

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE DRH30406-TA-6 (03/04)

Short Title: NC Toxic-Free Kids Act.

(Public)

Sponsors: Representatives McGrady, Fulghum, Harrison, and Glazier (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT CHILDREN FROM THE HEALTH IMPACTS OF TOXIC
3 CHEMICALS IN CHILDREN'S PRODUCTS BY PROHIBITING THE
4 MANUFACTURE AND SALE OF CHILDREN'S PRODUCTS CONTAINING
5 BISPHENOL A, TRIS, OR PHTHALATES; AND BY REQUIRING THE
6 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, IN
7 CONSULTATION WITH THE DIVISION OF PUBLIC HEALTH OF THE
8 DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO IDENTIFY AND
9 DESIGNATE CHEMICALS OF HIGH CONCERN AND PRIORITY CHEMICALS;
10 AND BY REQUIRING NOTICE AND AN ALTERNATIVES ASSESSMENT BY
11 MANUFACTURERS OF CHILDREN'S PRODUCTS CONTAINING CERTAIN
12 PRIORITY CHEMICALS.

13 Whereas, rates of chronic diseases among children, including childhood cancers,
14 autism spectrum disorders, certain birth defects, reproductive disorders, allergies, and
15 developmental disorders are increasing and are associated with children's exposures to
16 environmental agents; and

17 Whereas, infants and children are sensitive to toxic chemical exposure because their
18 neurological and endocrine systems are not fully developed and their ability to detoxify and
19 eliminate toxic residues is immature; and

20 Whereas, the Toxic Substances Control Act (TSCA), enacted in 1976, has allowed
21 more than 82,000 chemicals into commerce in the United States with only about 200 of those
22 chemicals subjected to limited health and safety testing; and

23 Whereas, four other states also have passed legislation regarding chemicals of
24 concern in children's products; and

25 Whereas, the chemicals known collectively as TRIS are added to plastics, foams,
26 and textiles as flame retardants used in children's products such as car seats, baby changing
27 pads, and baby carriers in order to comply with fire retardant standards in the state of
28 California; and

29 Whereas, TRIS is used as a replacement for certain PBDE (Polybrominated
30 Diphenyl Ether) flame retardants that have been banned or voluntarily phased out of use; and

31 Whereas, the U.S. Consumer Product Safety Commission banned TRIS from
32 children's clothing and sleepwear in 1977 because it was determined to cause cancer in test
33 animals; and

34 Whereas, phthalates are a group of chemical additives used as thickeners, softeners,
35 or controlled release agents in plastics like polyvinyl chloride or PVC and are readily absorbed
36 through the skin; and



