



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4113

by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

New Act

Creates the Toxic Chemical Safety Act. Requires the Director of the Illinois Environmental Protection Agency to publish a list of chemicals of high concern. Authorizes the Director to designate chemicals of high concern and other chemicals as priority chemicals. Requires the Director to report certain information about the designation process to the General Assembly. Requires each manufacturer and distributor of children's products that contain designated chemicals to provide certain information to the Director. Authorizes the Director, under certain circumstances, to prohibit, by rule, the sale and distribution of children's products containing a priority chemical. Requires manufacturers and distributors whose products are subject to one of these rules to file a compliance plan. Authorizes manufacturers and distributors to apply for, and the Director to grant, waivers from these rules. Exempts certain classes of chemicals, persons, and containers. Authorizes the Director to participate in an interstate clearinghouse to promote chemical safety. Authorizes the Director to request certificates of compliance from manufacturers and distributors. Requires the Director to develop certain educational materials. Creates the Advisory Council on Toxic Substances to provide expert and scientific advice to the Director. Authorizes the Director to adopt rules necessary to implement these provisions. Effective immediately.

LRB097 17955 JDS 63178 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

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 Toxic
5 Chemical Safety Act.

6 Section 5. Statement of policy. It is the policy of the
7 State of Illinois to protect public health and the environment
8 by reducing the exposure of its citizens and vulnerable
9 populations, such as children, to toxic chemicals, when safer
10 alternatives exist.

11 Section 10. Definitions. As used in this subchapter:

12 "Alternative" means a substitute process, product,
13 material, chemical, strategy, or combination that serves a
14 functionally equivalent purpose to a priority chemical or
15 chemical of high concern.

16 "Chemical" means a substance with a distinct molecular
17 composition or a group of structurally related substances and
18 includes the products that form through the decomposition or
19 metabolism of the substance.

20 "Chemical of high concern" means a chemical identified by
21 the Director under Section 15 of this Act.

22 "Chemical of low concern" means a chemical for which

1 adequate toxicity and environmental data are available to
2 determine that it is not a chemical of high concern, a chemical
3 of moderate concern, or a chemical of unknown concern.

4 "Chemical of moderate concern" means a chemical identified
5 by an authoritative governmental entity on the basis of
6 credible scientific evidence as being suspected of causing one
7 or more of the adverse health or environmental effects set
8 forth under subsection (a) of Section 15 of this Act.

9 "Chemical of unknown concern" means a chemical for which
10 insufficient data are available to classify it as a chemical of
11 high concern, a chemical of moderate concern, or a chemical of
12 low concern.

13 "Children's product" means:

14 (1) a consumer product intended for use by children,
15 such as a baby product, toy, car seat, personal care
16 product, or clothing; and

17 (2) any consumer product containing a chemical of high
18 concern that when used or disposed of will likely result in
19 a child being exposed to that chemical.

20 "Consumer product" means any item sold for residential or
21 commercial use, including any component or packaging.

22 "Consumer product" does not include:

23 (1) A food or beverage or an additive to a food or
24 beverage.

25 (2) A tobacco product.

26 (3) A paper or forest product.

1 (4) A pesticide regulated by the U.S. Environmental
2 Protection Agency.

3 (5) A drug or biologic regulated by the U.S. Food and
4 Drug Administration or the packaging of such a drug or
5 biologic if the U.S. Food and Drug Administration regulates
6 the drug or biologic's packaging.

7 "Director" means the Director of the Illinois
8 Environmental Protection Agency.

9 "Distributor" means a person who sells a consumer product
10 to a retail establishment on a wholesale basis.

11 "Manufacturer" means any person who manufactures a final
12 consumer product or whose brand name is affixed to the consumer
13 product. In the case of a consumer product imported into the
14 State and distributed, sold, or offered for sale in the State,
15 "manufacturer" includes the importer or domestic distributor
16 of the consumer product if the person who manufactured or
17 assembled the consumer product or whose brand name is affixed
18 to the consumer product does not have a presence in the United
19 States.

20 "Priority chemical" means a chemical identified as such by
21 the Director under Section 20 of this Act.

22 "Safer alternative" means an alternative that, when
23 compared to a priority chemical that it could replace, would
24 reduce the potential for harm to human health or the
25 environment or that has not been shown to pose the same or
26 greater potential for harm to human health or the environment

1 as the priority chemical.

