

Legislative Analysis



CHILDREN'S SAFE PRODUCTS ACT

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House Bill 4763
Sponsor: Rep. Judy Nerat

House Bill 4767
Sponsor: Rep. Jennifer Haase

House Bill 4764
Sponsor: Rep. Douglas Geiss

House Bill 4768
Sponsor: Rep. Gary McDowell

House Bill 4765
Sponsor: Rep. Rebekah Warren

House Bill 4769
Sponsor: Rep. Dian Slavens

House Bill 4766
Sponsor: Rep. Kate Segal

Committee: Great Lakes and Environment
Complete to 4-29-2009

A REVISED SUMMARY OF HOUSE BILLS 4763-4769 AS INTRODUCED 4-2-09

This seven-bill package would amend Part 54C of the Public Health Code to create the "Children's Safe Products Act."

House Bill 4763 would change the heading of Part 54C to "Children's Safe Products," allow it to be cited as the "Children's Safe Products Act," and authorize the Department of Community Health (DCH) to issue administrative rules, in consultation with the Department of Environmental Quality (DEQ), to implement the act. (MCL 333.5490)

House Bill 4764 would add or amend definitions, as described below. (MCL 333.5491)

House Bill 4765 would require DCH to create a comprehensive list of "chemicals of concern" by January 1, 2011, and to identify the chemicals on this list that were "of highest concern" by January 1, 2012 (and at least every two years thereafter). In doing so, DCH would have to consult existing authoritative lists and the DEQ. (MCL 333.5494)

House Bill 4766. Except as described below, no later than 180 days after a chemical was classified as "of highest concern," each manufacturer or distributor of a children's product sold in Michigan that contained that chemical would have to submit a written statement to DCH that identified the product; stated how many units of the product were sold or distributed in Michigan or nationally; and disclosed the chemicals "of highest concern" in the product, the amount of each such chemical per unit, and the intended purpose of each such chemical.

Exceptions. (1) Manufacturers producing and selling products at retail in small quantities (as determined by DCH) and (2) retailers would not have to submit these written statements. In addition, written statements would not be required as to chemicals of

concern (1) used for industrial or manufacturing purposes; (2) in motor vehicles or their components, except detachable car seats, or (3) in combustible fuels or generated solely as combustion byproducts.

Extensions. DCH could extend the deadline for submitting the written statement for one or more specified uses of a chemical of highest concern in a children's product if DCH and the DEQ determined that a manufacturer or distributor needed more time to comply.

Annual report on screening information data sets. By January 1, 2011, and annually thereafter, a manufacturer would have to report to DCH whether a screening information data set or equivalent information existed for added chemical ingredients contained in the children's products the manufacturer had sold in Michigan.

Posting of information. Within 30 days after receipt of a written statement or report required by this bill, DCH would have to publicly post the information in an electronic and consumer-friendly form. (MCL 333.5495)

House Bill 4767 would authorize DCH and the DEQ to participate in an interstate clearinghouse to promote safer alternatives in consumer products in cooperation with other states and governmental entities. (MCL 333.5496)

House Bill 4768 would require DCH, in consultation with the DEQ, to submit a report to the Legislature by January 1, 2013, and every two years thereafter, about progress in identifying chemicals of concern and of highest concern. The report would have to contain a detailed plan to inform consumers about chemicals of highest concern and to protect Michigan's children from chemicals of concern. (MCL 333.5497)

House Bill 4769. If a manufacturer or distributor failed to comply with a requirement of Part 54C, DCH could begin enforcement efforts 90 days later, assess fines under Section 5493, as described below, and request the attorney general to seek an immediate injunction to prevent that manufacturer or distributor from selling children's products in Michigan.

Existing Section 5493 provides the following civil fine schedule for violations of Part 54C by persons who are not individual consumers:

- First offense: a civil fine of not more than \$100 per item, not to exceed a total of \$5,000.
- Second offense: a civil fine of not more than \$1,000 per item, not to exceed a total of \$25,000.
- Third or subsequent offense: a civil fine of not more than \$1,000 per item, not to exceed a total of \$50,000.
- Knowing violation: the fine listed above multiplied by three.
- A civil fine could be waived if the person acted in good faith to comply with Part 54C, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

Tie-bars. Each bill is tie-barred to all of the others, meaning that unless all seven bills were enacted, none would take effect.

