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Legislative Document

No. 948

H.P. 651

House of Representatives, March 17, 2015

**An Act To Harmonize Maine's Laws Governing Toxic Chemicals in
Children's Products with Those of Other States**

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GIDEON of Freeport.
Cosponsored by Senator BAKER of Sagadahoc and
Representatives: DEVIN of Newcastle, DUCHESNE of Hudson, MAREAN of Hollis,
MORRISON of South Portland, TEPLER of Topsham, WHITE of Washburn, Senators:
DUTREMBLE of York, GRATWICK of Penobscot.

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

2 **Sec. 1. 38 MRSA §1695**, as amended by PL 2013, c. 232, §1, is further amended
3 to read:

4 **§1695. Disclosure of information on chemicals of high concern and priority**
5 **chemicals**

6 **1. Reporting of chemical use.** A person who is a manufacturer or distributor of a
7 children's product for sale in the State that contains a ~~priority chemical, as identified~~
8 ~~pursuant to section 1694,~~ chemical of high concern in an amount greater than a de
9 minimis level shall notify the department in writing on an annual basis in accordance with
10 rules adopted by the department, unless waived by the commissioner pursuant to this
11 section or exempt from this chapter pursuant to section 1697. ~~This written notice must be~~
12 ~~made within 180 days after a priority chemical is identified. If the sale of the children's~~
13 ~~product does not commence until after the 180 day reporting period ends, this written~~
14 ~~notice must be made within 30 days of sale of the children's product in the State.~~ This
15 written notice must identify the children's product, the number of units sold or distributed
16 for sale in the State or nationally, the ~~priority~~ chemical or chemicals of high concern
17 contained in the children's product, the amount of such chemicals in each unit of
18 children's product and the intended purpose of the chemicals in the children's product.

19 Not later than January 1, 2016, the department shall adopt rules to implement this
20 subsection. The rules adopted pursuant to this subsection:

21 A. May establish tiers for submitting the required notice that take into account the
22 size of the manufacturer and the exposure potential of the product, as long as the
23 rules require that the initial notices be submitted within 180 days and all notices be
24 submitted within 5 years of the effective date of the rule; and

25 B. Must require notification for each category of products subject to reporting, unless
26 the commissioner finds that a lower level of reporting is justified on the basis of
27 credible scientific evidence and consistent with section 1692, including the goal of
28 reducing exposure of vulnerable populations to chemicals of high concern.

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

31 **2. Supplemental information.** The manufacturer or distributor of a children's
32 product that contains a priority chemical shall provide the following additional
33 information if requested by the department:

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

38 B. Information on the extent to which the chemical is present in the environment or
39 human body; and

1 C. An assessment of the availability, cost, feasibility and performance, including
2 potential for harm to human health and the environment, of alternatives to the priority
3 chemical and the reason the priority chemical is used in the manufacture of the
4 children's product in lieu of identified alternatives. If an assessment acceptable to the
5 department is not timely submitted, the department may assess a fee on the
6 manufacturer or distributor to cover the costs to prepare an independent report on the
7 availability of safer alternatives by a contractor of the department's choice.

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

11 **3. Waiver of reporting; fee; extension of deadline.** The commissioner may waive
12 all or part of the notification requirement under subsection 1 for one or more specified
13 uses of a priority chemical if the commissioner determines that substantially equivalent
14 information is already publicly available, that the information is not needed for the
15 purposes of this chapter or that the specified use or uses are minor in volume. The
16 department may assess a fee payable by the manufacturer or distributor upon submission
17 of the notification to cover the department's reasonable costs in managing the information
18 collected. The department may extend the deadline for submission of the information
19 required under subsection 1 for one or more specified uses of a priority chemical in a
20 children's product if it determines that more time is needed by the manufacturer or
21 distributor to comply with the submission requirement or if the information is not needed
22 at that time.

23 **4. Rulemaking to determine fees.** If the department assesses a fee pursuant to
24 subsection 2, paragraph C or subsection 3, the department shall determine the appropriate
25 fee through major substantive rulemaking, as defined in Title 5, chapter 375, subchapter
26 2-A.

27 **Sec. 2. 38 MRSA §1695-A** is enacted to read:

28 **§1695-A. Identification of priority products**

29 **1. Criteria.** The commissioner may designate a consumer product as a priority
30 product if the commissioner finds:

31 **A. The consumer product is a children's product; and**

32 **B. The consumer product contains a chemical of high concern as identified pursuant**
33 **to section 1693-A or a priority chemical as designated pursuant to section 1694.**

34 **2. Designation.** Not later than January 1, 2017, the commissioner shall designate
35 consumer products within 3 categories of consumer products as priority products and
36 shall identify the chemicals that are the basis for each designation. A chemical of high
37 concern identified as the basis for designation of a priority product must be considered a
38 priority chemical as applied to that product category for the purposes of this chapter.

39 **3. Assessment.** Not later than 180 days after designation of a priority product
40 pursuant to this section, a manufacturer or distributor of a priority product shall submit to
41 the department an assessment of the availability of safer alternatives to any priority

1 chemical present in that product, including consideration of cost and performance, in
2 accordance with the requirements of section 1695, subsection 2, paragraph C.

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

6 **Sec. 3. Phthalates; rules.** Not later than January 1, 2016, the Department of
7 Environmental Protection shall adopt a rule pursuant to the Maine Revised Statutes, Title
8 38, section 1694 designating intentionally added di(2-ethylhexyl) phthalate, dibutyl
9 phthalate, benzyl butyl phthalate and diethyl phthalate as priority chemicals and requiring
10 manufacturers and distributors of children's products containing those phthalates to report
11 to the department on the use of those phthalates in children's products, including any
12 children's product containing one of those phthalates to which a pregnant woman may be
13 exposed.

14 SUMMARY

15 This bill amends the laws governing toxic chemicals in children's products in order to
16 ensure consistency with similar laws enacted in other states.

17 The bill requires annual reporting of the use of chemicals of high concern in
18 children's products sold in Maine, phased in over a 5-year period, with implementing
19 rules adopted by January 1, 2016.

20 The bill requires the Commissioner of Environmental Protection to designate 3
21 priority products that contain a chemical of high concern or a priority chemical by
22 January 1, 2017. Such a designation triggers an assessment of the availability of safer
23 alternatives by the manufacturer or distributor of a priority product, as authorized by
24 existing law.

25 The bill requires the Department of Environmental Protection to adopt, not later than
26 January 1, 2016, a rule designating 4 phthalates as priority chemicals and requiring
27 manufacturers and distributors of children's products containing those phthalates to report
28 to the department.