

SUPPORT

LD 1185 An Act To Amend the Process for Prioritizing Toxic Chemicals in Children's Products

Sponsor: Senator GOODALL of Sagadahoc

Co-Sponsors: Representatives DOW of Waldoboro, DUCHESNE of Hudson, FOSSEL of Alna, INNES of Yarmouth, KNAPP of Gorham, STRANG BURGESS of Cumberland, and Senator BARTLETT of Cumberland

Summary: The bill amends the Kid-Safe Products Law to establish a science-based process to create a candidate list of between 10 and 50 chemicals from which priority chemicals can be selected for regulatory scrutiny. The candidate list of chemicals would be based on similar listings of other authoritative agencies or demonstrated potential to expose children to that chemical from its use in consumer products. Fundamentally, this bill would narrow the scope of chemicals for consideration as priority chemicals, and require that at least 2 additional priority chemicals be designated by January 1, 2013.

Explanation: The Kid-Safe Products Law works to protect Maine children from toxic chemicals, by having the state's experts on chemical toxicity review the science and bring proposals to the legislature to restrict the most hazardous chemicals that threaten children's health in consumer products.

The Maine Chamber of Commerce, in-conjunction with many of the large chemical and consumer product trade associations have raised concerns about the implementation of the law, specifically that the List of Chemicals of High Concern is too broad and lengthy, and that industry does not know which chemicals could be considered next.

There has been some misunderstanding in the Legislature and from parts of Maine's business community about the List of Chemicals of High Concern, and how the law works in general – (*For detailed flow chart on how the law works, see below*). The statutory language directed Maine CDC and DEP to create a "list of lists" of all the carcinogens (*cancer-causing*), developmental and reproductive toxicants, persistent-bioaccumulative-toxic chemicals (*chemicals that are long-lived in the environment, build up in the food chain and are toxic*), and very persistent, very bioaccumulative chemicals that have been identified by other credible government agencies in the US, the European Union and by international bodies. Additional guidance was made specific by the 2008 Committee on Natural Resources. The List of Chemicals of High Concern was intended to reduce the universe of chemicals considered from 80,000+ in the US chemicals inventory to a more manageable number based upon the science demonstrating hazard.

CDC and DEP published their initial list in June of 2009. This list contained 1,750 chemicals based upon review and compilation of the other lists outlined in statute. There is no regulatory authority granted to DEP with the List of Chemicals of High Concern. It is merely a "list of lists," and an interim step in the process. It is the next steps in the process that are most important – that of the state's experts on chemical toxicity bringing proposals to designate priority chemicals for regulatory scrutiny to the Board of Environmental Protection (BEP), with proposed restrictions on the use of priority chemicals needing to be approved by BEP and then the Legislature.

This bill seeks to address and reduce concerns from the business community by narrowing the scope of chemicals considered for regulatory scrutiny to between 10 and 50 chemicals based upon similar listings of other authoritative agencies or demonstrated potential to expose children to that chemical from its use in consumer products. NRCM believes that the law is working well as it is written, but in order to decrease perceived opposition to the law, we are supportive of this compromise position.

NRCM supports LD 1185.

SUPPORT

How the Kid-Safe Products Law Works:

Step 1: State's Chemical Experts Deliberate Based on Statutory and Scientific Criteria

The state's experts on chemical toxicity – the State Toxicologist's Office, chemical assessment staff at the Center for Disease Control (CDC) and program staff at the Maine Department of Environmental Protection (DEP) – decide which chemicals should be scrutinized based on toxicity criteria prescribed in the law.

Step 2: State's Chemical Experts May Bring Proposal for "Priority Chemical"

DEP may choose to bring a proposal to designate a "Priority Chemical" from the "List of Chemicals of High Concern", which is a "list of lists" of toxic chemicals – carcinogens, PBTs, or highly persistent chemicals that build up in the food chain - that have been identified by other government jurisdictions. This list was prescribed in statute.

Step 3: CDC and DEP Directors Must Sign Off and Scientific Research is Compiled

The CDC director and the DEP Commissioner must agree on this proposal to designate a Priority Chemical. They then direct their staff to create a "basis statement" laying out the scientific evidence and rationale for designating the chemical as a priority through rulemaking.

Step 4: DEP Commissioner brings Priority Chemical Proposal and Scientific Basis Statement to Board of Environmental Protection

The DEP Commissioner then brings the basis statement and rule to designate the toxic chemical as a priority - along with a separate "state-of-the science" letter from the Center for Disease Control - to the Board of Environmental Protection (BEP).

Step 5: BEP Conducts Public Input Process, Deliberates, and Votes to Approve or Reject Priority Chemical Designation

The BEP schedules and holds public hearings, collects public comment, deliberates and votes to either approve or reject the proposal for designation based upon the scientific evidence presented.

Step 6: If BEP Approves the Priority Chemical, DEP is Given Discretionary Authority to Collect Data on Use from Manufacturers

If BEP decides to designate the toxic chemical as a Priority Chemical, then DEP has discretionary authority to collect data from manufacturers that use the chemical on the following: the identity of the product, the number of units sold or distributed for sale in the State or nationally, the amount and the intended purpose of the chemical and any data that they may have on toxicity or alternatives. DEP may also be granted the authority to conduct alternatives assessments to find cost-effective, available safer alternatives to the toxic, Priority Chemical.

Step 7: If a Restriction on the Use of a Priority Chemical is Also Proposed, BEP Must Vote to Approve it, and the Rule is Sent to the Legislature.

Step 8: All Product Restrictions of Priority Chemicals Must Be Approved by the Legislature

If DEP has proposed any restrictions on the use of the Priority Chemical, the Legislature must approve those restrictions. DEP can only propose restrictions if: a) Children are exposed to a priority chemical of high concern from that product and b) Safer alternatives are demonstrated to be available, effective, and affordable.