

Sec. 5. **REPEALER.**

Minnesota Statutes 1996, section 17.456, subdivision 4, is repealed.

Presented to the governor May 27, 1997

Signed by the governor May 30, 1997, 1:04 p.m.

CHAPTER 221—S.F.No. 184

An act relating to the environment; modifying requirements relating to toxics in products; amending Minnesota Statutes 1996, section 115A.9651.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 115A.9651, is amended to read:

115A.9651 TOXICS LISTED METALS IN SPECIFIED PRODUCTS; ENFORCEMENT.

Subdivision 1. **PROHIBITION.** (a) ~~Except as provided in paragraphs (d) and (e), no person may distribute for sale or use in this state any ink, dye, pigment, paint, or fungicide manufactured after September 1, 1994, into which lead, cadmium, mercury, or hexavalent chromium has been intentionally introduced.~~

(b) For the purposes of this subdivision, "intentionally introduce" means to deliberately use a metal listed in paragraph (a) as an element during manufacture or distribution of an item listed in paragraph (a). Intentional introduction does not include the incidental presence of any of the prohibited elements.

(c) ~~The concentration of a listed metal in an item listed in paragraph (a) may not exceed 100 parts per million.~~

(d) ~~The prohibition on the use of lead in substances utilized in marking road, street, highway, and bridge pavements does not take effect until July 1, 1998.~~

(e) ~~The use of lead in substances utilized in marking road, street, highway, and bridge pavements is exempt from this subdivision until July 1, 1998. After July 1, 1998, no person may distribute a listed product for sale or use in this state.~~

Subd. 2. **TEMPORARY EXEMPTION.** (a) ~~An item listed in subdivision 1 is exempt from this section until July 1, 1998, if the manufacturer of the item submitted to the commissioner a written request for an exemption by August 1, 1994. The request must include at least:~~

(1) ~~an explanation of why compliance is not technically feasible at the time of the request;~~

(2) ~~how the manufacturer will comply by July 1, 1997; and~~

(3) ~~the name, address, and telephone number of a person the commissioner can contact for further information.~~

New language is indicated by underline, deletions by ~~strikeout~~.

(b) By September 1, 1994, a person who uses an item listed in subdivision 1, into which one of the listed metals has been intentionally introduced, may submit, on behalf of the manufacturer, a request for temporary exemption only if the manufacturer fails to submit an exemption request as provided in paragraph (a). The request must include:

(1) an explanation of why the person must continue to use the item and a discussion of potential alternatives;

(2) an explanation of why it is not technically feasible at the time of the request to formulate or manufacture the item without intentionally introducing a listed metal;

(3) that the person will seek alternatives to using the item by July 1, 1997, if it still contains an intentionally introduced listed metal; and

(4) the name, address, and telephone number of a person the commissioner can contact for further information.

(c) A person who submits a request for temporary exemption under paragraph (b) may submit a request for a temporary exemption after September 1, 1994, for an item that the person will use as an alternative to the item for which the request was originally made as long as the new item has a total concentration level of all the listed metals that is significantly less than in the original item. An exemption under this paragraph expires July 1, 1998, and the person who requests it must submit the progress description required in paragraph (e).

(d) By October 1, 1994, and annually thereafter if requests are received under paragraph (c), the commissioner shall submit to the environment and natural resources committees of the senate and house of representatives, the finance division of the senate committee on environment and natural resources, and the house of representatives committee on environment and natural resources finance a list of manufacturers and persons that have requested an exemption under this subdivision and the items for which exemptions were sought, along with copies of the requests.

(e) By July 1, 1996, each manufacturer on the list shall submit to the commissioner a description of the progress the manufacturer has made toward compliance with subdivision 1, and the date compliance has been achieved or the date on or before July 1, 1998, by which the manufacturer anticipates achieving compliance. By July 1, 1996, each person who has requested an exemption under paragraph (b) or (c) shall submit to the commissioner:

(1) a description of progress made to eliminate the listed metal or metals from the item or progress made by the person to find a replacement item that does not contain an intentionally introduced listed metal; and

(2) the date or anticipated date the item is or will be free of intentionally introduced metals or the date the person has stopped or will stop using the item.

