

ASSEMBLY, No. 2104

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 38 (Bergen and Passaic)

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District 38 (Bergen and Passaic)

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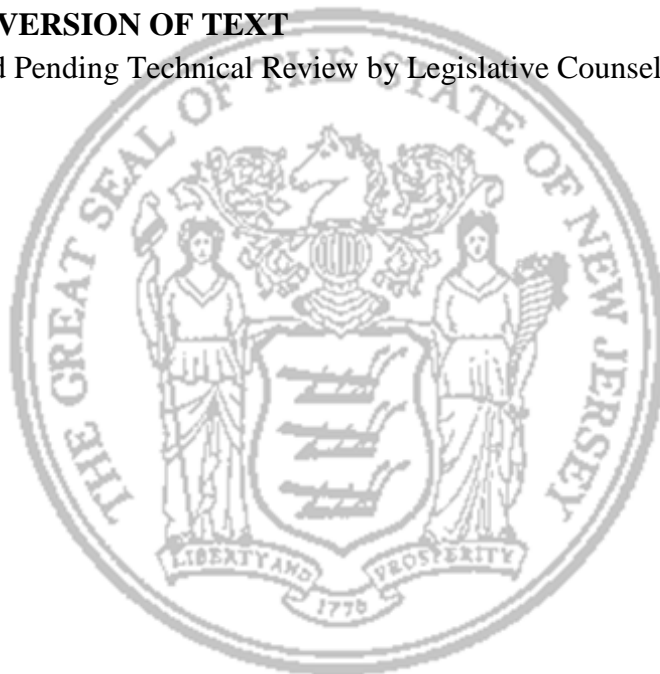
Assemblyman Benson

SYNOPSIS

Requires DEP to post list of certain chemicals, requires manufacturers of children's products to report use of certain chemicals, prohibits sale or distribution of children's products containing certain chemicals.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/13/2020)

1 **AN ACT** concerning certain chemicals in children’s products and
2 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. As used in this act:

8 “CAS” means Chemical Abstracts Service number identifying a
9 chemical substance.

10 “Chemical” means a substance with a distinct molecular
11 composition or a group of structurally related substances and
12 includes the breakdown products of the substance or substances that
13 form through decomposition, degradation, or metabolism.

14 “Chemical of concern” means, unless otherwise removed by the
15 department pursuant to subsection b. of section 2 of this act:

16 a. (1) 1, 1, 2, 2-Tetrachloroethane (CAS 79-34-5);

17 (2) 1, 2-Dibromoethane (CAS 106-93-4);

18 (3) 1, 1, 3, 3-Tetramethyl-4-butylphenol; 4-tert-octylphenol
19 (CAS 140 66-9);

20 (4) (1, 1, 3, 3 - Tetramethylbutyl) Phenol; Octylphenol (CAS
21 27193-28-8);

22 (5) 1, 3-Butadiene (CAS 106-99-0);

23 b. 1, 4-Dioxane (CAS 123-91-1);

24 c. 2, 2’, 3, 3’, 4, 4’, 5, 5’, 6, 6’-Decabromodiphenyl ether; BDE-
25 209 (CAS 15 1163-19-5);

26 d. (1) 2, 4-Diaminotoluene (CAS 95-80-7);

27 (2) 2, 4-Dihydroxybenzophenone; resbenzophenone (CAS 131-
28 56-6);

29 e. 2-Aminotoluene (CAS 95-53-4);

30 f. (1) 2-Ethylhexanoic acid (CAS 149-57-5);

31 (2) 2-Ethyl-hexyl-2, 3, 4, 5 tetrabromobenzoate (TBB) (CAS
32 183658-27-7);

33 g. (1) 2-Ethyl-hexyl-4-methoxycinnamate (CAS 5466-77-3);

34 (2) 2-Naphthylamine (CAS 91-59-8);

35 h. 2-Methoxyethanol (CAS 109-86-4);

36 i. (1) 3, 3’-Dimethylbenzidine and dyes metabolized to 3, 3’-
37 Dimethylbenzidine (CAS 119-93-7);

38 (2) 4-Hydroxybiphenol (CAS 92-69-3);

39 j. (1) 4-Nonylphenol; 4-NP and its isomer mixtures including
40 CAS 84852-15-3 and CAS 25154-52-3 (CAS 104-40-5);

