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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 605

02/14/2013 Authored by Winkler, Abeler, Atkins, Hortman and Selcer

The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to public health; protecting children from exposure to harmful chemicals
1.3 in products; amending criteria for identification of priority chemicals; requiring
1.4 disclosure by manufacturers of children's products that contain harmful
1.5 chemicals; authorizing Pollution Control Agency to prohibit sales of children's
1.6 products that contain harmful chemicals; providing waiver process; establishing
1.7 fees; requiring a report; amending Minnesota Statutes 2012, sections 13.7411,
1.8 subdivision 8; 116.9401; 116.9403; 116.9405; 116.9406; proposing coding for
1.9 new law in Minnesota Statutes, chapter 116.

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

1.11 Section 1. Minnesota Statutes 2012, section 13.7411, subdivision 8, is amended to read:

1.12 Subd. 8. **Pollution Control Agency.** (a) **Hazardous waste generators.**

1.13 Information provided by hazardous waste generators under section 473.151 and for which
1.14 confidentiality is claimed is governed by section 116.075, subdivision 2.

1.15 (b) **Tests.** Trade secret information made available by applicants for certain projects
1.16 of the Pollution Control Agency is classified under section 116.54.

1.17 (c) **Priority chemicals.** Trade secret information and other information submitted
1.18 to the Pollution Control Agency related to priority chemicals in children's products are
1.19 classified under sections 116.9403 to 116.9417.

1.20 Sec. 2. Minnesota Statutes 2012, section 116.9401, is amended to read:

1.21 **116.9401 DEFINITIONS.**

1.22 (a) For the purposes of sections 116.9401 to ~~116.9407~~ 116.9423, the following terms
1.23 have the meanings given them.

1.24 (b) "Agency" means the Pollution Control Agency.

2.1 (c) "Alternative" means a substitute process, product, material, chemical, strategy,
2.2 or combination of these that is technically feasible and serves a functionally equivalent
2.3 purpose to a chemical in a children's product.

2.4 (d) "Chemical" means a substance with a distinct molecular composition or a group
2.5 of structurally related substances and includes the breakdown products of the substance or
2.6 substances that form through decomposition, degradation, or metabolism.

2.7 (e) "Chemical of high concern" means a chemical identified on the basis of credible
2.8 scientific evidence by a state, federal, or international agency as being known or suspected
2.9 with a high degree of probability to:

2.10 (1) harm the normal development of a fetus or child or cause other developmental
2.11 toxicity;

2.12 (2) cause cancer, genetic damage, or reproductive harm;

2.13 (3) disrupt the endocrine or hormone system;

2.14 (4) damage the nervous system, immune system, or organs, or cause other systemic
2.15 toxicity;

2.16 (5) be persistent, bioaccumulative, and toxic; or

2.17 (6) be very persistent and very bioaccumulative.

2.18 (f) "Child" means a person under 12 years of age.

2.19 (g) "Children's product" means a consumer product intended for use by children,
2.20 such as baby products, toys, car seats, personal care products, and clothing.

2.21 (h) "Commissioner" means the commissioner of the Pollution Control Agency.

2.22 (i) "Department" means the Department of Health.

2.23 (j) "Distributor" means a person who sells consumer products to retail establishments
2.24 on a wholesale basis.

2.25 (k) "Green chemistry" means an approach to designing and manufacturing products
2.26 that minimizes the use and generation of toxic substances.

2.27 (l) "Manufacturer" means any person who manufactures a final consumer product
2.28 sold at retail or whose brand name is affixed to the consumer product. In the case of a
2.29 consumer product imported into the United States, manufacturer includes the importer
2.30 or domestic distributor of the consumer product if the person who manufactured or
2.31 assembled the consumer product or whose brand name is affixed to the consumer product
2.32 does not have a presence in the United States.

2.33 (m) "Priority chemical" means a chemical identified by the Department of Health as
2.34 a chemical of high concern that meets the criteria in section 116.9403.

2.35 (n) "Safer alternative" means:

3.1 (1) an alternative whose chemical that is not a chemical of high concern, the
 3.2 potential of which to harm human health is less than that of the use of a priority chemical
 3.3 that it could replace; or

3.4 (2) the removal of a priority chemical from a children's product without substitution
 3.5 of another chemical.

