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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, Selcer and others  
The bill was read for the first time and referred to the Committee on Health and Human Services Policy  
02/28/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Civil Law  
03/06/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Commerce and Consumer Protection Finance and Policy  
03/13/2013 Adoption of Report: Pass and re-referred to the Committee on Environment and Natural Resources Policy  
03/20/2014 By motion, recalled and re-referred to the Committee on Environment, Natural Resources and Agriculture Finance

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; providing a criminal penalty; amending Minnesota  
1.8 Statutes 2012, sections 13.7411, subdivision 8; 116.9401; 116.9403; 116.9405;  
1.9 116.9406; proposing coding for 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) "Mouthable" means a product that can be placed into and kept in a child's  
2.34 mouth to be sucked or chewed, including any product or product part smaller than five  
2.35 centimeters in one dimension. A product that can only be licked is not mouthable.

3.1 (n) "Practical quantification limit" means the lowest concentration of a chemical that  
3.2 can be reliably measured within specified limits of precision, accuracy, representativeness,  
3.3 completeness, and comparability under routine laboratory operating conditions, and  
3.4 whose value:

3.5 (1) is based on scientifically defensible, standard analytical methods;

3.6 (2) may vary depending on the matrix and analytical method used; and

3.7 (3) will be determined jointly by the agency and the department, taking into  
3.8 consideration practical quantification limits established by federal or state agencies.

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

3.11 (p) "Product category" means the brick level of the GS1 Global Product  
3.12 Classification (GPC) standard, which identifies products that serve a common purpose, are  
3.13 of a similar form and material, and share the same set of category attributes.

3.14 (q) "Product component" means a uniquely identifiable material or coating including,  
3.15 but not limited to, an ink or dye, that is intended to be included as a part of a finished  
3.16 children's product.

3.17 ~~(n)~~ (r) "Safer alternative" means:

3.18 (1) an alternative whose potential to harm human health is less than that of the use of  
3.19 a priority chemical that it could replace; chemical that is not a priority chemical identified  
3.20 by the Department of Health in section 116.9403; or

3.21 (2) an alternative chemical that is not identified on the basis of credible scientific  
3.22 evidence by a state, federal, or international agency as being known or suspected with  
3.23 a high degree of probability to:

3.24 (i) harm the normal development of a fetus or child or cause other developmental  
3.25 toxicity;

3.26 (ii) cause cancer, genetic damage, or reproductive harm;

3.27 (iii) disrupt the endocrine or hormone system; or

3.28 (iv) damage the nervous system, immune system, or organs, or cause other systemic  
3.29 toxicity.

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

3.31 **116.9403 IDENTIFICATION OF PRIORITY CHEMICALS.**

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

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

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

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

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

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

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

4.13 Subd. 2. Public data. Notwithstanding section 13.37, subdivision 2, the presence  
4.14 and level of a priority chemical in a specific children's product reported to the agency  
4.15 under section 116.9409, paragraph (a), clauses (1) to (5), are classified as public data.

4.16 Subd. 3. Not misappropriation of trade secret. Notwithstanding section 325C.01,  
4.17 subdivision 3, publication of the presence and level of a priority chemical in a specific  
4.18 children's product under this section is not misappropriation of a trade secret.

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

4.20 **116.9405 APPLICABILITY.**

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

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

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

4.25 (3) priority chemicals used in agricultural production;

4.26 (4) motor vehicles as defined in chapter 168 or watercraft as defined in chapter  
4.27 86B or their component parts, except that the use of priority chemicals in detachable  
4.28 car seats is not exempt;

4.29 (5) priority chemicals generated solely as combustion by-products or that are present  
4.30 in combustible fuels;

4.31 (6) retailers;

4.32 (7) pharmaceutical products or biologics;

4.33 (8) a medical device as defined in the federal Food, Drug, and Cosmetic Act, United  
4.34 States Code, title 21, section 321(h);

5.1 (9) ~~food and food or beverage packaging, except a container containing baby food~~  
 5.2 ~~or infant formula;~~

5.3 ~~(10) consumer electronics products and electronic components, including but not~~  
 5.4 ~~limited to personal computers; audio and video equipment; calculators; digital displays;~~  
 5.5 ~~wireless phones; cameras; game consoles; printers; and handheld electronic and electrical~~  
 5.6 ~~devices used to access interactive software or their associated peripherals; or products that~~  
 5.7 ~~comply with the provisions of directive 2002/95/EC of the European Union, adopted by~~  
 5.8 ~~the European Parliament and Council of the European Union now or hereafter in effect; or~~

5.9 ~~(11) (10) outdoor sport equipment, including snowmobiles as defined in section~~  
 5.10 ~~84.81, subdivision 3; all-terrain vehicles as defined in section 84.92, subdivision 8;~~  
 5.11 ~~personal watercraft as defined in section 86B.005, subdivision 14a; watercraft as defined~~  
 5.12 ~~in section 86B.005, subdivision 18; and off-highway motorcycles, as defined in section~~  
 5.13 ~~84.787, subdivision 7, and all attachments and repair parts for all of this equipment; or~~

5.14 ~~(11) a children's product, the annual production of which is less than 3,000 units.~~

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

5.16 **116.9406 DONATIONS TO THE STATE.**

5.17 The commissioner may accept donations, grants, and other funds to carry out the  
 5.18 purposes of sections 116.9401 to ~~116.9407~~ 116.9423. All donations, grants, and other  
 5.19 funds must be accepted without preconditions regarding the outcomes of the regulatory  
 5.20 oversight processes set forth in sections 116.9401 to ~~116.9407~~ 116.9423.

