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Legislative Document

No. 1129

H.P. 841

House of Representatives, March 15, 2011

**An Act To Provide the Department of Environmental Protection
with Regulatory Flexibility Regarding the Listing of Priority
Chemicals**

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

A handwritten signature in black ink that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative HAMPER of Oxford.

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

2 **Sec. 1. 5 MRSA §8060, sub-§7** is enacted to read:

3 **7. Agenda listing required.** Notwithstanding any provision of law to the contrary, a
4 rule may not be proposed pursuant to Title 38, chapter 16-D unless the chemical affected
5 by that proposed rule was specifically disclosed to the Legislature prior to the initiation of
6 the rule-making process as part of a regulatory agenda.

7 **Sec. 2. 38 MRSA §1691, sub-§7**, as enacted by PL 2007, c. 643, §2, is amended
8 to read:

9 **7. Children's product.** "Children's product" means a consumer product intended for
10 ~~use by children, made for, marketed for use by or marketed to children under 12 years of~~
11 ~~age, such as baby products, toys, car seats, personal care products~~ children's cosmetics,
12 children's jewelry and clothing, ~~and any consumer product containing or a consumer~~
13 ~~product designed or intended by the manufacturer to help a child with sucking or teething~~
14 ~~that contains~~ a chemical of high concern and that when used ~~or disposed of~~ will likely
15 result in a child's ~~or a fetus's~~ being exposed to that chemical.

16 **Sec. 3. 38 MRSA §1691, sub-§8-A** is enacted to read:

17 **8-A. Credible scientific evidence.** "Credible scientific evidence" means scientific
18 information that results from studies that are replicable, peer-reviewed, conducted
19 pursuant to widely accepted protocols for quality and reliability and in conformity with
20 the regulatory standards for quality of nonclinical environmental, health and safety data
21 on chemicals and chemical products as described by the Organisation for Economic
22 Co-operation and Development in its publication "Good Laboratory Practice, OECD
23 Principles and Guidance for Compliance Monitoring" published in 2006.

24 **Sec. 4. 38 MRSA §1691, sub-§8-B** is enacted to read:

25 **8-B. De minimis level.** "De minimis level" means a concentration of no more than
26 0.1% by weight of a finished product or 1,000 parts per million.

27 **Sec. 5. 38 MRSA §1693, sub-§1**, as enacted by PL 2007, c. 643, §2, is amended
28 to read:

29 **1. Criteria.** ~~By January 1, 2010, the~~ The department, in concurrence with the
30 Department of Health and Human Services, Maine Center for Disease Control and
31 Prevention, shall publish a list of chemicals of high concern. A chemical may be
32 included on the list only if it has been identified by an authoritative governmental entity
33 on the basis of credible scientific evidence as being known as having one or more of the
34 following characteristics that adversely affect human health:

- 35 A. A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor;
36 B. Persistent, bioaccumulative and toxic; ~~or~~ and
37 C. Very persistent and very bioaccumulative.

1 **Sec. 6. 38 MRSA §1693, sub-§3** is enacted to read:

2 **3. Process for removal.** A resident of this State or any interested retailer, distributor
3 or manufacturer may request that the department remove a chemical from the
4 department's list of chemicals of high concern. Upon receiving a request, the department
5 shall decide within 120 days whether a chemical will be removed from the list of
6 chemicals of high concern and notify the party making the request of the department's
7 decision. Upon review of credible scientific evidence that a chemical does not meet the
8 criteria in subsection 1, the chemical must be removed from the list of chemicals of high
9 concern. Chemicals that do meet the criteria in subsection 1 may be removed from the
10 list of chemicals of high concern based upon credible scientific evidence made available
11 to the department that children are not exposed to the substance from a children's product.

12 The commissioner shall adopt rules to implement the provisions of this subsection. Rules
13 adopted pursuant to this subsection are major substantive rules as defined in Title 5,
14 chapter 375, subchapter 2-A.