2 Section 15. Chemical of high concern.

3 (a) On or before January 1, 2013, the Director shall
4 publish a list of chemicals of high concern to public health or
5 the environment of the State of Illinois. The Director shall
6 update the list of chemicals of high concern as necessary and
7 at least annually. A chemical or other substance may be
8 included on the list of chemicals of high concern if the
9 Director determines that it has been identified by an
10 authoritative governmental entity on the basis of credible
11 scientific evidence as being known as one or more of the
12 following:

- 13 (1) A carcinogen.
14 (2) A mutagen.
15 (3) A reproductive or developmental toxin.
16 (4) An endocrine disruptor.
17 (5) A persistent or bioaccumulative toxin.

18 (b) The Director may revise the list as needed and may add
19 a chemical to the list of chemicals of high concern if it meets
20 one or more of the criteria of subsection (a) of this Section.
21 The Director may remove a chemical from the list of chemicals
22 of high concern if, based on evidence, the Director determines
23 that the chemical does not meet or no longer meets one or more
24 of the criteria of subsection (a) of this Section.

1 Section 20. Priority chemicals.

2 (a) The Director shall designate as a priority chemical any
3 chemical classified as "known to be a human carcinogen" in the
4 most recent report on carcinogens by the National Toxicology
5 Program in the U.S. Department of Health and Human Services.

6 (b) The Director may designate a chemical of high concern
7 as a priority chemical if the Director finds one or more of the
8 following:

9 (1) The chemical has been found through biomonitoring
10 to be present in human blood, umbilical cord blood, breast
11 milk, urine, or other bodily tissues or fluids.

12 (2) The chemical has been found through sampling and
13 analysis to be present in household dust, indoor air,
14 drinking water, or elsewhere in the home environment.

15 (3) The chemical has been found through monitoring to
16 be present in fish, wildlife, or the natural environment.

17 (4) The chemical has been found to be present in a
18 consumer product used or present in the home.

19 (5) The chemical has been identified as a high
20 production volume chemical by the U.S. Environmental
21 Protection Agency.

22 (6) The sale or use of the chemical or a product
23 containing the chemical has been banned in another state
24 within the United States.

25 (c) In reviewing the list of chemicals of high concern for
26 designation as a priority chemical under subsection (b) of this

1 Section, the Director shall prioritize designation of
2 chemicals that have been one or more of the following:

3 (1) Characterized as "reasonably anticipated to be a
4 human carcinogen" in the most recent report on carcinogens
5 by the National Toxicology Program in the U.S. Department
6 of Health and Human Services.

7 (2) Classified as "likely to be carcinogenic to humans"
8 in the U.S. Environmental Protection Agency's most recent
9 list of chemicals evaluated for carcinogenic potential.

10 (3) Identified by the U.S. Environmental Protection
11 Agency as causing birth defects, hormone disruption, or
12 harm to reproduction or development.

13 (d) Beginning January 1, 2013, the Director shall report
14 annually to the General Assembly with a summary of the
15 chemicals reviewed for designation under this Section, a
16 description of the review, and the number of chemicals
17 designated as priority chemicals under this Section.

18 Section 25. Priority chemical notification of use.

19 (a) No later than 180 days after the Director designates a
20 priority chemical under Section 20 of this Act, each
21 manufacturer and distributor of a children's product that is
22 distributed, sold, or offered for sale in Illinois and that
23 contains the priority chemical designated by the Director shall
24 notify the Director in writing of the presence of the priority
25 chemical in the children's product. The notification shall:

- 1 (1) identify the children's product;
- 2 (2) disclose the number of units of the children's
3 product sold or distributed in the State;
- 4 (3) specify the priority chemical or chemicals and the
5 amount of chemical or chemicals contained in the children's
6 product; and
- 7 (4) describe the intended purpose or use of the
8 priority chemical in the children's product.

9 (b) Each manufacturer and distributor of a children's
10 product that contains a priority chemical shall provide the
11 following additional information if requested by the Director:

- 12 (1) information on the likelihood that the chemical
13 will be released from the children's product to the
14 environment during the product's life cycle and the extent
15 to which users of children's products are likely to be
16 exposed to the chemical;
- 17 (2) information on the extent to which the chemical is
18 present in the environment or human body; and
- 19 (3) an assessment of the availability, cost,
20 feasibility, and performance, including potential for harm
21 to public health and the environment, or alternatives to
22 the priority chemical and the reason the priority chemical
23 was used in the manufacture of the children's product in
24 lieu of the identified alternatives. If an assessment
25 acceptable to the Director is not timely submitted, the
26 Director may assess the manufacturer or distributor the

1 cost of a report conducted by an independent contractor of
2 the Director's choice on the availability of safer
3 alternatives.

