

SENATE No. 2564

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

SENATE, January 29, 2024.

The committee on Consumer Protection and Professional Licensure, to whom was referred the petitions (accompanied by bill, Senate, No. 175) of Cindy F. Friedman, Joanne M. Comerford, Carmine Lawrence Gentile, Lydia Edwards and other members of the General Court for legislation relative to the disclosure of toxic chemicals in children's products; and (accompanied by bill, House, No. 318) of James K. Hawkins and others for legislation to direct the Department of Environmental Protection to publish a toxic chemicals of concern consumer products list, report the accompanying bill (Senate, No. 2564).

For the committee,
John J. Cronin

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An Act relative to toxic-free kids.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21A of the General Laws, as appearing in the 2022 Official
2 Edition, is hereby amended by inserting after section 28 the following new section:-

3 Section 29. (a) For the purposes of this section, the following terms shall have the
4 following meanings unless the context clearly requires otherwise:

5 “Authoritative body”, an agency or formally organized program or group which the
6 department of environmental protection, in consultation with the Toxics Use Reduction Institute
7 at the University of Massachusetts Lowell, has identified as having expertise in the identification
8 of chemicals causing cancer and other toxicity; provided, that these authoritative bodies shall
9 include, but are not limited to: (i) the American Conference of Governmental Industrial
10 Hygienists; (ii) the federal Environmental Protection Agency; (iii) the European Chemicals
11 Agency; (iv) the International Agency for Research on Cancer; (v) the National Toxicology
12 Program; and (vi) the Occupational Safety Health Administration.

13 “Chemical”, a substance with a distinct molecular composition and the breakdown
14 products of the substance that form through decomposition, degradation or metabolism or a
15 group of structurally related substances and the breakdown products of the substances that form
16 through decomposition, degradation or metabolism.

17 “Chemical class”, groupings that relate chemicals by similar features including
18 classifications by structure, physical properties, or other factors.

19 “Children”, natural persons 12 years of age and under.

20 “Children’s product”, consumer products intended, made or marketed for use by
21 children 12 years of age or under , including: (i) toys; (ii) children’s clothing; (iii) children’s
22 cosmetics and personal care products; (iv) children’s jewelry and novelty products; (v) children’s
23 school supplies; (vi) children’s arts and crafts supplies, including model making supplies (vii)
24 children’s bedding, furniture, and furnishings; (viii) child car seats; (ix) products to help a child
25 with sucking or teething, or to facilitate sleep, relaxation, or the feeding of a child; (x) artificial
26 turf fields installed on school properties, publicly owned properties, or intended for use by
27 children under the age of 18; (xi) products that meet any of the following conditions: represented
28 in its packaging, display, or advertising as appropriate for use by children, sold in conjunction
29 with, attached to, or packaged together with other products that are packaged, displayed, or
30 advertised as appropriate for use by children sold in a retail store, catalogue, or online website, in
31 which a person exclusively offers for sale products that are packaged, displayed, or advertised as
32 appropriate for use by children, or sold in a discrete portion of a retail store, catalogue, or online
33 website, in which a person offers for sale products that are packaged, displayed, or advertised as
34 appropriate for use by children; provided, however, that “children’s product” shall not include:

35 (i) batteries; (ii) slings and catapults; (iii) sets of darts with metallic points; (iv) toy steam
36 engines; (v) bicycles and tricycles; (vi) video toys that can be connected to video screen and are
37 operated at a nominal voltage exceeding twenty-four volts; (vii) chemistry sets; (viii) consumer
38 and children's electronic products, including but not limited to personal computers, audio and
39 video equipment, calculators, wireless phones, game consoles, and handheld devices
40 incorporating a video screen, used to access interactive software and their associated peripherals;
41 (ix) interactive software, intended for leisure and entertainment, including computer games and
42 their storage media, including compact disks; (x) BB guns, pellet guns and air rifles; (xi) snow
43 sporting equipment, including skis, poles, boots, snow boards, sleds and bindings; (xii) roller
44 skates; (xiii) scooters; (xiv) model rockets; (xv) athletic shoes with cleats or spikes; (xvi)
45 pocketknives and multitools; (xvii) food and beverages and food and beverage packaging
46 regulated by the United States Food and Drug Administration or the United States Department of
47 Agriculture; (xviii) pharmaceutical products and biologics; and (xix) medical devices, as defined
48 in the federal Food, Drug, and Cosmetic Act, U,S,C, 21 section 321(h).