15 **Sec. 7. 38 MRSA §1694, sub-§1**, as enacted by PL 2007, c. 643, §2, is amended
16 to read:

17 **1. Designation.** The commissioner may designate a chemical of high concern as a
18 priority chemical if the commissioner finds, in concurrence with the Department of
19 Health and Human Services, Maine Center for Disease Control and Prevention that there
20 is exposure to the chemical from a children's product and the chemical meets 2 or more of
21 the following criteria:

22 A. The chemical has been found through biomonitoring studies pursuant to protocols
23 established by the United States Department of Health and Human Services, Centers
24 for Disease Control and Prevention to be present in human blood, including umbilical
25 cord blood, human breast milk, human urine or other human bodily tissues or fluids;

26 B. The chemical has been found through ~~sampling and analysis~~ credible scientific
27 evidence to be present in household dust, indoor air, drinking water or ~~elsewhere in~~
28 the home environment other places where children's products are used and children
29 may be exposed to the chemical;

30 C. ~~The chemical has been found through monitoring to be present in fish, wildlife or~~
31 ~~the natural environment;~~

32 D. The chemical is present in a ~~consumer product used or present in the home~~
33 children's product in amounts greater than the de minimis level and children are or
34 may be exposed to the chemical;

35 E. ~~The chemical has been identified as a high production volume chemical by the~~
36 ~~federal Environmental Protection Agency; or~~

37 F. The sale or use of ~~the chemical or a children's~~ product containing the chemical has
38 been banned ~~in~~ by another state within the United States; and the Legislature in a
39 formal vote adopts a similar ban in this State on the sale or use of the children's
40 product containing the chemical; and

1 G. The chemical is present in a children's product in amounts greater than the de
2 minimis level and has been determined by an authoritative government entity to
3 cause harm when used as intended based on credible scientific evidence including
4 relevant assessments of the likelihood of exposure.

5 The commissioner shall designate at least 2 priority chemicals by January 1, 2011.

6 **Sec. 8. 38 MRSA §1694, sub-§2**, as enacted by PL 2007, c. 643, §2, is amended
7 to read:

8 **2. Updates.** The commissioner shall review the list of chemicals of high concern at
9 least every 3 years and may designate additional priority chemicals if the commissioner
10 finds that the chemicals meet one of the criteria listed in subsection 1. The commissioner
11 may also revoke the priority chemical designation for any chemical that no longer meets
12 any of the criteria listed in subsection 1 or for other reasons justified by credible scientific
13 evidence.

14 **Sec. 9. 38 MRSA §1694, last ¶**, as enacted by PL 2007, c. 643, §2, is amended to
15 read:

16 The commissioner shall adopt rules to implement the provisions of this section.
17 Rules adopted pursuant to this section are ~~routine technical~~ major substantive rules as
18 defined in Title 5, chapter 375, subchapter 2-A.

19 **Sec. 10. 38 MRSA §1695, sub-§1**, as enacted by PL 2007, c. 643, §2, is amended
20 to read:

21 **1. Reporting of chemical use.** Not later than 180 days after a priority chemical is
22 identified pursuant to section 1694, a person who is a manufacturer or distributor of a
23 children's product for sale in the State that contains a priority chemical above the de
24 minimis level shall notify the department in writing unless waived by the commissioner
25 pursuant to this section or exempt from this chapter pursuant to section 1697. This
26 written notice must identify the children's product, the number of units sold or distributed
27 for sale in the State or nationally, the priority chemical or chemicals contained in the
28 children's product, the amount of such chemicals in each unit of children's product and
29 the intended purpose of the chemicals in the children's product.

30 **Sec. 11. 38 MRSA §1696, sub-§1**, as enacted by PL 2007, c. 643, §2, is amended
31 to read:

32 **1. Authority.** The board may adopt rules prohibiting the manufacture, sale or
33 distribution in the State of a children's product containing a priority chemical above the
34 de minimis level if the board finds, after consideration of information filed under section
35 1695 and other relevant information submitted to or obtained by the board, that:

36 A. Distribution of the children's product directly ~~or indirectly~~ exposes children and
37 vulnerable populations to the priority chemical and will result in harm to those
38 children or vulnerable populations; and

1 chemicals pursuant to the Maine Revised Statutes, Title 38, chapter 16-D before
2 rulemaking may be initiated;

3 2. Providing the Department of Environmental Protection with a process by which it
4 can respond to developments in science to remove the designation of and de-list a
5 chemical that is ultimately found to not pose a risk to human health;

6 3. Designating rules adopted by the Department of Environmental Protection that
7 designate chemicals of high concern as priority chemicals to be major substantive rules;

8 4. Establishing de minimus levels of chemical concentrations in children's products;

9 5. Establishing clear exposure criteria for designation of priority chemicals;

10 6. Removing the presumptions regarding safer alternatives to a priority chemical;

11 7. Reducing regulatory duplication with other state or federal programs; and

12 8. Increasing from 10 to 45 days the amount of time a manufacturer or distributor of
13 a product offered for sale in violation of the priority chemical requirements has to provide
14 evidence that the product is not in violation or notify persons who sell the product.