By October 1, 1996, the commissioner shall submit to the environment and natural resources committees of the senate and house of representatives, the finance division of the senate committee on environment and natural resources, and the house of representatives committee on environment and natural resources finance a summary of the progress made by the manufacturers and other persons and any recommendations for appropriate legislative or other action to ensure that products are not distributed in the state after July 1, 1998, that violate subdivision 1.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 2. DEFINITIONS. (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Council" means the council established under subdivision 5.

(c) "Essential product" means a specified product into which the introduction of a listed metal is required under military specifications or to ensure the integrity of a product essential for aviation or railroad safety, and which is being used only in that application.

(d) "Intentionally introduce" means to deliberately use a listed metal as an element during manufacture or distribution of a specified product. Intentional introduction does not include the incidental presence of a listed metal.

(e) "Listed metal" means lead, cadmium, mercury, or hexavalent chromium.

(f) "Listed product" means a specified product that is included on the prohibited products list published under subdivision 4.

(g) "New product" means a specified product which was not used, sold, or distributed in the state before July 2, 1998, or which has been reformulated so that it contains more of a listed metal.

(h) "Official" means an officer of a corporation, a general partner of a partnership or limited partnership, a sole proprietor, or, in the case of any other entity, a person with high level management responsibilities.

(i) "Specified product" means an ink, dye, pigment, paint, or fungicide into which a listed metal has been intentionally introduced or in which the incidental presence of a listed metal exceeds a concentration of 100 parts per million.

Subd. 3. APPLICATION; ENFORCEMENT CERTIFICATION OF COMPLIANCE. (a) This section does not apply to art supplies.

(b) This section may be enforced under sections 115.071 and 116.072. The attorney general or the commissioner of the agency shall coordinate enforcement of this section with the director of the office. By July 1, 1998, each person who has filed the progress report specified in Laws 1994, chapter 585, section 30, subdivision 2, paragraph (e), indicating compliance would be achieved by July 1, 1998, shall certify to the commissioner that the products referenced in that report have been reformulated and no longer meet the definition of a specified product. The certification must be in writing and signed by an official of the company. If, due to significant change in circumstances, the person cannot so certify by July 1, 1998, a product review report and fee shall be submitted as provided under subdivision 6.

(b) The person submitting the certification shall keep a copy on file and make copies available to the commissioner or the attorney general upon request or to any member of the public within 60 days of receipt of a written request that specifies the type of product for which the information is requested.

Subd. 4. PROHIBITED PRODUCTS LIST. By October 1, 1998, the commissioner shall publish in the State Register a list of specified products for which the commissioner has received certifications as provided under subdivision 3.

Subd. 5. LISTED METALS ADVISORY COUNCIL. (a) The purpose of the listed metals advisory council is to promote sustainable development, as defined in sec-

New language is indicated by underline, deletions by strikeout.

tion 4A.07, the public health and welfare and protect the environment and the state's economy by removing listed metals from specified products so that the listed metals do not contribute to bioaccumulation and burden taxpayers with unnecessary disposal costs.

(b) By July 1, 1997, the commissioner shall appoint a listed metals advisory council consisting of the following five permanent members: a chair, a representative of government, a representative of business, a representative of a citizens' organization, and a representative from a relevant field of academia. Temporary members of the council shall be appointed by the commissioner under paragraph (f). No permanent or temporary member of the council who is an employee of a manufacturer or user of a specified product may sit in consideration of that product.