41 (2) 4, 4-methylenebis (2-chloroaniline) (CAS 101-14-4);

42 k. 4-Tert-octylphenol; 1, 1, 3, 3-Tetramethyl-4-butylphenol
43 (CAS 140-66-9) ;

44 l. Acetaldehyde (CAS 75-07-0);

45 m. Acrylonitrile (CAS 107-13-1);

46 n. Aniline (CAS 62-53-3);

47 o. Antimony & antimony compounds (CAS 7440-36-0);

- 1 p. Arsenic & arsenic compounds (CAS 7440-38-2) including
2 arsenic trioxide & dimethyl arsenic (CAS 75-60-5);
3 q. Asbestos (CAS 1332-21-4);
4 r. Benzene (CAS 71-43-2);
5 s. (1) Benzene, pentachloro (CAS 608-93-5);
6 (2) Benzidine and its salts (CAS 92-87-5);
7 t. (1) Benzophenone-2 (BP-2); 2, 2', 4, 4'-
8 tetrahydroxybenzophenone (CAS 131-55-5);
9 (2) Bis(2-ethylhexyl) tetrabromophthalate (TBPH) (CAS 26040-
10 51-7);
11 (3) Bis(chloromethyl) propane-1-3-diyltetrakis-(2-chloroethyl)
12 bis(phosphate)(V6)(CAS 38051-10-4);
13 u. (1) Bisphenol A (CAS 80-05-7);
14 (2) Bisphenol F (CAS 620-92-8);
15 (3) Bisphenol S (CAS 80-09-1);
16 v. Butyl benzyl phthalate (BBP) (CAS 85-68-7);
17 w. Butyl paraben (CAS 94-28-6);
18 x. Butylated Hydroxyanisole; (BHA) (CAS 25013-16-5);
19 y. C.I. solvent yellow 14 (CAS 842-07-9);
20 z. Cadmium & cadmium compounds (CAS 7440-43-9);
21 aa. (1) Carbon disulfide (CAS 75-15-0);
22 (2) Chlorinated paraffins (CAS 108171-26-2);
23 bb. (1) Cobalt & cobalt compounds (CAS 7440-48-4);
24 (2) Decabromodiphenyl ethane (DBPE) (CAS 84852-53-9);
25 (3) Decabromodiphenyl ether (CAS 163-19-5);
26 cc. (1) Di-2-ethylhexyl phthalate (CAS 117-81-7);
27 (2) Di-(2-methoxyethyl) phthalate (DMEP) (CAS 117-82-8);
28 dd. (1) Dibutyl phthalate (CAS 84-74-2);
29 (2) Dicyclohexyl phthalate (DCHP) (CAS 84-61-7);
30 ee. (1) Diethyl phthalate (CAS 84-66-2);
31 (2) Diisobutyl phthalate (DIBP) (CAS 84-69-5);
32 ff. Diisodecyl phthalate (DIDP) (CAS 26761-40-0);
33 gg. Diisononyl phthalate (DINP) (CAS 28553-12-0);
34 hh. Di-n-hexyl phthalate (CAS 84-75-3);
35 ii. (1) Di-n-octyl phthalate (DNOP) (CAS 117-84-0);
36 (2) Dipentyl phthalate (DPP) (CAS 131-18-0);
37 (3) Epichlorohydrin (CAS 106-98-9);
38 jj. Estragole (CAS 140-67-0);
39 kk. Ethyl paraben (CAS 120-47-8);
40 ll. Ethylbenzene (CAS 100-41-4);
41 mm. Ethylene glycol (CAS 107-21-1);
42 nn. (1) Ethylene glycol monoethyl ester (CAS 110-80-5);
43 (2) Ethyl hexyl d-phenol phosphate (EHDPP) (CAS 1241-94-7);
44 oo. Formaldehyde (CAS 50-0-0);
45 pp. Hexabromocyclododecane (HBCD) (CAS 25637-99-4);
46 qq. Hexachlorobenzene (CAS 118-74-1);
47 rr. (1) Hexachlorobutadiene (CAS 87-68-3);

