

# SB3378



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB3378

Introduced 2/14/2020, by Sen. Laura Fine

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.930 new

Creates the Toxic-Free Kids Act. Requires the Department of Public Health to establish, maintain, post on its website, review, revise, and update a list of high priority chemicals of concern for children's health when used in children's products. Provides that a manufacturer of a children's product that contains a chemical included on the list in an amount at or above a de minimis level shall provide notice to the Department. Allows the Department to enter into reciprocal data sharing agreements with other states. Provides that if manufacturers of children's products substitute a chemical on the list for another chemical, the manufacturer must submit a hazard assessment to the Department that explains how the children's product is inherently less hazardous than before the substitution was made. Provides waivers and exemptions from the Act's requirements. Except for notice violations, establishes a civil penalty not to exceed \$5,000 for a first violation or \$10,000 for a subsequent violation. For notice violations, establishes a civil penalty of \$2,500 for a first violation and \$5,000 for a subsequent violation. Contains other provisions. Amends the State Finance Act. Creates the High Priority Chemicals of Concern for Children's Health Fund as a special fund in the State treasury.

LRB101 16556 CPF 65940 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Toxic-Free Kids Act.

6 Section 5. Definitions. In this Act:

7 "Chemical" means:

8 (1) a substance with a distinct molecular composition  
9 and the breakdown products of the substance that form  
10 through decomposition, degradation, or metabolism; or

11 (2) a group of structurally related substances and the  
12 breakdown products of the substances that form through  
13 decomposition, degradation, or metabolism.

14 "Children's cosmetics" means products that are intended to  
15 be rubbed, poured, sprinkled, or sprayed on, introduced into,  
16 or otherwise applied to the human body or any part thereof for  
17 cleansing, moisturizing, beautifying, promoting  
18 attractiveness, or altering the appearance.

19 "Children's cosmetics" does not mean soap, dietary  
20 supplements, or food or drugs approved by the United States  
21 Food and Drug Administration.

22 "Children's product" means any of the following products,  
23 or any component part of the following products, that are made

1 for, marketed for use by, or marketed to children under 12  
2 years of age:

3 (1) a product designed or intended by the manufacturer  
4 to facilitate sucking, teething, sleep, relaxation,  
5 feeding, or drinking;

6 (2) children's clothing and footwear;

7 (3) car seats;

8 (4) children's cosmetics;

9 (5) children's jewelry; or

10 (6) toys.

11 "Children's product" does not mean:

12 (1) athletic shoes with cleats or spikes;

13 (2) batteries;

14 (3) BB guns, pellet guns, or air rifles;

15 (4) bicycles or tricycles;

16 (5) chemistry sets;

17 (6) consumer electronic products, including, but not  
18 limited to, personal computers, audio and video equipment,  
19 calculators, wireless telephones and game consoles,  
20 handheld devices that incorporate a video screen and are  
21 used to access interactive software, and the associated  
22 peripherals of those consumer electronic products;

23 (7) interactive software intended for leisure and  
24 entertainment, such as computer games, and their storage  
25 media, such as compact discs;

26 (8) model rockets;

- 1 (9) pocketknives and multitools;
- 2 (10) roller skates;
- 3 (11) scooters;
- 4 (12) sets of darts with metallic points;
- 5 (13) slings and catapults;
- 6 (14) snow sporting equipment, including skis, poles,
- 7 boots, snowboards, sleds, or bindings;
- 8 (15) sporting equipment and accessories, including,
- 9 but not limited to, bats, balls, gloves, sticks, pucks,
- 10 pads, helmets and other protective equipment, weight
- 11 training and exercise aids, protective eyewear, backpacks,
- 12 tents, rain gear, sport bags and luggage, and golf
- 13 equipment;
- 14 (16) video toys that can be connected to a video screen
- 15 and are operated at a nominal voltage exceeding 24 volts;
- 16 or
- 17 (17) food or beverages or food or beverage packaging
- 18 regulated by the United States Food and Drug Administration
- 19 or the United States Department of Agriculture.
- 20 "Contaminant" means trace amounts of chemicals that are
- 21 incidental to manufacturing and that serve no intended function
- 22 in the product component, including, but not limited to:
- 23 (1) unintended by-products of chemical reactions
- 24 during the manufacture of the product component;
- 25 (2) trace impurities in feedstock;
- 26 (3) incompletely reacted chemical mixtures; and

1 (4) degradation products.

