

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; prohibiting certain sales; providing a waiver 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 116.

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

Section 1. **[116.9401] DEFINITIONS.**

(a) For the purposes of sections 116.9401 to 116.9412, the following terms have
the meanings given them.

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

(c) "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.

(d) "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.

(e) "Chemical of high concern" means a chemical identified on the basis of credible
scientific evidence by a governmental entity or the United Nations' World Health
Organization as being known or suspected with a high degree of probability 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;

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

(6) be very persistent and very bioaccumulative.

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

(g) "Children's product" means a consumer product intended for use by children, such as baby products, toys, car seats, personal care products, and clothing, and includes packaging of food or beverage products intended for use by children under three years of age, but does not include food or pharmaceutical products, or a medical device as defined in the federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 321(h).

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

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

(j) "Green chemistry" means an approach to designing and manufacturing products in ways that minimize the use and generation of toxic substances.

(k) "Manufacturer" means any person who manufactures a final consumer product sold at retail or whose brand name is affixed to the consumer product. In the case of a consumer product 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.

(l) "Priority chemical" means a chemical identified by the commissioner as a chemical of high concern that is contained in a children's product offered for sale in Minnesota and meets the criteria in section 116.9403.

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

Sec. 2. [116.9402] IDENTIFICATION OF CHEMICALS OF HIGH CONCERN.

(a) By July 1, 2010, the agency shall, after consultation with the Department of Health, publish in the State Register and on the agency's Internet Web site a list of chemicals of high concern.

(b) The department must periodically review and revise the list of chemicals of high concern at least every three years. The department may add chemicals to the list if the chemical meets one or more of the criteria in section 116.9401, paragraph (e).

(c) The agency shall consider, among others, chemicals listed in the following sources for possible inclusion on the list of chemicals of high concern:

(1) chemicals identified as "Group 1 carcinogens" or "Group 2A carcinogens" by the United Nations' 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 agency may consider chemicals listed by another state as harmful to human health or the environment for possible inclusion in the list of chemicals of high concern.

Sec. 3. **[116.9403] IDENTIFICATION OF PRIORITY CHEMICALS.**

(a) The agency, after consultation with the Department of Health, may designate a chemical of high concern as a priority chemical if the agency finds that the chemical is contained in a children's product offered for sale in Minnesota, and:

(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 United States Environmental Protection Agency; or

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

(b) The agency shall designate at least five priority chemicals by January 1, 2011, and an additional five priority chemicals by January 1, 2013.

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

Sec. 4. **[116.9404] 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 116.9403, 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 agency of that fact in writing unless the children's product is not subject to regulation under section 116.9408. This written notice must identify the product, the number of units sold or distributed for sale in this state or nationally during the previous calendar year, the priority chemical or chemicals contained in the product, and the intended purpose of the priority 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 agency:

(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 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 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 agency is not timely submitted as determined by the agency, the agency 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 agency's choice.

Sec. 5. [116.9405] SAFER ALTERNATIVES TO PRIORITY CHEMICALS.

Subdivision 1. Replacement with safer alternative. A manufacturer or distributor of a children's product containing a priority chemical designated by the agency must:

(1) discontinue offering the product for sale in Minnesota;

(2) obtain a waiver from the commissioner under section 116.9407 in order to continue offering the product for sale in Minnesota; or

(3) replace the priority chemical with a safer alternative if the agency determines that a safer alternative is available and is a technically feasible replacement for the specific use in the children's product.

Subd. 2. Determination of safer alternative. Upon making a determination that a safer alternative is available for the specified use of the priority chemical in a product, the agency 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. In determining whether a safer alternative is available, the agency 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 prohibited 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. 3. Compliance plan. No later than 180 days prior to the effective date of a prohibition adopted under section 116.9406, the manufacturer or distributor of a children's product that contains the priority chemical that is subject to the prohibition shall file

a compliance plan with the commissioner or seek a waiver under section 116.9407. 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. [116.9406] PROHIBITION OF SALE.

Subdivision 1. Agency action against product containing priority chemical. The agency shall prohibit the 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 to the priority chemical, and one or more safer alternatives to the priority chemical are available and are technically feasible substitutes for the specific use of the priority chemical in the product; or
- (2) the manufacturer or distributor fails to provide the information required under section 116.9404 in a timely fashion.

