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An Act To Provide the Department of Environmental Protection with Regulatory Flexibility Regarding the Listing of Priority Chemicals

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

Sec. 1. 5 MRSA §8060, sub-§7 is enacted to read:

7. Agenda listing required. Notwithstanding any provision of law to the contrary, a rule may not be proposed pursuant to Title 38, chapter 16-D unless the chemical affected by that proposed rule was specifically disclosed to the Legislature prior to the initiation of the rule-making process as part of a regulatory agenda.

Sec. 2. 38 MRSA §1691, sub-§7, as enacted by PL 2007, c. 643, §2, is amended to read:

7. Children's product. "Children's product" means a consumer product intended for use by children, made for, marketed for use by or marketed to children under 12 years of age, such as baby products, toys, car seats, personal care products, children's cosmetics, children's jewelry and clothing, and any consumer product containing or a consumer product designed or intended by the manufacturer to help a child with sucking or teething that contains a chemical of high concern and that when used or disposed of will likely result in a child's or a fetus's being exposed to that chemical.

Sec. 3. 38 MRSA §1691, sub-§8-A is enacted to read:

8-A. Credible scientific evidence. "Credible scientific evidence" means scientific information that results from studies that are replicable, peer-reviewed, conducted pursuant to widely accepted protocols for quality and reliability and in conformity with the regulatory standards for quality of nonclinical environmental, health and safety data on chemicals and chemical products as described by the Organisation for Economic Co-operation and Development in its publication "Good Laboratory Practice, OECD Principles and Guidance for Compliance Monitoring" published in 2006.

Sec. 4. 38 MRSA §1691, sub-§8-B is enacted to read:

8-B. De minimis level. "De minimis level" means a concentration of no more than 0.1% by weight of a finished product or 1,000 parts per million.

Sec. 5. 38 MRSA §1693, sub-§1, as enacted by PL 2007, c. 643, §2, is amended to read:

1. Criteria. By January 1, 2010, theThe department, in concurrence with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, shall publish a list of chemicals of high concern. A chemical may be included on the list only if it has been identified by an authoritative governmental entity on the basis of credible scientific evidence as being known as having one or more of the following characteristics that adversely affect human health:

A. A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor;

B. Persistent, bioaccumulative and toxic; ~~or~~ and

C. Very persistent and very bioaccumulative.

Sec. 6. 38 MRSA §1693, sub-§3 is enacted to read:

3. Process for removal. A resident of this State or any interested retailer, distributor or manufacturer may request that the department remove a chemical from the department's list of chemicals of high concern. Upon receiving a request, the department shall decide within 120 days whether a chemical will be removed from the list of chemicals of high concern and notify the party making the request of the department's decision. Upon review of credible scientific evidence that a chemical does not meet the criteria in subsection 1, the chemical must be removed from the list of chemicals of high concern. Chemicals that do meet the criteria in subsection 1 may be removed from the list of chemicals of high concern based upon credible scientific evidence made available to the department that children are not exposed to the substance from a children's product.

The commissioner shall adopt rules to implement the provisions of this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 38 MRSA §1694, sub-§1, as enacted by PL 2007, c. 643, §2, is amended to read:

1. Designation. The commissioner may designate a chemical of high concern as a priority chemical if the commissioner finds, in concurrence with the Department of Health and Human Services, Maine Center for Disease Control and Prevention that there is exposure to the chemical from a children's product and the chemical meets 2 or more of the following criteria:

A. The chemical has been found through biomonitoring studies pursuant to protocols established by the United States Department of Health and Human Services, Centers for Disease Control and Prevention to be present in human blood, including umbilical cord blood, human breast milk, human urine or other human bodily tissues or fluids;

B. The chemical has been found through ~~sampling and analysis~~ credible scientific evidence to be present in household dust, indoor air, drinking water or elsewhere in the home environment ~~other places where children's products are used and children may be exposed to the chemical;~~

C. The ~~chemical has been found through monitoring to be present in fish, wildlife or the natural environment;~~

D. The chemical is present in a consumer product used or present in the home ~~children's product in amounts greater than the de minimis level and children are or may be exposed to the chemical;~~

E. The ~~chemical has been identified as a high production volume chemical by the federal Environmental Protection Agency; or~~

F. The sale or use of the ~~chemical or a children's product containing the chemical has been banned in~~ by another state within the United States: and the Legislature in a formal vote adopts a similar ban in this State on the sale or use of the children's product containing the chemical; and

G. The chemical is present in a children's product in amounts greater than the de minimis level and has been determined by an authoritative government entity to cause harm when used as intended based on credible scientific evidence including relevant assessments of the likelihood of exposure.

