

HOUSE BILL NO. 238

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KAWASAKI, Petersen, Kerttula

Introduced: 4/14/11

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to chemicals in children's products; and adding an unlawful act to the**
2 **Alaska Unfair Trade Practices and Consumer Protection Act."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 18 is amended by adding new sections to read:

5 **Article 4. Chemicals in Children's Products.**

6 **Sec. 18.31.610. Identification of chemicals of high concern.** The department,
7 after consultation with the Department of Health and Social Services, shall publish a
8 list of chemicals of high concern. The department may include a chemical on the list
9 only if it has been identified by a governmental entity based on credible scientific
10 evidence as being known as

11 (1) a carcinogen, a reproductive toxicant, a developmental toxicant, or
12 an endocrine disruptor;

13 (2) persistent, bioaccumulative, and toxic; or

14 (3) very persistent and very bioaccumulative.

1 **Sec. 18.31.620. Revision of list.** The department may periodically review and
2 revise the list of chemicals of high concern. The department may add a chemical to the
3 list if the department, after consultation with the Department of Health and Social
4 Services, determines that the chemical is a chemical of high concern. The department
5 may remove a chemical from the list of chemicals of high concern based on evidence
6 that the chemical is not present in a children's product or otherwise would not be
7 subject to the requirements of AS 18.31.610 - 18.31.800.

8 **Sec. 18.31.630. Designation of priority chemicals.** (a) The department may
9 designate by regulation a chemical of high concern as a priority chemical if, after
10 consultation with the Department of Health and Social Services, the department
11 determines that

12 (1) the chemical has been found, through biomonitoring, to be present
13 in human blood, including umbilical cord blood, breast milk, urine, or other bodily
14 tissues or fluids;

15 (2) the chemical has been found, through sampling and analysis, to be
16 present in household dust, indoor air, drinking water, or elsewhere in the home
17 environment;

18 (3) the chemical has been found, through monitoring, to be present in
19 fish, wildlife, or the natural environment;

20 (4) the chemical is present in a consumer product used or present in the
21 home;

22 (5) the chemical has been identified as a high production volume
23 chemical by the United States Environmental Protection Agency; or

24 (6) the sale or use of the chemical or a product containing the chemical
25 has been banned in another state in the United States.

26 (b) The department may, without making the determination required by (a) of
27 this section, designate mercury or a mercury compound as a priority chemical for the
28 purpose of prohibiting the manufacture, sale, or distribution of a children's product
29 that contains mercury.

30 **Sec. 18.31.640. Revision of the designation of priority chemicals.** The
31 department shall review the designation of priority chemicals at least every three years

1 and may designate additional chemicals as priority chemicals if the department
 2 determines, after consultation with the Department of Health and Social Services, that
 3 the chemicals are priority chemicals.

4 **Sec. 18.31.650. Notification of use of priority chemical.** (a) Not later than
 5 180 days after a priority chemical is identified under AS 18.31.630 or 18.31.640, a
 6 person who is a manufacturer or distributor of a children's product that is sold in the
 7 state and that contains a priority chemical shall notify the department in writing that
 8 the children's product contains a priority chemical and shall provide, for the children's
 9 product,

10 (1) an identification;
 11 (2) the number sold or distributed for sale in the state or nationally;
 12 (3) the priority chemical contained in the children's product;
 13 (4) the amount of the priority chemical in the children's product; and
 14 (5) the intended purpose of the priority chemical in the children's
 15 product.

16 (b) The department may extend the deadline for submission of the information
 17 required under (a) of this section if the department determines that the manufacturer or
 18 distributor needs more time to comply with the submission requirements or if the
 19 information is not needed at the time.

20 (c) The department may waive all or part of the notification requirement under
 21 (a) of this section if the department determines that substantially equivalent
 22 information is already publicly available, that the information is not needed for the
 23 purposes of AS 18.31.610 - 18.31.800, or that the amount of the priority chemical used
 24 in the children's product is minor.