- 1 (2) Isopropylated triphenyl phosphate (IPTPP) (CAS 68437-41-
2 7);
- 3 ss. Lead & lead compounds (CAS 7439-92-1);
- 4 tt. Mercury & mercury compounds (CAS 7439-97-6) including
5 methyl mercury (CAS 22967-92-6);
- 6 uu. Methyl ethyl ketone (CAS 78-93-3);
- 7 vv. Methyl paraben (CAS 99-76-3);
- 8 ww. (1) Methylene chloride (CAS 75-09-2);
- 9 (2) Methyl tert-butyl ether (MTBE) (CAS 1634-04-4);
- 10 xx. (1) Molybdenum & molybdenum compounds (CAS 7439-
11 98-7);
- 12 (2) Mono-n-butylphthalate (CAS 131-70-4);
- 13 yy. (1) N-methylpyrrolidone (CAS 872-50-4);
- 14 (2) Nickel and nickel compounds (CAS N/A);
- 15 zz. N-nitrosodimethylamine (CAS 62-75-9);
- 16 aaa. N-nitrosodiphenylamine (CAS 86-30-6);
- 17 bbb. Nonylphenol (CAS 25154-52-3);
- 18 ccc. Para-chloroaniline (CAS 106-47-3);
- 19 ddd. (1) Perchloroethylene (CAS 127-18-4);
- 20 (2) Perfluorooctanoic acid (PFOA & related substances) (CAS
21 335-67-1);
- 22 eee. Perfluorooctanyl sulphonic acid and its salts (PFOS) (CAS
23 1763-23-1);
- 24 fff. Phenol (CAS 108-95-2);
- 25 ggg. Phenol, 4-octyl- (CAS 1806-26-4);
- 26 hhh. P-hydroxybenzoic acid (CAS 99-96-7);
- 27 iii. (1) Propyl paraben (CAS 94-13-3);
- 28 (2) Short chain chlorinated paraffins (SCCP) (CAS 85535-84-8);
- 29 jjj. Silica, crystalline (in the form of quartz or cristabolite dust)
30 (CAS 14808-60-7);
- 31 kkk. Styrene (CAS 100-42-5);
- 32 ll. (1) Tetrabromobisphenol A (CAS 79-94-7);
- 33 (2) Tetrachloroethene (CAS 127-18-4);
- 34 mmm. (1) Toluene (CAS 108-88-3);
- 35 (2) Tricresyl phosphate (TCP) (CAS 1330-78-5);
- 36 (3) Tri-n-butyl phosphate (TNBP) (CAS 126-73-8);
- 37 (4) Triphenyl phosphate (TPP) (CAS 115-86-6);
- 38 nnn. (1) Tris (1, 3-dichloro-2-propyl) phosphate (CAS 13674-
39 87-3);
- 40 (2) Tris (1-chloro-2-propyl) phosphate (TCPP) (CAS 13674-84-
41 5);
- 42 ooo. (1) Tris (2-chloroethyl) phosphate (CAS 115-96-8);
- 43 (2) Tris (2, 3-dibromopropylphosphate) (CAS 126-72-7);
- 44 ppp. Vinyl chloride (CAS 75-01-4); and
- 45 qq. A chemical identified by the department pursuant to
46 subsection b. of section 2 of this act.
- 47 “Children” means a person or persons aged twelve and under.

1 “Children’s apparel” means any item of clothing that consists of
2 fabric or related material intended or promoted for use in children’s
3 clothing. Children’s apparel does not mean protective equipment
4 designed to prevent injury, including, but not limited to, bicycle
5 helmets, athletic supporters, knee pads, or elbow pads.

6 “Children’s product” means a product sold or distributed as new
7 and primarily intended for, made for, or marketed for use by
8 children, such as baby products, toys, car seats, school supplies,
9 personal care products, a product designed or intended by the
10 manufacturer to help a child with sucking or teething, to facilitate
11 sleep, relaxation, or the feeding of a child, and children’s novelty
12 products, children’s jewelry, children’s bedding, furniture,
13 furnishings, and apparel. The term shall not include:

14 (a) batteries;

15 (b) consumer electronic products including but not limited to
16 personal computers, audio and video equipment, calculators,
17 wireless phones, game consoles, and handheld devices
18 incorporating a video screen, used to access interactive software
19 and their associated peripherals;

20 (c) a food or beverage, or an additive to a food or beverage
21 regulated by the United States Food and Drug Administration; or

22 (d) a drug, biologic, or medical device regulated by the United
23 States Food and Drug Administration.

