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ENVIRONMENT AND NATURAL RESOURCES

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STATE OF MAINE
SENATE
126TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 418, L.D. 1181, Bill, "An Act To Further Strengthen the Protection of Pregnant Women and Children from Toxic Chemicals"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 38 MRSA §1691, sub-§8-B, as enacted by PL 2011, c. 319, §2, is amended to read:

8-B. De minimis level. "De minimis level" means:

A. For a chemical of high concern or priority chemical that is an intentionally added chemical in a component of a children's product, the practical quantification limit or the alternatives analysis threshold adopted by the department pursuant to section 1695; or

B. For a chemical of high concern or priority chemical that is a contaminant present in a component of a children's product, a concentration of 100 parts per million or the alternatives analysis threshold adopted by the department pursuant to section 1695.

Sec. 2. 38 MRSA §1693, sub-§2, as repealed and replaced by PL 2011, c. 319, §3, is repealed and the following enacted in its place:

2. Revisions. The department may periodically review new credible scientific evidence and revise the list published pursuant to subsection 1. The department may add a chemical to the list if, in the judgment of the Department of Health and Human Services, Maine Center for Disease Control and Prevention, the chemical meets one or more of the criteria in subsection 1.

Sec. 3. 38 MRSA §1693, sub-§3, ¶A, as enacted by PL 2011, c. 319, §3, is amended to read:

A. Does not meet the criteria for listing pursuant to subsection 1; or.

COMMITTEE AMENDMENT

1 **Sec. 4. 38 MRSA §1693, sub-§3, ¶B**, as enacted by PL 2011, c. 319, §3, is
2 repealed.

3 **Sec. 5. 38 MRSA §1693-A, sub-§3**, as enacted by PL 2011, c. 319, §4, is
4 amended to read:

5 **3. Updates.** ~~The~~ By January 1, 2015, and every 3 years thereafter, the commissioner
6 shall review the list published pursuant to subsection 1 ~~at least every 3 years~~. The
7 commissioner shall remove any chemical from the list of chemicals of high concern that
8 has been designated as a priority chemical pursuant to section 1694 or that no longer
9 meets any of the criteria of subsection 2. The commissioner may identify additional
10 chemicals of high concern according to the criteria and requirements of this section. The
11 list of chemicals of high concern may not consist of more than 70 or fewer than 10
12 chemicals of high concern, unless fewer than 10 chemicals of high concern meet any of
13 the criteria under subsection 2.

14 A person may submit recommendations with supporting credible scientific evidence to
15 the department to consider a chemical for addition to the list of chemicals of high
16 concern. By January 1, 2015, and annually thereafter, the department shall publish a list
17 of chemicals recommended for consideration pursuant to this subsection and any changes
18 made to the list of chemicals of high concern.

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

20 **3-A. Removal by petition.** A person may petition the department to remove a
21 chemical from the list published pursuant to subsection 1. The department, in concurrence
22 with the Department of Health and Human Services, Maine Center for Disease Control
23 and Prevention, may grant a petition if the person demonstrates to the satisfaction of the
24 department that the chemical:

25 A. Does not meet the criteria for listing pursuant to subsection 2; or

26 B. Meets the criteria for removal from the list pursuant to subsection 3.

27 Upon receipt of a petition under this subsection, the department shall notify interested
28 persons and provide an opportunity for review and comment on the evidence submitted
29 by the petitioner. The department shall make a determination within 180 days of receipt
30 of the petition and notify interested persons of the basis for its decision. If the petition is
31 granted, the department shall immediately remove the chemical from the list.

32 **Sec. 7. 38 MRSA §1694, sub-§2**, as amended by PL 2011, c. 319, §5, is further
33 amended to read:

34 **2. Designation.** ~~The commissioner shall designate at least 2 priority chemicals by~~
35 ~~January 1, 2011.~~ The commissioner may designate additional priority chemicals if the
36 commissioner finds that the chemicals meet one of the criteria listed in subsection 1.

37 A person may submit recommendations with supporting credible scientific evidence to
38 the department to consider a chemical for designation as a priority chemical. By January
39 1, 2015, and annually thereafter, the department shall publish a list of chemicals
40 recommended for consideration as priority chemicals pursuant to this subsection and any
41 changes made to the list of chemicals designated as priority chemicals.

1 **Sec. 8. 38 MRSA §1695, sub-§1-A** is enacted to read:

2 **1-A. Alternatives analysis threshold.** Starting on January 1, 2014, the department
3 may adopt an alternatives analysis threshold concentration for any chemical subject to
4 disclosure or reporting requirements of this chapter that is greater than the applicable
5 practical quantification limit for an intentionally added chemical. The department may
6 also specify an alternatives analysis threshold concentration greater than 100 parts per
7 million for any chemical subject to disclosure or reporting requirements of this chapter
8 that is a contaminant.

9 A. The department shall issue a notice to persons required to report pursuant to this
10 chapter inviting comments on the appropriate alternatives analysis threshold for a
11 particular chemical.

12 B. A person who submits comments pursuant to paragraph A must include an
13 explanation of the testing method used to reach the person's suggested alternatives
14 analysis threshold. The comments must also include a statement of the toxicity of the
15 chemical at the suggested threshold level.