25 **Sec. 18.31.660. Supplemental information.** (a) In addition to providing the
 26 information required to be in the notice under AS 18.31.650, a manufacturer or
 27 distributor of a children's product that is sold in the state and that contains a priority
 28 chemical shall, if requested by the department, provide

29 (1) information on the likelihood that the chemical will be released
 30 from the children's product to the environment during the life cycle of the children's
 31 product and the extent to which users of the children's product are likely to be exposed

1 to the chemical;

2 (2) information on the extent to which the chemical is present in the
3 environment or human body; and

4 (3) an assessment of the availability, cost, feasibility, performance, and
5 potential for harm to human health and the environment of alternatives to the priority
6 chemical in the children's product and the reason the priority chemical is used in the
7 manufacture of the children's product instead of alternatives identified under this
8 paragraph.

9 (b) If a manufacturer or distributor does not provide the information requested
10 under (a) of this section in the time set by the department, the department may assess a
11 fee on the manufacturer or distributor to cover the department's costs to contract with
12 another person to prepare an independent report on the availability of safer alternatives
13 for the children's product.

14 (c) In addition to the other information required by this section, a
15 manufacturer or distributor of a children's product that contains a priority chemical
16 may provide additional information to the department regarding the potential for harm
17 to human health and the environment from specific uses of the priority chemical for
18 the children's products of the manufacturer or distributor.

19 **Sec. 18.31.670. Information management fee.** When a manufacturer or
20 distributor submits a notice or other information under AS 18.31.650 or 18.31.660(a)
21 or (b), the department may charge the manufacturer or distributor a reasonable fee to
22 cover the department's costs to review the information collected.

23 **Sec. 18.31.680. Prohibitions by department.** (a) The department may
24 prohibit by regulation the manufacture, distribution, or sale in the state of a children's
25 product containing a priority chemical if the department finds, after consideration of
26 information filed under AS 18.31.650 and 18.31.660 and other relevant information
27 submitted to or obtained by the department, that

28 (1) distribution of the children's product directly or indirectly exposes
29 children and vulnerable populations to the priority chemical; and

30 (2) one or more safer alternatives to the priority chemical are available
31 at a comparable cost.

1 (b) If there are several available safer alternatives to a priority chemical, the
2 department may prohibit the sale of children's products that do not contain the safer
3 alternative that is least toxic to human health or least harmful to the environment.

4 (c) The department shall specify the effective date of the prohibition, which
5 may not be sooner than 12 months after the notice of the proposed regulation to make
6 the prohibition is published under AS 44.62.175 (Administrative Procedure Act).

7 **Sec. 18.31.690. Determination of availability of safer alternatives.** When
8 determining whether a safer alternative is available under AS 18.31.680, the
9 department may, in the absence of persuasive evidence to the contrary, presume that

10 (1) an alternative is a safer alternative if the alternative is not a
11 chemical of high concern;

12 (2) a safer alternative is available if the sale of the children's product
13 containing the priority chemical has been banned by another state in the United States;

14 (3) a safer alternative is available if the children's product containing
15 the priority chemical is an item of apparel or a novelty; and

16 (4) a safer alternative is available if the alternative is sold in the United
17 States.

18 **Sec. 18.31.700. Compliance plan.** (a) Not later than 180 days before the
19 effective date of a prohibition adopted under AS 18.31.680, the manufacturer or
20 distributor of a children's product that contains the priority chemical and that is subject
21 to the prohibition shall file a compliance plan with the department or seek a waiver
22 under AS 18.31.710.

23 (b) A compliance plan under (a) of this section must

24 (1) identify the children's product that contains the priority chemical;

25 (2) specify whether compliance will be achieved by discontinuing the
26 sale of the children's product in the state or by substituting a safer alternative in the
27 product; and

28 (3) if compliance is achieved by substitution of a safer alternative in
29 the product, identify the safer alternative and the timetable for substitution.

