

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1180

INTRODUCER: Senators Sobel and Thompson

SUBJECT: Chemicals in Consumer Products

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.	Lloyd	Stovall	HP	Favorable
3.			AHS	
4.			AP	

I. Summary:

SB 1180 creates s. 381.986, F.S., to require the Department of Health (department) to generate a list of at least 50, but no more than 100 chemicals of high concern present in consumer products and publish the list on its website by January 1, 2015. If funds are not available, the department is authorized to cite lists developed by other states. The list would allow public identification of such chemicals, encourage substitution with safer alternatives, and reduce the exposure of pregnant women and children to chemicals of high concern.

The bill authorizes the department to join in an interstate clearinghouse with other states and governmental entities to promote use of safer chemicals in consumer products.

The effective date of the bill is July 1, 2014, and there is a fiscal impact.

II. Present Situation:

The State of Florida does not currently maintain a list of chemicals of high concern in consumer products. In 2008, the Florida Department of Environmental Protection formed an internal workgroup to look at the issue of contaminants, collectively called emerging substances of concerns (ESOCs) in the report, such as flame retardants, pharmaceuticals and personal care products, endocrine-modulating chemicals, nanoparticles, and biological metabolites.¹ The workgroup focused on the effect of the ESOCs predominantly on the environment and the state's water supply. However, the workgroup did agree that a national policy and strategy would be more effective than a piece-meal approach by the states given the volume of new chemicals released each year.²

¹ Florida Department of Environmental Protection, *Emerging Substance of Concern* (December 2008). http://www.dep.state.fl.us/water/wqssp/docs/esoc_fdep_report_12_8_08.pdf (last visited April 3, 2014).

² *Id.*

Federal Policies

The U.S. Environmental Protection Agency (EPA) assesses the safety of commercial chemicals through a three-tiered process: 1) risk assessment and risk reduction; 2) data collection and screening; and, 3) public access to chemical data and information.³ The EPA will assess those chemicals with well-known hazard concerns which have a high possibility of significant exposure.⁴ This Toxic Substances Control Act (TSCA) Work Plan included 83 chemicals for further assessment in 2012. In 2013, the list focused on 23 chemicals, including 23 flame retardant chemicals.⁵ The EPA focused on chemicals that meet one or more of the following factors:⁶

- Potentially of concern to children's health;
- Neurotoxic effects;
- Persistent, Bioaccumulative, and Toxic (PBT);
- Probable or known carcinogens;
- Used in children's products; or
- Detected in biomonitoring programs.

Other State Programs

Maine, Minnesota, California, and Washington currently maintain chemicals of high concern lists.

Maine's law requires its Department of Environmental Protection to publish a list of no more than 70 chemicals of high concern.⁷ To be included on Maine's list, there must be a determination of strong, credible scientific evidence that the chemical is a reproductive or developmental toxicant, endocrine disruptor, or human carcinogen; and, there is strong, credible scientific evidence that the chemical meets one or more of the following criteria:⁸

- The chemical has been found through biomonitoring studies to be present in human blood, human breast milk, human urine, or other bodily tissues or fluids;
- The chemical has been found through sampling and analysis to be present in household dust, indoor air or drinking water or elsewhere in the home environment; or
- The chemical has been added to or is present in a consumer product used or present in the home.

Currently, Maine lists 49 compounds as chemicals of high concern.⁹

³ U.S. Environmental Protection Agency, *Existing Chemicals Program: Strategy* (Feb. 2012). http://www.epa.gov/oppt/existingchemicals/pubs/Existing_Chemicals_Strategy_Web.2-23-12.pdf (last visited April 3, 2014).

⁴ *Id.*

⁵ U.S. Environmental Protection Agency, *Existing Chemicals - List of Chemicals for Assessment* http://www.epa.gov/oppt/existingchemicals/pubs/assessment_chemicals_list.html (last visited April 3, 2014).

⁶ U.S. Environmental Protection Agency, *Existing Chemicals - TSCA Work Plan Chemicals* <http://www.epa.gov/oppt/existingchemicals/pubs/workplans.html> (last visited April 3, 2014).

⁷ Maine Department of Environmental Protection, *Sustainability - Chemicals of High Concern*, <http://www.maine.gov/dep/safechem/highconcern/> (last visited April 3, 2014).

⁸ *Id.*

⁹ *Id.*

Minnesota passed its Toxic Free Kids legislation in 2009, which requires the publication of a list identifying chemicals which could be harmful to human or environmental health and specifically chemicals which are suspected carcinogens, reproductive or developmental toxicants, or persistent, bioaccumulative and toxic or very persistent and very bioaccumulative.¹⁰ The Minnesota legislation also requires the state department of health to review and revise the list every 3 years. More than 1,700 chemicals are included on the state's 2013 list.¹¹

Washington passed the Children's Safe Products Act (CSPA) in 2008, requiring its Department of Ecology, in consultation with the Department of Health, to develop a list of chemicals of high concern for children and to establish rules for manufacturers of children's products to report on their use of these chemicals.¹² Information reported under the CSPA can be used by policy makers to determine what, if any, further actions might be required to assure consumers that children's products on the shelves are safe. The CSPA marks a significant departure from other laws aimed at reducing the threats and impacts caused by the continued and increasing use of toxic chemicals.¹³ Washington State's law is considered to be stronger than any other chemical disclosure law in the United States.¹⁴