24 “Commissioner” means the Commissioner of Environmental
25 Protection.

26 “Dangerous chemical” means, unless otherwise removed by the
27 department pursuant to subsection b. of section 2 of this act:

28 (a) the following chemicals:

29 CASRN13674-87-8 Tris (1, 3 dichloro-2-propyl) phosphate;

30 CASRN71-43-2 Benzene;

31 CASRN7439-92-1 lead and compounds (inorganic);

32 CASRN7439-97-6 Mercury and mercury compounds, including
33 methyl mercury (CASRN 22967-92-6);

34 CASRN50-00-0 Formaldehyde;

35 CASRN1332-21-4 Asbestos;

36 CASRN7440-38-2 Arsenic and arsenic compounds including
37 arsenic trioxide (CASRN 1327-53-3) and dimethyl arsenic (CASRN
38 75-60-5);

39 CASRN7440-43-9 Cadmium;

40 CASRN Assorted Organohalogen flame retardants; and

41 (b) a chemical identified by the department pursuant to
42 subsection b. of section 2 of this act.

43 “Department” means the Department of Environmental
44 Protection.

45 “Distributor” means a person who sells children’s products to
46 retail establishments on a wholesale basis.

47 “Manufacturer” means any person who currently manufactures a
48 children’s product or whose brand name is affixed to a children’s

1 product. In the case of a children's product that was imported into
2 the United States, the term includes the importer or first domestic
3 distributor of the children's product if the person who currently
4 manufactures or assembles the children's product or whose brand
5 name is affixed to the children's product does not have a presence
6 in the United States.

7 "Practical quantification level" means the level that can be
8 reliably measured within specified limits of precision and accuracy
9 in routine laboratory operating conditions.

10 "Toy" means a product designed or intended by the manufacturer
11 to be used by children at play.

12 "Trace contaminant" means a trace amount of a chemical or
13 chemicals that is incidental to manufacturing, including an
14 unintended by-product of chemical reactions during the
15 manufacture of a children's product, a trace impurity in feed-stock,
16 an incompletely reacted chemical mixture, or a degradation product.
17

18 2. a. Within 180 days after the date of enactment of this act,
19 the department shall post a list of dangerous chemicals and a list of
20 chemicals of concern on the department's website.

21 b. (1) The department, in consultation with the Department of
22 Health, shall periodically review the list of dangerous chemicals
23 and chemicals of concern and may, pursuant to the "Administrative
24 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), add or
25 remove a dangerous chemical or chemical of concern from the lists.

26 (2) The department, in consultation with the Department of
27 Health, shall identify a chemical as a dangerous chemical if it is
28 present in a children's product and meets any of the following
29 criteria:

30 (a) the chemical or its metabolites have been found through
31 biomonitoring to be present in humans;

32 (b) the chemical has been found through sampling and analysis
33 to be present in household dust, indoor air, drinking water or
34 elsewhere in the home environment;

35 (c) the chemical has been found through monitoring to be
36 present in fish, wildlife, or the natural environment; or

37 (d) the sale or use of the chemical or a children's product
38 containing the chemical has been banned in another state because of
39 the health effects of such chemical.

40 (3) The department, in consultation with the Department of
41 Health, may remove a chemical from the list of dangerous
42 chemicals or the list of chemicals of concern if, upon review, it
43 determines on the basis of credible scientific evidence that the
44 chemical no longer meets the criteria for listing under paragraph (2)
45 of this subsection.

46 (4) The department, in consultation with the Department of
47 Health, shall identify a chemical as a chemical of concern if, upon
48 review, it determines that the chemical is present in a children's

1 product and has been identified by a state, federal, or international
2 governmental entity on the basis of credible scientific evidence as:

- 3 (a) a carcinogen, reproductive or developmental toxicant,
4 neurotoxicant, asthmagen, or endocrine disruptor;
- 5 (b) persistent, bioaccumulative, and toxic; or
- 6 (c) very persistent and very bioaccumulative.

7
8 3. a. No later than 12 months after a chemical appears on a list
9 posted by the department pursuant to section 2 of this act, a
10 manufacturer who offers a children's product for sale or distribution
11 in the State that contains a dangerous chemical or chemical of
12 concern shall report the chemical's use at the practical
13 quantification level to the department.