Subd. 2. Notice of prohibition of sale. The agency shall notify a manufacturer or distributor of its decision to prohibit the offering for sale in this state of a product containing a priority chemical, unless the manufacturer or distributor has been granted a waiver under section 116.9407. The notice of prohibition of sale must contain the effective date of the prohibition, which must be at least 270 days after the date of the notice.

Subd. 3. Certificate of compliance. No less than 60 days prior to the effective date of the prohibition of sale determined under section 116.9405, a manufacturer or distributor must send to the agency, in writing, a certificate of compliance certifying that after the effective date of the prohibition, the manufacturer or distributor will not offer the product containing the priority chemical for sale in this state, and, if applicable, that compliance will be achieved through substitution of a safer alternative approved by the agency.

Subd. 4. Retailer notification. A manufacturer or distributor of a children's product issued a notice of prohibition of sale under subdivision 2 shall notify, in writing, persons that offer the product for sale or distribution in this state of the requirements of sections 116.9401 to 116.9411, and the effective date of the prohibition of sale. Notice under this subdivision must be issued within 30 days of the issuance of the notice of prohibition of sale, unless the manufacturer or distributor has applied for a waiver under section

116.9407, in which case the notice must be issued within 30 days of a permit denial by the commissioner.

Subd. 5. **Sale of inventory.** A retailer selling a children's product containing a priority chemical that is the subject of a prohibition issued under subdivision 1 may not offer the children's product for sale in this state after the effective date of the prohibition, except that a retailer may exhaust stocks present in the retailer's premises 90 days prior to the effective date of the prohibition, after providing evidence of that fact to the agency.

Subd. 6. **Exceptions.** A children's product containing a priority chemical designated by the agency may continue to be sold or offered for sale in this state if:

(1) the manufacturer or distributor obtains a waiver under section 116.9407; or

(2) 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.

Sec. 7. [116.9407] WAIVER FOR SPECIFIC USES.

Subdivision 1. **Application for waiver.** The manufacturer or distributor of a children's product that contains a priority chemical and is subject to a prohibition under section 116.9406 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 technically or economically 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 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. [116.9408] APPLICABILITY.

The requirements of sections 116.9401 to 116.9412 do not apply to:

(1) chemicals in used children's products;

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

(3) priority chemicals used in agricultural production;

(4) 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;

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

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

Sec. 9. **[116.9409] DONATIONS TO THE STATE.**

The commissioner may accept donations, grants, and other funds to carry out the purposes of sections 116.9401 to 116.9412. All such donations, grants, and other funds must be accepted without preconditions regarding the outcomes of the regulatory oversight processes set forth in sections 116.9401 to 116.9412.

Sec. 10. **[116.9410] PARTICIPATION IN INTERSTATE CHEMICALS CLEARINGHOUSE.**

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

Sec. 11. **[116.9411] REPORTS.**

(a) By January 15, 2010, the Pollution Control Agency shall report to the senate and house of representatives committees with jurisdiction over environment and natural resources, commerce, and public health regarding the department's plans for implementing the requirements of sections 116.9401 to 116.9408, and make recommendations for funding the implementation of those sections.

(b) By January 15, 2012, the Pollution Control Agency, in conjunction with the commissioner of human services and the commissioner of commerce, shall report to the senate and house of representatives committees with jurisdiction over environment and

9.1 natural resources, commerce, and public health regarding recommendations to evaluate
9.2 and regulate toxic chemicals in all consumer products and to promote and provide
9.3 incentives for product design that uses principles of green chemistry and lifecycle analysis
9.4 to protect public health and the environment.

9.5 Sec. 12. **[116.9412] ENFORCEMENT.**

9.6 The agency shall enforce sections 116.9401 to 116.9411 in the manner provided by
9.7 sections 115.071, subdivisions 1 to 6, and 116.072.

9.8 Sec. 13. **RULEMAKING.**

9.9 The agency shall adopt rules under Minnesota Statutes, chapter 14, to implement the
9.10 provisions of Minnesota Statutes, sections 116.9404 to 116.9408, no later than October
9.11 1, 2010.

9.12 Sec. 14. **EFFECTIVE DATE.**

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