30 **Sec. 18.31.710. Waiver for specific uses.** (a) The manufacturer or distributor
31 of a children's product that contains a priority chemical and that is subject to a

1 prohibition adopted under AS 18.31.680 may apply to the department for a waiver for
2 one or more specific uses of the priority chemical in a children's product. The waiver
3 application must, at a minimum,

4 (1) identify the specific children's product use for which the waiver is
5 sought;

6 (2) identify the alternatives considered for substitution of the priority
7 chemical;

8 (3) explain the basis for concluding that the use of an alternative is not
9 feasible; and

10 (4) identify the steps that have and will be taken to minimize the use of
11 the priority chemical in the children's product.

12 (b) The department may grant a waiver with or without conditions if the
13 department finds that there is a need for the children's product in which the priority
14 chemical is used and there are no technically or economically feasible alternatives for
15 the use of the priority chemical in the children's product.

16 (c) The department may grant a waiver under (b) of this section for a period of
17 time that may not exceed five years. The department may renew the waiver for one or
18 more additional five-year periods if the manufacturer or distributor submits a written
19 application that demonstrates that feasible alternatives are not available for technical
20 or economical reasons. The department shall deny or grant a request for a waiver
21 within 60 days after receiving a completed application for a waiver.

22 **Sec. 18.31.720. Notification responsibility.** A manufacturer or distributor of a
23 children's product containing a priority chemical shall notify the persons who sell or
24 distribute the product in the state of the requirements of AS 18.31.610 - 18.31.800.

25 **Sec. 18.31.730. Retailer prohibition.** A retailer may not knowingly sell a
26 children's product containing a priority chemical after the effective date of a regulation
27 that is adopted by the department under AS 18.31.680 and that prohibits the sale of the
28 children's product, if the manufacturer, distributor, or the state has notified the retailer
29 of the prohibition under AS 18.31.720 for which the manufacturer has not received a
30 waiver under AS 18.31.710. In this section, "knowingly" has the meaning given in
31 AS 11.81.900.

1 **Sec. 18.31.740. General exemptions.** AS 18.31.610 - 18.31.800 do not apply
2 to

3 (1) chemicals in used products;

4 (2) motor vehicles or their component parts, except that the use of
5 priority chemicals in detachable car seats is not exempt; in this paragraph, "motor
6 vehicle" has the meaning given in AS 28.90.990; or

7 (3) priority chemicals generated solely as combustion by-products or
8 that are present in combustible fuels.

9 **Sec. 18.31.750. Education and assistance.** If the department has sufficient
10 resources for the program, the department shall develop a program to educate and
11 assist consumers and retailers in identifying children's products that may contain
12 priority chemicals.

13 **Sec. 18.31.760. Manufacturer and distributor prohibitions.** (a) A
14 manufacturer or distributor may not manufacture, sell, or distribute for sale in the state
15 a children's product containing a priority chemical if the manufacturer or distributor
16 has failed to provide information as required for the children's product under
17 AS 18.31.650 and 18.31.660. The department shall exempt a children's product from
18 this prohibition if the department determines that the lack of availability of the
19 children's product could pose an unreasonable risk to public health, safety, or welfare.

20 (b) A manufacturer or distributor may not manufacture, sell, or distribute for
21 sale in the state a children's product that contains a priority chemical and that is
22 prohibited by the department under AS 18.31.680, unless otherwise allowed by
23 AS 18.31.710.

24 **Sec. 18.31.770. Certificate of compliance.** If there are grounds to suspect that
25 a children's product is being sold in violation of AS 18.31.610 - 18.31.800, the
26 department may request the manufacturer or distributor of the product to provide a
27 certificate of compliance with the provisions of AS 18.31.610 - 18.31.800. Within 10
28 days after receipt of a request under this section, the manufacturer or distributor shall

29 (1) provide the department with the certificate attesting that the
30 children's product does not contain a priority chemical; or

31 (2) notify the persons who sell the children's product in the state that

1 the sale of the children's product is prohibited and provide the department with a list of
2 the names and addresses of the persons notified.