- 1 known or suspected with a high degree of probability to be any of the
2 following:
- 3 a. Harmful to the normal development of a fetus or child or cause other
4 developmental toxicity.
 - 5 b. A cause of cancer, genetic damage, or reproductive harm.
 - 6 c. Disruptive to the endocrine or hormone system.
 - 7 d. Damaging to the nervous system, immune system, or organs, or
8 cause other systemic toxicity.
 - 9 e. Persistent, bioaccumulative, and toxic.
 - 10 f. Very persistent and very bioaccumulative.
- 11 (6) Child. – A person under 12 years of age.
 - 12 (7) Children's product. – A consumer product intended for use by children, such
13 as baby products, toys, car seats, personal care products, or clothing.
14 Children's product shall also mean food containers for infant and toddler
15 foods intended for consumption by children under three years of age, such as
16 baby food and infant formula.
 - 17 (8) Department. – The Department of Environment and Natural Resources.
 - 18 (9) Distributor. – A person who sells consumer products to retail establishments
19 on a wholesale basis.
 - 20 (10) Division. – The Division of Public Health of the Department of Health and
21 Human Services.
 - 22 (11) Manufacturer. – Any person who manufactures a final consumer product
23 sold at retail or whose brand name is affixed to the consumer product. In the
24 case of a consumer product imported into the United States, manufacturer
25 includes the importer or domestic distributor of the consumer product if the
26 person who manufactured or assembled the consumer product or whose
27 brand name is affixed to the consumer product does not have a presence in
28 the United States.
 - 29 (12) Phthalates. – Di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP),
30 benzyl butyl phthalate (BBP), diisonoyl phthalate (DINP), diisodecyl
31 phthalate (DIDP), or di-n-octyl phthalate (DnOP).
 - 32 (13) Priority chemical. – A chemical identified by the Department of
33 Environment and Natural Resources as a chemical of high concern that
34 meets the criteria in G.S. 130A-514.
 - 35 (14) Safer alternative. – An alternative whose potential to harm human health is
36 less than that of the use of a priority chemical that it could replace.
 - 37 (15) TRIS. – Either or both of the following chemicals:
38 a. TDCPP (tris(1,3-dichloro-2-propyl)phosphate), Chemical Abstracts
39 Service Registry Number 13674-87-8, as of the effective date of this
40 section.
41 b. TCEP (tris(2-chloroethyl)phosphate), Chemical Abstracts Service
42 Registry Number 115-96-8, as of the effective date of this section.
 - 43 (16) Very bioaccumulative. – Having a bioconcentration factor or
44 bioaccumulation factor greater than or equal to 5,000 or, if neither factor is
45 available, having a log K_{ow} greater than 5.0. For the purposes of this
46 definition, " K_{ow} " means octanol-water partition coefficient.
 - 47 (17) Very persistent. – One of the following:
48 a. A half-life of greater than 180 days in soil or sediment.
49 b. A half-life of greater than or equal to 60 days in water or evidence of
50 long-range transport.

1 **"§ 130A-512. Prohibition on the manufacture and sale of children's products that contain**
2 **Bisphenol A, phthalates, or TRIS.**

3 Beginning July 1, 2015, no manufacturer, wholesaler, or retailer may manufacture,
4 knowingly sell, offer for sale, distribute for sale, or distribute for use in this State, a children's
5 product containing any of the following:

- 6 (1) Bisphenol A.
- 7 (2) Phthalates, individually or in combination, greater than 0.10 percent by
8 weight (1000 parts per million).
- 9 (3) TRIS in amounts greater than 50 parts per million in any component.

10 **"§ 130A-513. Applicability.**

11 The requirements of this Article shall not apply to:

- 12 (1) The sale or purchase of any previously owned product containing a
13 substance listed in G.S. 130A-512 made in casual or isolated sales and sales
14 by nonprofit organizations.
- 15 (2) Priority chemicals used in the manufacturing process, but that are not present
16 in the final children's product.
- 17 (3) Priority chemicals used in agriculture production.
- 18 (4) Motor vehicles as defined in G.S. 20-4.01 and personal watercraft as that
19 term is defined in G.S. 75A-13.3, except that the use of priority chemicals in
20 detachable car seats is not exempt.
- 21 (5) Priority chemicals generated solely as combustion by-products or that are
22 present in combustible fuels.
- 23 (6) Pharmaceutical products or biologics.
- 24 (7) A medical device as defined in the Food, Drug, and Cosmetic Act (21 U.S.C.
25 § 321).
- 26 (8) Consumer electronics products and electronic components including:
27 personal computers; audio and video equipment; calculators; digital
28 displays; wireless phones; cameras; game consoles; printers; and handheld
29 electronic and electrical devices used to access interactive software or their
30 associated peripherals; and products that comply with Directive 2002/95/EC
31 of the European Union (Restriction of the Use of Certain Hazardous
32 Substances in Electrical and Electronic Equipment).
- 33 (9) Outdoor sport equipment, including all-terrain vehicles and motorcycles as
34 those terms are defined in G.S. 20-4.01, and all attachments and repair parts
35 for outdoor sport equipment.
- 36 (10) Food and beverage packaging except a container containing infant foods,
37 toddler food, or infant formula.

38 **"§ 130A-514. Identification of chemicals of high concern.**

39 (a) By June 1, 2014, the Department shall, after consultation with the Division, create a
40 list of chemicals of high concern.