4 Section 30. Prohibition on sale.

5 (a) The Director may prohibit, by rule, the manufacture,
6 sale, or distribution in the State of a children's product
7 containing a priority chemical if the Director determines,
8 after consideration of the information submitted under Section
9 25 of this Act and other relevant information obtained by the
10 Director, that:

11 (1) distribution of the children's product directly or
12 indirectly exposes children and vulnerable populations to
13 the priority chemical; and

14 (2) one or more safer alternatives to the priority
15 chemical are available at a comparable cost.

16 (b) If, under subsection (a) of this Section, the Director
17 identifies several safer alternatives to a priority chemical,
18 the Director may ban the sale of children's products that do
19 not contain the alternative that is the least toxic to public
20 health or the environment.

21 (c) A prohibition adopted by rule under this Section shall
22 have an effective date of at least 12 months after the date the
23 final rule is published in the Illinois Register.

24 (d) For the purpose of determining whether a safer
25 alternative is available under subsection (a) of this Section,

1 the Director may, in the absence of persuasive evidence to the
2 contrary:

3 (1) presume that an alternative is a safer alternative
4 if the alternative is not a chemical of high concern;

5 (2) presume that a safer alternative is available if
6 the sale of the children's product containing the priority
7 chemical has been banned by another state within the United
8 States;

9 (3) presume that a safer alternative is available if
10 the children's product containing the priority chemical is
11 an item of apparel or a novelty; and

12 (4) presume that a safer alternative is available if
13 the alternative is sold in the United States.

14 (e) At least 180 days before the effective date of a
15 prohibition of a priority chemical adopted under subsection (a)
16 of this Section, each manufacturer and distributor of a
17 children's product that contains the priority chemical that is
18 subject to the prohibition shall file a compliance plan with
19 the Director or shall seek a waiver from the Director under
20 subsection (g) of this Section. A compliance plan submitted
21 under this subsection shall:

22 (1) identify the children's product that contains a
23 priority chemical;

24 (2) specify whether compliance with a prohibition on a
25 priority chemical will be achieved by discontinuing the
26 sale of the children's product in the State or by

1 substituting a safer alternative in the product; and

2 (3) if compliance is to be achieved by substitution of
3 a safer alternative in the product, identify the safer
4 alternative and the timetable for substitution.

5 (f) A manufacturer or distributor of a children's product
6 that contains a priority chemical shall notify all persons that
7 offer the children's product for sale or distribution in the
8 State of the requirements of this Act and whether the
9 children's product is subject to a prohibition on sale adopted
10 under subsection (a) of this Section.

11 (g) (1) The manufacturer or distributor of a children's
12 product that contains a priority chemical and that is subject
13 to a prohibition adopted under subsection (a) of this Section
14 may apply to the Director for a waiver for one or more specific
15 uses of the priority chemical. The waiver application shall, at
16 a minimum:

17 (A) identify the specific children's product use
18 or uses for which the waiver is sought;

19 (B) identify the alternatives considered for
20 substitution of the priority chemical;

21 (C) explain the alternatives considered for
22 substitution of the priority chemical; and

23 (D) identify the steps that have been and will be
24 taken to minimize the use of the priority chemical.

25 (2) The Director may grant a waiver under this subsection
26 with or without conditions upon a finding that (i) there is

1 a need for the children's product in which the priority
2 chemical is used and (ii) there are no technically or
3 economically feasible alternatives for the use of the
4 priority chemical in the children's product. A waiver may
5 be granted for a term not to exceed 5 years and may be
6 renewed for one additional 5-year term upon written
7 application demonstrating that technically or economically
8 feasible alternatives remain unavailable. The Director
9 shall grant or deny a request for a waiver under this
10 subsection within 60 days after receipt of an
11 administratively complete application for a waiver.

12 Section 35. Exemptions. The requirements of this Act shall
13 not apply to:

14 (1) Chemicals in used products.

15 (2) Priority chemicals used in or for industry or
16 manufacturing.

17 (3) Priority chemicals generated solely as a
18 combustion byproduct or that are present in combustible
19 fuels.

20 (4) A person selling a children's product at retail
21 unless the person knowingly sells a children's product
22 containing a priority chemical after the effective date of
23 a prohibition adopted under Section 30 of this Act.

