

Maine's Kid-Safe Products Act



There's no place for toxic chemicals in consumer products.

In April 2008, Governor John Baldacci signed into law LD 2048, *An Act To Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products*. The bill requires Maine to adopt a list of Chemicals of High Concern already proven to be hazardous and name Priority Chemicals for immediate action, requires manufacturers to disclose use of Priority Chemicals in their products, and authorizes the state to require use of safer alternative chemicals whenever they are available and affordable.

The Maine Legislature enacted the Kid-Safe Products Act (KSPA) by an overwhelming bipartisan margin (129 - 9 in the House, 35 - 0 in the Senate) despite unrelenting opposition from the national chemical industry.

This law embodies a practical, precautionary approach by declaring it state policy “to reduce exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives when feasible.” With an emphasis on the inherently harmful properties of chemicals, LD 2048 rejected chemical industry attempts to define and defend “acceptable risk” levels for toxic chemicals. Under the bill’s hazard-based approach, if a prioritized chemical can harm the health of exposed children and there is a safer alternative available, the hazardous chemical should be phased out of use in consumer products.

The bill establishes Maine as a leader in safer chemicals policy, along with Washington and Connecticut, which passed bills with some same elements, and Massachusetts and California, where chemical policy reform is pending.

An Act to Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products (sponsored by House Majority Leader Hannah Pingree) will:

- **Cover Many Products:** “Children's products” are defined broadly to include both products intentionally marketed for children (like toys) and any other consumer product containing that may expose a child or fetus through use or disposal of the product.
- **List Chemicals of High Concern:** By Jan. 1, 2010, the State will publish a list of Chemicals of High Concern, which have been identified by another government agency or the state’s experts as a known or likely to be a carcinogen, reproductive or developmental toxicant or endocrine disruptor; persistent, bioaccumulative and toxic; or very persistent and very bioaccumulative; based on credible scientific evidence. (*The state published this list with over 1,700 chemicals in June 2009.*)
- **Identify Priority Chemicals:** By Jan. 1, 2011, the State will designate at least two chemicals of high concern (or groups of similar chemicals) as Priority Chemicals based on triggering of one or more exposure-related criteria, e.g. the chemical has been found in humans through biomonitoring; found in the indoor environment (dust, water, air, etc.), found in fish, wildlife or the environment; is present in consumer products in the home; is

a high production volume chemical; or its sale or use has already been banned in another state. Additional priority chemicals may be added every three years.

- **Notify Consumers:** Not later than 6 months after a priority chemical is named, a manufacturer or distributor must report to the State on which of their products contain the priority chemical, the number of units sold, the amount of the chemical and its purpose. The State is also granted authority to require manufacturers or distributors to submit information on the likelihood of chemical releases from the product and any biomonitoring or environmental data, and to prepare an alternatives assessment on the availability, cost, feasibility, performance and safety of alternatives to the priority chemical. The State is also authorized to assess fees on industry to pay for managing the information collected and to pay for an independent alternatives assessment if the manufacturer does not produce a requested one that's acceptable to the State. *(These fees are part of the current rulemaking process, and will require Legislative approval.)*
- **Require Safer Alternatives:** The State is authorized to restrict the sale of a product for specific uses if it contains a priority chemical, if they find that distribution of the product directly or indirectly exposes children and vulnerable populations to the priority chemical, and that one or more safer alternatives to the priority chemical are available at a comparable cost. Rulemaking and approval by the Legislature are required. If there is more than one safer alternative, they can require the one that is least toxic to human health or least harmful to the environment. The State may presume that safer alternatives are available if the alternative is not a chemical of high concern, if the priority chemical has been banned by another state, if the product containing the priority chemical is an item of apparel or a novelty and if the alternative is sold within the United States. A compliance plan is required within six months of the effective date of a prohibition on the sale of the product. Waivers from the restrictions for up to five years can be applied for and granted if the manufacturer demonstrates that the use of an alternative is not feasible.
- **Foster Interstate Cooperation:** The State is authorized to participate in an interstate clearinghouse to promote safer chemicals in consumer products and share information about chemicals among the states. The State may cooperate through the clearinghouse to classify existing chemicals into one of four categories defined in statute: chemicals of high concern, chemicals of moderate concern, chemicals of unknown concern and chemicals of low concern.

What's Happening Now (December 2009)

Maine is putting the Kid-Safe Products Law into effect. In July 2009, over 1,700 chemicals already known to be hazardous were named as Chemicals of High Concern. In November 2009, the Maine Department of Environmental Protection proposed rules to govern the designation of Priority Chemicals targeted for immediate action and to recover costs of administering the program from companies that use Priority Chemicals in their products. The chemical industry and some manufacturing companies are trying to use the rulemaking process to overturn the intent of Maine's Legislature, undercut the law, and starve the state of resources needed to make sure the law is implemented and that companies comply with its provisions.

The Board of Environmental Protection will hold a public hearing on the proposed rules on December 17, 2009 and accept public comments through January 11, 2010.