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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **727**

02/01/2017 Authored by Hilstrom, Hornstein, Ward, Omar, Dehn, R., and others
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance

1.1 A bill for an act
1.2 relating to environment; regulating chemicals of high concern in children's products;
1.3 amending Minnesota Statutes 2016, sections 13.7411, subdivision 8; 116.9401;
1.4 116.9402; 116.9403; 116.9405; 116.9406; proposing coding for new law in
1.5 Minnesota Statutes, chapter 116.

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

1.7 Section 1. Minnesota Statutes 2016, section 13.7411, subdivision 8, is amended to read:

1.8 Subd. 8. **Pollution Control Agency.** (a) Hazardous waste generators. Information
1.9 provided by hazardous waste generators under section 473.151 and for which confidentiality
1.10 is claimed is governed by section 116.075, subdivision 2.

1.11 (b) Priority chemicals. Trade secret information and other information submitted to
1.12 the Pollution Control Agency related to priority chemicals in children's products are classified
1.13 under sections 116.9403 to 116.9411.

1.14 EFFECTIVE DATE. This section is effective the day following final enactment.

1.15 Sec. 2. Minnesota Statutes 2016, section 116.9401, is amended to read:

1.16 **116.9401 DEFINITIONS.**

1.17 (a) For the purposes of sections 116.9401 to ~~116.9407~~ 116.9411, the following terms
1.18 have the meanings given them.

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

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

2.4 (d) "Chemical" means a substance with a distinct molecular composition or a group of
2.5 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, such
2.20 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) "Contaminant" means a trace amount of a chemical that is incidental to manufacturing
2.23 and serves no intended function in the product component. Contaminant includes, but is
2.24 not limited to, unintended by-products of chemical reactions that occur during the
2.25 manufacture of the product component, trace impurities in feedstock, incompletely reacted
2.26 chemical mixtures, and degradation products.

2.27 (j) "Department" means the Department of Health.

2.28 ~~(j)~~ (k) "Distributor" means a person who sells consumer products to retail establishments
2.29 on a wholesale basis.

2.30 ~~(k)~~ (l) "Green chemistry" means an approach to designing and manufacturing products
2.31 that minimizes the use and generation of toxic substances.

3.1 ~~(h)~~ (m) "Manufacturer" means any person who manufactures a final consumer product
3.2 sold at retail or whose brand name is affixed to the consumer product. In the case of a
3.3 consumer product imported into the United States, manufacturer includes the importer or
3.4 domestic distributor of the consumer product if the person who manufactured or assembled
3.5 the consumer product or whose brand name is affixed to the consumer product does not
3.6 have a presence in the United States.

3.7 (n) "Practical quantification limit" means the lowest concentration of a chemical that
3.8 can be reliably measured within specified limits of precision, accuracy, representativeness,
3.9 completeness, and comparability under routine laboratory operating conditions, the value
3.10 of which:

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

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

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

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

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

3.20 (q) "Safer alternative" means an alternative whose potential to harm human health is
3.21 less than that of the use of a priority chemical that it could replace.

3.22 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.23 Sec. 3. Minnesota Statutes 2016, section 116.9402, is amended to read:

3.24 **116.9402 IDENTIFICATION OF CHEMICALS OF HIGH CONCERN.**

3.25 (a) By July 1, 2010, the department shall, after consultation with the agency, generate
3.26 a list of chemicals of high concern.

3.27 (b) The department must periodically review and revise the list of chemicals of high
3.28 concern at least every three years. The department may add chemicals to the list if the
3.29 chemical meets one or more of the criteria in section 116.9401, paragraph (e). Any changes
3.30 to the list of chemicals of high concern must be published on the department's Web site and
3.31 in the State Register when a change is made.

4.1 (c) The department shall consider chemicals listed as a suspected carcinogen, reproductive
4.2 or developmental toxicant, or as being persistent, bioaccumulative, and toxic, or very
4.3 persistent and very bioaccumulative by a state, federal, or international agency. These
4.4 agencies may include, but are not limited to, the California Environmental Protection Agency,
4.5 the Washington Department of Ecology, the United States Department of Health, the United
4.6 States Environmental Protection Agency, the United Nation's World Health Organization,
4.7 and European Parliament Annex XIV concerning the Registration, Evaluation, Authorisation,
4.8 and Restriction of Chemicals.

4.9 (d) The department may consider chemicals listed by another state as harmful to human
4.10 health or the environment for possible inclusion in the list of chemicals of high concern.

4.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.12 Sec. 4. Minnesota Statutes 2016, section 116.9403, is amended to read:

4.13 **116.9403 IDENTIFICATION OF PRIORITY CHEMICALS.**

4.14 (a) The department, after consultation with the agency, may designate a chemical of
4.15 high concern as a priority chemical if the department finds that the chemical:

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

4.18 (2) meets any of the following criteria:

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

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

4.23 (iii) the chemical has been found through monitoring to be present in fish, wildlife, or
4.24 the natural environment.