24 (5) A container or packaging for a food or beverage
25 product unless the product is intentionally marketed for

1 the use of children under 3 years of age.

2 Section 40. Interstate clearinghouse for safer chemicals.
3 The Director is authorized to participate, in cooperation with
4 other states and governmental entities, in an interstate
5 clearinghouse to classify existing chemicals and to promote
6 safer chemicals in consumer products. The Director may also
7 cooperate with an interstate clearinghouse in order to:

8 (1) organize and manage available data on chemicals,
9 including information on uses, hazards, and environmental
10 concerns;

11 (2) produce and inventory information on (i) safer
12 alternatives to uses of chemicals of concern and (ii) model
13 policies and programs;

14 (3) provide businesses and consumers with technical
15 assistance regarding the use of safer chemicals; and

16 (4) undertake other activities in support of State
17 programs to promote the use of safer chemicals.

18 Section 45. Certificate of compliance. In addition to any
19 remedies or procedures authorized by this Act, the Director may
20 request each manufacturer and distributor of a product offered
21 for sale or distribution in the State to provide the Director
22 with a certificate of compliance with the requirements of this
23 Act and rules adopted thereunder. Within 10 days after receipt
24 of a request from the Director under this Section, the

1 manufacturer or distributor shall do one of the following:

2 (1) Provide the Director with a certificate attesting
3 that the product does not contain the priority chemical or
4 is not subject to the requirements of this Act.

5 (2) Notify persons who sell or distribute the product
6 in the State that the sale of the product is prohibited and
7 shall provide the Director with a list of the names and
8 addresses of those notified.

9 Section 50. Education and consultation. The Director shall
10 develop educational materials regarding the requirements of
11 this Act for distribution to manufacturers, distributors, and
12 retailers. The Director shall consult with retailers and
13 retailer associations in order to assist retailers in complying
14 with the requirements of this Act.

15 Section 55. Advisory Council on Toxic Substances.

16 (a) There is created an Advisory Council on Toxic
17 Substances to provide expert and scientific advice to the
18 Director regarding identification of chemicals of high
19 concern, designation of priority chemicals, and identification
20 of safer alternative chemicals. The Advisory Council on Toxic
21 Substances shall annually recommend to the Director:

22 (1) strategies or actions to reduce public health risks
23 from exposure to chemicals of high concern. In identifying
24 public health risks, the Advisory Council on Toxic

1 Substances shall with heightened scrutiny evaluate
2 potential public health risks to citizens of the State of
3 Illinois;

4 (2) restrictions on or prohibitions of the
5 distribution, sale, or use of a chemical of high concern;

6 (3) public disclosure requirements for a manufacturer
7 of a chemical of high concern or a product containing a
8 chemical of high concern; and

9 (4) safer alternative chemicals to chemicals of high
10 concern.

11 (b) The Advisory Council on Toxic Substances shall consist
12 of the following members:

13 (1) one member of the House of Representatives,
14 appointed by the Speaker;

15 (2) one member of the Senate, appointed by the
16 President of the Senate;

17 (3) the Director or his or her designee;

18 (4) the Director of Public Health or his or her
19 designee;

20 (5) the Director of Agriculture or his or her designee;

21 (6) the Attorney General or his or her designee;

22 (7) a representative of a Solid Waste Management
23 District, appointed by the Director;

24 (8) an Illinois toxicologist, appointed by the
25 Director;

26 (9) a representative of the Illinois retail community,

1 appointed by the Director;

2 (10) a representative of the Illinois manufacturing
3 community, appointed by the Director;

4 (11) a representative of an Illinois college or
5 university, appointed by the Director;

6 (12) a representative of the Illinois medical
7 community, appointed by the Director;

8 (13) a representative of a statewide consumer interest
9 group, appointed by the Director;

10 (14) a representative of a statewide environmental
11 group, appointed by the Director; and

12 (15) a scientist knowledgeable about matters related
13 to toxic substances, appointed by the Director.

14 (c) The Advisory Council on Toxic Substances shall report
15 annually to the General Assembly by January 15 with a summary
16 of the recommendations presented to the Director under
17 subsection (a) of this Section.

18 (d) The Environmental Protection Agency shall provide the
19 Advisory Council on Toxic Substances with technical, legal, and
20 administrative staff support as needed.

21 Section 60. Rulemaking. The Director may adopt rules in
22 accordance with the requirements of the Illinois
23 Administrative Procedure Act in order to implement the
24 requirements of this Act.

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.