



2009 ASSEMBLY BILL 637

December 18, 2009 – Introduced by Representatives MASON, ROYS, PARISI, TURNER, BERCEAU, HILGENBERG, BENEDICT and MILROY, cosponsored by Senators HANSEN, TAYLOR and MILLER. Referred to Committee on Consumer Protection.

- 1 **AN ACT** *to create* 100.58 of the statutes; **relating to:** regulating chemicals in
2 children’s products and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill regulates chemicals used in consumer products intended for use by children and in certain consumer products to which a child or fetus may be exposed (children’s products).

Under the bill, the Department of Agriculture, Trade and Consumer Protection (DATCP) must identify chemicals known, on the basis of credible scientific evidence, to be capable of causing certain types of harm to a child or fetus (priority chemicals). Any person who manufactures or distributes a children’s product that contains a priority chemical must provide certain information to DATCP about the product and the use of the priority chemical in the product. The bill imposes deadlines for DATCP’s initial identification of priority chemicals and for subsequent updates.

The bill requires DATCP to identify safer alternatives to specific uses of priority chemicals in children’s products. A safer alternative, under the bill, generally means a product, process, or material that is functionally equivalent to a chemical in a children’s product and that has less potential for harm to human health or to the environment. DATCP must promulgate a rule that imposes a reasonable deadline, not to exceed three years, for a manufacturer or distributor to replace a priority chemical used in a children’s products. Within 180 days after DATCP promulgates the rule, a manufacturer or distributor must submit to DATCP a plan for replacing the priority chemical in a children’s product with a safer alternative.

The bill permits DATCP to promulgate rules that do any of the following: 1) require a manufacturer or distributor to adopt an alternative to the use of a priority

ASSEMBLY BILL 637

chemical in a children's product that is the least toxic or harmful to the environment of the available alternatives; 2) require a manufacturer or distributor to submit a report to DATCP assessing the availability of safer alternatives; or 3) exempt from the bill's disclosure requirements the manufacturer of a product sold in small quantities.

Under the bill, any person may petition DATCP to determine whether a safer alternative exists to a specific use of a priority chemical in a children's product. The bill provides exemptions for all of the following: 1) the use of a priority chemical for industrial or manufacturing purposes; 2) a motor vehicle or component part of a motor vehicle; 3) combustible fuel or a by-product of a combustible fuel; and 4) a retailer of children's products, unless the retailer knowingly sells a children's product that the retailer reasonably should know contains a priority chemical. The bill also authorizes DATCP to grant an exemption for a specific use of a priority chemical in a children's product if DATCP determines there is no safer alternative to the use of the priority chemical.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.58 of the statutes is created to read:

2 **100.58 Chemicals in children's products. (1) DEFINITIONS.** In this section:

3 (a) "Alternative" means a process, product, material, chemical, strategy, or a
4 combination of processes, products, materials, chemicals, or strategies that is
5 functionally equivalent to a chemical in a children's product.

6 (b) "Chemical of high concern" means a chemical that is known, on the basis
7 of credible scientific evidence, to be capable of doing any of the following:

8 1. Harming the normal development of a fetus or child or causing other
9 developmental toxicity.

10 2. Causing cancer, genetic damage, or reproductive harm.

11 3. Disrupting the endocrine system.

12 4. Damaging the nervous system, immune system, or causing other systemic
13 toxicity.

ASSEMBLY BILL 637

1 5. Being persistent, bioaccumulative, and toxic.

2 6. Being very persistent and very bioaccumulative.

3 (c) “Chemical of low concern” means a chemical that credible scientific evidence
4 indicates is not a chemical of high concern, a chemical of moderate concern, or a
5 chemical of unknown concern.

6 (d) “Chemical of moderate concern” means a chemical suspected, on the basis
7 of credible scientific evidence, as being capable of doing anything described in par.
8 (b) 1. to 6.

