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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO HEALTH AND SAFETY -- TOXIC CHEMICALS IN CHILDREN'S PRODUCTS

Introduced By: Representatives Rice, McNamara, Segal, Walsh, and Handy

Date Introduced: January 10, 2008

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "Health and Safety" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 24.11

4 TOXIC CHEMICALS IN CHILDREN'S PRODUCTS

5 **23-24.11-1. Definitions.** – (a) As used in this chapter, unless the context otherwise
6 indicates, the following terms have the following meanings:

7 (1) "Alternative" means a substitute process, product, materials, chemical, strategy or
8 combination of these that serves a functionally equivalent purpose to a chemical in a children's
9 product.

10 (2) "Chemical" means a substance with a distinct molecular composition or a group of
11 structurally related substances and includes the breakdown products of the substance or
12 substances that form through decomposition, degradation or metabolism.

13 (3) "Chemical of high concern" means a chemical identified by an authoritative
14 governmental entity on the basis of credible scientific evidence as being known to:

15 (i) Harm the normal development of a fetus or child or cause other developmental
16 toxicity;

17 (ii) Cause cancer, genetic damage or reproductive harm;

18 (iii) Disrupt the endocrine or hormone system;

- 1 (iv) Damage the nervous system, immune system or organs or cause other systemic
2 toxicity;
- 3 (v) Be persistent, bioaccumulative and toxic; or
4 (vi) Be very persistent and very bioaccumulative.
- 5 (4) “Chemical of low concern” means a chemical for which adequate toxicity and
6 environmental data are available to determine that it is not a chemical of high concern, a chemical
7 of moderate concern or a chemical of unknown concern.
- 8 (5) “Chemical of moderate concern” means a chemical identified by an authoritative
9 governmental entity on the basis of credible scientific evidence as being suspected of causing an
10 adverse health or environmental effect listed in subsection 3.
- 11 (6) “Chemical of unknown concern” means a chemical for which insufficient data is
12 available to classify it as a chemical of high concern, a chemical of moderate concern or a
13 chemical of low concern.
- 14 (7) “Children’s product” means a consumer product intended for use by children, such as
15 baby products, toys, car seats, personal care products and clothing, and any consumer product
16 containing a chemical of high concern that when used or disposed of may result in a child or a
17 fetus being exposed to that chemical.
- 18 (8) “Consumer product” means any item sold for residential or commercial use, including
19 any component parts and packaging. “Consumer product” does not include a drug or biologic
20 regulated by the federal Food and Drug Administration, a food or beverage or an additive to a
21 food or beverage, a tobacco product or a pesticide regulated by the Federal Environmental
22 Protection Agency, except that “consumer product” may include a container or packaging in
23 which such an item is sold.
- 24 (9) “Distributor” means a person who sells consumer products to retail establishments on
25 a wholesale basis.
- 26 (10) “Manufacturer” means any person who manufactured a final consumer product or
27 whose brand name is affixed to the consumer product. In the case of a consumer product that was
28 imported into the United States, “manufacturer” includes the importer or domestic distributor of
29 the consumer product if the person who manufactured or assembled the consumer product or
30 whose brand name is affixed to the consumer product does not have a presence in the United
31 States.
- 32 (11) “Priority chemical” means a chemical identified as such by the department pursuant
33 to section 23.24.11-2.
- 34 (12) “Safer alternative” means an alternative that, when compared to a priority chemical

1 that it could replace, would reduce the potential for harm to human health or the environment or
2 that has not been shown to pose the same or greater potential for harm to human health or the
3 environment as that priority chemical.

4 (13) “Department” means the Rhode Island department of health.

5 **23-24.11-2. Identification of priority chemicals.** – Process and criteria. (a) Not later
6 than January 1, 2011, the department shall identify at least one hundred (100) chemicals of high
7 concern as priority chemicals after consideration of the potential for exposure of a child or fetus
8 to each chemical as determined on the basis of credible scientific evidence in accordance with
9 one or more of the following criteria:

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

12 (2) The chemical has been found through sampling and analysis to be present in
13 household dust, indoor air, drinking water or elsewhere in the home environment;

14 (3) The chemical has been added to or is present in a consumer product used or present in
15 the home; or

16 (4) The chemical has been identified as a high production volume chemical by the
17 Federal Environmental Protection Agency.