41 (b) The Department shall periodically review and revise the list of chemicals of high
42 concern at a minimum, once every three years. The Department may add a chemical to the list
43 of chemicals of high concern if the chemical meets one or more of the sub-subdivisions in
44 subdivision (6) of G.S. 130A-511.

45 (c) In creating the list of chemicals of high concern, the Department shall consider
46 chemicals listed as a suspected carcinogen, reproductive or developmental toxicant, or as being
47 persistent, bioaccumulative, and toxic, or very persistent and very bioaccumulative by a state,
48 federal, or international agency. These agencies may include: the California Environmental
49 Protection Agency; the Washington Department of Ecology; the United States Department of
50 Health; the United States Environmental Protection Agency; the United Nations World Health
51 Organization; and the European Commission.

1 (d) The Department may consider chemicals that are listed by another state as harmful
2 to human health or the environment for possible inclusion in the list of chemicals of high
3 concern.

4 **"§ 130A-515. Identification of priority chemicals.**

5 (a) The Department, after consultation with the Division, may designate a chemical of
6 high concern as a priority chemical if the Department finds that the chemical meets any of the
7 following criteria:

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

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

14 (3) The chemical has been identified as a high-production volume chemical by
15 the United States Environmental Protection Agency.

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

18 (b) By May 1, 2014, the Department shall publish a list of priority chemicals in the
19 North Carolina Register and on the Department's Internet Web site and shall update the
20 published list whenever a new priority chemical is designated.

21 **"§ 130A-516. Notice that a children's product contains a priority chemical.**

22 Beginning November 1, 2014, a manufacturer of a children's product, or a trade
23 organization on behalf of its member manufacturers, shall provide notice to the Department that
24 the manufacturer's product contains a priority chemical. The notice shall be filed annually with
25 the Department and shall include all of the following information:

26 (1) The name of the chemical used or produced and its Chemical Abstracts
27 Service Registry Number.

28 (2) A brief description of the product or product component containing the
29 substance.

30 (3) A description of the function of the chemical in the product.

31 (4) The amount of the chemical used in each unit of the product or product
32 component. The amount may be reported in ranges rather than the exact
33 amount.

34 (5) The name and address of the manufacturer and the name, address, and phone
35 number of a contact person for the manufacturer.

36 (6) Any other information the manufacturer deems relevant to the appropriate
37 use of the product.

38 **"§ 130A-517. Alternatives assessment required.**

39 (a) By April 1, 2015, the manufacturer of a children's product whose product contains
40 TRIS shall submit to the Department an alternatives assessment consistent with G.S. 130A-518.

41 (b) Beginning December 1, 2014, the manufacturer of a children's product that has
42 provided notice as required under G.S. 130A-516 that their product contains phthalates shall,
43 within one year of providing notice, submit to the Department an alternatives assessment
44 consistent with G.S. 130A-518.

45 (c) Beginning December 1, 2014, the manufacturer of a children's product that has
46 provided notice as required under G.S. 130A-516 that their product contains Bisphenol A shall,
47 within one year of providing notice, submit to the Department an alternatives assessment
48 consistent with G.S. 130A-518.

49 (d) Beginning June 1, 2015, the manufacturer of a children's product that has provided
50 notice as required under G.S. 130A-516 that their product contains a priority chemical, shall,

1 within one year of providing notice, submit to the Department an alternatives assessment
2 consistent with G.S. 130A-518.

3 (e) Beginning July 1, 2018, the Department may require a manufacturer of children's
4 products containing chemicals of high concern for children to conduct an alternatives
5 assessment consistent with G.S. 130A-518. The Department shall provide a manufacturer at
6 least one year to submit the alternatives assessment. The Department shall not require
7 alternatives assessments for more than two chemicals of high concern for children per
8 manufacturer per fiscal year.

9 (f) A manufacturer required to conduct an alternatives assessment pursuant to this
10 section may work with a trade association, other manufacturers, or third parties to complete and
11 submit a single alternatives assessment.