3.6 Sec. 3. Minnesota Statutes 2012, section 116.9403, is amended to read:

3.7 **116.9403 IDENTIFICATION OF PRIORITY CHEMICALS.**

3.8 Subdivision 1. Designation; publication. (a) The department, after consultation
 3.9 with the agency, may designate a chemical of high concern as a priority chemical if the
 3.10 department finds that the chemical:

3.11 (1) has been identified as a high-production volume chemical by the United States
 3.12 Environmental Protection Agency; ~~and~~

3.13 ~~(2) meets any of the following criteria:~~

3.14 ~~(i) the chemical (2) has been found through biomonitoring to be present in human~~
 3.15 ~~blood, including umbilical cord blood, breast milk, urine, or other bodily tissues or fluids;~~

3.16 ~~(ii) the chemical (3) has been found through sampling and analysis to be present in~~
 3.17 ~~household dust, indoor air, drinking water, or elsewhere in the home environment; or~~

3.18 ~~(iii) the chemical (4) has been found through monitoring to be present in fish,~~
 3.19 ~~wildlife, or the natural environment.~~

3.20 (b) By February 1, 2011, the department shall publish a list of priority chemicals in
 3.21 the State Register and on the department's Internet Web site and shall update the published
 3.22 list whenever a new priority chemical is designated.

3.23 Subd. 2. Public data. Notwithstanding section 13.37, subdivision 2, identification
 3.24 of a chemical that is trade secret information as a priority chemical through designation or
 3.25 publication under this section is classified as public data.

3.26 Subd. 3. Not misappropriation of trade secret. Notwithstanding section 325C.01,
 3.27 subdivision 3, designation or publication of the identity of a priority chemical under this
 3.28 section is not misappropriation of a trade secret.

3.29 Sec. 4. Minnesota Statutes 2012, section 116.9405, is amended to read:

3.30 **116.9405 APPLICABILITY.**

3.31 The requirements of sections 116.9401 to ~~116.9407~~ 116.9423 do not apply to:

3.32 (1) chemicals in ~~used~~ previously owned children's products;

3.33 (2) priority chemicals used in the manufacturing process, but that are not present
 3.34 in the final product;

- 4.1 (3) priority chemicals used in agricultural production;
- 4.2 (4) motor vehicles as defined in chapter 168 or watercraft as defined in chapter
- 4.3 86B or their component parts, except that the use of priority chemicals in detachable
- 4.4 car seats is not exempt;
- 4.5 (5) priority chemicals generated solely as combustion by-products or that are present
- 4.6 in combustible fuels;
- 4.7 (6) retailers;
- 4.8 (7) pharmaceutical products or biologics;
- 4.9 (8) a medical device as defined in the federal Food, Drug, and Cosmetic Act, United
- 4.10 States Code, title 21, section 321(h);
- 4.11 ~~(9) food and food or beverage packaging, except a container containing baby food~~
- 4.12 ~~or infant formula;~~
- 4.13 ~~(10) consumer electronics products and electronic components, including but not~~
- 4.14 ~~limited to personal computers; audio and video equipment; calculators; digital displays;~~
- 4.15 ~~wireless phones; cameras; game consoles; printers; and handheld electronic and electrical~~
- 4.16 ~~devices used to access interactive software or their associated peripherals; or products that~~
- 4.17 ~~comply with the provisions of directive 2002/95/EC of the European Union, adopted by~~
- 4.18 ~~the European Parliament and Council of the European Union now or hereafter in effect; or~~
- 4.19 ~~(11) outdoor sport equipment, including snowmobiles as defined in section~~
- 4.20 ~~84.81, subdivision 3; all-terrain vehicles as defined in section 84.92, subdivision 8;~~
- 4.21 ~~personal watercraft as defined in section 86B.005, subdivision 14a; watercraft as defined~~
- 4.22 ~~in section 86B.005, subdivision 18; and off-highway motorcycles, as defined in section~~
- 4.23 ~~84.787, subdivision 7, and all attachments and repair parts for all of this equipment; or~~
- 4.24 (11) a children's product, the annual production of which is less than 3,000 units.

4.25 Sec. 5. Minnesota Statutes 2012, section 116.9406, is amended to read:

4.26 **116.9406 DONATIONS TO THE STATE.**

4.27 The commissioner may accept donations, grants, and other funds to carry out the

4.28 purposes of sections 116.9401 to ~~116.9407~~ 116.9423. All donations, grants, and other

4.29 funds must be accepted without preconditions regarding the outcomes of the regulatory

4.30 oversight processes set forth in sections 116.9401 to ~~116.9407~~ 116.9423.

