

New York, New York: The Status of Regulation of Children's Products in the Empire State

Insight

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By Michelle Corrigan

Recently, Albany County, New York enacted the “Toxic Free Toys Act” (the Act) prohibiting the sale of any children’s products in the county that contain certain heavy metals and chemicals. The Safe to Play Coalition (the Coalition), which is comprised of multiple trade organizations representing the manufacturers of children’s products, challenged the law on federal preemption grounds in federal court. Albany County amended the Act on February 18, 2016, through which it conceded that the Act would be preempted by federal law if the federal government has a Final Rule in effect with respect to a children’s product safety standard that relates to a specific hazard that conflicts with the Act. Further, unlike the original draft which prohibited any amount of various substances in children's products, the amended Act provides a specific maximum total content value allowable for certain chemicals in children’s products. The litigation over Albany County's law is ongoing, but the amended Act is currently scheduled to take effect on July 1, 2016. It is possible, if not likely, that the effective date of the amended Act may be stayed pending resolution of the litigation between Albany County and the Coalition.¹

Following Albany County's lead, several other New York counties passed similar laws restricting or banning the presence of certain chemicals in children's products sold in those counties. Along with Albany County's amended Act, Suffolk County's law is also set to take effect on July 1, 2016. Westchester County's law was scheduled to take effect on May 11, but [according to the Toy Industry Association, Inc. \(TIA\)](#), the county will delay enforcement of the law until the litigation involving Albany County's Act is resolved.

Meanwhile, this month, the New York State Assembly passed by an overwhelming majority a bill known as the "Child Safe Products Act" (AB 5612), which would regulate the presence of chemicals and other substances in children's products sold in the state. The bill now moves to the New York State Senate.

The bill gives the New York Department of Environmental Conservation (DEC) the power to establish lists of priority substances and chemicals of high concern. Some of the named

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substances include tris (1,3 dichloro-2-propyl) phosphate, benzene, lead, mercury, antimony, formaldehyde, asbestos, arsenic, cadmium and cobalt. If a children's product sold in New York contains any of those substances, the bill proposes that sellers must report the presence of the substance(s) in the product and provide additional data to the DEC, conspicuously post notice to consumers that the product contains the substance(s), and stop selling the product in New York by January 1, 2019, if it still contains the substance(s). The law would apply not only to toys sold in New York, but also to baby products, car seats, school supplies or any other "product primarily intended for, made for or marketed for use by children." *See*, [AB 5612](#), § 37-0901-Definitions.

This is not the first proposed law governing children's products to be passed in the New York Assembly. However, none of the prior bills have made it to a vote with the New York Senate. Whether the current proposed Child Safe Products Act stands a chance with the New York Senate remains to be seen, as the New York legislature is set to adjourn in June.

In the meantime, the U.S. Congress recently announced that House and Senate negotiators are currently finalizing a bill to reform the federal Toxic Substances Control Act (TSCA). TSCA, passed in 1976, provides the Environmental Protection Agency (EPA) with authority to regulate the introduction of new or already existing chemicals into commerce and the environment.² If and when TSCA reform measures are passed at the federal level, interesting questions will arise as to TSCA's preemption of state and municipal regulation of chemicals in children's products, including New York's proposed Child Safe Products Act and local laws governing the sale of children's products in various New York counties. It is anticipated that the TSCA reform bill will be introduced in the next several months.

For more information about the New York proposed Child Safe Products Act, the children's products laws in various New York counties, or the anticipated TSCA reform, please contact [Michelle Corrigan](#) or the Stinson Leonard Street attorney with whom you regularly work.

¹ For more information about Albany County's Act and general issues related to the federal preemption of state and municipal laws governing children's products, please see "[Federal Preemption of State and Local Laws Governing Children's Products](#)," Woodard, April 12, 2016.

² For more information on TSCA reform and other emerging issues in the children's products industry, please see "[2016 Emerging Issues in the Children's Products Industry](#)," Corrigan, Lubben, Scheipeter, February 9, 2016.

CONTACT

Michelle Corrigan Erikson