9 (e) “Chemical of unknown concern” means a chemical for which there is
10 insufficient credible scientific evidence available to classify the chemical as a
11 chemical of high concern, a chemical of moderate concern, or a chemical of low
12 concern.

13 (f) “Children’s product” means any of the following:

14 1. A consumer product intended for use by children.

15 2. A consumer product containing a chemical of high concern, if use or disposal
16 of the consumer product may result in the exposure of a child or fetus to the chemical
17 of high concern.

18 (g) “Consumer product” means a product intended for personal, family, or
19 household use.

20 (h) “Manufacturer” includes any person whose brand name is affixed to a
21 consumer product. With respect to a consumer product that was not manufactured
22 in the United States, “manufacturer” includes the importer or domestic distributor
23 of a consumer product, if the person who manufactured or assembled the consumer
24 product or whose brand name is affixed to the consumer product does not have a
25 presence in the United States.

ASSEMBLY BILL 637

1 (i) “Safer” means having less potential for harm to human health or to the
2 environment.

3 **(2) IDENTIFICATION OF PRIORITY CHEMICALS.** (a) Not later than January 1, 2013,
4 the department shall identify at least 100 chemicals of high concern as priority
5 chemicals based on consideration of the potential for exposure of a child or fetus to
6 the chemical, as indicated by credible scientific evidence. The department may
7 identify a chemical of high concern as a priority chemical if any of the following
8 applies:

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

12 2. The chemical has been found through sampling and analysis to be present
13 in household dust, indoor air, drinking water, or elsewhere in homes.

14 3. The chemical has been added to, or is present in, a consumer product used
15 or present in homes.

16 4. The chemical has been identified as a high production volume chemical by
17 the federal environmental protection agency.

18 (b) After January 1, 2013, the department shall update the list of chemicals of
19 high concern at least once every 3 years.

20 **(3) DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS.** (a) Not later than 180
21 days after the department identifies a priority chemical under sub. (2), any person
22 who manufactures or distributes a children’s product for sale in this state that
23 contains the priority chemical shall notify the department in writing, unless the
24 department waives notification under par. (b). The notice shall identify the product,
25 the number of units sold or distributed for sale in in this state or nationally, the

ASSEMBLY BILL 637

1 priority chemical contained in the product, the amount of such chemical in each unit
2 of product, and the intended purpose of the chemical in the product.

3 (b) The department may waive the notification requirement under par. (a) for
4 a specific use of a priority chemical if the department determines that substantially
5 equivalent information is already available to the public or that the specific use is
6 minor in volume or is not likely to result in exposure of a child or fetus to the chemical.

7 (c) The department may assess a fee for submission of a notification under par.
8 (a) to cover the department's reasonable costs in managing the information collected.

9 (d) The department may extend the deadline for submission of a notification
10 under par. (a) for good cause.

11 **(4) SAFER ALTERNATIVES TO PRIORITY CHEMICALS.** (a) Not later than January 1,
12 2014, the department shall determine, for at least one specific use of a priority
13 chemical in a children's product, whether there is a safer alternative to the priority
14 chemical. In making determinations under this paragraph, the department shall
15 presume that an alternative is safer than the use of a priority chemical if the process,
16 product, material, chemical, or strategy does not involve the use of a chemical of high
17 concern.

18 (b) Not later than January 1, 2015, the department shall promulgate a schedule
19 for determining whether a process, product, material, chemical, or strategy could
20 serve as a safer alternative to the use of the priority chemicals identified by the
21 department. The schedule shall be updated periodically to account for the
22 department's identification of additional priority chemicals.

23 (c) The department shall promulgate a rule requiring a manufacturer or
24 distributor to replace a priority chemical in a children's product sold in this state with
25 a safer alternative identified by the department. The rule shall impose a reasonable

ASSEMBLY BILL 637**SECTION 1**

1 deadline, not to exceed 3 years from the date on which the rule is promulgated, by
2 which date a manufacturer or distributor shall replace the priority chemical.

