

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Ensure That Children's Products Are Free of Cadmium**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 22 MRSA c. 167** is enacted to read:

### **CHAPTER 167**

### **CADMIUM CONTROL**

#### **§ 791. Restrictions on children's products containing cadmium**

**1. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Cadmium" means elemental cadmium and any compound or alloy that contains cadmium.
- B. "Children" means persons under 12 years of age.
- C. "Children's product" means a consumer product, including any component of the consumer product, designed or intended primarily for use on or by children, including but not limited to:

(1) Children's products as defined in section 1316A, subsection 1, paragraph E;

(2) Children's clothing;

(3) Accessories, decorative objects, backpacks, car seats, furniture and other articles used by or intended to be used by children;

(4) Candy, food, dietary supplements and other edible or chewable products used by or intended to be used by children; and

(5) Any item sold for residential or commercial use, including any component parts and packaging, but not including a food or beverage or additive to a food or beverage, a tobacco product, a pesticide regulated by the United States Environmental Protection Agency or a drug or biologic regulated by the United States Department of Health and Human Services, Food and Drug Administration or the packaging of a drug or biologic if the packaging is regulated by the United States Department of Health and Human Services, Food and Drug Administration.

**2. Restriction.** Beginning July 1, 2013, a person may not manufacture, sell, distribute or offer for sale or distribution a children's product that contains cadmium at more than .004% by weight.

**3. Alternatives.** A person who manufactures a children's product, when substituting substances in the manufacturing process to come into compliance with subsection 2, must use the least toxic alternative substance. In replacing cadmium in the children's product with the least toxic alternative substance, a person may not:

A. Use a substance containing a carcinogen rated by or a substance listed by the United States Environmental Protection Agency as a known or likely carcinogen, a known human carcinogen or a likely or suspected human carcinogen; or

B. Use a toxicant that may cause birth defects or reproductive or developmental harm as identified by the United States Environmental Protection Agency or as listed in California's health and safety code.

**4. Enforcement.** The department and the Maine Center for Disease Control and Prevention shall enforce this section within available resources. The following provisions apply as penalties for violations of this section.

A. For the first violation of this section, the penalty is not more than \$100 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$5,000.

B. For a 2nd violation of this section, the penalty is not more than \$500 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$25,000.

C. For a 3rd or subsequent violation of this section, the penalty is not more than \$1,000 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$50,000.

D. A penalty under this section may be waived by the court if it is determined that the person in good faith and with due diligence attempted to comply with the requirements of this section and promptly corrected after discovery any noncompliance with this section.

## SUMMARY

This bill prohibits the manufacture, sale and distribution in commerce of children's products containing cadmium at more than .004% by weight beginning July 1, 2013. In addition, the bill limits the substances that may be used as alternatives to cadmium in children's products. The bill directs the Department of Health and Human Services and the Maine Center for Disease Control and Prevention to enforce the cadmium limitation within available resources and provides penalties for violations.