

A bill for an act

relating to public health; protecting the health of children from toxic chemicals in products; requiring disclosure by manufacturers of children's products that contain chemicals of high concern; authorizing the Pollution Control Agency to designate priority chemicals of high concern and require replacement with safer alternatives; providing an exemption process; authorizing participation in an interstate clearinghouse; requiring reports to the legislature on implementation plans and comprehensive safe products framework; proposing coding for new law in Minnesota Statutes, chapter 325F.

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

Section 1. **[325F.172] DEFINITIONS.**

(a) For the purposes of sections 325F.172 to 325F.173, the following terms have the meanings given them.

(b) "Alternative" means a substitute process, product, material, chemical, strategy, or combination of these that serves a functionally equivalent purpose to a chemical in a children's product.

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

(d) "Chemical of high concern" means a chemical identified by an authoritative governmental entity on the basis of credible scientific evidence as being known to:

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

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

(3) disrupt the endocrine or hormone system;

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

(5) be persistent, bioaccumulative, and toxic.

(e) "Chemical of low concern" means a chemical for which adequate toxicity and environmental data are available to determine that it is not a chemical of high concern or a chemical of moderate concern.

(f) "Chemical of moderate concern" means a chemical identified by an authoritative governmental entity on the basis of credible scientific evidence as being suspected of causing an adverse health or environmental effect listed in paragraph (d).

(g) "Chemical of unknown concern" means a chemical for which insufficient data are available to classify it as a chemical of high concern, a chemical of moderate concern, or a chemical of low concern.

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

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

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

(k) "Department" means the Pollution Control Agency.

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

(m) "Manufacturer" means any person who manufactured a final consumer product or whose brand name is affixed to the consumer product. In the case of a consumer product that was imported into the United States, "manufacturer" includes the importer or domestic distributor of the consumer product if the person who manufactured or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States.

(n) "Priority chemical subject to regulation" means a chemical identified by the commissioner as a chemical of high concern that meets the criteria in section 325F.1722.

(o) "Safer alternative" means an alternative that, when compared to a priority chemical that it could replace, would reduce the potential for harm to human health or the environment or that has not been shown to pose the same or greater potential for harm to human health or the environment as that priority chemical.

Sec. 2. [325F.1721] IDENTIFICATION OF CHEMICALS OF HIGH CONCERN.

(a) By July 1, 2010, the department shall, after consultation with the Department of Health, publish a list of chemicals of high concern found in children's products.

(b) The department may periodically review and revise the list of chemicals of high concern. The department may add chemicals to the list if the chemical meets one or more of the criteria in section 325F.172, paragraph (d), including chemicals of moderate or unknown concern for which new health-effects data is available. The department may remove a chemical from the list of chemicals of high concern based on evidence that the chemical is not present in a children's product or otherwise would not be subject to the requirements of this chapter.

(c) The department shall consider, among others, the following authoritative sources to evaluate criteria for chemicals of high concern:

(1) chemicals identified as "Group 1 carcinogens" or "Group 2A carcinogens" by the World Health Organization, International Agency for Research on Cancer;

(2) chemicals identified as "known to be a human carcinogen" and "reasonably anticipated to be a human carcinogen" by the secretary of the United States Department of Health and Human Services;

(3) chemicals identified as "Group A carcinogens" or "Group B carcinogens" by the United States Environmental Protection Agency;

(4) chemicals identified as reproductive or developmental toxicants by:

(i) the United States Department of Health and Human Services, National Toxicology Program, Center for the Evaluation of Risks to Human Reproduction; and

(ii) the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment pursuant to the California Health and Safety Code, Safe Drinking Water and Toxic Enforcement Act of 1986, chapter 6.6, section 25249.8;

(5) chemicals identified as known or likely endocrine disruptors through screening or testing conducted in accordance with protocols developed by the United States Environmental Protection Agency pursuant to the federal Food, Drug and Cosmetic Act, United States Code, title 21, section 346a(p), as amended by the federal Food Quality Protection Act (Public Law 104-170) or the federal Safe Drinking Water Act, United States Code, title 42, section 300j-17;

(6) chemicals listed on the basis of endocrine-disrupting properties in Annex XIV, List of Substances subject to Authorisation, Regulation (EC) No 1907/2006 of the European Parliament concerning the Registration, Evaluation, Authorisation, and Restriction of Chemicals;

(7) persistent, bioaccumulative, and toxic chemicals identified by:

(i) the state of Washington Department of Ecology in Washington Administrative Code, chapter 173-333; or

(ii) the United States Environmental Protection Agency in Code of Federal Regulations, title 40, part 372; and

(8) a very persistent, very bioaccumulative chemical listed in Annex XIV, List of Substances subject to Authorisation, Regulation (EC) No 1907/2006 of the European Parliament concerning the Registration, Evaluation, Authorisation, and Restriction of Chemicals.