(c) The council shall have the following duties:

(1) review reports submitted under subdivisions 6, 7, and 8 and provide advice to the commissioner pursuant to paragraph (d); and

(2) report to the commissioner on October 1, 2000, and October 1, 2005, on any reasonable measures that would allow the criteria in paragraph (d) to be met with regard to products reviewed based on information obtained during the review of products.

(d) The council's advice to the commissioner under paragraph (c), clause (1), shall be based on an evaluation of the environmental impact of the product and the ability of the manufacturer or user to reduce or eliminate the listed metal. Before making a recommendation that the commissioner take action under subdivision 9, the council must conclude that:

(1) there is an alternative to the specified product that does not contain the listed metal that performs the same technical function, is commercially available, and is economically practicable; and

(2) replacement of the product with the alternative will result in an environmental benefit in the state.

(e) A recommendation that the commissioner take action under subdivision 9 shall include the information required by section 14.131 to the extent the council, through reasonable effort, can ascertain this information.

(f) Before the council evaluates a specific product or group of products, the commissioner shall appoint temporary council members in an even number up to six. The commissioner shall seek to appoint as temporary members persons having expertise on the product or group of products under review as well as persons representing community interests. The temporary members shall be voting members of the council on all matters related to consideration of the product or group of products. The terms of the temporary members shall expire when the council has completed its review of the product or group of products and has submitted its recommendation to the commissioner pursuant to this subdivision.

(g) The permanent members of the council must prioritize the council's review of a specific product or group of products by publishing a notice in the State Register by October 1, 1998, identifying those specified products, or groups of products, which will be reviewed by July 1, 2000. By October 1, 2000, the council shall publish a notice in the State Register identifying those specified products, or groups of products, which will be

New language is indicated by underline, deletions by ~~strikeout~~.

reviewed by July 1, 2005. The council shall consider potential environmental impacts in prioritizing its review. The council shall notify manufacturers and users who have submitted product review reports of the appropriate review schedule. A manufacturer who has submitted a product review report may request an expedited review by the council.

(h) The commissioner shall provide staff and administrative services to the council. Compensation and removal of council members shall be as provided in section 15.059, subdivisions 3 and 4. The council shall dissolve on June 30, 2006.

Subd. 6. PRODUCT REVIEW REPORTS. (a) Except as provided under subdivision 7, the manufacturer, or an association of manufacturers, of any specified product distributed for sale or use in this state that is not listed pursuant to subdivision 4 shall submit a product review report and fee as provided in paragraph (c) to the commissioner for each product by July 1, 1998. Each product review report shall contain at least the following:

(1) a policy statement articulating upper management support for eliminating or reducing intentional introduction of listed metals into its products;

(2) a description of the product and the amount of each listed metal distributed for use in this state;

(3) a description of past and ongoing efforts to eliminate or reduce the listed metal in the product;

(4) an assessment of options available to reduce or eliminate the intentional introduction of the listed metal including any alternatives to the specified product that do not contain the listed metal, perform the same technical function, are commercially available, and are economically practicable;

(5) a statement of objectives in numerical terms and a schedule for achieving the elimination of the listed metals and an environmental assessment of alternative products;

(6) a listing of options considered not to be technically or economically practicable;
and

(7) certification attesting to the accuracy of the information in the report signed and dated by an official of the manufacturer or user.

If the manufacturer fails to submit a product review report, a user of a specified product may submit a report and fee which comply with this subdivision by August 15, 1998.

(b) By July 1, 1999, and annually thereafter until the commissioner takes action under subdivision 9, the manufacturer or user must submit a progress report and fee as provided in paragraph (c) updating the information presented under paragraph (a).

(c) The fee shall be \$295 for each report. The fee shall be deposited in the state treasury and credited to the environmental fund.

(d) Where it cannot be determined from a progress report submitted by a person pursuant to Laws 1994, chapter 585, section 30, subdivision 2, paragraph (e), the number of products for which product review reports are due under this subdivision, the commissioner shall have the authority to determine, after consultation with that person, the number of products for which product review reports are required.

