

Act 188 (S.239): An Act Relating to the Regulation of Toxic Substances

Summary

Overview

- S.239 requires manufacturers of children’s products to notify the Department of Health (DOH) if their product contains chemicals of high concern to children (CHCC).
- S.239 also authorizes DOH, upon recommendation of a working group, to adopt by rule requirements for the sale of a children’s product containing a CHCC, including prohibition on sale or labeling.
- S.239 is designed to be substantially similar to a Washington state law. California and Maine also require notice of chemicals in children’s products.

What is a Children’s Product?

- Under S.239, “child” or “children” is defined to mean an individual under 12 years of age.
- A children’s product is a consumer product marketed for use by, marketed to, sold, offered for sale, or distributed to children in Vermont, including:
 - Toys;
 - Children’s cosmetics;
 - Children’s jewelry;
 - Products designed or intended to help a child with teething or sleep (e.g. pacifiers);
 - Products designed for the feeding of child;
 - Products worn as clothing by children; and
 - Child car seats.
- Multiple products are defined as not being children’s products in order to be consistent with Washington state’s program. The products that are not children’s products include:
 - Products primarily used or purchased for industrial or business use;
 - Food and beverage;
 - Tobacco, pesticides, drugs, biologics, medical devices, and supplements;
 - Ammunition, firearms, and hunting and fishing equipment;
 - Aircraft, motor vehicles, or vessels;
 - Batteries;
 - Consumer electronic products and interactive software;
 - Snow sporting equipment;
 - Inaccessible components of a consumer product;
 - Used products sold in second-hand markets; and
 - The packaging of products.

What Chemicals are Listed?

- S.239 lists in statute 66 CHCC. These listed chemicals are the chemicals listed in Washington.
- DOH can adopt by rule additional chemicals of high concern to children.
- A chemical can be added to the list if, based on scientific evidence, the Commissioner determines that accredited government or university research determined that the chemical:
 1. Harms the development of a fetus or child; causes cancer, genetic damage, or reproductive harm; disrupts the endocrine system; damages the nervous system, immune system, or organs; or is a persistent bioaccumulative toxic; and
 2. Has been found through biomonitoring to be present in blood, breast milk, and human tissues; has been found through sampling to be present in the home environment; or has been found through monitoring to be present in the natural environment.
- Every 2 years DOH shall review the list to determine if additional chemicals should be added.
- DOH shall post the list of chemicals to the DOH website.
- Any person may request that DOH adopt a rule to add or remove a chemical from the list.

Manufacturer Notice

- Beginning July 1, 2015, and biennially thereafter, a manufacturer of a children's product containing a CHCC shall notify DOH of the presence of the chemical in the product.
- Notice is not required for:
 - An intentionally added chemical that does not exceed a de minimis threshold, known as the practical quantification level; or
 - a chemical present in a product as a contaminant at a concentration of less than 100 ppm.
- DOH shall specify the format of the notice, but it shall include the name of the chemical, its registry number, a description of the children's product containing the chemical; the amount of the chemical by weight in the product contact information; any information the manufacture deems relevant; and any other information required by DOH.
- DOH may enter reciprocal data sharing agreements with states that collect similar data.
- DOH may waive reporting requirements if:
 - the manufacturer submitted data to a state that DOH has a data sharing agreement with; or
 - the manufacturer submitted information to an independent third party and the information is publicly available through the DOH website.
- DOH shall post on the DOH website the information submitted in a manufacturer's notice.
- Manufacturers can notify DOH at any time that their product no longer contains a CHCC or is no longer sold in the State. DOH must remove the product from the website.
- A manufacturer shall pay a fee of \$2,000 to DOH per notice for deposit in a special fund to pay program costs.
 - The fee is required only for the first submission of notice; not for subsequent notices.

Chemicals of High Concern to Children Working Group

- S.239 establishes a Chemicals of High Concern to Children Working Group within DOH to provide DOH with advice and recommendations regarding implementation of the requirements for CHCC.
- The Working Group consists of 9 members: the Commissioner of Health; the Commissioner of Environmental Conservation; the State toxicologist; representatives of public interest groups with expertise in toxic chemicals or health related issues; representatives of business that use chemicals; a scientist with experience in toxic chemicals; and a representative of the children's product industry.
- The Governor appoints the non-ex officio members. The Governor may also appoint an additional 3 adjunct members.
- The Working Group shall:
 - Upon request of the Commissioner of Health review proposed chemicals for addition to the list of CHCC; and
 - Recommend to the Commissioner of Health whether rules should be adopted to regulate the sale or distribution of a children's product containing a CHCC.

Rules to Regulate Children's Products Containing CHCC

- DOH is authorized, upon recommendation of the Chemicals of High Concern to Children Working Group, to adopt a rule to regulate the sale or distribution of a children's product containing a CHCC upon a determination that:
 - Children will be exposed to a CHCC in the children's product; and
 - There is a probability that, due to the degree of exposure or frequency of exposure to a CHCC, exposure could result in an adverse health impact.
- In determining whether a child will be exposed to a CHCC, DOH will review multiple criteria, including its market presence, its presence in households, and potential frequency of exposure.
- In any rule regulating the sale of a children's product, DOH shall include reasonable time frames for compliance.
- No prohibition on sale shall take effect sooner than 2 years from adoption of the rule.
- The Commissioner shall adopt by rule the process and procedure for listing a chemical or for regulating a children's product.
- The Commissioner may adopt by rule reporting ranges or phased in reporting.

Violations

- A violation is considered a violation of the Consumer Protection Act. The Attorney General would have the same rights and authorities for enforcement.
 - There is no private right of action.