2 "De minimis level" means:

3 (1) for a chemical that is an intentionally added  
4 chemical, the practical quantification limit; or

5 (2) for a chemical that is a contaminant, a  
6 concentration of 100 parts per million.

7 "Department" means the Department of Public Health.

8 "Fund" means the High Priority Chemicals of Concern for  
9 Children's Health Fund.

10 "Importer" means the owner of a children's product.

11 "Intentionally added chemical" means a chemical in a  
12 product that serves an intended function in the product  
13 component.

14 "Manufacturer" means any person that produces a children's  
15 product or an importer or domestic distributor of a children's  
16 product.

17 "Mouthable" means, in describing a children's product or  
18 any part of a children's product, that the product or part may  
19 be brought into the mouth and placed in the mouth so that the  
20 product or part can be sucked or chewed. If a children's  
21 product or part of a children's product in one dimension is  
22 smaller than 5 centimeters, the product or part can be placed  
23 in the mouth. "Mouthable" does not mean, in describing a  
24 children's product or any part of a children's product, that  
25 the product or part may only be licked, but not placed in the  
26 mouth.

1 "Practical quantification limit" means the lowest  
2 concentration of a chemical that can be reliably measured  
3 within specified limits of precision, accuracy,  
4 representation, completeness, and comparability during routine  
5 laboratory operating conditions.

6 "Product model" means the specific product name used by a  
7 retailer or assembler to place a product into the stream of  
8 commerce.

9 "Trade association" means a membership organization of  
10 persons engaging in the same, similar, or related line of  
11 commerce, organized to promote and improve business conditions  
12 in that line of commerce and not to engage in regular business  
13 activities that ordinarily are carried on for profit.

14 Section 10. List of high priority chemicals of concern.

15 (a) The Department shall establish and maintain a list of  
16 high priority chemicals of concern for children's health when  
17 used in children's products. The list shall include chemicals  
18 that are listed on the Washington State Department of Ecology's  
19 reporting list of Chemicals of High Concern to Children on the  
20 effective date of this Act.

21 (b) In establishing by rule the practical quantification  
22 limits for chemicals on the list of high priority chemicals,  
23 the Department shall consider guidance developed by the State  
24 of Washington and other federal, State, and nongovernmental  
25 organizations with the applicable expertise.

1 (c) The Department shall post the list of high priority  
2 chemicals on its website. For each high priority chemical on  
3 the list, the Department shall post:

4 (1) information regarding the known health impacts  
5 associated with exposure to the chemical; and

6 (2) data collected under Section 15 in a format that is  
7 searchable and accessible to the public.

8 (d) The Department shall review and revise the list of high  
9 priority chemicals every 2 years. In completing the revisions  
10 under this subsection, the Department:

11 (1) shall consider adding or removing a chemical from  
12 the list of high priority chemicals if, after the effective  
13 date of this Act, the chemical is added to or removed from  
14 the Washington State Department of Ecology's reporting  
15 list of Chemicals of High Concern to Children or a list  
16 maintained by another State agency, another state, or a  
17 federal agency that the Department has identified by rule  
18 as a list intended to identify high priority chemicals; and

19 (2) may remove a chemical from the list of high  
20 priority chemicals if the Department determines that the  
21 chemical is no longer being used in children's products.

22 (e) The Department shall update the list of high priority  
23 chemicals on its website within one year after the date on  
24 which a chemical is added to or removed from the list.

25 Section 15. Manufacturer notice.

1           (a) A manufacturer of a children's product sold or offered  
2 for sale in this State that contains a chemical included on the  
3 list established and maintained under Section 10 in an amount  
4 at or above a de minimis level shall provide a biennial notice  
5 as described under subsection (b) to the Department by January  
6 1 of each applicable notice year.