3 **Sec. 18.31.780. Interstate clearinghouse to promote safer alternatives.** (a)

4 The department may participate in an interstate clearinghouse to promote safer
5 chemicals in children's products in cooperation with other states and governmental
6 entities.

7 (b) Under (a) of this section, the department may cooperate with the interstate
8 clearinghouse to

9 (1) classify existing chemicals in commerce into one of four
10 categories: chemicals of high concern, chemicals of moderate concern, chemicals of
11 unknown concern, and chemicals of low concern; in this paragraph,

12 (A) "chemical of low concern" means a chemical for which
13 adequate toxicity and environmental data are available to determine that it is
14 not a chemical of high concern, a chemical of moderate concern, or a chemical
15 of unknown concern;

16 (B) "chemical of moderate concern" means a chemical
17 identified by an authoritative governmental entity on the basis of credible
18 scientific evidence as being suspected of causing an adverse health or
19 environmental effect;

20 (C) "chemical of unknown concern" means a chemical for
21 which insufficient data are available to classify it as a chemical of high
22 concern, a chemical of moderate concern or a chemical of low concern;

23 (2) organize and manage available data on chemicals, including
24 information on uses, hazards, and environmental concerns;

25 (3) produce and inventory information on safer alternatives to specific
26 uses of chemicals of concern and on model policies and programs;

27 (4) provide technical assistance to businesses and consumers related to
28 safer alternatives; and

29 (5) undertake other activities in support of state programs to promote
30 safer alternatives.

31 **Sec. 18.31.790. Regulations.** The department may adopt regulations under

1 AS 44.62 (Administrative Procedure Act) to implement AS 18.31.610 - 18.31.800.

2 **Sec. 18.31.800. Definitions.** In AS 18.31.610 - 18.31.800, unless the context
3 indicates otherwise,

4 (1) "alternative" means a substitute process, product, material,
5 chemical, or strategy or a combination of a substitute process, product, material,
6 chemical, or strategy that serves a functionally equivalent purpose to a chemical in a
7 children's product;

8 (2) "chemical" means

9 (A) a substance with a distinct molecular composition;

10 (B) a group of structurally related substances; and

11 (C) a substance that forms through decomposition, degradation,
12 or metabolism of a substance described in (A) or (B) of this paragraph;

13 (3) "chemical of high concern" means a chemical identified as a
14 chemical of high concern under AS 18.31.610;

15 (4) "child" means an individual under 16 years of age;

16 (5) "children's product" means a consumer product intended for use by
17 a child, including baby products, toys, car seats, personal care products, and clothing;

18 (6) "consumer product" means an item sold for residential or
19 commercial use, a component of the item, and the packaging of the item, except

20 (A) a food, a beverage, an additive to a food, an additive to a
21 beverage, a tobacco product, paper, or a forest product;

22 (B) a pesticide regulated by the United States Environmental
23 Protection Agency;

24 (C) a drug or biologic regulated by the United States Food and
25 Drug Administration;

26 (D) the packaging of a drug or biologic regulated by the United
27 States Food and Drug Administration if the packaging is regulated by the
28 United States Food and Drug Administration;

29 (7) "department" means the Department of Environmental
30 Conservation;

31 (8) "distributor" means a person who sells consumer products to retail

1 establishments on a wholesale basis;

2 (9) "manufacturer" means a person who, in the course of business,

3 (A) manufactures a consumer product;

4 (B) affixes a brand name to a consumer product; or

5 (C) is the importer or first domestic distributor of a consumer
6 product if the consumer product was imported into the United States and if the
7 person who manufactured or assembled the consumer product or whose brand
8 name is affixed to the consumer product does not do business in the United
9 States;

10 (10) "packaging" means, for a consumer product that is a food or
11 beverage, the packaging of a food or beverage that is intentionally marketed or
12 intended for a child under three years of age;

13 (11) "priority chemical" means a chemical identified as a priority
14 chemical under AS 18.31.630;

15 (12) "safer alternative" means an alternative that, when compared to a
16 priority chemical that it could replace,

17 (A) would reduce the potential for harm to human health or the
18 environment;

19 (B) has not been shown to pose the same or greater potential
20 for harm to human health or the environment as the priority chemical;

21 (13) "sell" includes an offer to sell.