The commissioner shall designate at least 2 priority chemicals by January 1, 2011.

Sec. 8. 38 MRSA §1694, sub-§2, as enacted by PL 2007, c. 643, §2, is amended to read:

2. Updates. The commissioner shall review the list of chemicals of high concern at least every 3 years and may designate additional priority chemicals if the commissioner finds that the chemicals meet one of the criteria listed in subsection 1. The commissioner may also revoke the priority chemical designation for any chemical that no longer meets any of the criteria listed in subsection 1 or for other reasons justified by credible scientific evidence.

Sec. 9. 38 MRSA §1694, last ¶, as enacted by PL 2007, c. 643, §2, is amended to read:

The commissioner shall adopt rules to implement the provisions of this section. Rules adopted pursuant to this section are ~~routine technical~~major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 10. 38 MRSA §1695, sub-§1, as enacted by PL 2007, c. 643, §2, is amended to read:

1. Reporting of chemical use. Not later than 180 days after a priority chemical is identified pursuant to section 1694, a person who is a manufacturer or distributor of a children's product for sale in the State that contains a priority chemical above the de minimis level shall notify the department in writing 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 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.

Sec. 11. 38 MRSA §1696, sub-§1, as enacted by PL 2007, c. 643, §2, is amended to read:

1. Authority. The board may adopt rules prohibiting the manufacture, sale or distribution in the State of a children's product containing a priority chemical above the de minimis level if the board finds, after consideration of information filed under section 1695 and other relevant information submitted to or obtained by the board, that:

A. Distribution of the children's product directly ~~or indirectly~~ exposes children and vulnerable populations to the priority chemical and will result in harm to those children or vulnerable populations; and

B. ~~One~~As determined by a comparative assessment of hazards, exposures, risks, costs and benefits, one or more safer alternatives to the priority chemical are available at a comparable cost.

~~If there are several available safer alternatives to a priority chemical, the board may prohibit the sale of children's products that do not contain the safer alternative that is least toxic to human health or least harmful to the environment.~~

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

Sec. 12. 38 MRSA §1696, sub-§2, as enacted by PL 2007, c. 643, §2, is repealed.

Sec. 13. 38 MRSA §1697, sub-§9 is enacted to read:

9. Regulatory duplication. The requirements of this chapter do not apply to a chemical or children's product that the department determines is regulated by a federal or state regulatory program, other than the department, or international trade agreement ratified by the United States Senate that addresses the same public health and environmental threats and exposure pathways that would otherwise be the basis for the chemical's being listed as a priority chemical or the basis for a children's product's being designated for disclosure or prohibition under this chapter. The department may reevaluate a determination previously made pursuant to this subsection and rescind that determination if the department finds that the facts or assumptions upon which the determination was based are no longer valid.

Sec. 14. 38 MRSA §1699-A, sub-§2, as enacted by PL 2007, c. 643, §2, is amended to read:

2. Certificate of compliance. If there are grounds to suspect that a children's product is being offered for sale in violation of this chapter, the department may request the manufacturer or distributor of the product to provide a certificate of compliance with the provisions of this chapter. Within ~~45~~ days of receipt of a request under this subsection, the manufacturer or distributor shall:

- A. Provide the department with the certificate attesting that the children's product does not contain the priority chemical; or
- B. Notify persons who sell the product in this State that the sale of the children's product is prohibited and provide the department with a list of the names and addresses of those notified.

SUMMARY

This bill makes a number of changes to the priority chemical program, including:

1. Amending the Maine Administrative Procedure Act to require that the Legislature receive notification through the regulatory agenda process of any proposals to regulate chemicals pursuant to the Maine Revised Statutes, Title 38, chapter 16-D before rulemaking may be initiated;
2. Providing the Department of Environmental Protection with a process by which it can respond to developments in science to remove the designation of and de-list a chemical that is ultimately found to not pose a risk to human health;

3. Designating rules adopted by the Department of Environmental Protection that designate chemicals of high concern as priority chemicals to be major substantive rules;
4. Establishing de minimus levels of chemical concentrations in children's products;
5. Establishing clear exposure criteria for designation of priority chemicals;
6. Removing the presumptions regarding safer alternatives to a priority chemical;
7. Reducing regulatory duplication with other state or federal programs; and
8. Increasing from 10 to 45 days the amount of time a manufacturer or distributor of a product offered for sale in violation of the priority chemical requirements has to provide evidence that the product is not in violation or notify persons who sell the product.