7           (b) The first biennial notice required under this Section  
8 shall be submitted to the Department by January 1 of the year  
9 following the year that the chemical contained in the  
10 children's product sold or offered for sale in this State is  
11 added to the list. Notwithstanding anything in this subsection  
12 to the contrary, the first biennial notices required to be  
13 submitted to the Department under this subsection for chemicals  
14 contained in children's products that are included on the list  
15 created under Section 10 shall be submitted to the Department  
16 no later than January 1, 2023.

17           (c) The notice required under this Section must contain:

18               (1) the name and Chemical Abstracts Service Registry  
19 Number of the chemical contained in the children's product;

20               (2) the product category of the children's product that  
21 contains the chemical;

22               (3) the product model and brand name of the children's  
23 product that contains the chemical;

24               (4) a description of the function of the chemical in  
25 the children's product;

26               (5) the amount of the chemical used in each unit of the



1 children's product, reported as a range rather than an  
2 exact amount;

3 (6) the name and address of the manufacturer and the  
4 name, address, and telephone number of a contact person for  
5 the manufacturer; and

6 (7) any other information that the manufacturer deems  
7 relevant to the appropriate use of the children's product.

8 (d) The Department may enter into reciprocal data sharing  
9 agreements with other states in which manufacturers of  
10 children's products are required to disclose information  
11 related to high priority chemicals of concern for children's  
12 health used in children's products. The Department must use the  
13 GS1 Global Product Classification system to identify and  
14 specify product categories subject to the data sharing  
15 agreements. If the Department enters or has entered into a data  
16 sharing agreement with another state, and a manufacturer  
17 reports or has reported the information required in the notice  
18 described under subsection (c) to that state, the manufacturer  
19 may request that the other state provide the Department with  
20 the information in lieu of the manufacturer's direct reporting  
21 of the information to the Department.

22 (e) A manufacturer fulfills the notice requirement under  
23 this Section when the Department receives the information from  
24 the other state and the Department determines that the  
25 information received satisfies the requirements for the notice  
26 specified under subsection (c).

1 (f) In lieu of the manufacturer's providing notice to the  
2 Department under subsection (a) or (d), the Department may  
3 require that the notice be submitted to the Interstate  
4 Chemicals Clearinghouse. The Department by rule shall specify  
5 procedures for the provision of such notice by manufacturers to  
6 the Interstate Chemicals Clearinghouse.

7 (g) The Department shall grant an exemption to a  
8 manufacturer of children's products that applies for an  
9 exemption from the notice requirements of this Section if the  
10 application demonstrates that:

11 (1) the high priority chemical of concern for  
12 children's health used in children's products is present in  
13 the children's product only as a contaminant;

14 (2) the manufacturer conducts a manufacturing control  
15 program for the contaminant; and

16 (3) the manufacturing control program meets minimum  
17 standards for a manufacturing control program as set forth  
18 by the Department by rule.

19 (h) The Department shall approve or disapprove an exemption  
20 application within 180 days after its submission. If the  
21 Department fails to act within 180 days, the exemption  
22 application shall be deemed approved. If the Department  
23 disapproves an exemption application, the manufacturer may  
24 submit a revised exemption application for consideration  
25 within 180 days after the Department's disapproval.

26 (i) A trade association may provide the required notices on

1 behalf of its member manufacturers under this Section.

2 (j) When a manufacturer provides notice to the Department  
3 under this Section, the manufacturer may submit  
4 recommendations to the Department regarding technical,  
5 financial, or logistical support deemed necessary for  
6 innovation and green chemistry solutions related to high  
7 priority chemicals of concern for children's health used in  
8 children's products.

9 Section 20. Removal or substitution of chemicals.

10 (a) On or before the date on which a manufacturer of a  
11 children's product submits the third biennial notice required  
12 under Section 15 for a chemical that is present in a children's  
13 product, the manufacturer must remove or make a substitution  
14 for the chemical and submit a hazard assessment under Section  
15 25, or seek a waiver under Section 30, if the chemical is  
16 present in a children's product that is:

17 (1) mouthable;

18 (2) a children's cosmetic; or

19 (3) made for, marketed for use by, or marketed to  
20 children under 3 years of age.