14 b. The report shall identify the children's product, the dangerous
15 chemical or chemical of concern contained in the children's
16 product, and the intended purpose of the chemical. The department
17 may also require reporting of the following information:

- 18 (1) the amount of the chemical in the children's product; or
- 19 (2) information on the likelihood that the chemical will be
20 released from the children's product into the environment during
21 the product's life cycle and the extent to which users of the product
22 are likely to be exposed to the chemical.

23 c. Upon application by a manufacturer, the commissioner may
24 waive all or part of the reporting requirements under subsection a.
25 of this section for a specified use of a dangerous chemical or a
26 chemical of concern. In making a waiver determination, the
27 commissioner shall consider whether:

- 28 (1) substantially equivalent information is already publicly
29 available or the information is not needed for the purposes of this
30 act;
- 31 (2) similar waivers have been granted by other states; and
- 32 (3) the specified use is minor in volume.

33 d. (1) The manufacturer of a children's product containing a
34 dangerous chemical shall notify persons that offer the children's
35 product for sale or distribution in the State, on a form and in a
36 manner prescribed by the department, of the presence of a
37 dangerous chemical, and provide persons with information
38 regarding the potential harms caused by the presence of the
39 chemical.

40 (2) The department shall notify consumers about children's
41 products that contain a chemical of concern or a dangerous
42 chemical. The notification shall be published on the department's
43 website.

44 e. The department may impose a fee upon a manufacturer upon
45 submission of a report of chemical use pursuant to subsection a. of
46 this section or a waiver request pursuant to subsection c. of this

1 section to cover the department's reasonable costs in the
2 administration and enforcement of this act. Exclusive of fines and
3 penalties otherwise provided by P.L.1960, c.39 (C.56:8-1 et seq.),
4 the department's fees shall be based upon the actual cost of
5 administration and enforcement of this act.

6
7 4. a. Beginning on January 1 three years following the date of
8 enactment, no person shall distribute, sell, or offer for sale in the
9 State a children's product containing tris (1, 3 dichloro-2-propyl)
10 phosphate, benzene, formaldehyde (other than in textiles), asbestos,
11 or organohalogen flame retardants.

12 b. This prohibition shall not apply:

13 (1) to a children's product solely based on its containing an
14 enclosed battery or enclosed electronic components;

15 (2) where State regulation of children's products is preempted
16 by federal law; or

17 (3) where the chemical is present as a trace contaminant.

18 c. The commissioner may exempt a children's product from the
19 prohibition provided in this section if the commissioner determines
20 that the lack of availability of the children's product would pose an
21 unreasonable risk to public health, safety, or welfare.

22
23 5. a. Beginning on January 1 four years following the date of
24 enactment:

25 (1) No person shall distribute, sell, or offer for sale in the State a
26 children's product that contains a chemical on the dangerous
27 chemicals list posted by the department pursuant to subsection a. of
28 section 2 of this act.

29 (2) No person shall distribute, sell, or offer for sale in the State a
30 children's product that contains a chemical added to the list of
31 dangerous chemicals pursuant to subsection b. of section 2 of this
32 act beginning on the first day of the month next three years after a
33 chemical has been added to the list of dangerous chemicals.

34 b. This section shall not apply:

35 (1) to a children's product solely based on its containing an
36 enclosed battery or enclosed electronic components;

37 (2) where State regulation of children's products is preempted
38 by federal law; or

39 (3) where the chemical is present as a trace contaminant.

40 c. The commissioner may exempt a children's product from the
41 prohibition provided in this section if the commissioner determines
42 that the lack of availability of the children's product would pose an
43 unreasonable risk to public health, safety, or welfare.

44
45 6. a. A children's product containing a dangerous chemical
46 shall not be sold, offered for sale, or distributed for sale in the State
47 unless the manufacturer has provided the notification required

1 pursuant to section 3 of this act. The commissioner may exempt a
2 children's product from the prohibition if the commissioner
3 determines that the lack of availability of the children's product
4 would pose an unreasonable risk to public health, safety, or welfare.

5 b. If there are grounds to suspect that a children's product is
6 being offered for sale in violation of this section, the department
7 may request the manufacturer of the children's product to provide a
8 statement of compliance on a form provided by the department no
9 more than 10 days after receipt of a request from the department.
10 The statement of compliance shall:

11 (1) attest that the children's product does not contain the
12 dangerous chemical;

13 (2) attest and provide the department with documentation that
14 notification of the presence of the dangerous chemical has been
15 provided to the department or provide notice as required by
16 subsection d. of section 3 of this act; or

17 (3) attest that the manufacturer has notified persons who sell the
18 product in the State that the sale of the children's product is
19 prohibited.

