improve business conditions in that
8 line of commerce and not to engage in a regular business of a
9 kind ordinarily carried on for profit.

10 Section 15. Regulation of toxic chemicals in children's
11 products.

12 (a) Beginning July 1, 2009, no person may manufacture,
13 knowingly sell, offer for sale, distribute for sale, or
14 distribute for use in this State a children's product or
15 product component containing the following:

16 (i) lead or cadmium at more than 0.004 percent by
17 weight (40 parts per million); or

18 (ii) phthalates, individually or in combination, at
19 more than 0.01 percent by weight (100 parts per million).

20 (b) Beginning July 1, 2009, no person may manufacture,
21 knowingly sell, offer for sale, distribute for sale, or
22 distribute for use in this State a children's product intended
23 for a child under 3 years of age if that product contains or
24 leaches bisphenol A.

1 Section 20. Chemicals of high concern to children
2 designated as priority chemicals.

3 (a) Lead, cadmium, phthalates, and bisphenol A are hereby
4 designated priority chemicals.

5 (b) The Agency may designate chemicals of high concern as
6 additional priority chemicals after considering a child's or
7 developing fetus's potential for exposure to the chemical based
8 on credible scientific evidence of any one or more of the
9 following:

10 (i) the chemical has been found through biomonitoring
11 to be present in human blood, including umbilical cord
12 blood, breast milk, urine, or other bodily tissues or
13 fluids;

14 (ii) the chemical has been found through sampling and
15 analysis to be present in household dust, indoor air,
16 drinking water, or elsewhere in the home environment;

17 (iii) the chemical has been added to or is present in a
18 consumer product used or present in the home; or

19 (iv) the chemical has been identified as a high
20 production volume chemical by the U.S. Environmental
21 Protection Agency.

22 Section 25. Reporting of priority chemicals in consumer
23 products.

24 (a) Six months after a chemical is identified as a priority
25 chemical pursuant to Section 20 of this Act, a manufacturer of

1 a consumer product containing a priority chemical, or a trade
2 association on behalf of its members, shall provide notice to
3 the Agency that the manufacturer's product contains a priority
4 chemical. The notice shall be in electronic format. The notice
5 must be filed annually with the Agency and shall include the
6 following information:

7 (i) the name and a brief description of the product;

8 (ii) the name of the priority chemical;

9 (iii) the amount of the chemical in each unit of the
10 product;

11 (iv) the total amount of the chemical in all units of
12 the product sold in Illinois and the United States during
13 the most recent calendar year for which sales figures are
14 available;

15 (v) the intended purpose of the chemical in the
16 product;

17 (vi) the name and address of the manufacturer and the
18 name, address, and phone number of a contact person for the
19 manufacturer of the product; and

20 (vii) a statement of the manufacturer's policy
21 regarding the use of priority chemicals in consumer
22 products.

23 (b) The Agency may waive the notification requirement under
24 subsection (a) of this Section for one or more specified uses
25 of a priority chemical if the Agency determines that
26 substantially equivalent information is already publicly

1 available or that the specified use or uses are minor in volume
2 and very unlikely to result in exposure of a child or fetus to
3 the chemical. The Agency may grant an extension of the deadline
4 for submission of the required information for one or more
5 specified uses of a priority chemical in a consumer product if
6 it determines that more time is needed by the manufacturer.

7 Section 30. Other authorities and responsibilities of the
8 Agency.

9 (a) The Agency shall develop, publish, and maintain a web
10 site that includes a list of priority chemicals, with
11 explanations for why they are so designated, and provides
12 consumers with information on consumer products that contain
13 priority chemicals and available information on safer
14 alternatives to the priority chemical.

15 (b) By January 15 2009, and January 15 of every subsequent
16 2-year period in which one or more chemicals has been
17 designated a priority chemical pursuant to Section 20 of this
18 Act, the Agency shall submit a report on priority chemicals in
19 consumer products to the committees of the legislature having
20 jurisdiction over environmental health matters. The report
21 shall identify consumer products or product categories that may
22 contain priority chemicals, available information on safer
23 alternatives to those chemicals, and a list of and
24 recommendations regarding policy options for addressing
25 consumer products that contain priority chemicals, including,

1 but not limited to, policies that phase out existing and
2 prevent new uses of priority chemicals in consumer products,
3 policies to facilitate the identification or development of
4 safer alternatives, and ways to inform consumers about toxic
5 chemicals in products, including labeling.