New language is indicated by underline, deletions by strikeout.

(e) The commissioner shall summarize, aggregate, and publish data reported under paragraphs (a) and (b) annually.

(f) A product that is the subject of a decision under section 115A.965 is exempt from this section.

Subd. 7. ESSENTIAL PRODUCTS; PUBLISHED LIST. (a) By January 1, 1998, a manufacturer or user of an essential product must submit a certification to the commissioner that the product meets the definition in subdivision 2, paragraph (c). By July 1, 2002, each manufacturer or user of an essential product shall submit a report to the commissioner which includes the information required in subdivision 6, paragraph (a), and a statement of whether the product continues to meet the definition in subdivision 2, paragraph (c).

(b) By October 1, 1998, the commissioner shall publish in the State Register a list of essential products for which the commissioner has received certification pursuant to this subdivision. By October 1, 2002, the commissioner shall publish in the State Register a list of essential products based on reports submitted by July 1, 2002, as provided in paragraph (a).

Subd. 8. NEW PRODUCTS; CRITERIA FOR REVIEW. (a) After July 1, 1998, but before July 1, 2005, no person shall sell, distribute, or offer for sale in this state a new product prior to the manufacturer or user submitting a product review report and fee specified in subdivision 6.

(b) The council shall review reports submitted under this subdivision and provide advice to the commissioner. The council's advice to the commissioner under this subdivision shall be based on an evaluation of the environmental impact of the product and the ability of the manufacturer or user to reduce or eliminate the listed metal. Before making a recommendation that the commissioner take action under subdivision 9, the council must conclude that:

(1) there is an alternative to the specified product that does not contain the listed metal that performs the same technical function, is commercially available, and is economically practicable, and replacement of the product with the alternative will result in an environmental benefit in the state; or

(2) if there is no alternative to the new product, that the use of the listed metal in the new product presents a significant threat to the safe and efficient operation of waste facilities, or use of the listed metal does not increase the useful life span of the new product, reduce the overall toxicity of the final product or of material used in production of the final product, or otherwise provide a net environmental benefit to the state.

(c) Notwithstanding subdivision 5, paragraph (f), where the commissioner determines that a new product subject to paragraph (a) is sufficiently similar to a product or products previously reviewed by the council, the commissioner may authorize the permanent members of the council to perform the duties established in paragraph (b) without the appointment of temporary members. In performing those duties, the council shall utilize information gathered in any previous review of a similar product or products.

(d) Beginning July 1, 2005, no person shall sell, distribute, or offer for sale in this state a new product without the commissioner's approval. A person seeking approval of a new product shall submit a product review report including the information and fee spe-

New language is indicated by underline, deletions by strikethrough.

cified in subdivision 6. The commissioner shall not approve the new product unless the commissioner determines that it meets the criteria in paragraph (b). The commissioner shall make a determination within six months of receipt of a complete request.

Subd. 9. **AUTHORITY OF COMMISSIONER.** (a) The commissioner may, upon the recommendation of the council, prohibit the distribution for sale or use in this state of a specified product that is not an essential product.

(b) Before taking action under this subdivision, the commissioner must conclude that:

(1) there is an alternative to the specified product that does not contain the listed metal that performs the same technical function, is commercially available, and is economically practicable, and replacement of the product with the alternative will result in an environmental benefit to the state; or

(2) if there is no alternative to the new product, that the use of the listed metal in the new product presents a significant threat to the safe and efficient operation of waste facilities, or use of the listed metal does not increase the useful life span of the new product, reduce the overall toxicity of the final product or of material used in production of the final product, or otherwise provide a net environmental benefit to the state.

(c) If the commissioner fails to take action under this subdivision as recommended by the council, the commissioner shall submit a report to the legislature explaining the reasons for not taking such action.

(d) The commissioner shall provide the legislature a report and recommendations based on any report prepared by the council under subdivision 5, paragraph (c), clause (2).