21 (b) A manufacturer with 25 or fewer employees may apply for  
22 a 2-year extension of the date specified under subsection (a)  
23 of this Section to meet the requirements of this Section.

24 (c) Manufacturers are exempt from meeting the requirements  
25 of this Section for children's products described under

1 subsection (a) that contain high priority chemicals of concern  
2 for children's health used in children's products at levels  
3 that are at or below allowable levels for children's products  
4 as established by the federal Consumer Product Safety  
5 Improvement Act of 2008 in effect on the effective date of this  
6 Act.

7 (d) For purposes of this Section, any consumer product  
8 safety standard adopted under federal law that establishes  
9 allowable levels for children's products of a high priority  
10 chemical of concern for children's health used in children's  
11 products is presumed to establish the maximum allowable level  
12 of the chemical that may be used in children's products that  
13 are sold or offered for sale in this State. The Department may  
14 not require a manufacturer in compliance with the federal  
15 standard to also comply with this Section unless the Department  
16 establishes in the rulemaking process that a lower maximum  
17 allowable level for children's products of a high priority  
18 chemical of concern for children's health used in children's  
19 products than the allowable level set by the federal standard  
20 is necessary to protect human health and welfare.

21 Section 25. Hazard assessment.

22 (a) When a manufacturer of children's products sold or  
23 offered for sale in this State removes a high priority chemical  
24 of concern for children's health used in children's products  
25 from a children's product sold or offered for sale in this

1 State that substitutes another chemical under Section 20, the  
2 manufacturer must submit a hazard assessment to the Department  
3 that explains how the children's product, and any substitute  
4 chemical the children's product contains, is inherently less  
5 hazardous than before the substitution was made.

6 (b) When a manufacturer of children's products sold or  
7 offered for sale in this State removes a high priority chemical  
8 of concern for children's health used in children's products  
9 from a children's product as described in subsection (a) and  
10 does not substitute another chemical, the manufacturer must  
11 submit notice to the Department that the manufacturer is no  
12 longer using the chemical or a substitute chemical.

13 (c) The Department shall establish by rule the methodology  
14 that a manufacturer must use and the standards that a  
15 children's product must meet in order to comply with the hazard  
16 assessment requirements described in subsection (a).

17 (d) The Department shall approve or disapprove a hazard  
18 assessment within 180 days after its submission. If the  
19 Department fails to act within 180 days, the hazard assessment  
20 shall be deemed approved, and the manufacturer may continue to  
21 sell or offer for sale in this State the children's product for  
22 which the manufacturer submitted a hazard assessment. If the  
23 Department disapproves a hazard assessment, the manufacturer  
24 may submit a revised hazard assessment for consideration within  
25 180 days after the Department's disapproval.

1 Section 30. Waiver; alternatives assessment.

2 (a) The Department shall grant a waiver to a manufacturer  
3 of children's products that applies for a waiver in order to  
4 comply with Section 20 if the application includes an  
5 alternatives assessment demonstrating that removal of the high  
6 priority chemical of concern for children's health used in  
7 children's products is not financially or technically  
8 feasible.

9 (b) An alternatives assessment submitted under subsection  
10 (a) must be conducted in a manner consistent with the guidance  
11 and frameworks for such assessments in effect on the effective  
12 date of this Act and as established by the United States  
13 Environmental Protection Agency, the Interstate Chemicals  
14 Clearinghouse, the State of California, as part of that state's  
15 program for reducing toxic chemicals in consumer products, or  
16 other states or nongovernmental organizations with the  
17 applicable expertise, or as developed by the Department by  
18 rule. The Department may recommend or require that a  
19 manufacturer follow particular guidance or frameworks in order  
20 to meet the requirements of this Section.

21 (c) If the Department determines that an alternatives  
22 assessment is incomplete, the Department may obtain the  
23 assessment from another party. The manufacturer that submitted  
24 the incomplete assessment must pay for the assessment performed  
25 by the other party.