4.31 Sec. 6. **[116.9409] CHILDREN'S PRODUCTS; REPORTING INFORMATION**

4.32 **ON PRIORITY CHEMICALS.**

4.33 (a) Within 180 days after a priority chemical is designated under section 116.9403

4.34 or, for a priority chemical designated under section 116.9403 before July 1, 2011, by

5.1 January 1, 2014, a manufacturer or distributor of a children's product offered for sale in
5.2 the state that contains a priority chemical must, unless the children's product is not subject
5.3 to regulation under section 116.9405, provide the following information to the agency on
5.4 a form developed by the commissioner:

5.5 (1) the name of the priority chemical and its Chemical Abstracts Service Registry
5.6 number;

5.7 (2) in which of the following categories the children's product containing a priority
5.8 chemical belongs:

5.9 (i) Category 1: a children's product intended to be used by children three years of age
5.10 or younger or intended to be placed in a child's mouth or directly applied to a child's skin;

5.11 (ii) Category 2: a children's product intended to be in direct contact with a child's skin
5.12 for one hour or longer, including but not limited to clothing, jewelry, bedding, or a car seat;

5.13 (iii) Category 3: a children's product intended to be in direct contact with a child's
5.14 skin for less than one hour; or

5.15 (iv) Category 4: a children's product in which a priority chemical is contained only
5.16 in an internal component not intended to be in direct contact with a child's skin or mouth;

5.17 (3) an estimate of the total amount of the priority chemical contained in each product
5.18 and product component, a description of how the estimate was made, and an evaluation of
5.19 the estimate's accuracy;

5.20 (4) evidence describing the extent to which a child is likely to be exposed to the
5.21 priority chemical through normal use of the children's product;

5.22 (5) the number of units of the children's product sold or distributed in Minnesota
5.23 or nationally;

5.24 (6) any assessment of the use of safer alternatives to the priority chemical contained
5.25 in the children's product;

5.26 (7) any other information the manufacturer deems relevant; and

5.27 (8) any other information requested by the commissioner.

5.28 (b) If the information required in paragraph (a) is not submitted in a timely fashion
5.29 or is incomplete or otherwise unacceptable as determined by the agency, the agency may
5.30 contract with an independent third party of the agency's choice to provide the information
5.31 and may assess a fee on the manufacturer or distributor to pay the costs as specified
5.32 under section 116.9419. If the priority chemical in question is claimed as a trade secret
5.33 under section 325C.01, subdivision 5, any contract between the agency and a third party
5.34 for information required under this section must stipulate that the trade secret status of
5.35 the information be maintained.

6.1 (c) Following the initial submission of the information required under paragraph
6.2 (a), a manufacturer or distributor of a children's product offered for sale in the state that
6.3 continues to contain a priority chemical must submit the information required under
6.4 paragraph (a) to the agency every two years.

6.5 **Sec. 7. [116.9411] CHILDREN'S PRODUCTS; MANUFACTURER'S OR**
6.6 **DISTRIBUTOR'S OPTIONS.**

6.7 A manufacturer or distributor of a children's product containing a priority chemical
6.8 must:

- 6.9 (1) obtain a determination from the commissioner under section 116.9413 that a
6.10 child using the children's product is unlikely to be exposed to the priority chemical;
6.11 (2) remove the priority chemical from the children's product;
6.12 (3) discontinue offering the children's product for sale in the state; or
6.13 (4) obtain a waiver from the commissioner under section 116.9417.

6.14 **Sec. 8. [116.9413] CHILDREN'S PRODUCTS; EXPOSURE DETERMINATION.**

6.15 Subdivision 1. **Agency determination.** Within 180 days following receipt of the
6.16 information provided under section 116.9409, the agency shall determine whether a child
6.17 is likely to be exposed to the priority chemical through normal use of the children's
6.18 product. If the agency determines that exposure is likely to occur, the children's product
6.19 must be prohibited from sale according to section 116.9415, unless the commissioner has
6.20 approved a waiver under section 116.9417. In making the determination, the agency may
6.21 request additional information regarding potential exposure to the priority chemical from
6.22 the manufacturer or distributor of the children's product.

6.23 Subd. 2. **Notice.** Within 30 days of a determination of exposure under subdivision
6.24 1, the agency shall provide written notice of the determination to the manufacturer or
6.25 distributor of the children's product containing a priority chemical.

6.26 Subd. 3. **Inadequate response; contract option.** If the additional information
6.27 requested under subdivision 1 is not submitted by the manufacturer or distributor to the
6.28 agency in a timely fashion or is incomplete or otherwise unacceptable, as determined by
6.29 the agency, the agency may contract with an independent third party of the agency's choice
6.30 to provide the information and may assess a fee on the manufacturer or distributor to pay
6.31 the costs of providing the information, as specified in section 116.9419. If the priority
6.32 chemical in question is claimed as a trade secret under section 325C.01, subdivision 5, any
6.33 contract between the agency and a third party for information required under this section
6.34 must stipulate that the trade secret status of the information be maintained.