Washington's CSPA created a searchable, online database that includes 66 chemicals. These chemicals were chosen because studies have linked them to cancer or to reproductive, developmental, or neurological effects in animals or people.¹⁵ In most cases, no one knows what, if anything, exposure to small doses of these chemicals may do to people, especially babies and toddlers who tend to chew on items or rub them on their skin.¹⁶ For many of these compounds, there has been little or no research to investigate children's exposure to them.¹⁷ According to Dr. Sheela Sathyanarayana, a pediatric researcher at the University of Washington and the Seattle Children's Research Institute, who advised state officials when the disclosure rules were written, "Children are uniquely vulnerable to exposures given their hand-to-mouth behaviors, floor play and developing nervous and reproductive systems."¹⁸

Officials with CSPA agree with the Toy Industry Association that the presence of a substance on the Washington state list in a toy or game doesn't automatically mean there is a risk or cause for concern.¹⁹ However, the new law is already driving changes in products. Some companies,

¹⁰ Minnesota Department of Health, *2013 Minnesota Chemicals of High Concern Report, Executive Summary*, p.1, <http://www.health.state.mn.us/divs/eh/hazardous/topics/toxfreekids/report2013.pdf> (last visited April 3, 2014).

¹¹ Minnesota Department of Health, *2013 Minnesota Chemicals of High Concern Report - 2013 Chemicals of High Concern Update*, p.4, <http://www.health.state.mn.us/divs/eh/hazardous/topics/toxfreekids/report2013.pdf> (last visited April 3, 2014).

¹² State of Washington, Department of Ecology, *Washington's Children's Safe Products Act, Executive Summary*, <http://www.ecy.wa.gov/programs/safa/rules/pdf/CSPAexcum.pdf> (last visited April 3, 2014).

¹³ *Id.*

¹⁴ Jane Kay, *EHN Special Report: 'Chemicals of high concern' found in thousands of children's products* (May 6, 2013), ENVIRONMENTAL HEALTH NEWS <http://www.environmentalhealthnews.org/ehs/news/2013/childrens-products> (last visited April 3, 2014).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

including Wal-Mart, Gap, Nike, and Johnson & Johnson have filed documents with the state stating they would eliminate some chemicals on the state's list.²⁰

III. Effect of Proposed Changes:

Section 1 creates s. 381.986, F.S., which provides it is the policy of the state to reduce the exposure of pregnant women and children to chemicals of high concern through the public identification of such chemicals and encourage the use of safer alternatives whenever possible. This section also contains definitions for:

- Chemical;
- Chemicals of high concern;
- Children or child;
- Consumer product;
- Credible scientific evidence; and,
- Department.

This section directs the Department of Health (department) to publish an initial list of at least 50, but no more than 100, chemicals of high concern by January 1, 2015. The department may cite lists developed by other states if funds are not available to create the list. The list would be reviewed by the department every three years and revised as needed. The initial list of chemicals of high concern would be published on the department's website and updated whenever the published list was revised.

The criteria to designate a chemical of high concern is set out in this section. The department may include a chemical that has been formally identified by another state as a priority chemical or chemical of high concern if that state's criteria is substantially equivalent to the criteria set out in the proposed legislation or has been identified by another state as being known to cause cancer, birth defects, or other reproductive harm.

Additionally, a chemical is considered a chemical of high concern if the department determines that:

- The chemical, based on credible scientific evidence, is identified by a governmental agency as being known or likely to:
 - Harm the normal development of a fetus or child or cause other developmental toxicity;
 - Cause cancer, genetic damage, or reproductive harm;
 - Damage the nervous system, immune system, hormone system, or organs or cause other systems toxicity; or
 - Be persistent, bioaccumulative, and toxic; and
- There is credible scientific evidence that the chemical has been added to, or is present in, a consumer product used or stored in around a residence, child care facility, or school.

The bill authorizes the department to join an interstate clearinghouse with other states and governmental entities to: promote use of safer chemicals in consumer products; organize chemical data; model policies related to safer alternatives to specific chemical uses; provide technical assistance to businesses and consumers regarding the use of safer chemicals; and

²⁰ *Id.*

initiate activities in support of state programs to promote the use of safer chemicals in consumer products.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1180 directs the department to create a list of at least 50, and no more than 100, chemicals of high concern by January 1, 2015. The Toy Industry Association has pointed out that the presence of a substance found in a toy or game does not automatically imply that it is a risk or cause for concern. Without additional information, consumers may make purchasing decisions based on the presence of a chemical in a product even though it might not be harmful to human health or a violation of any safety standard.

C. Government Sector Impact:

Fiscal Impact	Fiscal Year 2014-15			
Agency/program	FTE	GR	Trust	Total
Public Health Toxicology Section (1.5 FTE) Environmental Epidemiology Section (1.0 FTE)	2.5	\$117,402	\$0	\$117,402
Travel/Computing Expenses		\$38,853		\$38,853
		\$885	\$0	\$885
Total		\$157,140	\$0	\$157,140

The department indicates that the SB 1180 requires the development and maintenance of a new website, data management, and publicly searchable access. There will be a fiscal impact of \$157,140 for the first fiscal year and a recurring impact of \$186,869 in General Revenue funds.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.986, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²¹ Florida Department of Health, *Senate Bill 1180 Analysis* (Feb. 25, 2014) (on file with the Senate Committee on Health Policy).