3 (5) COMPLIANCE PLAN. Not later than 180 days before the deadline specified by
4 the department under sub. (4) (c), a manufacturer or distributor of a children's
5 product containing the priority chemical shall submit to the department a
6 compliance plan that identifies the means of compliance, the safer alternative that
7 will replace the priority chemical, and a plan for educating and assisting retailers to
8 ensure timely compliance.

9 (6) NOTIFICATION OF RETAILERS. A manufacturer or distributor of a children's
10 product containing a priority chemical shall notify persons that sell the product at
11 retail of the requirements of this chapter.

12 (7) RULE MAKING. The department may promulgate rules that do any of the
13 following:

14 (a) Require that a safer alternative required under this section to replace a
15 priority chemical in a children's product be the least toxic to human health or least
16 harmful to the environment of available safer alternatives to the priority chemical
17 in question.

18 (b) Require that a manufacturer or distributor of a children's product
19 containing a priority chemical prepare and submit, within a reasonable time, a
20 report acceptable to the department that assesses the availability of safer
21 alternatives to that chemical.

22 (c) Impose on a manufacturer or distributor that fails to timely submit a report
23 under par. (b) a fee to cover the cost of an independent report on the availability of
24 safer alternatives prepared by a contractor selected by the department.

ASSEMBLY BILL 637

1 (d) Exempt from the disclosure requirements of sub. (3) a manufacturer of
2 products sold in small quantities.

3 **(8) PETITIONS.** Any person may submit a written petition requesting that the
4 department make a determination whether a safer alternative is available for a
5 specific use of a priority chemical in a children's product. The department shall make
6 the determination not more than 180 days after the department concludes that the
7 petitioner has submitted sufficient information to establish a reasonable basis for
8 informing the department's determination. The petitioner bears the burden of proof
9 in establishing the availability of a safer alternative.

10 **(9) EXEMPTIONS.** (a) This section does not apply to any of the following:

11 1. The use of a priority chemical for industrial or manufacturing purposes.

12 2. A motor vehicle, as defined in s. 340.01 (35), or a component part of a motor
13 vehicle, except that this paragraph does not apply to a priority chemical used in a
14 detachable car seat.

15 3. A priority chemical that is generated solely as a by-product of combustion
16 or that is present in a combustible fuel.

17 4. A retailer, unless the retailer knowingly sells a consumer product containing
18 a substance that the retailer reasonably should know is a priority chemical after the
19 department identifies the substance as a priority chemical.

20 (b) The department may grant an exemption for a specific use of a priority
21 chemical to a manufacturer or distributor if the department determines that there
22 is no safer alternative to the use of a priority chemical in a consumer product. A
23 manufacturer or distributor shall submit a written application for an exemption
24 under this paragraph that identifies the specific use for which the manufacturer or
25 distributor seeks an exemption, the alternatives that the manufacturer or

ASSEMBLY BILL 637**SECTION 1**

1 distributor has evaluated, and the manufacturer's or distributor's basis for
2 concluding that the alternatives are not feasible. The duration of an exemption
3 under this paragraph may not exceed 5 years from the date on which the department
4 grants the exemption.

5 **(10) ENFORCEMENT.** If the department has reason to believe that a consumer
6 product is being offered for sale in violation of this section, the department may bring
7 an action in the name of the state for temporary or permanent injunctive relief and
8 for any other appropriate relief. The court may make any order or judgment that is
9 necessary to restore to any person any pecuniary loss suffered because of a violation
10 of this section if proof of the loss is shown to the satisfaction of the court.

11 **(11) OTHER PROVISIONS.** (a) The department may participate in an interstate
12 clearinghouse to promote safer chemicals in consumer products in cooperation with
13 other states and governmental entities.

14 (b) The department shall develop a program to educate and assist consumers
15 and retailers in identifying children's products that may contain priority chemicals.

16 **(END)**