7.1 **Sec. 9. [116.9415] CHILDREN'S PRODUCTS; SALE PROHIBITION.**

7.2 **Subdivision 1. Notice of intention.** Within 30 days of receiving the agency's
7.3 notice of determination of exposure issued under section 116.9413, a manufacturer or
7.4 distributor intending to seek a safer alternative to replace a priority chemical in a children's
7.5 product must provide written notice of that fact to the commissioner. The notice must
7.6 include an estimated timeline and outline of the stages of the safer alternative research
7.7 and development process. The manufacturer or distributor must file a written report to
7.8 the agency every three months, documenting activities in researching and developing a
7.9 safer alternative. Material filed by a manufacturer or distributor under this subdivision is
7.10 nonpublic data as defined in section 13.02, subdivision 9.

7.11 **Subd. 2. Agency determination.** (a) No later than 90 days after making a
7.12 determination that a user of a children's product is likely to be exposed to a priority chemical
7.13 through normal use of the children's product, the commissioner shall, after considering the
7.14 information provided by the manufacturer or distributor under subdivision 1, if applicable,
7.15 specify a date, no less than 18 months after, but not exceeding four years after, issuing a
7.16 notice of prohibition of sale under subdivision 3, after which the children's product may
7.17 no longer be sold or offered for sale in the state if it contains a priority chemical.

7.18 (b) The commissioner may, based on the reports filed under subdivision 1, advance or
7.19 set back the initial effective date of prohibition of sale, but may not extend it beyond four
7.20 years after the date of issuing the initial notice of prohibition of sale under subdivision 3.

7.21 (c) The commissioner may prohibit the sale in the state of a children's product
7.22 containing a priority chemical if the manufacturer or distributor fails to provide the
7.23 information required under section 116.9409 in a timely fashion or if the information is
7.24 incomplete or otherwise unacceptable, as determined by the agency.

7.25 **Subd. 3. Notice of prohibition of sale.** Within 30 days of a determination under
7.26 subdivision 2, the agency shall provide written notice to the manufacturer or distributor of
7.27 the children's product containing a priority chemical of the agency's decision to prohibit
7.28 offering the children's product for sale in the state and the effective date of the prohibition.

7.29 **Subd. 4. Compliance plan.** (a) No later than 180 days prior to the effective date of a
7.30 prohibition established under subdivision 2, the manufacturer or distributor of a children's
7.31 product that contains a priority chemical that is subject to a prohibition of sale under this
7.32 section shall file a compliance plan with the commissioner. A compliance plan must:

7.33 (1) identify the children's product that contains the priority chemical;

7.34 (2) specify whether compliance will be achieved by discontinuing the sale of the
7.35 children's product in the state or by removing the priority chemical from the children's
7.36 product; and

8.1 (3) if compliance is achieved through substitution of a safer alternative for the
 8.2 priority chemical:

8.3 (i) identify the safer alternative;

8.4 (ii) evaluate the likelihood of a child using the children's product to be exposed to
 8.5 the safer alternative through normal use; and

8.6 (iii) evaluate the potential harm to the health of a child exposed to the safer
 8.7 alternative; and

8.8 (4) contain a certificate of compliance certifying that after the effective date of the
 8.9 prohibition of sale, the manufacturer or distributor will not offer the product containing
 8.10 the priority chemical for sale in the state.

8.11 (b) The agency must approve, reject, or modify a compliance plan and provide
 8.12 written notice of the agency's decision to the manufacturer or distributor within 120 days
 8.13 after the compliance plan is filed.

8.14 Subd. 5. **Retailer notification.** A manufacturer or distributor of a children's product
 8.15 issued a notice of prohibition of sale under subdivision 3 shall notify, in writing, persons
 8.16 that offer the product for sale or distribution in the state of the requirements of sections
 8.17 116.9401 to 116.9423, and the effective date of the prohibition of sale. Notice under this
 8.18 subdivision must be issued within 30 days of the agency's approval of the manufacturer's
 8.19 or distributor's compliance plan, unless the manufacturer or distributor has applied for and
 8.20 been denied a waiver under section 116.9417, in which case the notice must be issued
 8.21 within 30 days of denial of a waiver by the commissioner.

8.22 Subd. 6. **Sale of inventory.** A retailer selling a children's product containing a
 8.23 priority chemical that is the subject of a prohibition of sale issued under this section may
 8.24 not offer the children's product for sale in the state after the effective date of the prohibition,
 8.25 except that a retailer may exhaust stocks present on the retailer's premises 90 days prior to
 8.26 the effective date of the prohibition, after providing evidence of that fact to the agency.