18 (b) Updates. The department shall update the list of priority chemicals in this section at
19 least every three (3) years by adding additional chemicals of high concern after consideration of
20 the criteria listed in this section.

21 **23-24.11-3. Disclosure of information on priority chemicals.** – (a) Reporting of
22 chemical use. Not later than one hundred eighty (180) days after a priority chemical is identified
23 pursuant to section 23-24.11-2, any person who is a manufacturer or distributor of a children’s
24 product for sale in the state that contains a priority chemical shall notify the department in writing
25 unless waived by the department pursuant to this section or exempt pursuant to section 23-24.11-
26 5. This written notice must identify the product, the number of units sold or distributed for sale in
27 the state or nationally, the priority chemical or chemicals contained in the product, the amount of
28 such chemicals in each unit of product and the intended purpose of the chemicals in the product.

29 (b) Waiver of reporting; fee; extension of deadline. The department may waive the
30 notification requirement under subsection(2) for one or more specified uses of a priority chemical
31 if the department determines that substantially equivalent information is already publicly
32 available or that the specified use or uses are minor in volume or not likely to result in exposure
33 of a child or fetus to the chemical. The department may assess a fee payable by the manufacturer
34 or distributor upon submission of the notification to cover the department’s reasonable costs in

1 managing the information collected. The department may extend the deadline for submission of
2 the required information for one or more specified uses of a priority chemical in a children's
3 product if it determines that more time is needed by the manufacturer or distributor to comply or
4 if the information will not be needed until a later time in accordance with the schedule adopted
5 pursuant to section 23.24.11-4.

6 **23-24.11-4. Safer alternatives to priority chemicals.** – (a) Determination process. Not
7 later than January 1, 2012, the department shall make a determination as to the availability of
8 safer alternatives for one or more specific uses of at least one priority chemical in a children's
9 product. Not later than January 1, 2013, the department shall adopt a schedule for completion of
10 the review and determination of the availability of safer alternatives for the major uses in
11 children's products of all priority chemicals identified pursuant to section 23.24.11-2. This
12 schedule must include goals and a timeline established at the discretion of the department to
13 complete the review and determination and must be updated periodically to account for priority
14 chemicals identified pursuant to section 23-24.11-2.

15 (b) Safer alternative required. The department shall require a manufacturer or distributor
16 to replace a priority chemical in a children's product sold in this state with a safer alternative
17 whenever the department determines that a safer alternative is available for the specified use of
18 the priority chemical in that product. Upon making such a determination, the department shall
19 specify a reasonably expeditious timeline, not to exceed three (3) years, by which date the priority
20 chemical in the children's product sold in this state must be replaced with a safer alternative. The
21 manufacturer or distributor subject to a requirement under this section must comply with the
22 requirement or be subject to the prohibition specified in subsection 23-24.11-8(2). An alternative
23 to a priority chemical is presumed to be a safer alternative if it is not a chemical of high concern.

24 (c) Compliance plan. Not later than one hundred eight (180) days prior to the date
25 specified by the department under subsection 23-24.11-8(2) to replace a priority chemical with a
26 safer alternative, the manufacturer or distributor of a children's product containing that chemical
27 shall submit a compliance plan acceptable to the department. The compliance plan must identify
28 the means of compliance, the safer alternative that will replace the priority chemical and a means
29 to educate and assist retailers to ensure timely compliance.

30 (d) Responsibility. A manufacturer or distributor of a children's product containing a
31 priority chemical shall notify persons that sell the product of the requirements of this chapter.

32 (e) Authority granted. The department has the authority to take actions under this
33 subsection:

1 (1) The department has the authority to require that the safer alternative required under
2 this section to replace a priority chemical in a children’s product be the least toxic to human
3 health or least harmful to the environment of several available safer alternatives to the priority
4 chemical in question.

5 (2) The department has the authority to require that a manufacturer or distributor of a
6 children’s product containing a priority chemical prepare and submit a report acceptable to the
7 department that assesses the availability of safer alternatives to that chemical as long as
8 reasonable time is provided to complete the report. If a report acceptable to the department is not
9 timely submitted, the department may assess a fee on the manufacturer or distributor to cover the
10 costs to prepare an independent report on the availability of safer alternatives by a contractor of
11 the department’s choice.

12 (f) Petitions. Any person may petition the department in writing to make a determination
13 as to whether a safer alternative is available for a specified use of a priority chemical in a
14 children’s product. The department shall make its determination within one hundred eight (180)
15 days after the department concludes that the petitioner has submitted enough information to
16 establish a reasonable basis for informing the determination of the department. The petitioner
17 bears the burden of proof in establishing the availability of a safer alternative.