6 (c) The Agency may assess fees, not to exceed \$250 for a
7 manufacturer or \$10,000 for a trade association, payable upon
8 submission of notice of priority chemical use, to cover the
9 Agency's reasonable costs, including hiring staff, in
10 complying with the requirements of this Act.

11 (d) The Agency has the authority to require that a
12 manufacturer of a children's product containing a priority
13 chemical, or a trade association on its member's behalf,
14 prepare and submit a report acceptable to the Agency that
15 assesses the availability of safer alternatives to that
16 chemical. The Agency shall the allow the manufacturer or trade
17 association reasonable time to complete the report. If a report
18 acceptable to the Agency is not timely submitted, the Agency
19 may assess a fee on the manufacturer or distributor to cover
20 the costs to prepare an independent report on the availability
21 of safer alternatives by Agency staff or a contractor of the
22 Agency's choice.

23 Section 35. Exemptions. The following are exempt from the
24 reporting and requirements in Section 20 of this Act.

25 (a) Industry. The requirements of this Act do not apply to

1 the use of priority chemicals for industrial or manufacturing
2 purposes if that use does not result in the priority chemicals
3 inclusion in a consumer product.

4 (b) Transportation. The requirements of this Act do not
5 apply to transportation vehicles or their component parts,
6 except that the use of priority chemicals in detachable car
7 seats is not exempt.

8 (c) Combustion. The requirements of this Act do not apply
9 to priority chemicals generated solely as combustion
10 byproducts or that are present in combustible fuels.

11 (d) Retailers. Retailers are exempt from the requirements
12 of this Act, except if they knowingly sell a consumer product
13 containing a priority chemical after the effective date of its
14 prohibition under this Act for which they have received prior
15 notification from a manufacturer, trade association, or the
16 State.

17 Section 40. Interstate clearinghouse. The Agency is
18 authorized to participate in an interstate clearinghouse to
19 promote safer chemicals in consumer products in cooperation
20 with other states and governmental entities. The Agency may
21 cooperate with the interstate clearinghouse to organize and
22 manage available data on chemicals, including information on
23 uses, hazards, and environmental concerns; to produce an
24 inventory of information on safer alternatives to specific uses
25 of chemicals of high concern, and on model policies and

1 programs; to provide technical assistance to business and
2 consumers related to safer chemicals; and to undertake other
3 activities in support of State programs to promote safer
4 chemicals. The Agency may provide the interstate clearinghouse
5 with product information submitted to the Agency in accordance
6 with this Act.

7 Section 45. Enforcement and implementation.

8 (a) A consumer product containing a priority chemical may
9 not be knowingly offered for final sale, use, or distribution
10 after the effective date of this Act unless the manufacturer of
11 that product is in compliance with the requirements of this
12 Act.

13 (b) A manufacturer of consumer products that are restricted
14 under this Act must notify persons that sell the manufacturer's
15 products in this State about the provisions of this Act no less
16 than 90 days prior to the effective date of the restrictions. A
17 manufacturer that produces, sells, or distributes a consumer
18 product prohibited from manufacture, sale, or distribution in
19 this Act shall recall the product and reimburse the retailer or
20 any other purchaser for the product.

21 (c) A manufacturer of consumer products in violation of
22 this Act is subject to a civil penalty not to exceed \$5,000 for
23 each violation in the case of a first offense. Manufacturers
24 who are repeat violators are subject to a civil penalty not to
25 exceed \$10,000 for each repeat offense. Penalties collected

1 under this Section shall be allocated to the Agency to help
2 cover the Agency's reasonable costs in complying with the
3 requirements of this Act.

4 (d) If there are grounds to suspect that a product is being
5 offered for sale, use, or distribution in violation of this
6 Act, the Agency may request the manufacturer to provide a
7 certificate of compliance. Within 10 days after receipt of a
8 request, the manufacturer shall:

9 (i) provide the Agency with a certificate attesting
10 that the product complies with the requirements of this
11 Section; or

12 (ii) notify persons who sell the manufacturer's
13 products in this State that the sale of the product is
14 prohibited and reimburse them for the product and any
15 applicable shipping and handling charges for returning the
16 product.

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.