8.27 Sec. 10. **[116.9417] CHILDREN'S PRODUCTS; WAIVER FROM SALE**
 8.28 **PROHIBITION.**

8.29 Subdivision 1. **Waiver application.** No later than one year prior to the date of
 8.30 prohibition of sale established under section 116.9415, a manufacturer or distributor of a
 8.31 children's product that is subject to the prohibition may file an application for a waiver
 8.32 from the prohibition with the commissioner. The waiver application must:

8.33 (1) identify the specific children's product and the function of the priority chemical
 8.34 for which the waiver is sought;

8.35 (2) identify alternatives considered as substitutions for the priority chemical;

9.1 (3) contain evidence supporting the conclusion that the use of a safer alternative is
9.2 not technically or economically feasible;

9.3 (4) identify steps that have been and will be taken to minimize the use of the priority
9.4 chemical in the children's product, if any; and

9.5 (5) contain evidence demonstrating that the lack of availability of the children's
9.6 product containing the priority chemical may pose an unreasonable risk to public health,
9.7 safety, or welfare.

9.8 Subd. 2. **Waiver determination.** (a) The commissioner may grant a waiver with or
9.9 without conditions upon determining that:

9.10 (1) there is no technically or economically feasible safer alternative for the use of the
9.11 priority chemical in the children's product; and

9.12 (2) the lack of availability of the children's product containing the priority chemical
9.13 may pose an unreasonable risk to public health, safety, or welfare.

9.14 (b) The commissioner shall grant or deny a waiver request within 90 days of
9.15 receiving a completed waiver application.

9.16 (c) In making a determination under this section, the commissioner may contract
9.17 with an independent third party of the agency's choice to provide additional information
9.18 and may assess a fee on the manufacturer or distributor to pay the costs of providing the
9.19 information, as specified in section 116.9419. If a priority chemical that is the subject of a
9.20 waiver application is claimed as a trade secret under section 325C.01, subdivision 5, any
9.21 contract between the commissioner and a third party for information required under this
9.22 section must stipulate that the trade secret status of the information be maintained.

9.23 Subd. 3. **Notice of waiver determination.** Within 30 days of a determination under
9.24 subdivision 2, the agency shall provide written notice of the decision to the manufacturer
9.25 or distributor of the children's product containing the priority chemical.

9.26 Subd. 4. **Term of waiver.** A waiver may be granted for a term not to exceed two
9.27 years. A waiver may be renewed for one additional two-year term upon approval by the
9.28 commissioner, following the commissioner's receipt of a written application from the
9.29 manufacturer or distributor containing the information required under subdivision 1.

9.30 Subd. 5. **Waiver application not public information.** A waiver application
9.31 is nonpublic data, as defined in section 13.02, subdivision 9. The fact that a waiver
9.32 application has been filed with the agency is public data that may be accessed according to
9.33 section 13.03.

9.34 Sec. 11. **[116.9419] FEES.**

10.1 (a) The agency shall, if applicable, collect the following fees from manufacturers
10.2 and distributors of children's products offered for sale in the state:

10.3 (1) a fee of \$..... for each report filed under section 116.9409;

10.4 (2) a fee equal to the costs billed by the independent contractor plus the agency's
10.5 actual incurred costs to bid and administer the contract for each contract issued under
10.6 section 116.9409, paragraph (b), 116.9413, subdivision 3, or 116.9417, subdivision 2;

10.7 (3) a fee of \$..... for each compliance plan filed under section 116.9415; and

10.8 (4) a fee of \$..... for each waiver application filed under section 116.9417,
10.9 subdivision 1.

10.10 (b) The commissioner shall deposit all fees collected under this section in the
10.11 environmental fund. All fees collected under this section are exempt from section
10.12 16A.1285.

10.13 **Sec. 12. [116.9423] ENFORCEMENT.**

10.14 The agency shall enforce sections 116.9401 to 116.9419 in the manner provided
10.15 by section 115.071, subdivisions 1 to 6.

10.16 **Sec. 13. REPORT.**

10.17 By January 15, 2015, the commissioner of the Pollution Control Agency shall
10.18 report to the legislative committees with jurisdiction over environment and natural
10.19 resources, commerce, and public health regarding the agency's plans for implementing the
10.20 requirements of sections 116.9401 to 116.9419.

10.21 **Sec. 14. EFFECTIVE DATE.**

10.22 Sections 1 to 13 are effective the day following final enactment.