49 “Contaminant”, trace amounts of chemicals that are incidental to manufacturing and that
50 serve no intended function in the product component, including, but not limited to: (i) unintended
51 by-products of chemical reactions during the manufacture of the product component; (ii) trace
52 impurities in feedstock; (iii) incompletely reacted chemical mixtures; and (iv) degradation
53 products.

54 “De minimis level”, (i) for a chemical that is an intentionally added chemical in a
55 component of a consumer product, the practical quantification limit; (ii) for a chemical that has a
56 contaminant present in a component of a consumer product, a concentration of 100 parts per
57 million; or (iii) for an engineered nanoobject, there shall be no de minimis level.

58 “Department”, the department of environmental protection.

59 “Engineered nanoobject”, a material with 1, 2 or 3 external dimensions in the nanoscale.

60 “Government entity”, a federal or state government agency.

61 “IC2”, the Interstate Chemicals Clearinghouse, an association of state, local, and tribal
62 governments that promotes a clean environment, healthy communities, and a vital economy
63 through the development and use of safer chemicals and products.

64 “Institute”, the Toxics Use Reduction Institute established in section 6 of chapter 21I.

65 “Manufacturer”, any person, firm, association, partnership, corporation, governmental
66 entity, organization, combination or joint venture which produces a children’s product or an
67 importer or domestic distributor of a children’s product that is produced in a foreign country.

68 “Nanoscale”, size range from approximately 1 nanometers to 100 nanometers.

69 “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS”, substances that include any
70 member of the class of fluorinated organic chemicals containing at least one fully fluorinated
71 carbon atom.

72 “Practical quantification limit”, the lowest concentration of a chemical that can be
73 reliably measured within specified limits of precision, accuracy, representativeness,
74 completeness and comparability during routine laboratory operating conditions; provided, that
75 the practical quantification limit is based on scientifically defensible, standard analytical
76 methods; and provided further, that the practical quantification limit for a given chemical may be
77 different depending on the matrix and the analytical method used.

78 “Regulated perfluoroalkyl and polyfluoroalkyl substances” or “regulated PFAS”,
79 substances that include either: (i) PFAS that a manufacturer has intentionally added to a product
80 and that have a functional or technical effect in the product, including, but not limited to, the
81 PFAS components of intentionally added chemicals and PFAS that are unintentional breakdown
82 products of an added chemical that also have a functional or technical effect in the product; or (ii)
83 the presence of PFAS in a product or product component at or above 100 parts per million, as
84 measured in total organic fluorine.

85 “Safer alternative”, an alternative whose potential to harm human health is less than that
86 of the use of a high priority chemical that it could replace.

87 “Toy”, a product designed or intended by the manufacturer to be used by a child at play.

88 (b) No manufacturer, wholesaler or retailer shall knowingly sell, offer for sale or
89 distribute for use a children’s product or product component containing regulated PFAS.

90 (c) The department, in consultation with the institute, shall maintain and publish a list of
91 toxic chemicals of concern in children’s products, which shall be available to the public on the
92 department’s website.

93 The chemicals of concern list shall include chemicals identified by a government entity
94 or other authoritative body or identified based on scientific evidence as being :

95 (1) a carcinogen or mutagen;

96 (2) persistent or bio-accumulative and toxic

97 (3) an endocrine disruptor;

- 98 (4) a reproductive or developmental toxicant;
- 99 (5) a neurotoxicant;
- 100 (6) a respiratory or skin sensitizer; and
- 101 (7) any other chemical of equivalent concern, as determined by the department, in
102 consultation with the institute.

103 In developing the chemicals of concern list, the department shall consult published
104 authoritative lists of chemical categorizations, including, but not limited to, the Maine Chemicals
105 of Concern List, New York Chemicals of Concern List, Oregon Chemicals of Concern List,
106 Vermont Chemicals of Concern List, Canadian Domestic Substances List Categorization, the
107 European Commission list of Substances of Very High concern, and the International Agency for
108 Research on Cancer list of carcinogens.

109 As needed, but not less than every 3 years, the department, in consultation with the
110 institute, shall update the chemicals of concern list.