4.25 (b) By February 1, 2011, the department shall publish a list of priority chemicals in the
4.26 State Register and on the department's Internet Web site and shall update the published list
4.27 whenever a new priority chemical is designated. Any proposed changes to the list of priority
4.28 chemicals must be published on the department's Web site and in the State Register and is
4.29 subject to a minimum 60-day public comment period. After the department's review and
4.30 consideration of public comments, a final list of changes to the list of priority chemicals
4.31 must be published on the department's Web site and in the State Register.

4.32 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.1 Sec. 5. Minnesota Statutes 2016, section 116.9405, is amended to read:

5.2 **116.9405 APPLICABILITY.**

5.3 The requirements of sections 116.9401 to ~~116.9407~~ 116.9411 do not apply to:

5.4 (1) chemicals in used children's products;

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

5.7 (3) priority chemicals used in agricultural production;

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

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

5.13 (6) retailers;

5.14 (7) pharmaceutical products or biologics;

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

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

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

5.25 ~~(11)~~ (10) outdoor sport equipment, including snowmobiles as defined in section 84.81,
5.26 subdivision 3; all-terrain vehicles as defined in section 84.92, subdivision 8; personal
5.27 watercraft as defined in section 86B.005, subdivision 14a; watercraft as defined in section
5.28 86B.005, subdivision 18; and off-highway motorcycles, as defined in section 84.787,
5.29 subdivision 7, and all attachments and repair parts for all of this equipment;

6.1 (11) a manufacturer or distributor of a children's product whose annual aggregate gross
6.2 sales, both within and outside this state, as reported in the manufacturer's or distributor's
6.3 most recently filed federal tax return, is below \$100,000; or

6.4 (12) a children's product if the annual production of the children's product is less than
6.5 3,000 units.

6.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.7 Sec. 6. Minnesota Statutes 2016, section 116.9406, is amended to read:

6.8 **116.9406 DONATIONS TO THE STATE.**

6.9 The commissioner may accept donations, grants, and other funds to carry out the purposes
6.10 of sections 116.9401 to ~~116.9407~~ 116.9411. All donations, grants, and other funds must be
6.11 accepted without preconditions regarding the outcomes of the regulatory oversight processes
6.12 set forth in sections 116.9401 to ~~116.9407~~ 116.9411.

6.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.14 Sec. 7. **[116.9408] CHILDREN'S PRODUCTS; REPORTING INFORMATION ON**
6.15 **PRIORITY CHEMICALS.**

6.16 Subdivision 1. **Reporting; content.** A manufacturer or distributor of a children's product
6.17 offered for sale in this state that contains one or more priority chemicals designated under
6.18 section 116.9403 must, unless the children's product is exempt under section 116.9405,
6.19 provide the following information to the agency, on a form developed by the agency, for
6.20 each priority chemical that is intentionally added to the children's product and present at or
6.21 above the practical quantification limit or that is a contaminant present in a component of
6.22 the children's product at a concentration above 100 parts per million:

6.23 (1) the name of the priority chemical;

6.24 (2) the Chemical Abstracts Service Registry number of the priority chemical;

6.25 (3) the concentration of each priority chemical contained in a children's product, a
6.26 description of how the concentration was determined, and an evaluation of the accuracy of
6.27 the determination. Concentrations at or above the practical quantification limit must be
6.28 reported, but may be reported in the following ranges:

6.29 (i) greater than or equal to the practical quantification limit but less than 100 parts per
6.30 million (ppm);

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

- 7.1 (iii) greater than or equal to 500 ppm but less than 1,000 ppm;
- 7.2 (iv) greater than or equal to 1,000 ppm but less than 5,000 ppm;
- 7.3 (v) greater than or equal to 5,000 ppm but less than 10,000 ppm; and
- 7.4 (vi) greater than or equal to 10,000 ppm;
- 7.5 (4) the product category of the children's product;
- 7.6 (5) the number of units of the children's product sold in Minnesota or nationally in the
7.7 most recently completed calendar year;
- 7.8 (6) information that the agency determines is necessary to determine the extent to which
7.9 a child is likely to be exposed to the priority chemical through normal use of the product;
- 7.10 (7) any assessment conducted by the manufacturer or distributor of the children's product
7.11 or others regarding the use of safer alternatives to the priority chemical contained in the
7.12 children's product; and
- 7.13 (8) any additional information requested by the agency.
- 7.14 Subd. 2. **Report timing.** (a) A manufacturer or distributor subject to this section must
7.15 report the information required under this section to the agency no later than one year after
7.16 a priority chemical has been designated under section 116.9403 or, for a priority chemical
7.17 designated under section 116.9403 before July 1, 2011, on the following schedule based on
7.18 the manufacturer's or distributor's annual aggregate gross sales, both within and outside the
7.19 state, as reported in the manufacturer's or distributor's most recently filed federal tax return:
- 7.20 (1) for a manufacturer or distributor with gross sales exceeding \$1,000,000,000, by July
7.21 1, 2018;
- 7.22 (2) for a manufacturer or distributor with gross sales exceeding \$250,000,000 but less
7.23 than or equal to \$1,000,000,000, by January 1, 2019;
- 7.24 (3) for a manufacturer or distributor with gross sales exceeding \$100,000,000 but less
7.25 than or equal to \$250,000,000, by July 1, 2019;
- 7.26 (4) for a manufacturer or distributor with gross sales exceeding \$5,000,000 but less than
7.27 or equal to \$100,000,000, by July 1, 2020; and
- 7.28 (5) for a manufacturer or distributor with gross sales exceeding \$100,000 but less than
7.29 or equal to \$5,000,000, by July 1, 2021.
- 7.30 (b) Two years after submitting an initial report to the agency under this section, a
7.31 manufacturer or distributor of a children's product offered for sale in this state that continues

