

HB5040



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5040

Introduced 1/25/2010, by Rep. Naomi D. Jakobsson - Mike Fortner

SYNOPSIS AS INTRODUCED:

New Act

Creates the Child-Safe Chemicals Act. Regulates the sale and distribution of children's products or product components containing cadmium and priority chemicals of high concern. Designates cadmium as a priority chemical. 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.

LRB096 17893 RPM 33261 b

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 cadmium and other chemicals
10 that have been shown to cause harm to children's health and the
11 environment. Cadmium and other chemicals like it have been
12 linked to long-term health impacts, including birth defects,
13 reproductive harm, impaired learning, liver toxicity, and
14 cancer.

15 (2) The scientific literature provides extensive evidence
16 that cadmium is a dangerous neurotoxicant that can damage the
17 human brain, internal organs, and nervous system.

18 (3) Because children's bodies are growing and developing,
19 they are especially vulnerable to the effects of toxic
20 chemicals.

21 (4) To protect children's health, it is important to phase
22 out the use of cadmium in children's toys and to collect
23 information on other hazardous chemicals that are present in

1 toys and other products to determine whether further action is
2 required.

3 Section 10. Definitions. In this Act:

4 "Agency" means the Illinois Environmental Protection
5 Agency.

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

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

14 (1) represented in its packaging, display, or
15 advertising as appropriate for use by children under the
16 age of 12;

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

20 (3) sized for children and not intended for use by
21 adults; or

22 (4) sold in any of the following:

23 (i) a vending machine;

24 (ii) a retail store, catalogue, or online web site,
25 in which a person exclusively offers for sale products

1 that are packaged, displayed, or advertised as
2 appropriate for use by children; or

3 (iii) a discrete portion of a retail store,
4 catalogue, or online web site, in which a person offers
5 for sale products that are packaged, displayed, or
6 advertised as appropriate for use by children.

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

8 (1) toys;

9 (2) cosmetics intended for children under the age of
10 12;

11 (3) children's jewelry;

12 (4) a product designed or intended by the manufacturer
13 to help a child with sucking or teething, to facilitate
14 sleep, relaxation, or the feeding of a child, or to be worn
15 as clothing by children; or

16 (5) child car seats.

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

20 (1) harm the normal development of a fetus or child or
21 cause other developmental toxicity;

22 (2) cause cancer, genetic damage, or reproductive
23 harm;

24 (3) disrupt the endocrine or hormone system;

25 (4) damage the nervous system, immune system, or organs
26 or cause other systemic toxicity;

1 (5) be persistent, bioaccumulative, and toxic; or

2 (6) be very persistent and very bioaccumulative.

3 "Chemical of low concern" means a chemical for which
4 adequate toxicity and environmental data are available to
5 determine that it is not a chemical of high concern, a chemical
6 of moderate concern, or a chemical of unknown concern.

7 "Chemical of moderate concern" means a chemical identified
8 by an authoritative governmental entity on the basis of
9 credible scientific evidence as being suspected of causing an
10 adverse health or environmental effect listed in the definition
11 of "chemicals of high concern."

12 "Chemical of unknown concern" means a chemical for which
13 insufficient data are available to classify it as a chemical of
14 high concern, a chemical of moderate concern, or a chemical of
15 low concern.

16 "Consumer product" means any item sold for residential or
17 commercial use, including any component parts and packaging.
18 For purposes of this Act, a consumer product does not include a
19 drug or biologic regulated by the U.S. Food and Drug
20 Administration, a food or beverage or additives thereto,
21 tobacco products, or a pesticide regulated by the U.S.
22 Environmental Protection Agency, except that a consumer
23 product may include a container or packaging in which those
24 products are sold.

25 "Cosmetics" includes articles intended to be rubbed,
26 poured, sprinkled, or sprayed on, introduced into, or otherwise

1 applied to the human body or any part thereof for cleansing,
2 beautifying, promoting attractiveness, or altering the
3 appearance, and articles intended for use as a component of
4 such an article.

5 "Distributor" means a person who sells products to retail
6 establishments on a wholesale basis.

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

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

16 "Safer alternative" means an alternative that, when
17 compared to a priority chemical that it could replace, would
18 reduce the potential for harm to human health or the
19 environment or that has not been shown to pose the same or
20 greater potential for harm to human health or the environment
21 as that priority chemical.

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

24 "Trade association" means a membership organization of
25 persons engaging in a similar or related line of commerce,
26 organized to promote and improve business conditions in that

1 line of commerce and not to engage in a regular business of a
2 kind ordinarily carried on for profit.

3 Section 15. Regulation of toxic chemicals in children's
4 products. Beginning July 1, 2011, no person may manufacture,
5 knowingly sell, offer for sale, distribute for sale, or
6 distribute for use in this State a children's product or
7 product component containing cadmium at more than 0.004 percent
8 by weight (40 parts per million).

9 Section 20. Chemicals of high concern to children
10 designated as priority chemicals.

11 (a) Cadmium is hereby designated a priority chemical.

12 (b) The Agency may designate chemicals of high concern as
13 additional priority chemicals after considering a child's or
14 developing fetus's potential for exposure to the chemical based
15 on credible scientific evidence of any one or more of the
16 following:

17 (i) the chemical has been found through biomonitoring
18 to be present in human blood, including umbilical cord
19 blood, breast milk, urine, or other bodily tissues or
20 fluids;

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

24 (iii) the chemical has been added to or is present in a

1 consumer product used or present in the home; or
2 (iv) the chemical has been identified as a high
3 production volume chemical by the U.S. Environmental
4 Protection Agency.