16 **Sec. 9. 38 MRSA §1695, sub-§§2 and 4**, as enacted by PL 2007, c. 643, §2, are
17 amended to read:

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

21 A. Information on the likelihood that the chemical will be released from the
22 children's product to the environment during the children's product's life cycle and the
23 extent to which users of the children's product are likely to be exposed to the
24 chemical;

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

27 C. An assessment of the availability, cost, feasibility and performance, including
28 potential for harm to human health and the environment, of alternatives to the priority
29 chemical and the reason the priority chemical is used in the manufacture of the
30 children's product in lieu of identified alternatives. ~~If an assessment acceptable to the~~
31 ~~department is not timely submitted, the department may assess a fee on the~~
32 ~~manufacturer or distributor to cover the costs to prepare an independent report on the~~
33 ~~availability of safer alternatives by a contractor of the department's choice.~~

34 If an assessment acceptable to the department is not timely submitted or if the
35 department determines the preparation of such an assessment by an independent
36 contractor will be more expeditious, cost-effective or comprehensive, the department
37 may assess a fee on the manufacturer or distributor to cover the costs to prepare an
38 independent report on the availability of safer alternatives by a contractor of the
39 department's choice.

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

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

5 **Sec. 10. 38 MRSA §1699**, as enacted by PL 2007, c. 643, §2, is repealed and the
 6 following enacted in its place:

7 **§1699. Education and assistance**

8 **1. Education and assistance.** As resources allow, the department shall develop a
 9 program to educate and assist consumers and retailers in identifying children's products
 10 that may contain priority chemicals.

11 **2. Citizen participation.** Once every year, beginning in 2015, the department shall
 12 establish a 30-day period during which any person may submit information, in summary
 13 form, on the topic of toxic chemicals in children's products and the effectiveness of this
 14 chapter. The summary must be limited to the concise key points related to the products
 15 or chemicals. The department may request additional information based on the summary
 16 provided.

17 **3. Information.** Beginning January 1, 2014 and annually by January 1st thereafter,
 18 the department shall publish on the department's publicly accessible website the list of
 19 chemicals of high concern under section 1693-A, subsection 1 and the types of products
 20 that contain each chemical on the list.

21 **Sec. 11. Progress report.** By January 3, 2014, the Department of Environmental
 22 Protection shall consult with the Department of Health and Human Services, Maine
 23 Center for Disease Control and Prevention to review relevant available information
 24 regarding chemicals in children's products and consider appropriate actions under the
 25 Maine Revised Statutes, Title 38, chapter 16-D. Upon request by the Joint Standing
 26 Committee on Environment and Natural Resources, the department shall provide a
 27 briefing on the department's implementation of Title 38, chapter 16-D to the joint
 28 standing committee. The joint standing committee may report out a bill relating to the
 29 briefing to the Second Regular Session of the 126th Legislature.

30 **Sec. 12. Appropriations and allocations.** The following appropriations and
 31 allocations are made.

32 **ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

33 **Administration - Environmental Protection 0251**

34 Initiative: Provides Other Special Revenue Funds allocations for technology costs related
 35 to implementing changes in the toxic chemicals in children's products program.

36	OTHER SPECIAL REVENUE FUNDS	2013-14	2014-15
37	All Other	\$586	\$781
38			
39	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$586</u>	<u>\$781</u>

1 **Administration - Environmental Protection 0251**

2 Initiative: Provides funding for technology costs related to implementing changes in the
3 toxic chemicals in children's products program.

4	GENERAL FUND	2013-14	2014-15
5	All Other	\$665	\$886
6			
7	GENERAL FUND TOTAL	<u>\$665</u>	<u>\$886</u>

8 **Remediation and Waste Management 0247**

9 Initiative: Provides funding for 1/2-time Environmental Specialist IV position and one
10 Toxicologist position and associated administrative and technology costs related to
11 implementing changes in the toxic chemicals in children's products program.

12	GENERAL FUND	2013-14	2014-15
13	POSITIONS - LEGISLATIVE COUNT	1.500	1.500
14	Personal Services	\$92,160	\$131,049
15	All Other	\$11,246	\$995
16			
17	GENERAL FUND TOTAL	<u>\$103,406</u>	<u>\$132,044</u>

18	ENVIRONMENTAL PROTECTION,		
19	DEPARTMENT OF		
20	DEPARTMENT TOTALS	2013-14	2014-15
21			
22	GENERAL FUND	\$104,071	\$132,930
23	OTHER SPECIAL REVENUE FUNDS	\$586	\$781
24			
25	DEPARTMENT TOTAL - ALL FUNDS	<u>\$104,657</u>	<u>\$133,711</u>
26			

27 **SUMMARY**

28 This amendment is the minority report of the committee and replaces the bill. The
29 amendment does the following.

30 1. It authorizes the Department of Environmental Protection to specify by rule an
31 alternatives analysis threshold for a chemical for the purpose of determining the de
32 minimis level of the chemical.

33 2. It establishes a process for considering revisions to the lists of chemicals of high
34 concern and priority chemicals.

35 3. It establishes a process for petitioning for removal of a chemical from the list of
36 chemicals of high concern.

