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An Act To Promote the Use of Safer Chemicals in Consumer Products

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

Sec. 1. 38 MRSA c. 16-D is enacted to read:

CHAPTER 16-D

CHEMICAL SAFETY IN CONSUMER PRODUCTS

§ 1691. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Alternative. "Alternative" means a chemical, material, technology or method of equivalent function that can be substituted for the use of a priority chemical.

2. Chemical of high concern. "Chemical of high concern" means a substance included on published government lists of chemicals that are recognized as:

- A. Carcinogens, reproductive or developmental toxicants or endocrine disruptors;
- B. Persistent, bioaccumulative and toxic; or
- C. Very persistent and very bioaccumulative.

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

4. Manufacturer. "Manufacturer" means a person who manufactures a product or whose brand or label appears on the product or product packaging; if that person does not have a presence in the United States, the importer of the product also is a "manufacturer."

5. Novelty. "Novelty" means a product intended mainly for personal or household enjoyment or adornment. "Novelty" includes, but is not limited to, items intended for use in practical jokes, figurines, toys, games, cards, ornaments, candles, jewelry and decorations.

6. Priority chemical. "Priority chemical" means a substance designated as a priority chemical by the board under section 1693.

7. Safer alternative. "Safer alternative" means an alternative that, if adopted to substitute for the use of a priority chemical, would reduce the potential for harm to human health or the environment.

§ 1692. Declaration of policy

It is the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to reduce exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives when feasible. By enactment of this chapter, the Legislature confers upon the department the regulatory power to collect information on chemical use and prohibit the sale of products containing chemicals of high concern when safer alternatives are available. The policy represented in this chapter is in furtherance of the toxics use reduction policies under chapter 26. Nothing in chapter 26 may be interpreted to contravene action taken by the department under this chapter.

§ 1693. Identification of priority chemicals

The board may adopt rules designating a chemical of high concern as a priority chemical if the board has reason to suspect, based on information in the public domain, that the chemical is being used in the manufacture of toys, clothing, child care products, cosmetics, furniture, electronic devices or any other consumer product intended for use in the home and the board determines, based on monitoring data, that significant amounts of the chemical are present in humans or the environment.

Prior to initiating rulemaking under this section, the board shall conduct a search of public sources of information on the chemical it proposes to designate as a priority chemical. Public sources include public and electronically searchable databases maintained by the Federal Government, state governments and intergovernmental organizations.

If rulemaking to designate a priority chemical under this section is initiated by petition under Title 5, section 8055, the commissioner shall consider the information submitted in support of the petition but is not obligated to conduct a search of other sources of information on the chemical. The petitioner bears the burden of demonstrating that the chemical meets the criteria for designation as a priority chemical.

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§ 1694. Collection of information on products containing priority chemicals

1. Disclosure of chemical use required. No later than 120 days after the effective date of a rule adopted pursuant to section 1693, and every 3 years thereafter, a manufacturer or distributor of a product in the State that contains the priority chemical identified in that rule shall file a notice with the department unless this requirement is waived by the board or the commissioner as provided under subsection 4. The notice must identify the product, the approximate number of units distributed in the State, the estimated amount of the priority chemical in each unit and the purpose for including the chemical in the product. The department shall provide a form for filing the notice and a means of filing the notice electronically.

2. Supplemental information. The manufacturer or distributor of a product that contains a priority chemical shall provide the following information to the department if requested by the commissioner:

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

B. Information on the extent to which the priority 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 product in lieu of identified alternatives.

3. Failure to provide notice. A product containing a priority chemical may not be sold, offered for sale or distributed for sale in this State if the information required under subsection 1 has not been submitted to the department within 120 days after the effective date of the rule designating the chemical as a priority chemical or has not been obtained from other sources. The commissioner shall exempt a product from this prohibition if, in the commissioner's judgment, the lack of availability of the product could pose an unreasonable risk to public health, safety or welfare.