20

21 7. a. The provisions of this act shall not apply to:

22 (1) used children's products that are sold at secondhand stores,
23 yard sales, on the internet, distributed at no cost, or donated to
24 charities;

25 (2) a priority chemical used in or for industry or manufacturing,
26 including a chemical processed or otherwise used in or for
27 industrial or manufacturing processes and not included in the final
28 product; and

29 (3) children's product makers that employ five persons or fewer.

30 b. A retailer shall be exempt from the requirements of this act
31 unless that retailer knowingly sells a children's product containing a
32 dangerous chemical after the effective date of its prohibition for
33 which that retailer has received notification pursuant to section 3 of
34 this act.

35

36 8. Any violation of this act shall be an unlawful practice
37 pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

38

39 9. The department may adopt, pursuant to the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
41 regulations as may be necessary to implement this act.

42

43 10. This act shall take effect immediately and section 6 of this
44 act shall expire on the first day of the year next three years after the
45 date of enactment.

STATEMENT

This bill would require the Department of Environmental Protection (DEP) to post a list of dangerous chemicals and a list of chemicals of concern on its internet website, require manufacturers of certain children's products to report use of dangerous chemicals or chemicals of concern, and would eventually prohibit the sale of children's products containing dangerous chemicals.

Within 180 days after the effective date of the bill, the DEP would be required to post list of dangerous chemicals and a list of chemicals of concern on its website. The bill defines the terms "dangerous chemicals" and "chemicals of concern," and lists specific chemicals within each term. The bill also provides a means by which the DEP may add or remove a chemical from each list.

No later than twelve months after a chemical appears on a list of dangerous chemicals or chemicals of concern, a manufacturer who offers a children's product for sale or distribution in the State that contains a dangerous chemical or chemical of concern would be required to report such chemical use to the DEP. The report would identify the children's product, the dangerous chemical or chemical of concern contained in the children's product, and the intended purpose of such chemical. The DEP commissioner may waive all or part of the reporting requirements in specific circumstances. The manufacturer would also be required to notify retailers of children's products of the dangerous chemical or chemical of concern.

The bill provides that no person shall distribute, sell, or offer for sale a children's product containing tris (1, 3 dichloro-2-propyl) phosphate, benzene, formaldehyde (other than in textiles), asbestos, organohalogen flame retardants beginning January 1st, three years after enactment. The bill prohibits the sale of a children's product containing a chemical on the dangerous chemicals list beginning January 1st four years after enactment. For any chemical added to the dangerous chemicals list by the department pursuant to the act, the prohibition would take effect three years following the addition of the chemical to the list of dangerous chemicals, starting on January 1st four years after enactment. The DEP Commissioner may exempt a children's product from this prohibition if, in the commissioner's judgment, the lack of availability of the children's product would pose an unreasonable risk to public health, safety or welfare. Before the prohibition takes effect, a children's product containing a dangerous chemical may not be sold, offered for sale, or distributed for sale in the State unless the manufacturer has provided the notification required pursuant to the bill.

The bill would not apply to used children's products that are sold at secondhand stores, yard sales, on the internet, distributed at no cost, or donated to charities. The bill would also not apply to priority chemicals used in or for industry or manufacturing. The bill would not apply to children's product makers that employ five

1 persons or fewer. A retailer is exempt from the requirements of bill
2 unless that retailer knowingly sells a children's product containing a
3 dangerous chemical after the effective date of its prohibition for
4 which that retailer has received notification pursuant to the bill.

5 Any violation of the bill would be an unlawful practice pursuant
6 to P.L.1960, c.39 (C.56:8-1 et seq.). Unlawful practices may be
7 punished by enjoining an individual from managing or owning any
8 business organization within this State and from serving in
9 corporate leadership, vacating or annulling the charter of a
10 corporation; revoking the certificate of authority to do business in
11 this State of a foreign corporation; and revoking any other licenses,
12 permits or certificates. A court may also restore to any moneys or
13 property which may have been acquired by means of an unlawful
14 practice.