

Legislative Analysis



CHILDREN'S SAFE PRODUCTS ACT

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House Bill 4763 without amendment

Sponsor: Rep. Judy Nerat

House Bill 4764 (Substitute H-1)

Sponsor: Rep. Douglas Geiss

House Bill 4765 (Substitute H-1)

Sponsor: Rep. Rebekah Warren

House Bill 4766 (Substitute H-2)

Sponsor: Rep. Kate Segal

House Bill 4767 (Substitute H-1)

Sponsor: Rep. Jennifer Haase

House Bill 4768 without amendment

Sponsor: Rep. Gary McDowell

House Bill 4769 (Substitute H-2)

Sponsor: Rep. Dian Slavens

Committee: Great Lakes and Environment

First Analysis (5-13-09)

BRIEF SUMMARY: This seven-bill package would amend Part 54C of the Public Health Code to create the "Children's Safe Products Act," requiring manufacturers to disclose the presence, amount, and purpose of certain chemicals contained in children's products sold in Michigan.

- House Bill 4763 would name Part 54C the "Children's Safe Products Act" and allow the Department of Community Health (DCH) to issue administrative rules.
- House Bill 4764 would add or amend definitions in Part 54C, as described below.
- House Bill 4765 would require DCH to compile a comprehensive list of "chemicals of concern" by January 1, 2011, and, from this list, create a list of "chemicals of highest concern" by January 1, 2012.
- House Bill 4766 would require manufacturers to submit written statements to DCH that disclosed the presence, amount, and purpose of any chemical "of highest concern" in children's products already sold in Michigan within 180 days after the DCH gave a chemical this designation, and to submit a written statement with this information to the DCH before introducing a new children's product containing such a chemical into Michigan. These requirements would be subject to exceptions and extensions of time as described below. The bill would also require manufacturers to report annually to the DCH on existing screening information data set information for chemical ingredients used in their children's products. The DCH would make information about chemicals of highest concern in children's products sold in Michigan publicly available in a consumer-friendly form on its website.
- House Bill 4767 would authorize DCH and the Department of Environmental Quality to participate in an interstate clearinghouse on chemicals.

- House Bill 4768 would require DCH to submit a legislative report by January 1, 2013, and every two years thereafter, about its efforts under the act.
- House Bill 4769 would establish a fine schedule for violations of the act and require fines assessed under Part 54C to be deposited into a new fund administered by DCH called the "Children's Safe Products Fund."

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

FISCAL IMPACT:

House Bills 4763 through 4769 as reported from committee will create state costs for the Department of Community Health to establish lists of chemicals of concern and chemicals of highest concern, update the latter list at least every 2 years, receive and post information submitted by manufacturers, report to the Legislature every 2 years, establish and implement plans to inform consumers about chemicals of highest concern and plans to protect children from chemicals of concern, and conduct enforcement monitoring and take enforcement action in cases of non-compliance. A minimum of 3-4 new FTE positions will 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. This would include a toxicologist. 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 (H-2) may generate revenue if fines are assessed on non-compliant manufacturers or distributors. Under the current language, any fines collected would be deposited into a newly established Children's Safe Products Fund. Any fines collected will be appropriated to help support costs of the administration of the program.

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.

THE APPARENT PROBLEM:

Although chemicals play an important role in modern life, many present potential risks to human health and the environment. Children are more vulnerable to health effects from toxic chemicals because they are still developing and because, pound for pound, they eat, drink, and breathe about two and one half times more than adults. Young children also place objects and their hands directly into their mouths, ingesting more contaminants. Exposure to even a small amount of a toxic chemical can affect a child's ability to reach his or her full potential. For instance, lead poisoning can reduce intelligence, cause learning disabilities, behavioral problems, stunted growth, and kidney damage. In general, exposure to toxic chemicals has been linked with a wide range of children's health and developmental issues.

Some of the chemicals known or suspected to be dangerous to children include arsenic, lead, mercury, and Bisphenol-A. In studies of children's products surveyed by HealthyToys.org in 2008, arsenic was detected in about 1.4 percent, lead in about 20 percent, and mercury in one

percent. Bisphenol-A is the main ingredient in hard polycarbonate plastics found in some baby bottles, drinking water bottles, and food containers, and is used in many other common products.