22 * **Sec. 2.** AS 45.50.471(b) is amended by adding a new paragraph to read:

23 (58) violating AS 18.31.730 or 18.31.760 (chemicals in children's
24 products).

25 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **TRANSITION: INITIAL LIST OF CHEMICALS OF HIGH CONCERN.** By
28 January 1, 2013, the Department of Environmental Conservation, in consultation with the
29 Department of Health and Social Services, shall identify and publish the first list of chemicals
30 of high concern under AS 18.31.610, enacted by sec. 1 of this Act. In developing the list, the
31 departments may consider

1 (1) chemicals identified as "Group 1 carcinogens" or "Group 2A carcinogens"
2 by the World Health Organization, International Agency for Research on Cancer;

3 (2) chemicals identified as "known to be carcinogens" or "reasonably
4 anticipated to be carcinogens" under 42 U.S.C. 241(b)(4);

5 (3) chemicals identified as "Group A carcinogens" or "Group B carcinogens"
6 by the United States Environmental Protection Agency;

7 (4) chemicals identified as reproductive or developmental toxicants by

8 (A) the United States Department of Health and Human Services,
9 National Toxicology Program, Center for the Evaluation of Risks to Human
10 Reproduction; and

11 (B) the California Environmental Protection Agency, Office of
12 Environmental Health Hazard Assessment, under the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Chapter 6.6, Section 25249.8;

14 (5) chemicals identified as known or likely endocrine disruptors through
15 screening or testing conducted under protocols developed by the United States Environmental
16 Protection Agency under 21 U.S.C. 346a(p);

17 (6) chemicals listed on the basis of endocrine-disrupting properties in Annex
18 XIV, List of Substances Subject to Authorisation, Regulation (EC) No 1907/2006 of the
19 European Parliament concerning the Registration, Evaluation, Authorisation and Restriction
20 of Chemicals;

21 (7) persistent, bioaccumulative, and toxic chemicals identified by

22 (A) the State of Washington, Department of Ecology, in the
23 Washington Administrative Code, Chapter 173–333; or

24 (B) the United States Environmental Protection Agency in 40 CFR
25 372; and

26 (8) a very persistent, very bioaccumulative chemical listed in Annex XIV, List
27 of Substances Subject to Authorisation, Regulation (EC) No 1907/2006 of the European
28 Parliament concerning the Registration, Evaluation, Authorisation and Restriction of
29 Chemicals.

30 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 TRANSITION: INITIAL DESIGNATION OF PRIORITY CHEMICALS. (a) By
2 January 1, 2014, the Department of Environmental Conservation, in consultation with the
3 Department of Health and Social Services, shall identify and designate at least two chemicals
4 of high concern, or groups of similar chemicals, as priority chemicals under AS 18.31.630,
5 enacted by sec. 1 of this Act.

6 (b) Before designating the priority chemicals under (a) of this section, the department
7 shall

8 (1) convene a group that includes representatives of consumer product
9 manufacturers, chemical manufacturers, retailers, trade associations, nonprofit health
10 organizations, business groups, environmental groups, and other affected parties;

11 (2) invite independent experts with relevant experience with chemicals to
12 participate in the group; and

13 (3) seek recommendations from the group on the

14 (A) development of a protocol to be used for the designation of priority
15 chemicals under AS 18.31.630, enacted by sec. 1 of this Act;

16 (B) responsibilities, activities, and proposed rules necessary to
17 implement AS 18.31.630, enacted by sec. 1 of this Act; and

18 (C) issues of concern to the members of the group regarding the
19 implementation of AS 18.31.630, enacted by sec. 1 of this Act.

20 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 REVISOR'S INSTRUCTION. Wherever "chapter" appears in AS 18.31.010 -
23 18.31.500, the revisor of statutes shall substitute "AS 18.31.010 - 18.31.500."