26 (d) The Department shall approve or disapprove a waiver

1 application within 180 days after its submission. If the  
2 Department fails to act within 180 days, the waiver application  
3 shall be deemed approved, and the manufacturer may continue to  
4 sell or offer for sale in this State the children's product for  
5 which the manufacturer submitted a waiver application. If the  
6 Department disapproves a waiver application, the manufacturer  
7 may submit a revised waiver application for consideration  
8 within 180 days after the Department's disapproval.

9 Section 35. Exemptions. Manufacturers of children's  
10 products with annual worldwide gross sales of less than \$5  
11 million, as reported on the most recent tax return filed by the  
12 manufacturer before the notice required under subsection (a) of  
13 Section 15, are exempt from the requirements of Sections 15,  
14 20, 25, and 30.

15 Section 40. Testing; fees.

16 (a) The Department may conduct testing of children's  
17 products sold or offered for sale in this State in order to  
18 determine compliance with Sections 15, 20, and 25 of this Act.

19 (b) The Department may establish by rule a schedule of fees  
20 for manufacturers of children's products that are based on the  
21 costs to the Department for administering this Act. Fees  
22 collected by the Department under this subsection shall be  
23 deposited in the High Priority Chemicals of Concern for  
24 Children's Health Fund established under Section 55.

1           Section 45. Interstate Chemicals Clearinghouse. The  
2 Department is authorized to participate in the Interstate  
3 Chemicals Clearinghouse in cooperation with other states and  
4 government entities to assist the Department in carrying out  
5 this Act.

6           Section 50. Civil penalties.

7           (a) Except as provided under subsection (e), the Department  
8 may impose a civil penalty on a manufacturer of children's  
9 products for a violation of any provision under Section 20 or  
10 25.

11           (b) For purposes of assessing civil penalties under this  
12 Section, a violation consists of a single course of conduct  
13 with regard to an entire children's product line that is sold  
14 or offered for sale in this State.

15           (c) The Department shall adopt by rule a schedule of civil  
16 penalties under subsection (a). A civil penalty may not exceed  
17 \$5,000 for the first violation or \$10,000 for a second or  
18 subsequent violation.

19           (d) In imposing a penalty under subsection (a) or (e) of  
20 this Section, the Department shall consider the following  
21 factors:

22           (1) the past history of the manufacturer in taking all  
23 feasible steps or following all feasible procedures  
24 necessary or appropriate to correct any violation;



1           (2) any prior violations of statutes, rules, orders, or  
2 permits pertaining to high priority chemicals of concern  
3 for children's health used in children's products;

4           (3) the gravity and magnitude of the violation;

5           (4) whether the violation was a sole, repeated, or  
6 continuous event;

7           (5) whether the violation was a result of an  
8 unavoidable accident, negligence, or an intentional act;

9           (6) the violator's cooperation, and efforts to correct  
10 the violation;

11           (7) the economic and financial conditions of the  
12 manufacturer incurring a penalty; and

13           (8) if a manufacturer asserts that a high priority  
14 chemical of concern for children's health used in  
15 children's products is present in a children's product only  
16 as a contaminant, evidence that the manufacturer conducted  
17 a manufacturing control program for the contaminant and  
18 exercised due diligence.

19           (e) If a manufacturer violates the notice requirements  
20 described under Section 15 or subsection (a) of Section 25, the  
21 Department shall provide the manufacturer with written notice  
22 informing the manufacturer of the violation and stating that  
23 the manufacturer may avoid a civil penalty for the violation by  
24 providing the proper notice required under Section 15 or  
25 subsection (a) of Section 25 within 90 days.

26           If the manufacturer fails to cure the violation within 90

1 days after receiving notice from the Department, the Department  
2 may impose a civil penalty not to exceed \$2,500 on the  
3 manufacturer. For a continuing violation, each 90-day period  
4 that the violation continues after the preceding imposition of  
5 a civil penalty is a separate offense subject to a separate  
6 civil penalty not to exceed \$5,000. The Department is not  
7 required to provide the manufacturer with an opportunity to  
8 cure the continuing violation before imposing a civil penalty  
9 for the continuing violation.