Although the federal Environmental Protection Agency is authorized to regulate and test chemicals that are risky to people or the environment under the Toxic Substances Control Act (TSCA), most of the tens thousands of existing chemicals have never been tested and hundreds of new ones are introduced each year. Under TSCA, the EPA does not routinely assess the human health and environmental risks of existing chemicals; it has required testing on fewer than 200 chemicals, and it has banned or limited the production of only five chemicals or groups of chemicals. Since 1998, the EPA has focused its efforts on obtaining information on existing chemicals through voluntary programs, such as its high production volume program. The federal Governmental Accountability Office (GAO), the investigative arm of Congress, has found that TSCA is inadequate in many ways.¹ One of many identified problems with TSCA is that its provisions make it difficult or impossible for the EPA to disclose to the general public or even to state agencies important information about chemicals when that information is claimed to be confidential by manufacturers.

The bills would help inform parents and other consumers about chemicals in toys and other children's products, allowing them to make informed purchasing decisions. The bill package is, in essence, "right-to-know" legislation.

THE CONTENT OF THE BILL:

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 to implement the act, in consultation with the Department of Environmental Quality (DEQ). (MCL 333.5490)

House Bill 4764 (Substitute H-1) would add or amend definitions:

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

"Chemical of concern" would mean a chemical identified, on the basis of credible scientific evidence, as having any of the following characteristics: (1) is a carcinogen, a reproductive or developmental toxicant, or causes reproductive or developmental harm or other systemic toxicity; (2) is an endocrine or hormone disruptor; (3) is persistent, bioaccumulative, and toxic; or (4) is very persistent and very bioaccumulative.

"Chemical of highest concern" would mean a "chemical of concern" that DCH designates as such under Section 5494 (found in House Bill 4765).

¹ See, for example, GAO statement, dated August 2, 2006, entitled "Chemical Regulation: Actions are Needed to Improve the Effectiveness of EPA's Chemical Review Program," found online at <http://www.gao.gov/new.items/d061032t.pdf>.

"Children" would mean individuals who are 12 years old 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. (MCL 333.5491)

House Bill 4765 (Substitute H-1) would require DCH to create a comprehensive list of "chemicals of concern" by January 1, 2011, in consultation with the DEQ. This list could be updated whenever DCH and DEQ considered it necessary.

In addition, by January 1, 2012, DCH would have to compile a list of highest concern, from the list of chemicals of concern, also in consultation with the DEQ. This list would have to be updated at least every two years.

A chemical of concern could be designated as one "of highest concern" if it met any of the following criteria:

- It has been found through biomonitoring to be present in human blood, including umbilical cord blood; breast milk; urine; or other bodily tissues or fluids.
- It has been found through sampling and analysis to be present in consumer products or in household dust, indoor air, drinking water, or elsewhere in the home environment.
- It has been found through monitoring to be present in fish, wildlife, or the natural environment.
- It has been identified as a high production volume chemical by the U.S. Environmental Protection Agency.
- It is determined by DCH to be of specific relevance to the health of Michigan children. (MCL 333.5494)

House Bill 4766 (Substitute H-2). Except as described below, each manufacturer or distributor of a children's product sold in Michigan that contained a chemical of highest concern would have to do all of the following, as applicable:

- Children's products already being sold in Michigan. As to a children's product already being sold in Michigan, the manufacturer or distributor would have to submit a written statement as described below within 180 days after DCH identified a chemical contained in the product as one of highest concern.
- Children's products not yet sold in Michigan. For children's products not yet sold in Michigan, the manufacturer or distributor would have to submit a written statement as described below before providing that product for sale in Michigan.

Written statements. Each written statement would have to identify the children's product, the chemicals of highest concern in the product, the amount of the chemical, and its intended purpose in the product.

Retailer exception. A retailer would not have to submit written statements unless it was also a manufacturer, distributor, or both.

Exceptions for certain uses. In addition, written statements would not be required for chemicals of highest concern (1) used for industrial or manufacturing purposes; (2) in motor vehicles or their component parts, except detachable car seats; or (3) in combustible fuels or generated solely as combustion by-products.

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. Except as described below, by January 1, 2011, and annually thereafter, a manufacturer would have to report to DCH whether a screening information data set, as specified by the Organisation for Economic Co-operation and Development, or equivalent information, existed for added chemical ingredients contained in the children's products the manufacturer sells in Michigan.

Exception for products sold in small quantities. If 3,000 or fewer units of a children's product were sold in Michigan during the previous calendar year (or if 3,000 or fewer were to be offered in a year), the product's manufacturer or distributor would not have to submit a written statement or provide a screening information data set report.