Definitions (House Bill 4764)

"Bioaccumulative" would mean having a bioaccumulation factor greater than 1,000, as defined in the Great Lakes Binational Toxics Strategy developed by the federal government.

"Chemical" would mean a substance or a group of substances with a distinct molecular composition, and would include the breakdown products of the substance (or group of substances) that form through decomposition, degradation, or metabolism.

"Chemical of concern" would mean a chemical identified by DCH on the basis of credible scientific evidence as being known to: (1) harm a fetus or child (or cause other developmental harm); (2) cause cancer, genetic damage, or reproductive harm; (3) disrupt the endocrine or hormone system; (4) damage the nervous system, immune system, or organs (or cause other systemic harm); (5) be persistent and bioaccumulative; or (6) be very persistent and very bioaccumulative. DCH could also identify as a "chemical of concern" a chemical similar to one with any of these characteristics or which preliminary studies suggest may have one or more of these characteristics but for which there are insufficient credible scientific data for assessment.

"Chemical of highest concern" would mean a "chemical of concern" (1) used in children's products; (2) present in children, human breast milk, or cord blood to an extent DCH considered significant; (3) present in household dust, indoor air, drinking water, or elsewhere in the home environment to an extent DCH considered significant; or (4) determined to have specific relevance to the health of Michigan children by DCH.

"Children" would mean individuals who are 12 and younger, rather than those seven and younger.

"Children's product" would mean a consumer product intended primarily for use by children or for their care, such as baby products, car seats, personal care products, toys, and clothing, as well as any consumer product containing a "chemical of highest concern" to which a fetus or child would likely be exposed during the product's use or disposal.

"Consumer product" would mean any item sold for residential or commercial use, including any component parts and packaging. The term would not include the following items, except for their containers or packaging: (1) drugs or biologics regulated by the federal Food and Drug Administration; (2) foods, beverages, or their additives, (3) tobacco products, and (4) pesticides regulated by the federal Environmental Protection Agency.

"Distributor" would mean "a person who sells consumer products to retail establishments on a wholesale basis."

"Manufacturer" would mean any person who manufactures a final consumer product or whose brand name is affixed to it. For an imported consumer product, "manufacturer" would mean the product's importer or distributor if its manufacturer or assembler (or the person whose brand name is on it) did not have a presence in the United States.

"Persistent" would mean having a half-life in water, sediment, or biota of more than seven days, as defined in the Great Lakes Binational Toxics Strategy.

"Safer alternative" would mean an alternative that would reduce the potential for harm to human health or the environment (or that has not been shown to pose the same or greater potential for such harm) when compared to the "chemical of concern" it could replace.

"Very persistent" would mean having half-life in water, sediment, or biota of greater than 56 days.

"Very bioaccumulative" would mean having a bioaccumulation factor of greater than 5,000.

FISCAL IMPACT:

House Bills 4763 through 4769, as introduced, will create state costs for the Department of Community Health to establish lists of chemicals of concern and chemicals of highest concern, update the lists every two years, receive and post information submitted by manufacturers, report to the Legislature every two years, establish and implement plans to inform consumers about chemicals of highest concern, and plans to protect children from chemicals of concern, and take enforcement action in cases of non-compliance. A minimum of 3-4 new FTE positions may be needed to carry out these responsibilities in the Department of Community Health at a total cost of \$300,000-\$500,000 for staff and related needs. Costs could be higher if more positions are needed to carry out the responsibilities outlined in the bills given the high volume of chemicals and children's products that must be considered.

House Bill 4769 as introduced may generate revenue if fines are assessed on non-compliant manufacturers or distributors. Under the current language, any fines collected would be deposited into the state General Fund.

The Department of Environmental Quality can comply with requirements in these tie-barred bills without increased funding in the annual appropriation or without increasing the number of employed staff. There would be no fiscal impact on local governmental units.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.