10 (f) If the Department has reason to believe that a  
11 children's product that contains a high priority chemical of  
12 concern for children's health used in children's products is  
13 being sold or offered for sale in this State in violation of  
14 Section 15, 20, or 25, the Department may request that the  
15 manufacturer provide a statement of compliance on a form  
16 provided by the Department. The manufacturer must submit the  
17 statement of compliance within 10 days after receipt of a  
18 request. To prove compliance with Sections 15, 20, or 25 the  
19 manufacturer must:

20 (1) show that the children's product does not contain  
21 the high priority chemical of concern for children's health  
22 used in children's products;

23 (2) show that the manufacturer has previously provided  
24 the Department with notice as required under Section 15;

25 (3) provide the Department with notice as required  
26 under Section 15 or subsection (a) of Section 25, as

1 applicable; or

2 (4) provide the Department with documentation that the  
3 manufacturer has previously complied with subsection (a)  
4 of Section 25.

5 (g) All civil penalties recovered under this Section shall  
6 be paid into the High Priority Chemicals of Concern for  
7 Children's Health Fund established under Section 55 of this  
8 Act.

9 Section 55. High Priority Chemicals of Concern for  
10 Children's Health Fund.

11 (a) The High Priority Chemicals of Concern for Children's  
12 Health Fund is created as a special fund in the State treasury  
13 to be used by the Department for the administration and  
14 enforcement of this Act. Interest earned by the High Priority  
15 Chemicals of Concern for Children's Health Fund shall be  
16 credited to the Fund.

17 (b) The Department may accept gifts, grants, or  
18 contributions from any public or private source for the purpose  
19 of carrying out this Act.

20 (c) The Fund shall consist of:

21 (1) Moneys accepted by the Department under subsection

22 (b) of this Section.

23 (2) Payments and fees collected under this Act.

24 (3) Civil penalties imposed under Section 50.

1 Section 60. Reports. The Department shall issue a report to  
2 the General Assembly by no later than February 15 of each  
3 odd-numbered year. The report shall include the following  
4 information:

5 (1) Any revisions made under Section 10 to the list of  
6 high priority chemicals of concern for children's health  
7 used in children's products.

8 (2) The number of manufacturers of children's products  
9 in compliance with Section 15 and an analysis of the  
10 information collected under Section 15 specifying:

11 (A) the number and types of children's products  
12 sold or offered for sale in this State that contain high  
13 priority chemicals of concern for children's health used in  
14 children's products;

15 (B) the range of amounts of high priority chemicals  
16 of concern for children's health used in children's  
17 products, by product category, and the total number of and  
18 most frequently disclosed high priority chemicals of  
19 concern for children's health used in children's products;

20 (C) the potential for exposure to high priority  
21 chemicals of concern for children's health used in  
22 children's products based on the number of children's  
23 products sold or offered for sale in this State that  
24 contain chemicals on the list established under Section 10,  
25 likely exposure routes, and the typical use patterns for  
26 the children's products that contain chemicals on the list

1 established under Section 10; and

2 (D) recommendations to limit, reduce, or prevent  
3 exposure to high priority chemicals of concern for  
4 children's health used in children's products based on an  
5 analysis of the information collected.

6 (3) Details about the implementation of Sections 25 and  
7 30 regarding hazard assessments and waivers. In cases where  
8 the Department grants waivers for the continued use of high  
9 priority chemicals of concern for children's health used in  
10 children's products and the waiver application includes an  
11 alternatives assessment, the Department may develop  
12 recommendations for opportunities to provide technical  
13 assistance, provide grants, promote public-private  
14 partnerships, and other actions to encourage manufacturers  
15 to produce children's products through green chemistry and  
16 that do not contain high priority chemicals of concern for  
17 children's health used in children's products.

18 (4) A summary of compliance testing results obtained  
19 under Section 40.

20 (5) Any recommendations submitted to the Department by  
21 manufacturers under Section 15.

22 In developing the recommendations described in this  
23 subsection, the Department may consult with the Department of  
24 Labor, the Environmental Protection Agency, or any other State  
25 agency.

1           Section 95. The State Finance Act is amended by adding  
2           Section 5.930 as follows:

3           (30 ILCS 105/5.930 new)

4           Sec. 5.930. The High Priority Chemicals of Concern for  
5           Children's Health Fund.