8.1 to contain one or more priority chemicals must submit an updated report containing the
8.2 information required under subdivision 1 and the 12-digit Universal Product Code for the
8.3 children's product. If the children's product continues to be offered for sale in this state and
8.4 to contain the priority chemical, the information required under this paragraph must be
8.5 submitted to the agency every two years.

8.6 Subd. 3. **Public data.** Notwithstanding section 13.37, subdivision 2, the presence and
8.7 concentration of a priority chemical in a specific children's product reported to the agency
8.8 under subdivision 1 are classified as public data.

8.9 Subd. 4. **Not misappropriation of trade secret.** Notwithstanding section 325C.01,
8.10 subdivision 3, publication by the agency of the presence and concentration of a priority
8.11 chemical in a specific children's product reported to the agency under subdivision 1 is not
8.12 misappropriation of a trade secret.

8.13 Subd. 5. **Removal of priority chemical; reporting.** A manufacturer or distributor who
8.14 removes a priority chemical from a children's product reported under this section must notify
8.15 the agency of the removal at the earliest possible date. If the priority chemical removed is
8.16 replaced by a safer alternative, the manufacturer or distributor must provide, on a form
8.17 developed by the agency, the name of the safer alternative and its Chemical Abstracts Service
8.18 Registry number or, if not replaced by a chemical alternative, a description of the techniques
8.19 or design changes implemented. The safer alternative or nonchemical techniques or design
8.20 changes may be designated as trade secrets. Upon verification that all priority chemicals in
8.21 the product have been replaced by safer alternatives, the commissioner must promptly
8.22 remove from state agency Web sites any reference to the relevant children's product of the
8.23 manufacturer, and the manufacturer will no longer report or pay fees on that children's
8.24 product.

8.25 Subd. 6. **Failure to report.** If the information required in subdivision 1 is not submitted
8.26 in a timely fashion or is incomplete or otherwise unacceptable as determined by the agency,
8.27 the agency may contract with an independent third party of the agency's choice to provide
8.28 the information and may assess a fee on the manufacturer or distributor to pay the costs
8.29 specified under section 116.9409.

8.30 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.1 Sec. 8. **[116.9409] FEES.**

9.2 (a) The agency shall collect a fee of \$1,000 for each priority chemical initially reported
9.3 under section 116.9408. The fee doubles for each report subsequently filed with the agency
9.4 under section 116.9408 for the same chemical contained in the same children's product.

9.5 (b) The agency shall collect a fee equal to the costs billed by the independent contractor
9.6 plus the agency's actual incurred costs to bid and administer the contract for each contract
9.7 issued under section 116.9408, subdivision 6.

9.8 (c) The commissioner shall deposit all fees received under this section in an account in
9.9 the special revenue fund.

9.10 (d) Fees collected under this section are exempt from section 16A.1285.

9.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.12 Sec. 9. **[116.9410] ENFORCEMENT.**

9.13 The agency shall enforce sections 116.9401 to 116.9409 in the manner provided by
9.14 section 115.071, subdivisions 1, 3, 4, 5, and 6. Section 115.071, subdivision 2, does not
9.15 apply to violations of sections 116.9401 to 116.9409.

9.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.17 Sec. 10. **[116.9411] STATE AGENCY DUTIES.**

9.18 Subdivision 1. **Safer alternative grants.** If there is fee revenue collected under section
9.19 116.9409, paragraph (a), in excess of program implementation costs, the commissioner, in
9.20 consultation with the commissioners of commerce and health, may use that fee revenue to
9.21 offer grants awarded competitively to manufacturers or other researchers to develop safer
9.22 alternatives to priority chemicals in children's products, to establish alternatives as safer
9.23 alternatives, or to accelerate the commercialization of safer alternatives.

9.24 Subd. 2. **Education and outreach.** The commissioners of health and commerce shall
9.25 develop and implement an education and outreach effort regarding priority chemicals in
9.26 children's products.

9.27 Subd. 3. **Report.** By January 15, 2019, and every three years thereafter, the
9.28 commissioners of the Pollution Control Agency, health, and commerce shall report to the
9.29 legislative committees with jurisdiction over environment and natural resources, commerce,
9.30 and public health on the implementation of sections 116.9401 to 116.9411.

9.31 **EFFECTIVE DATE.** This section is effective the day following final enactment.