111 (d) Not later than 180 days after a chemical is added to the chemicals of concern list
112 established under subsection (c), and biennially thereafter, a manufacturer of a children's product
113 for sale in the commonwealth that contains a chemical in an amount greater than a de minimis
114 level shall notify the department in writing; provided, however, if the children's product contains
115 a listed chemical that is an engineered nanoobject, the manufacturer shall notify the department
116 in writing regardless of the amount of chemical present. The manufacturer's written notice shall
117 include:

118 (1) the name of the chemical used or produced and its chemical abstracts service registry
119 number;

120 (2) a brief description of the product or product component containing the chemicals,
121 including the Global Product Classification product brick description;

122 (3) the brand name, product model, and the universal product code if the product has such
123 a code;

124 (4) a description of the function of the chemical in the product;

125 (5) the amount of the chemical used in each unit of the product or product component,
126 which may be reported in ranges, rather than the exact amount; and

127 (6) the name and address of the manufacturer and the name, address, and phone number
128 of a contact person for the manufacturer.

129 The department is authorized to direct submission of such reports to the IC2 and may
130 otherwise provide for reciprocal data sharing with other states which require reporting of the
131 same information. The department shall specify procedures for the provision of such notice by
132 manufacturers to the IC2.

133 (e) The department shall make information reported under subsection (d) available to the
134 public via the department's website and via linkage to relevant databases on the IC2 website.

135 (f) The department in consultation with the institute, shall maintain and publish a list of
136 high priority chemicals in children's products, which shall be available to the public on the
137 department's website.

138 The department may identify a chemical as a high priority chemical if, upon such review:
139 (i) the chemical or its metabolites have been found through biomonitoring to be present in
140 humans; (ii) the chemical has been found through sampling and analysis to be present in
141 household dust, indoor air, drinking water or elsewhere in the home environment; (iii) the
142 chemical has been scientifically demonstrated to release from the product, resulting in likely
143 exposure to children; or (iv) the sale or use of the chemical or a children's product containing the
144 chemical has been restricted in another state or states within the United States.

145 The department, in consultation with the institute, may remove a chemical from the high
146 priority chemicals list if, upon review, it determines based on substantial scientific evidence that
147 such chemical no longer meets the criteria for listing under this subsection.

148 Not later than 180 days after a chemical is added to the high priority chemicals list,
149 manufacturers of a children's product containing such high priority chemical shall notify persons
150 that offer the children's product for sale or distribution in the state that the product contains a
151 high priority chemical and shall provide such persons with information regarding toxicity and
152 risk management. Notification shall be provided in a form specified by the department.

153 Not later than 3 years after a chemical is added to the high priority chemicals list, no
154 person shall distribute, sell or offer for sale in the commonwealth a children's product containing
155 the high priority chemical, unless a prohibition on the distribution, sale or offer for sale of the
156 children's product would be preempted by federal law or the commissioner exempts the
157 children's product from such prohibition because, in the commissioner's judgment, the lack of
158 availability of the children's product could pose an unreasonable risk to public health, safety or
159 welfare.

160 The department, in consultation with the institute, shall update the high priority chemicals
161 list at least once every 3 years. At least 3 high priority chemicals or one chemical class shall be
162 added to the high priority chemicals list at each update.

163 (g) The department, in consultation with the institute, may periodically publish a list of
164 safer alternative chemicals that may be substituted for the chemicals listed on the high priority
165 chemicals list established in subsection (f). Manufacturers of children’s products containing high
166 priority chemicals may redesign products to eliminate the need for high priority chemicals or
167 they may substitute a chemical from the safer alternatives list.

168 Manufacturers may not replace chemicals on the high priority chemicals list established
169 in subsection (f) with any chemical that is on the chemicals of concern list established in
170 subsection (c) or any chemical that has been identified by a government entity or other
171 authoritative body or is identified based on scientific evidence as having the characteristics of a
172 chemical of concern as described in subsection (c).

173 Manufacturers that seek to replace chemicals on the high priority chemicals list
174 established in subsection (f) with chemicals that are not on the safer alternative chemicals list
175 established in this subsection shall disclose to the department and institute the chemical
176 substitutes that the manufacturer will use. The manufacturer shall conduct a hazard assessment
177 that explains how the children’s product, and any substitute chemical the children’s product
178 contains, are less hazardous than before the substitution was made. The department shall
179 establish the methodology that a manufacturer must use, and the standards that a children’s
180 product must meet, in order to comply with the hazard assessment requirements. Upon the

181 request of the department, manufacturers must submit hazard assessment to the department for
182 review.

183 If the department, in consultation with the institute, requests to review the hazard
184 assessment, the department, in consultation with the institute, may approve or disapprove a
185 hazard assessment within 180 days after its submission. If the department fails to act within 180
186 days, the hazard assessment is deemed approved, and the manufacturer may continue to sell or
187 offer for sale in this state the children’s product for which the manufacturer submitted a hazard
188 assessment. If the department disapproves a hazard assessment, the manufacturer may submit a
189 revised hazard assessment for consideration within 180 days after the department’s disapproval.