Subd. 10. **APPLICATION; ENFORCEMENT.** (a) This section does not apply to art supplies.

(b) This section may be enforced under sections 115.071 and 116.072. The attorney general or the commissioner of the agency shall coordinate enforcement of this section with the director of the office.

Subd. 11. **RULEMAKING AUTHORITY.** (a) The pollution control agency may adopt, amend, suspend, and repeal rules to implement this section.

(b) Publication of notice under subdivision 5, paragraph (g), shall be deemed to satisfy the requirements of section 14.101.

(c) The commissioner may adopt a council recommendation under subdivision 5 as the agency's statement of need and reasonableness. A recommendation adopted in this manner shall be deemed to satisfy any content requirements for a statement of need and reasonableness imposed by law.

(d) Any hearings on rules adopted under this section shall be conducted in accordance with sections 14.14 to 14.20 and address whether the rule meets the standards for review under which the judge is required to approve or disapprove the rule.

(e) Section 14.125 does not apply to the agency's rulemaking authority under this section.

New language is indicated by underline, deletions by ~~strikeout~~.

(f) A rule adopted under this section is effective until repealed by the agency.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective the day following final enactment.

Presented to the governor May 27, 1997

Signed by the governor May 30, 1997, 1:12 p.m.

CHAPTER 222—S.F.No. 501

An act relating to commerce; providing powers and duties to the commissioner; regulating investments by certain licensees; regulating securities; modifying the real estate licensing exemption for closing agents; regulating real property appraisers; regulating residential building contractors and remodelers; requiring a compliance bond for sign contractors; modifying licensing requirements for collection agencies; regulating charitable trusts; regulating notaries public; regulating certificates of release by title insurance companies; making technical changes; amending Minnesota Statutes 1996, sections 45.011, subdivision 1; 45.028, subdivision 1; 67A.231; 80A.02, subdivision 1; 80A.04, subdivisions 3, 4, and by adding a subdivision; 80A.05, subdivisions 4, 5, and by adding a subdivision; 80A.06, subdivisions 1, 2, and 3; 80A.08; 80A.12, by adding a subdivision; 80A.14, subdivisions 3, 4, and by adding subdivisions; 80A.15, subdivisions 1 and 2; 80A.16; 80A.28, subdivisions 1 and 2; 80C.01, subdivision 4; 82.19, by adding a subdivision; 82.20, subdivision 15; 82.22, subdivision 13; 82.24, subdivision 5; 82B.13, subdivisions 1, 4, and 5; 82B.14; 82B.19, subdivision 1; 317A.141, by adding a subdivision; 317A.671; 326.83, subdivisions 11 and 19; 326.84, subdivision 3; 326.85, by adding a subdivision; 326.921; 332.33, subdivision 1, and by adding a subdivision; 332.34; 333.01; 359.061; 359.071; 501B.35, subdivision 3; and 507.401, subdivisions 2 and 3; proposing coding for new law in Minnesota Statutes, chapters 45; 60K; 80A; 325E; and 333; repealing Minnesota Statutes 1996, section 60K.07, subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 45.011, subdivision 1, is amended to read:

Subdivision 1. **SCOPE.** As used in chapters 45 to 83, 155A, 309, 332, 345, and 359, and sections 326.83 to ~~326.98~~ 326.991, and 386.61 to 386.78, unless the context indicates otherwise, the terms defined in this section have the meanings given them.

Sec. 2. [45.011] TEMPORARY LICENSES.

Subdivision 1. **AUTHORITY.** The commissioner may grant a temporary license to an applicant who can demonstrate successful completion of all requirements for a permanent license. The temporary license will remain in effect until the earliest of:

- (1) receipt by the applicant of the permanent license;
- (2) the expiration of 45 days from the date on which the temporary license was granted; or

New language is indicated by underline, deletions by ~~strikeout~~.