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

Sec. 3. **[325F.1722] IDENTIFICATION OF PRIORITY CHEMICALS SUBJECT TO REGULATION.**

Subdivision 1. **Designation.** The department, after consultation with the Department of Health, may designate a chemical of high concern as a priority chemical if the department finds:

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

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

(3) the chemical has been found through monitoring to be present in fish, wildlife, or the natural environment;

(4) the chemical has been identified as a high-production volume chemical by the federal Environmental Protection Agency; or

(5) the sale or use of the chemical or a product containing the chemical has been banned in another state within the United States.

The department shall designate at least five priority chemicals by January 1, 2011, and an additional five priority chemicals by January 1, 2013.

Subd. 2. **Updates.** The department shall review the list of chemicals of high concern at least every three years and shall designate additional priority chemicals that meet one of the criteria listed in subdivision 1.

Sec. 4. **[325F.1723] DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS.**

Subdivision 1. **Reporting of chemical use.** Not later than 180 days after a priority chemical is identified under section 325F.1722, any person who is a manufacturer or distributor of a children's product for sale in this state that contains a priority chemical shall notify the department in writing unless waived by the commissioner under this section

or not subject to regulation under section 325F.1727. This written notice must identify the product, the number of units sold or distributed for sale in this state or nationally, the priority chemical or chemicals contained in the product, the amount of the chemicals in each unit of product, and the intended purpose of the chemicals in the product.

Subd. 2. Supplemental information. The manufacturer or distributor of a children's product that contains a priority chemical shall provide the following additional information if requested by the department:

(1) information on the likelihood that the chemical will be released from the children's product to the environment during the children's product's lifecycle and the extent to which users of the children's product are likely to be exposed to the chemical;

(2) additional information regarding the potential for harm to human health and the environment from specific uses of the priority chemical; and

(3) an assessment of the availability, cost, feasibility, and performance, including potential for harm to human health and the environment, of alternatives to the priority chemical and the reason the priority chemical is used in the manufacture of the children's product in lieu of identified alternatives. If an assessment acceptable to the department is not timely submitted, the department may assess a fee on the manufacturer or distributor to cover the costs to prepare an independent report on the availability of safer alternatives by a contractor of the department's choice.

Subd. 3. Waiver of reporting. The department may waive all or part of the notification requirement under subdivision 1 for one or more specified uses of a priority chemical if the commissioner determines that substantially equivalent information is already publicly available, that the information is not needed for purposes of this chapter, or that the specified use or uses are minor in volume.

Subd. 4. Extension of deadline. The department may extend the deadline for submission of the required information for one or more specified uses of a priority chemical in a children's product if it determines that more time is needed by the manufacturer or distributor to comply with the submission requirement or if the information is not needed at that time.

Subd. 5. Manufacturer or distributor notification. A manufacturer or distributor of a children's product containing a priority chemical shall notify persons that offer the product for sale or distribution in the state of the requirements of sections 325F.172 to 325F.173.

Sec. 5. [325F.1724] SAFER ALTERNATIVES TO PRIORITY CHEMICALS AND SALES PROHIBITION.

Subdivision 1. **Safer alternative required.** The department shall require a manufacturer or distributor to replace a priority chemical in a children's product sold in this state with a safer alternative whenever the department determines that a safer alternative is available for the specified use of the priority chemical in that product. Upon making the determination, the department shall specify a reasonably expeditious timeline, not to exceed two years, by which date the priority chemical in the children's product sold in this state must be replaced with a safer alternative. The manufacturer or distributor subject to a requirement under this section must comply with the requirement or be subject to the prohibition specified in section 325F.1725. For the purpose of determining whether a safer alternative is available, the department may, in the absence of persuasive evidence to the contrary presume that:

(1) an alternative is a safer alternative if the alternative is not a chemical of high concern;

(2) a safer alternative is available if the sale of the children's product containing the priority chemical has been banned by another state within the United States;

(3) a safer alternative is available if the children's product containing the priority chemical is an item of apparel or a novelty; and

(4) a safer alternative is available if the alternative is sold in the United States.

Subd. 2. **Compliance plan required.** No later than 180 days prior to the effective date of a prohibition adopted under section 325F.1725, the manufacturer or distributor of a children's product that contains the priority chemical and that is subject to the prohibition at the time of adoption shall file a compliance plan with the commissioner or seek a waiver under section 325F.1726. A compliance plan must:

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

(2) specify whether compliance will be achieved by discontinuing the sale of the children's product in this state or by substituting a safer alternative in the product; and

(3) if compliance is achieved by substitution of a safer alternative in the product, identify the safer alternative and the timetable for substitution.

Sec. 6. [325F.1725] ENFORCEMENT AND IMPLEMENTATION.

Subdivision 1. **Generally.** If a manufacturer or distributor fails to comply with a requirement of sections 325F.172 to 325F.173 within 90 days of the effective date of the requirement, unless otherwise provided in sections 325F.172 to 325F.173, the department may take enforcement action and assess penalties under chapter 116, and may request the attorney general to initiate immediate injunction proceedings to prevent the sale of the product.