18 **23-24.11-5. Exemptions.** – (a) Small quantities. The disclosure requirements of section
19 23-24.11-3 do not apply to a manufacturer that produces and sells its product at retail in this state
20 in small quantities.

21 (b) Industry. The requirements of this chapter do not apply to uses of priority chemicals
22 for industrial or manufacturing purposes.

23 (c) Vehicles. The requirements of this chapter do not apply to motor vehicles or their
24 component parts, except that the use of priority chemicals in detachable car seats is not exempt.

25 (d) Combustion. The requirements of this chapter do not apply to priority chemicals
26 generated solely as combustion by-products or that are present in combustible fuels.

27 (e) Retailers. A retailer is exempt from the requirements of this chapter, unless that
28 retailer knowingly sells a consumer product containing a priority chemical after the effective date
29 of its prohibition for which that retailer has received prior notification from a manufacturer,
30 distributor or this state.

31 (f) Exemption process. A manufacturer or distributor may apply to the department for an
32 exemption for one or more specific uses of a priority chemical subject to a requirement of
33 replacement with a safer alternative adopted under section 23-24.11-4. The written application
34 for exemption must identify the specific consumer product use or uses for which the exemption is

1 sought. The application must document the alternatives evaluated and the basis for concluding
2 that alternatives are not feasible.

3 The department may grant an exemption for a term not to exceed five (5) years upon finding that
4 there is no feasible alternative to the use or uses of a priority chemical in a consumer product.

5 **23-24.11-6. Interstate clearinghouse to promote safer chemicals.** – The department is
6 authorized to participate in an interstate clearinghouse to promote safer chemicals in consumer
7 products in cooperation with other states and governmental entities. The department may
8 cooperate with the interstate clearinghouse to classify existing chemicals in commerce into one of
9 four (4) categories: chemicals of high concern, chemicals of moderate concern, chemicals of
10 unknown concern and chemicals of low concern; to organize and manage available data on
11 chemicals, including information on uses, hazards and environmental concerns; to produce and
12 inventory information on safer alternatives to specific uses of chemicals of concern and on model
13 policies and programs; to provide technical assistance to business and consumers related to safer
14 chemicals; and to undertake other activities in support of state programs to promote safer
15 chemicals.

16 **23-24.11-7. Education and assistance.** – The department shall develop a program to
17 educate and assist consumers and retailers in identifying children’s products that may contain
18 priority chemicals.

19 **23-24.11-8. Enforcement and implementation.** – (1) General. If a manufacturer or
20 distributor fails to comply with a requirement of this chapter within ninety (90) days of the
21 effective date of the requirement, unless otherwise provided in this chapter, the department may
22 take enforcement action and may request the attorney general to initiate immediate injunction
23 proceedings to prevent the sale of the product.

24 (2) Restriction on sale. A manufacturer or distributor who fails to comply with the safer
25 alternatives requirements of section 23-24.11-1 by the effective date specified by the department
26 is prohibited from selling or distributing for sale in this state a children’s product containing the
27 priority chemical subject to the requirement.

28 (3) Certificate of compliance. If there are grounds to suspect that a consumer product is
29 being offered for sale in violation of this chapter, the department may request the manufacturer
30 or distributor of the product to provide a certificate of compliance. Within ten (10) days of
31 receipt of a request, the manufacturer or distributor shall: (a) provide the department with the
32 certificate attesting that the consumer product complies with the requirements of this chapter; or
33 (b) Notify persons who sell the consumer product in this state that the sale of the product is
34 prohibited and provide the department with a list of the names and addresses of those notified.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- TOXIC CHEMICALS IN CHILDREN'S
PRODUCTS

1 This act would require manufacturers of children's products that contain chemicals of
2 high concern to disclose information to the department of health on their chemical use if the
3 department designates the chemical as a priority chemical based on potential exposure of a child
4 or fetus to that chemical. The act would further authorize the department to require replacement
5 of a priority chemical in children's products with a safer alternative whenever it determines that a
6 safer alternative is available for a specified use. The act would exempt use of priority chemicals
7 for industrial or manufacturing purposes, in motor vehicles and components, as fuels or that are
8 generated as combustion byproducts.

9 This act would take effect upon passage.

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