If there are grounds to suspect that a product is being sold, offered for sale or distributed in violation of this subsection, the commissioner may request the manufacturer or distributor to provide a certificate of compliance. Within 10 days of receiving the request, the manufacturer or distributor shall:

A. Provide the department with a certificate attesting that the product does not contain the priority chemical;

B. File the notice required under subsection 1; or

C. Stop the sale of the product in the State by:

(1) Notifying retailers and wholesalers in the State to whom the product has been distributed that the sale of the product is prohibited by law;

(2) Repossessing unsold units of the product;

(3) Compensating retailers and wholesalers for the full price paid for repossessed units; and

(4) Providing the department with a list of the names and addresses of the retailers and wholesalers that were contacted.

4. Waiver of distributor or manufacturer disclosure. The board may waive the notice requirement of subsection 1 in whole or part by including a statement to that effect in the rule designating the chemical as a priority chemical. The commissioner also may waive the notice requirement of subsection 1 in whole or part upon determining that the information is already available or otherwise not needed for the purposes of this chapter.

5. Trade secrets. If a manufacturer believes that information required to be submitted to the department under this section involves the release of a trade secret, the manufacturer shall provide the information to the commissioner and may designate the portion of the information that it believes is a trade secret. The designation must be clearly indicated on each page or other portion of information. The commissioner shall segregate the designated information from public records of the department in the same manner as required under section 1310-B and may release the information to the public only as provided under that section.

§ 1695. Authority to restrict the sale of products containing a priority chemical

1. Authority. The board may adopt rules prohibiting the manufacture, sale or distribution in the State of a product containing a priority chemical if the board finds, after consideration of information filed under section 1694 and other relevant information submitted to or obtained by the board, that:

- A. Distribution of the product directly or indirectly exposes humans to the priority chemical; and
- B. One or more safer alternatives to the priority chemical are available.

The rule 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.

2. Alternatives assessment; presumptions. For the purpose of determining whether a safer alternative is available under subsection 1, paragraph B, the board may, 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 high concern;
- B. Presume that a safer alternative is available if the product containing the priority chemical is an item of apparel or a novelty; and
- C. Presume that an alternative is available if the alternative is sold in the United States.

3. Implementation. No later than 180 days prior to the effective date of a prohibition adopted under subsection 1, the manufacturer or distributor of a product that contains the priority chemical at the time of adoption shall file a compliance plan with the commissioner or seek an exemption under subsection 4. A compliance plan must:

- A. Identify the product that contains the priority chemical;
- B. Specify whether compliance will be achieved by removing the product from the state market or by substituting a safer alternative; and

C. If compliance is achieved by substitution of a safer alternative, identify the safer alternative and the timetable for substitution.

4. Exemption. The manufacturer or distributor of a priority chemical subject to a prohibition adopted under subsection 1 may apply to the commissioner for an exemption for one or more particular uses of the priority chemical. The exemption application must, at a minimum:

A. Identify the particular product uses for which the exemption is sought;

B. Identify the alternatives considered;

C. Explain the basis for concluding that substitution of the alternatives is not technically or economically feasible; and

D. Set forth the steps that have and will be taken to minimize the use of the priority chemical.

The commissioner may grant an exemption with or without conditions upon finding that there is a need for the product in which the priority chemical is used and there is no technically or economically feasible alternative to the use of the priority chemical in the product. An exemption may be granted for a term not to exceed 5 years and may be renewed for one or more additional 5-year terms upon written application demonstrating that a technically or economically feasible alternative remains unavailable. The commissioner shall deny or grant an exemption request within 60 days after receipt of a complete application.

§ 1696. Applicability

This chapter does not apply to a pesticide as defined in Title 7, section 604, subsection 25 or to a drug as defined in the federal Food, Drug and Cosmetic Act, 20 United States Code, Section 321.

SUMMARY

This bill requires a manufacturer or a distributor of a product that contains a toxic, carcinogenic or very bioaccumulative chemical to disclose information on its chemical use if the Board of Environmental Protection designates the chemical as a priority chemical. Upon review of the information, the board then may adopt rules banning the sale of a product that contains the chemical.