Subd. 2. **Department action against product containing priority chemical.**

(a) The department may prohibit the manufacture, sale, or distribution in this state of a children's product containing a priority chemical if the department finds that:

(1) distribution of the children's product directly or indirectly exposes children and vulnerable populations to the priority chemical; and

(2) one or more safer alternatives to the priority chemical are available.

(b) If there are several available safer alternatives to a priority chemical, the department may prohibit the sale of children's products that do not contain the safer alternative that is least toxic to human health or least harmful to the environment.

Subd. 3. **Failure to provide notice.** A children's product containing a priority chemical may not be sold, offered for sale, or distributed for sale in this state if the manufacturer or distributor has failed to provide information required under section 325F.1723 by the date required in that section. The commissioner shall exempt a children's product from this prohibition if, in the commissioner's judgment, the lack of availability of the children's product could pose an unreasonable risk to public health, safety, or welfare.

Subd. 4. **Certificate of compliance.** If there are grounds to suspect that a children's product is being offered for sale in violation of sections 325F.172 to 325F.173, the department may request the manufacturer or distributor of the product to provide a certificate of compliance. Within ten days of receipt of a request, the manufacturer or distributor shall:

(1) provide the department with the certificate attesting that the children's product does not contain the priority chemical; or

(2) notify persons who sell the product in this state that the sale of the children's product is prohibited and provide the department with a list of the names and addresses of those notified.

Sec. 7. **[325F.1726] WAIVER FOR SPECIFIC USES.**

Subdivision 1. **Application for waiver.** The manufacturer or distributor of a children's product that contains a priority chemical and that is subject to a prohibition under section 325F.1725 may apply to the commissioner for a waiver for one or more specific uses of the priority chemical. The waiver application must, at a minimum:

(1) identify the specific children's product use or uses for which the waiver is sought;
(2) identify the alternatives considered for substitution of the priority chemical;
(3) explain the basis for concluding that the use of an alternative is not feasible; and
(4) identify the steps that have and will be taken to minimize the use of the priority chemical.

Subd. 2. **Term of waiver.** The commissioner may grant a waiver with or without conditions upon finding that there is a need for the children's product in which the priority chemical is used and there are no technically or economically feasible alternatives for the use of the priority chemical in the children's product. Waivers may be granted for a term not to exceed four years and may be renewed for one or more additional four-year terms upon written application demonstrating that technically or economically feasible alternatives remain unavailable. The commissioner shall deny or grant waiver requests within 60 days after receipt of a completed waiver application.

Sec. 8. **[325F.1727] APPLICABILITY.**

The requirements of sections 325F.172 to 325F.173 do not apply to:

(1) chemicals in used products;

(2) priority chemicals used in or for industry or manufacturing, including chemicals processed or otherwise used in or for industrial or manufacturing processes;

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

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

(5) retailers, unless that retailer knowingly sells a children's product containing a priority chemical after the effective date of its prohibition, for which that retailer has received prior notification from a manufacturer, distributor, or the state;

(6) a telecommunications carrier whose name appears on a telecommunications device unless the telecommunications carrier is the actual manufacturer of the device. As used in this section, "telecommunications carrier" has the meaning given in chapter 237; or

(7) a container or packaging for a food or beverage product, unless that product is intentionally marketed or intended for the use of children under three years of age.

Sec. 9. **[325F.1728] DONATIONS TO THE STATE.**

The department, through the governor, may accept donations, grants, and other funds to carry out the purposes of sections 325F.172 to 325F.173. All such donations, grants, and other funds must be accepted without preconditions regarding the outcomes of the regulatory oversight processes set forth in sections 325F.172 to 325F.173.

Sec. 10. **[325F.1729] PARTICIPATION IN INTERSTATE CHEMICALS CLEARINGHOUSE.**

9.1 The department may participate in an interstate chemicals clearinghouse to promote
9.2 safer chemicals in consumer products in cooperation with other states, including the
9.3 classification of chemicals in commerce; organizing and managing available data on
9.4 chemicals, including information on uses, hazards, and environmental and health
9.5 concerns; and producing and evaluating information on safer alternatives to specific uses
9.6 of chemicals of concern.

9.7 Sec. 11. **[325F.173] REPORTS.**

9.8 (a) By January 15, 2010, the Pollution Control Agency shall report to the senate
9.9 and house of representatives committees with jurisdiction over environment and natural
9.10 resources, commerce, and public health regarding the department's plans for implementing
9.11 the requirements of sections 325F.172 to 325F.173, and make recommendations for
9.12 funding implementation of sections 325F.172 to 325F.173.

9.13 (b) By January 15, 2012, the Pollution Control Agency, in conjunction with the
9.14 commissioner of human services and the commissioner of commerce, shall report to the
9.15 senate and house of representatives committees with jurisdiction over environment and
9.16 natural resources, commerce, and public health regarding recommendations to evaluate
9.17 and regulate toxic chemicals in all consumer products; and to promote and provide
9.18 incentives for product design that uses principles of green chemistry and lifecycle analysis
9.19 to protect public health and the environment.