5.21 Sec. 6. **[116.9408] CHILDREN'S PRODUCTS; REPORTING INFORMATION**  
 5.22 **ON PRIORITY CHEMICALS; TIMING.**

5.23 A manufacturer or distributor of a children's product offered for sale in this state that  
 5.24 contains a priority chemical must, unless the children's product is not subject to regulation  
 5.25 under section 116.9405, provide the information required under section 116.9409 to the  
 5.26 agency. The maximum length of time between the designation of a priority chemical  
 5.27 under section 116.9403 and the time the information required under section 116.9409 must  
 5.28 be submitted to the agency varies according to the manufacturer's or distributor's annual  
 5.29 aggregate gross sales, both within and outside the state, as reported in the manufacturer's  
 5.30 or distributor's most recently filed federal tax return, as follows:

5.31 (1) for a manufacturer or distributor with gross sales exceeding \$1,000,000,000, one  
 5.32 year or, for a priority chemical designated under section 116.9403 before July 1, 2011, by  
 5.33 July 1, 2014;

6.1 (2) for a manufacturer or distributor with gross sales exceeding \$250,000,000 but  
6.2 less than or equal to \$1,000,000,000, 1-1/2 years or, for a priority chemical designated  
6.3 under section 116.9403 before July 1, 2011, by July 1, 2015;

6.4 (3) for a manufacturer or distributor with gross sales exceeding \$100,000,000 but  
6.5 less than or equal to \$250,000,000, two years or, for a priority chemical designated under  
6.6 section 116.9403 before July 1, 2011, by July 1, 2015;

6.7 (4) for a manufacturer or distributor with gross sales exceeding \$5,000,000 but less  
6.8 than or equal to \$100,000,000, three years or, for a priority chemical designated under  
6.9 section 116.9403 before July 1, 2011, by July 1, 2016;

6.10 (5) for a manufacturer or distributor with gross sales exceeding \$100,000 but less  
6.11 than or equal to \$5,000,000, four years or, for a priority chemical designated under section  
6.12 116.9403 before July 1, 2011, by July 1, 2017; and

6.13 (6) for a manufacturer or distributor with gross sales below \$100,000, five years or, for  
6.14 a priority chemical designated under section 116.9403 before July 1, 2011, by July 1, 2018.

6.15 **Sec. 7. [116.9409] CHILDREN'S PRODUCTS; REPORTING INFORMATION**  
6.16 **ON PRIORITY CHEMICALS.**

6.17 (a) A manufacturer or distributor of a children's product offered for sale in the state  
6.18 that contains one or more priority chemicals must, except as provided in paragraph (d) or  
6.19 if the children's product is not subject to regulation under section 116.9405, provide the  
6.20 following information to the agency on a form developed by the commissioner:

6.21 (1) each name of the priority chemical and its Chemical Abstracts Service Registry  
6.22 number;

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

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

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

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

6.32 (iv) Category 4: a children's product in which a priority chemical is contained only  
6.33 in an internal component that, under normal use, is unlikely to come into direct contact  
6.34 with a child's skin or mouth;

7.1 (3) the product components, materials, or coatings that contain one or more priority  
7.2 chemicals;

7.3 (4) the concentration and total amount of each priority chemical contained in a  
7.4 children's product, a description of how the concentration was determined, and an  
7.5 evaluation of the accuracy of the determination. Concentrations at or above the practical  
7.6 quantification limit must be reported, but may be reported in the following ranges:

7.7 (i) greater than or equal to the practical quantification limit but less than 100 ppm;

7.8 (ii) greater than or equal to 100 ppm but less than 500 ppm;

7.9 (iii) greater than or equal to 500 ppm but less than 1,000 ppm;

7.10 (iv) greater than or equal to 1,000 ppm but less than 5,000 ppm;

7.11 (v) greater than or equal to 5,000 ppm but less than 10,000 ppm; and

7.12 (vi) greater than or equal to 10,000 ppm.

7.13 For the purposes of this section, "ppm" means parts per million;

7.14 (5) the product category or categories for the children's product;

7.15 (6) the name and address of the reporting manufacturer and the name, address, and  
7.16 telephone number of the contact person for the reporting manufacturer;

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

7.19 (8) the number of units of the children's product sold or distributed in Minnesota  
7.20 or nationally;

7.21 (9) any assessment of the use of safer alternatives to the priority chemical contained  
7.22 in the children's product;

7.23 (10) any other information the manufacturer deems relevant; and

7.24 (11) any other information requested by the commissioner.