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 (Substitute H-1) would authorize DCH and the DEQ to participate in an interstate chemicals clearinghouse in cooperation with other states and governmental entities to promote safe chemicals in consumer products, organize and manage available data on chemicals, or otherwise support efforts to promote the use of safer chemicals. (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 (H-2). Existing law provides the following civil fine schedule for violations of existing provisions 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.

Under the bill, if a manufacturer or distributor failed to comply with a requirement of Part 54C, DCH could begin enforcement efforts 90 days later, assess fines 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.

In addition, the bill would provide the following civil fine schedule for violations of Part 54C by manufacturers and distributors, notwithstanding the existing fine schedule set forth above:

- First offense: a civil fine of not more than \$5,000.
- Second offense: a civil fine of not more than \$25,000.
- Third or subsequent offense: a civil fine of not more than \$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.

Fund. The bill would create the Children Safe Products Fund within the state treasury. All civil fines collected under Part 54C would be deposited into the fund and it could also receive money or other assets from any other source. The state treasurer would invest the fund and credit the fund with its investment earnings. Money in the fund at the close of a fiscal year would remain in it and not lapse to the General Fund. DCH would have to spend the fund's money, upon appropriation, for the purpose of administering and carrying out its duties under Part 54C. DCH would be the administrator of the fund for auditing purposes.

ARGUMENTS:

For:

The bill package is essentially "right-to-know" legislation. The legislation doesn't regulate or outlaw the use of any chemical or product, but simply provides parents and other consumers a way to find out what chemicals identified as "of highest concern" are present in children's products sold in Michigan.

By making this information publicly available, the legislation may indirectly encourage, but would not require, manufacturers to make children's products without using chemicals of the highest concern, when possible.

If consumers avoid purchasing children's products containing chemicals of "highest concern," or manufacturers reformulate products to avoid using such chemicals, the bill will help protect children from harm. Children are more vulnerable than adults to negative effects from chemicals and exposures to the most worrisome chemicals have been linked to serious health and developmental problems, including learning disabilities.

Against:

Opponents contend that product safety should be addressed by the federal government under existing laws, not by individual states, and that the legislation's disclosure requirements would be burdensome. Some critics also object to giving the DCH authority to promulgate rules to implement the legislation.

Others contend that the mere presence of a chemical of highest concern in a children's product would not necessarily mean that a child would be exposed to the chemical or suffer any negative consequences from using the product. For instance, the worrisome chemical might be found in a part inside a product that a child would not handle or ingest. They are concerned that consumers could be deterred from purchasing children's products that contain chemicals of highest concern but that are nevertheless safe to use.

In addition, some critics suggest that the DCH does not have the resources or the personnel needed to determine what chemicals are "of concern" or "of highest concern," and that no new regulatory programs should be created given the current state of the economy and the state budget.

POSITIONS:

- Department of Community Health indicated support of the concept of the bills. (4-30-09).
- Association for Children's Mental Health indicated support of the bills as introduced. (4-22-09).
- Clean Water Action indicated support of the bills as introduced. (4-22-09)
- The Ecology Center supports the bills as reported. (5-13-09)
- Learning Disabilities Association of Michigan indicated support of the bills. (4-22-09)
- Michigan Environmental Council indicated support of the bills. (4-30-09)
- Michigan League of Conservation Voters indicated support of the bills. (4-22-09)
- Michigan Network for Children's Environmental Health, a coalition of many environmental, health care, and educational organizations, supports the bills as reported. (5-13-09).
- Michigan Nurses Association (as part of the Michigan Network for Children's Environmental Health) indicated support of the bills. (4-22-09)
- Pathways to Freedom indicated support of the bills. (4-22-09)
- The Science and Environmental Health Network indicated support of the bills. (4-22-09)
- Sierra Club indicated support of the bills. (4-22-09)

- The American Chemistry Council testified in opposition and remains opposed to the bills as reported. (4-22-09)
- The Consumer Specialty Products Association submitted written testimony in opposition to and remains opposed to the bills. (5-13-09)
- The Grocery Manufacturers Association testified in opposition to the bills as introduced. (4-22-09)
- Michigan Chemistry Council testified in opposition to the bills as introduced. (4-24-09)
- The Michigan Manufacturers Association testified and submitted a memorandum in opposition to the bills as introduced. (4-23-09)
- The Michigan Chamber of Commerce testified and submitted a memorandum in opposition to the bills as introduced. (4-23-09)
- The National Federation of Independent Businesses (NFIB) submitted written testimony in opposition to the bills as introduced. (4-24-09)
- Toy Industry Association testified in opposition to the bills as introduced. (4-22-09)

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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.