5 Section 25. Reporting of priority chemicals in consumer
6 products.

7 (a) Six months after a chemical is identified as a priority
8 chemical pursuant to Section 20 of this Act, a manufacturer of
9 a consumer product containing a priority chemical, or a trade
10 association on behalf of its members, shall provide notice to
11 the Agency that the manufacturer's product contains a priority
12 chemical. The notice shall be in electronic format. The notice
13 must be filed annually with the Agency and shall include the
14 following information:

- 15 (i) the name and a brief description of the product;
16 (ii) the name of the priority chemical;
17 (iii) the amount of the chemical in each unit of the
18 product;
19 (iv) the total amount of the chemical in all units of
20 the product sold in Illinois and the United States during
21 the most recent calendar year for which sales figures are
22 available;
23 (v) the intended purpose of the chemical in the
24 product;
25 (vi) the name and address of the manufacturer and the

1 name, address, and phone number of a contact person for the
2 manufacturer of the product; and

3 (vii) a statement of the manufacturer's policy
4 regarding the use of priority chemicals in consumer
5 products.

6 (b) The Agency may waive the notification requirement under
7 subsection (a) of this Section for one or more specified uses
8 of a priority chemical if the Agency determines that
9 substantially equivalent information is already publicly
10 available or that the specified use or uses are minor in volume
11 and very unlikely to result in exposure of a child or fetus to
12 the chemical. The Agency may grant an extension of the deadline
13 for submission of the required information for one or more
14 specified uses of a priority chemical in a consumer product if
15 it determines that more time is needed by the manufacturer.

16 Section 30. Other authorities and responsibilities of the
17 Agency.

18 (a) The Agency shall develop, publish, and maintain a web
19 site that includes a list of priority chemicals, with
20 explanations for why they are so designated, and provides
21 consumers with information on consumer products that contain
22 priority chemicals and available information on safer
23 alternatives to the priority chemical.

24 (b) By January 15 2011, and January 15 of every subsequent
25 2-year period in which one or more chemicals has been

1 designated a priority chemical pursuant to Section 20 of this
2 Act, the Agency shall submit a report on priority chemicals in
3 consumer products to the committees of the legislature having
4 jurisdiction over environmental health matters. The report
5 shall identify consumer products or product categories that may
6 contain priority chemicals, available information on safer
7 alternatives to those chemicals, and a list of and
8 recommendations regarding policy options for addressing
9 consumer products that contain priority chemicals, including,
10 but not limited to, policies that phase out existing and
11 prevent new uses of priority chemicals in consumer products,
12 policies to facilitate the identification or development of
13 safer alternatives, and ways to inform consumers about toxic
14 chemicals in products, including labeling.

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

20 (d) The Agency has the authority to require that a
21 manufacturer of a children's product containing a priority
22 chemical, or a trade association on its member's behalf,
23 prepare and submit a report acceptable to the Agency that
24 assesses the availability of safer alternatives to that
25 chemical. The Agency shall the allow the manufacturer or trade
26 association reasonable time to complete the report. If a report

1 acceptable to the Agency is not timely submitted, the Agency
2 may assess a fee on the manufacturer or distributor to cover
3 the costs to prepare an independent report on the availability
4 of safer alternatives by Agency staff or a contractor of the
5 Agency's choice.

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

8 (a) Industry. The requirements of this Act do not apply to
9 the use of priority chemicals for industrial or manufacturing
10 purposes if that use does not result in the priority chemicals
11 inclusion in a consumer product.

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

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

19 (d) Retailers. Retailers are exempt from the requirements
20 of this Act, except if they knowingly sell a consumer product
21 containing a priority chemical after the effective date of its
22 prohibition under this Act for which they have received prior
23 notification from a manufacturer, trade association, or the
24 State.

1 Section 40. Interstate clearinghouse. The Agency is
2 authorized to participate in an interstate clearinghouse to
3 promote safer chemicals in consumer products in cooperation
4 with other states and governmental entities. The Agency may
5 cooperate with the interstate clearinghouse to organize and
6 manage available data on chemicals, including information on
7 uses, hazards, and environmental concerns; to produce an
8 inventory of information on safer alternatives to specific uses
9 of chemicals of high concern, and on model policies and
10 programs; to provide technical assistance to business and
11 consumers related to safer chemicals; and to undertake other
12 activities in support of State programs to promote safer
13 chemicals. The Agency may provide the interstate clearinghouse
14 with product information submitted to the Agency in accordance
15 with this Act.

16 Section 45. Enforcement and implementation.

17 (a) A consumer product containing a priority chemical may
18 not be knowingly offered for final sale, use, or distribution
19 after the effective date of this Act unless the manufacturer of
20 that product is in compliance with the requirements of this
21 Act.

22 (b) A manufacturer of consumer products that are restricted
23 under this Act must notify persons that sell the manufacturer's
24 products in this State about the provisions of this Act no less
25 than 90 days prior to the effective date of the restrictions. A

1 manufacturer that produces, sells, or distributes a consumer
2 product prohibited from manufacture, sale, or distribution in
3 this Act shall recall the product and reimburse the retailer or
4 any other purchaser for the product.

5 (c) A manufacturer of consumer products in violation of
6 this Act is subject to a civil penalty not to exceed \$5,000 for
7 each violation in the case of a first offense. Manufacturers
8 who are repeat violators are subject to a civil penalty not to
9 exceed \$10,000 for each repeat offense. Penalties collected
10 under this Section shall be allocated to the Agency to help
11 cover the Agency's reasonable costs in complying with the
12 requirements of this Act.

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

18 (i) provide the Agency with a certificate attesting
19 that the product complies with the requirements of this
20 Section; or

21 (ii) notify persons who sell the manufacturer's
22 products in this State that the sale of the product is
23 prohibited and reimburse them for the product and any
24 applicable shipping and handling charges for returning the
25 product.

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.