7.25 (b) If the information required in paragraph (a) is not submitted in a timely fashion  
7.26 or is incomplete or otherwise unacceptable as determined by the agency, the agency may  
7.27 contract with an independent third party of the agency's choice to provide the information  
7.28 and may assess a fee on the manufacturer or distributor to pay the costs as specified  
7.29 under section 116.9419.

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

7.34 (d) The department shall determine on a case-by-case basis if reporting the  
7.35 information in paragraph (a), clauses (3) to (8), is required by a manufacturer whose  
7.36 children's product belongs in Category 4 under paragraph (a), clause (2).

8.1 (e) If the manufacturer claims that any of the information provided to the agency  
8.2 under this section is trade secret information under section 325C.01, subdivision 5, the  
8.3 agency shall make a determination regarding the claim under that section and section  
8.4 13.37, subdivision 1. Information determined to be public data will be posted on the  
8.5 agency's Web site. This paragraph does not apply to the identification of a chemical as a  
8.6 priority chemical, which is governed under section 116.9403, subdivisions 2 and 3.

8.7 **Sec. 8. [116.9411] CHILDREN'S PRODUCTS; MANUFACTURER'S OR**  
8.8 **DISTRIBUTOR'S OPTIONS.**

8.9 A manufacturer or distributor of a children's product containing a priority chemical  
8.10 must:

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

8.16 **Sec. 9. [116.9413] CHILDREN'S PRODUCTS; EXPOSURE DETERMINATION.**

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

8.25 Subd. 2. **Notice.** Within 30 days of a determination of exposure under subdivision  
8.26 1, the agency shall provide written notice of the determination to the manufacturer or  
8.27 distributor of the children's product containing a priority chemical.

8.28 Subd. 3. **Inadequate response; contract option.** If the additional information  
8.29 requested under subdivision 1 is not submitted by the manufacturer or distributor to the  
8.30 agency in a timely fashion or is incomplete or otherwise unacceptable, as determined by  
8.31 the agency, the agency may contract with an independent third party of the agency's choice  
8.32 to provide the information and may assess a fee on the manufacturer or distributor to pay  
8.33 the costs of providing the information, as specified in section 116.9419. If the priority  
8.34 chemical in question is claimed as a trade secret under section 325C.01, subdivision 5, any



9.1 contract between the agency and a third party for information required under this section  
9.2 must stipulate that the trade secret status of the information be maintained.

9.3 **Sec. 10. [116.9415] CHILDREN'S PRODUCTS; SALE PROHIBITION.**

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

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

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

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

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

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

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

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

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

10.6 (i) identify the safer alternative;

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

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

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

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

10.17 Subd. 5. **Retailer notification.** A manufacturer or distributor of a children's product  
 10.18 issued a notice of prohibition of sale under subdivision 3 shall notify, in writing, persons  
 10.19 that offer the product for sale or distribution in the state of the requirements of sections  
 10.20 116.9401 to 116.9423, and the effective date of the prohibition of sale. Notice under this  
 10.21 subdivision must be issued within 30 days of the agency's approval of the manufacturer's  
 10.22 or distributor's compliance plan, unless the manufacturer or distributor has applied for and  
 10.23 been denied a waiver under section 116.9417, in which case the notice must be issued  
 10.24 within 30 days of denial of a waiver by the commissioner.

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

10.30 Subd. 7. **Criminal penalty.** A knowing violation of this section that involves a  
 10.31 prohibited sale of a children's product is a misdemeanor.

10.32 **Sec. 11. [116.9417] CHILDREN'S PRODUCTS; WAIVER FROM SALE**  
 10.33 **PROHIBITION.**

10.34 Subdivision 1. **Waiver application.** No later than one year prior to the date of  
 10.35 prohibition of sale established under section 116.9415, a manufacturer or distributor of a

11.1 children's product that is subject to the prohibition may file an application for a waiver  
11.2 from the prohibition with the commissioner. The waiver application must:

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

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

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

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

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

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

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

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

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

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

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

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

11.35 Subd. 5. **Waiver application not public information.** A waiver application  
11.36 is nonpublic data, as defined in section 13.02, subdivision 9. The fact that a waiver

12.1 application has been filed with the agency is public data that may be accessed according to  
12.2 section 13.03.

12.3 **Sec. 12. [116.9419] FEES.**

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

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

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

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

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

12.13 (b) The commissioner shall deposit all fees collected under this section in the  
12.14 environmental fund. All fees collected under this section are exempt from section  
12.15 16A.1285.

12.16 **Sec. 13. [116.9423] ENFORCEMENT.**

12.17 The agency shall enforce sections 116.9401 to 116.9419 in the manner provided by  
12.18 section 115.071, subdivisions 1, 3, 4, 5, and 6. Section 115.071, subdivision 2, does not  
12.19 apply to violations of section 116.9401 to 116.9419.

12.20 **Sec. 14. REPORT.**

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

12.25 **Sec. 15. EFFECTIVE DATE.**

12.26 Sections 1 to 14 are effective the day following final enactment.