12 (g) The Department shall provide technical assistance to any manufacturer required to
13 conduct an alternatives assessment that requests the Department's assistance. Technical
14 assistance may include the provision of:

15 (1) Alternatives assessments previously submitted to the Department.

16 (2) Existing resources and tools for conducting alternatives assessments.

17 (3) Information the Department gathered from literature reviews, manufacturers'
18 surveys, and the interstate chemicals clearinghouse.

19 (h) A manufacturer of children's products with annual gross sales, both within and
20 outside of North Carolina, of less than five million dollars (\$5,000,000), based on the
21 manufacturer's most recent tax year filing, is exempt from the requirements of this section.

22 **"§ 130A-518. Alternatives assessment; contents.**

23 (a) An alternatives assessment shall identify alternatives for consideration that reduce
24 or eliminate the use of and potential for children's exposure to the chemical of high concern.
25 For the chemical of high concern and each potential alternative, an alternatives assessment shall
26 include the following:

27 (1) Chemical names and Chemical Abstracts Service Registry Numbers.

28 (2) An assessment of whether, based on credible scientific evidence, the
29 alternative demonstrates the potential to do one or more of the following:

30 a. Harm the normal development of a fetus or child or cause other
31 developmental toxicity.

32 b. Cause cancer or genetic damage.

33 c. Cause reproductive toxicity.

34 d. Disrupt the endocrine system.

35 e. Damage the nervous system, immune system, or organs or cause
36 other systemic toxicity.

37 f. Cause sensitization and immune system response.

38 g. Cause negative ecological impacts.

39 h. Be persistent, bioaccumulative, and toxic.

40 i. Be very persistent or very bioaccumulative.

41 (3) Available information or data, based on credible scientific evidence
42 regarding (i) the degree of toxicity, including dose response studies and (ii)
43 potential routes of exposure to children through which the chemical or
44 alternative may cause each effect listed in subdivision (2) of this subsection.

45 (4) Information on performance and functionality of the potential alternatives in
46 products and materials addressed in the alternatives assessment.

47 (5) Opportunities for product reformulation, chemical substitution, product
48 redesign, or manufacturing process redesign.

49 (b) The alternatives assessment shall also include the following:

1 (1) A comparison of the alternatives and the chemicals of high concern for the
2 elements required in subdivisions (2) through (5) of subsection (a) of this
3 section.

4 (2) A description of the criteria and assumptions used to compare alternatives,
5 including identification of data gaps.

6 (3) An explanation of the findings and conclusions of the data supporting the
7 alternatives assessment.

8 (c) The manufacturer may provide any additional information used in evaluating
9 alternatives or deemed by the manufacturer to be relevant to the alternatives assessment, such
10 as cost and availability of potential alternatives; purchase price differential between the product
11 containing chemicals of high concern and the alternative; conditions of use; chemical
12 management; and technical feasibility.

13 **"§ 130A-519. Adoption of rules.**

14 The Department may adopt rules as necessary to implement, administer, and enforce this
15 Article."

16 **SECTION 2.(a)** The Department of Environment and Natural Resources in
17 consultation with the Division of Public Health of the Department of Health and Human
18 Services shall report to the General Assembly no later than January 1, 2016, summarizing and
19 evaluating manufacturers' notices on chemicals of high concern and alternatives assessments
20 required under Section 1 of this act. The report shall include recommendations for legislation to
21 protect children's health and to improve the alternatives assessment process, as well as the
22 following elements:

23 (1) A summary of the information provided by manufacturers about the use of
24 chemicals of high concern in children's products.

25 (2) Evidence of children's exposure to chemicals of high concern.

26 (3) Opportunities for preventing children's exposure to chemicals of high
27 concern.

28 (4) Results from completed alternatives assessments, including whether there
29 are safer alternatives to the chemical of high concern.

30 **SECTION 2.(b)** The definitions in G.S. 130A-511, as enacted by Section 1 of this
31 act, apply to this section unless the context clearly requires otherwise.

32 **SECTION 3.** Section 1 of this act becomes effective December 1, 2013. The
33 remainder of this act is effective when it becomes law.