CHAPTER 47--H.F.No. 359

An act relating to health; prohibiting the use of certain flame-retardant chemicals in certain products; allowing certain exemptions; amending Minnesota Statutes 2018, section 325F.071; proposing coding for new law in Minnesota Statutes, chapter 325F.

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

Section 1. Minnesota Statutes 2018, section 325F.071, is amended to read:

325F.071 FLAME-RETARDANT CHEMICALS; PROHIBITION.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given.

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

(c) "Children's product" means a product primarily designed or intended by a manufacturer to be used by or for a child, including any article used as a component of such a product, but excluding a food, beverage, dietary supplement, pharmaceutical product or biologic, children's toys that are subject to the most recent version of the American Society for Testing and Materials F963, Standard Consumer Safety Specification for Toy Safety, a medical device as defined in the Federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 321(h), products listed under section 116.9405, clauses (10) and (11), and products listed under sections 325F.03 and 325F.04.

(d) "Upholstered residential furniture" means furniture with padding, coverings, and cushions intended and sold for use in the home ~~or places of lodging~~.

(e) "Mattress" means a mattress as defined in Code of Federal Regulations, title 16, section 1632.1.

(f) "Organohalogenated chemical" means any chemical that contains one or more carbon elements and one or more halogen elements, including fluorine, chlorine, bromine, or iodine.

(g) "Residential textile" means a textile designed for use in the home as a covering on windows or walls.

Subd. 2. **Flame-retardant chemicals; prohibition.** (a) ~~On and after July 1, 2018,~~ No manufacturer or wholesaler may manufacture, sell, offer for sale, distribute for sale, or distribute for use in this state a children's product ~~or,~~ upholstered residential furniture, residential textile, or mattress containing, in amounts greater than 1,000 parts per million in any product component, ~~the following flame-retardants:~~ any organohalogenated flame retardant chemical.

~~(1) TDCPP (tris(1,3-dichloro-2-propyl)phosphate), Chemical Abstracts Service number 13674-87-8;~~

~~(2) decabromodiphenyl ether, Chemical Abstracts Service number 1163-19-5;~~

~~(3) hexabromocyclododecane, Chemical Abstracts Service number 25637-99-4; and~~

~~(4) TCEP (tris(2-chloroethyl)phosphate), Chemical Abstracts Service number 115-96-8.~~

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(b) ~~On and after July 1, 2019,~~ No retailer may sell or offer for sale or use in this state a children's product ~~or~~, upholstered residential furniture, residential textile, or mattress containing in amounts greater than 1,000 parts per million in any product component the flame retardant chemicals listed in paragraph (a).

(c) The sale or offer for sale of any previously owned product containing a chemical restricted under this section is exempt from the provisions of this section.

Subd. 2a. **Exemptions.** The following are exempt from the provisions of this section:

(1) the sale or offer for sale of any previously owned product containing a chemical restricted under this section;

(2) an electronic component of a children's product, mattress, upholstered residential furniture, or residential textile or any associated casing;

(3) a children's product, mattress, upholstered residential furniture, or residential textile for which there is a federal or national flammability standard;

(4) thread or fiber when used for stitching mattress components together; or

(5) components of an adult mattress other than foam. As used in this clause, "adult mattress" means a mattress other than toddler mattress, crib mattress, or other infant sleep product.

Subd. 2b. **Exception.** The prohibitions in subdivision 2 do not apply to a flame retardant that:

(1) is a polymeric material in accordance with the criteria in Code of Federal Regulations, title 40, section 723.250, or is chemically reacted to form a polymeric material with the materials it is intended to protect; or

(2) has a determination of safety under United States Code, title 15, section 2604, subsection (a), paragraph (3), subparagraph (C), or under United States Code, title 15, section 2605, subsection (b), paragraph (4).

Subd. 3. **Flame-retardant chemicals; replacement chemicals.** A manufacturer shall not replace a chemical whose use is prohibited under this section with a chemical identified on the basis of credible scientific evidence by a state, federal, or international agency 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; or

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

Subd. 4. **Enforcement.** The commissioner of the Pollution Control Agency may enforce compliance with this section under sections 115.071 and 116.072. The commissioner must coordinate with the commissioners of commerce and health in enforcing this section.

EFFECTIVE DATE. (a) Subdivisions 2a and 2b and the amendments to subdivision 2, paragraph (a), are effective July 1, 2021.

(b) The amendments to subdivision 2, paragraph (b), are effective July 1, 2022.

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Sec. 2. **[325F.072] FIREFIGHTING FOAM.**

Subdivision 1. **Definitions.** (a) For the purpose of this section, the following terms have the meanings given.

(b) "Class B firefighting foam" means foam designed for flammable liquid fires.

(c) "PFAS chemicals" or "perfluoroalkyl and polyfluoroalkyl substances" means, for the purposes of firefighting agents, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom and designed to be fully functional in class B firefighting foam formulations.

(d) "Political subdivision" means a county, city, town, or a metropolitan airports commission organized and existing under sections 473.601 to 473.679.

(e) "State agency" means an agency as defined in section 16B.01, subdivision 2.

(f) "Testing" means calibration testing, conformance testing, and fixed system testing.

Subd. 2. **Notification.** Beginning on July 1, 2020, any person, political subdivision, or state agency that discharges, uses, releases, or knows of a discharge, use, or release of class B firefighting foam that contains intentionally added PFAS chemicals must be reported to the Minnesota Fire Incident Reporting System within 24 hours of the discharge, use, or release. The notification must include:

(1) the time, date, location, and estimated amount of class B firefighting foam discharged, used, or released;

(2) the purpose or reason of the discharge, use, or release; and

(3) the containment, treatment, and disposal measures to be taken or used to prevent or minimize the discharge or release of the foam into the environment.

Subd. 3. **Prohibition of testing and training.** (a) Beginning July 1, 2020, no person, political subdivision, or state agency shall discharge class B firefighting foam that contains intentionally added PFAS chemicals:

(1) for testing purposes, unless the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases of foam to the environment; or

(2) for training purposes, unless otherwise required by law, and with the condition that the training event has implemented appropriate containment, treatment, and disposal measures to prevent releases of foam to the environment. For training purposes, class B foam that contains intentionally added PFAS chemicals shall not be used.

(b) This section does not restrict:

(1) the manufacture, sale, or distribution of class B firefighting foam that contains intentionally added PFAS chemicals; or

(2) the discharge or other use of class B firefighting foams that contain intentionally added PFAS chemicals in emergency firefighting or fire prevention operations.

Subd. 4. **Enforcement.** The commissioner of the Pollution Control Agency may enforce compliance with this section under sections 115.071 and 116.072. The commissioner must coordinate with the commissioners of commerce and health in enforcing this section.

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Presented to the governor May 22, 2019

Signed by the governor May 22, 2019, 1:44 p.m.

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