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States Continue to Enact Chemical Legislation in 2017

State legislatures have been relatively active on chemical and material regulations in 2017. As previously reported [here](#), at least 51 bills to regulate chemicals were introduced across the country's state houses in 2017. At least three of the proposed bills have certain green chemistry components: New York [Senate Bill 1454](#), Massachusetts [Senate Bill 474](#), and Vermont [House Bill 268](#). The status of all these proposed bills as of today is in the [attached chart](#).

At least six bills from five states became law this year, compared to three bills in 2016 (as reported [here](#)). These new laws cover topics including flame retardants in furniture; heavy metals in brake materials, vehicle wheels, and electrical components; and cleaning products. Five of these laws impose new restrictions on the use of chemicals in certain products. The new California law on cleaning products requires information disclosure. As of today, none of the three green chemistry-related bills has been enacted.

This alert covers those measures that have now become law.

Rhode Island (flame retardants). [House Bill H5082](#), restricting organohalogen flame retardants for upholstered bedding or furniture, was passed in both houses and became law on October 3, 2017. The bill amends chapters 23-26 ("Bedding and Upholstered Furniture") and 23-75 ("Children's Product Safety Act") of the Rhode Island General Laws.

- The law prohibits, beginning on July 1, 2019, the manufacturing, knowing sale, offering for sale, and distribution for use of residential upholstered bedding or furniture that contains 100 parts per million or above of any organohalogen flame retardant chemical.
- Manufacturers must notify sellers of the law 90 days before the effective date of the ban.
- The state's Department of Health is required to promulgate regulations to enforce the law.
- Any first violation triggers a civil fine not exceeding \$ 5,000. Each subsequent violation triggers a fine up to \$ 10,000.

Maine (flame retardants). [LD 182 \(HP 138\)](#), restricting flame retardants for upholstered furniture, became law after both houses overrode the Governor's veto on August 2, 2017. The bill adds section 1609-A to title 38 of the Maine Revised Statutes.

- The law prohibits, beginning on January 1, 2019, sale, offering to sell, and distribution for promotional purposes of upholstered furniture that contains in its fabric, other covering, or cushioning materials more than 0.1% of either a flame retardant chemical or a mixture including flame retardant chemicals.
- The restrictions do not apply to: (1) used upholstered furniture, (2) upholstered furniture purchased for public use in public facilities, or (3) new upholstered furniture imported or otherwise purchased or acquired prior to January 1, 2019 (even if sold, offered for sale, or distributed for promotional purposes in the state on or after January 1, 2019).
- The state's Department of Environmental Protection is required to adopt regulations to implement this law.

Washington (copper in brakes). [House Bill 1738](#), restricting copper for brake friction materials, became law on May 5, 2017. The bill amends chapter 70.285 of the Revised Code of Washington.

- The law prohibits, beginning on January 1, 2025, the sale or offering for sale of brake friction materials containing more than 0.5% by weight of copper or copper compounds.
- The sale or offering for sale of brake friction materials manufactured prior to 2025 is exempt from the prohibition for the purposes of clearing inventory until January 1, 2035.
- The sale or offering for sale of brake friction materials as part of an original equipment service contract is exempt from the prohibition.
- The state's Department of Ecology is authorized to adopt regulations to implement the law.

Maryland (lead and mercury in wheel weights). [House Bill 66](#), restricting lead and mercury wheel weights, became law on May 4, 2017. The bill adds section 6-501 in the Article for Environment of the Maryland Code.

- The law prohibits certain persons from using, allowing to be used, or selling externally attached lead wheel weights composed of greater than 0.1% of lead or mercury by weight during the first tire installation, replacement, or balancing of any Maryland-registered vehicles, new or used, after January 1, 2020.
- The state is required to "ensure" that no state fleet vehicle purchased after January 1, 2019 is equipped with externally attached lead wheel weights composed of greater than 0.1% of lead or mercury by weight; any tire of a state fleet vehicle to be balanced or replaced after January 1, 2018 must not be equipped with lead wheel weights composed of greater than 0.1% of lead or mercury by weight.
- The law requires proper recycling of removed and collected lead and mercury wheel weights.
- Violation first triggers a warning notice from the Department of the Environment; if the person continues to fail to comply one year after receiving the notice, the person is subject to a civil fine not exceeding \$1,000 for each subsequent offense.

Maryland (mercury in switches and relays). [House Bill 504](#) and its companion Senate Bill 713, restricting mercury-containing electric switches, electric relays, and gas valve switches, became law on May 27, 2017. The bills amend various sections in subtitle 9 (mercury) in the Article for Environment of the Maryland Code.

- The law prohibits certain "marketers," beginning on October 1, 2018, from knowingly selling or providing to consumers mercury-containing electric switches, electric relays, and gas valve switches.
- Five statutory exceptions are provided for certain replacement parts.
- Violation can trigger both civil penalties in a judicial action and administrative fines from the Department of the Environment. Either way, the penalty or fine may not exceed \$1,000 for the first offense, \$2,500 for the second offense, or \$5,000 for any subsequent offense. Each day a violation continues will be counted as a separate offense. For the administrative fine, the law provides five factors for the Department's consideration as it assesses the fine.

California (cleaning products).¹ [Senate Bill 258](#), establishing chemical disclosure and communication requirements for cleaning products, became law on October 15, 2017. The bill adds Chapter 13 to Part 3 of Division 104 of California's Health and Safety Code, and adds Section 6398.5 to the state's Labor Code.

- The law requires manufacturers of "designated products," including air care products, automotive products, general cleaning products, and polish or floor maintenance products used primarily for janitorial, domestic, or institutional cleaning purposes, to provide on the product labels information related to certain ingredients and allergens.
- The law requires each manufacturer of designated products to post on its website information related to certain ingredients, constituents, and allergens as well as related information such as the functional purpose served by each intentionally added ingredient and links to safety data sheets.
- Designated products are prohibited from being sold in California if out of compliance with the law's disclosure requirements.
- Employers subject to safety data sheet retention requirements must make available in the workplace the information relating to designated products.

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¹ The New York State Department of Environmental Conservation (DEC) also proposed a similar disclosure program, named the Household Cleansing Product Information Disclosure Program, on April 25, 2017. The Program was announced pursuant to existing provisions in the Environmental Conservation Law (ECL) Article 35 and New York Code of Rules and Regulations (NYCRR) Part 659. Under the regulation, a "household cleansing product" includes "any product, including but not limited to, soaps and detergents containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils and household and commercial premises." Certain products, including "foods, drugs and cosmetics, including personal care items such as toothpaste, shampoo and hand soap" and "products labeled, advertised, marketed and distributed for use primarily as pesticides" are not in scope. See N.Y. Comp. Codes R. & Regs. tit. 6, § 659.1(a). NY DEC [released](#) a draft guidance document on the program that specifies what information has to be disclosed and how to disclose the information, as well as a draft certification form. The [comment period](#) ended on July 14, 2017.