190 (h) The department may conduct testing of children’s products sold or offered for sale in
191 the state in order to determine compliance with this act.

192 (i) The department may grant a temporary or permanent waiver to manufacturers of
193 children’s products that request waiver from the requirement to remove or substitute high
194 priority chemicals. The manufacturer applying for waiver must demonstrate that the high priority
195 chemical is not reasonably anticipated to result in exposure based upon an analysis of
196 leachability and bioavailability of chemical of concern. The department may establish
197 requirements and fees for waiver requests.

198 (j) This section shall apply to chemicals in children’s products sold or distributed as new
199 and do not apply to used children’s products that are sold or distributed for free at secondhand
200 stores, yard sales, on the internet or donated to charities.

201 (k) A manufacturer that produces, sells or distributes a product prohibited from
202 manufacture, sale or distribution in the commonwealth under this section shall recall the product
203 and reimburse the retailer or any other purchaser for the product.

204 (l) A manufacturer of products in violation of this section shall be subject to a civil
205 penalty not to exceed \$5,000 for each violation in the case of a first offense. Manufacturers who
206 are repeat violators are subject to a civil penalty not to exceed \$10,000 for each repeat offense.

207 (m) If there are grounds to suspect that a children's product is being offered for sale in
208 violation of this section, the department may request the manufacturer of the children's product
209 to provide a statement of compliance on a form provided by the department within 10 days of
210 receipt of a request from the department. The statement of compliance shall: (i) attest that the
211 children's product does not contain the dangerous chemical; (ii) attest and provide the
212 department with documentation that notification of the presence of the high priority chemical has
213 been provided to the department or provide notice as required by subsection (f); or (iii) attest that
214 the manufacturer has notified persons that sell the product in this state that the sale of the
215 children's product is prohibited.

216 Retailers who unknowingly sell products that are restricted from sale under this section
217 are not liable under this section.

218 (n) Every 3 years, the department, in consultation with the institute, shall submit a report
219 on the toxic chemicals of concern in children's products to the joint committee on public health,
220 the joint committee on the environment, natural resources and agriculture, and the house and
221 senate committees on global warming and climate change. The report shall include general
222 information and policy recommendations for addressing toxic chemicals in children's products,

223 including, but not limited to: (i) ways, in addition to the IC2, to inform and educate consumers
224 about toxic chemicals in children’s products; (ii) ways to protect children from toxic chemical
225 exposures; (iii) progress and challenges in implementing this section; (iv) updated lists of
226 chemicals of concern, high priority chemicals and safer alternative chemicals; (v) results of
227 reporting, including the number and types of children’s products with chemicals of concern or
228 high priority chemicals, amounts used, and the most frequently disclosed chemicals; (vi)
229 information on waiver requests made and granted and compliance and enforcement activities,
230 including testing and penalties; and (vii) any proposed regulations and legislation necessary to
231 carry out the report’s recommendations. The department shall make the report available on its
232 website and may publicize it through any other appropriate channels.

233 (o) The department shall promulgate rules and regulations necessary for the
234 implementation and enforcement of this section, including the need for department and institute
235 staffing, website development and management, reporting, and testing and enforcement.

236 SECTION 2. The regulations required by subsection (o) of section 29 of chapter 21A of
237 the General Laws shall be promulgated not later than 1 year after the effective date of this act.

238 SECTION 3. Notwithstanding any general or special law to the contrary, the department
239 of environmental protection, in consultation with the Toxics Use Reduction Institute established
240 in section 6 of chapter 21I of the General Laws, shall publish an initial: (i) list of toxic chemicals
241 of concern in children’s products, as required by subsection (c) of section 29 of chapter 21A of
242 the General Laws; (ii) list of high priority chemicals in children’s products, as required by
243 subsection (f) of section 29 of chapter 21A of the General Laws; and (iii) list of safer alternative

244 chemicals in children's products, as required by subsection (g) of section 29 of chapter 21A of
245 the General Laws, not later than 2 years after the effective date of this act.

246 SECTION 4. Notwithstanding any general or special law to the contrary, the department
247 of environmental protection, in consultation with the Toxics Use Reduction Institute at the
248 University of Massachusetts Lowell, shall submit its first report, as required by subsection (n) of
249 section 29 of chapter 21A of the General Laws, not later than 3 years after the effective date of
250 this act.