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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **3202**

02/07/2022 Authored by Wazlawik, Her and Hollins

The bill was read for the first time and referred to the Committee on Environment and Natural Resources Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to public health; reducing public exposure to toxic chemicals in products;
- 1.3 requiring disclosure by manufacturers of products that contain chemicals of high
- 1.4 concern; providing for designation of priority chemicals and replacement with
- 1.5 safer alternatives; prohibiting certain sales; providing waiver process; requiring
- 1.6 reports; requiring rulemaking; amending Minnesota Statutes 2020, sections
- 1.7 116.9401; 116.9402; 116.9403; 116.9405; proposing coding for new law in
- 1.8 Minnesota Statutes, chapter 116.
- 1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.10 Section 1. Minnesota Statutes 2020, section 116.9401, is amended to read:
- 1.11 **116.9401 DEFINITIONS.**
- 1.12 (a) For the purposes of sections 116.9401 to ~~116.9407~~ 116.9413, the following terms
- 1.13 have the meanings given them.
- 1.14 (b) "Agency" means the Pollution Control Agency.
- 1.15 (c) "Alternative" means a substitute process, product, material, chemical, strategy, or
- 1.16 combination of these that is technically feasible and serves a functionally equivalent purpose
- 1.17 to a priority chemical in a ~~children's~~ product.
- 1.18 (d) "Chemical" means a substance with a distinct molecular composition or a group of
- 1.19 structurally related substances and includes the breakdown products of the substance or
- 1.20 substances that form through decomposition, degradation, or metabolism.
- 1.21 (e) "Chemical of high concern" means a chemical identified on the basis of credible
- 1.22 scientific evidence by a state, federal, or international agency as being known or suspected
- 1.23 with a high degree of probability to:

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

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

2.4 (3) disrupt the endocrine or hormone system;

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

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

2.8 (6) be very persistent and very bioaccumulative.

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

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

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

2.13 ~~(i)~~ (g) "Department" means the Department of Health.

2.14 ~~(j)~~ (h) "Distributor" means a person who sells consumer products to retail establishments
2.15 on a wholesale basis.

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

2.18 ~~(l)~~ (i) "Manufacturer" means any person who manufactures a final consumer product
2.19 sold at retail or whose brand name is affixed to the consumer product. In the case of a
2.20 consumer product imported into the United States, manufacturer includes the importer or
2.21 domestic distributor of the consumer product if the person who manufactured or assembled
2.22 the consumer product or whose brand name is affixed to the consumer product does not
2.23 have a physical presence in the United States.

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

2.26 ~~(n)~~ (k) "Safer alternative" means an alternative whose potential to harm human health
2.27 is less than that of the use of a priority chemical that it could replace in a product, as
2.28 determined by the department.

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

3.1 Sec. 2. Minnesota Statutes 2020, section 116.9402, is amended to read:

3.2 **116.9402 IDENTIFYING CHEMICALS OF HIGH CONCERN.**

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

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

3.8 (c) In reviewing potential chemicals of high concern, the department shall ~~shall~~ must consider,
3.9 among others, chemicals listed as a suspected carcinogen, reproductive or developmental
3.10 toxicant, or as being persistent, bioaccumulative, and toxic, or very persistent and very
3.11 bioaccumulative by a state, federal, or international agency by a state, federal, or international
3.12 agency as meeting one or more of the characteristics listed in section 116.9401, paragraph
3.13 (e), clauses (1) to (6). These agencies may include, but are not limited to, the California
3.14 Environmental Protection Agency, the Washington Department of Ecology, the United
3.15 States Department of Health, the United States Environmental Protection Agency, the United
3.16 Nation's World Health Organization, and European Parliament Annex XIV concerning the
3.17 Registration, Evaluation, Authorisation, and Restriction of Chemicals.

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

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

3.21 Sec. 3. Minnesota Statutes 2020, section 116.9403, is amended to read:

3.22 **116.9403 IDENTIFYING PRIORITY CHEMICALS.**

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

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

3.27 (2) meets any of the following criteria:

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

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

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

4.3 (b) ~~By February 1, 2011,~~ The department shall publish a list of priority chemicals in the
4.4 State Register and on the department's Internet website and shall update the published list
4.5 whenever a new priority chemical is designated.

4.6 Sec. 4. Minnesota Statutes 2020, section 116.9405, is amended to read:

4.7 **116.9405 APPLICABILITY.**

4.8 The requirements of sections 116.9401 to ~~116.9407~~ 116.9413 do not apply to:

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

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

4.12 (3) priority chemicals used in agricultural production;

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

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

4.18 (6) retailers, except for section 116.941, subdivision 5;

4.19 (7) pharmaceutical products or biologics;

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

4.22 (9) food and food or beverage packaging, except a container containing baby food or
4.23 infant formula;

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

4.30 (11) outdoor sport equipment, including snowmobiles as defined in section 84.81,
4.31 subdivision 3; all-terrain vehicles as defined in section 84.92, subdivision 8; personal

5.1 watercraft as defined in section 86B.005, subdivision 14a; watercraft as defined in section
5.2 86B.005, subdivision 18; and off-highway motorcycles, as defined in section 84.787,
5.3 subdivision 7, and all attachments and repair parts for all of this equipment.

5.4 Sec. 5. [116.9408] DISCLOSING INFORMATION ON PRIORITY CHEMICALS.

5.5 Subdivision 1. Reporting chemical use. (a) No later than 180 days after the effective
5.6 date of this act or 180 days after a priority chemical is designated under section 116.9403,
5.7 whichever occurs later, a manufacturer or distributor of a product that is for sale in the state
5.8 and that contains a priority chemical must notify the commissioner of that fact in writing
5.9 unless:

5.10 (1) the manufacturer obtains a waiver for the priority chemical in the product under
5.11 section 116.9411;

5.12 (2) the product is not subject to regulation under section 116.9405; or

5.13 (3) the chemical is prohibited from any use or from use in the specific product under
5.14 federal or Minnesota law.

5.15 (b) The written notice under paragraph (a) must identify the product, the number of units
5.16 sold or distributed for sale in the state or nationally during the previous calendar year, the
5.17 priority chemical contained in the product, and the intended function of the priority chemical
5.18 in the product.

5.19 Subd. 2. Supplemental information. A manufacturer or distributor of a product that
5.20 contains a priority chemical must provide the following additional information if requested
5.21 by the commissioner:

5.22 (1) information on the likelihood that the priority chemical will be released from the
5.23 product to the environment during the product's life cycle and the extent to which users of
5.24 the product are likely to be exposed to the priority chemical;

5.25 (2) additional information regarding the potential for harm to human health from exposure
5.26 to the priority chemical; and

5.27 (3) an assessment of the availability, cost, feasibility, and performance, including the
5.28 potential for harm to human health, of alternatives to the priority chemical and the reason
5.29 the priority chemical is used in the product in lieu of identified alternatives. If an assessment
5.30 acceptable to the commissioner is not timely submitted as determined by the commissioner,
5.31 the commissioner may assess a fee on the manufacturer or distributor in an amount sufficient

6.1 to pay an independent contractor to prepare a report containing the information required
6.2 under this clause.

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

6.4 Sec. 6. **[116.9409] SAFER ALTERNATIVES; COMPLIANCE PLAN.**

6.5 Subdivision 1. **Feasibility determination.** Based on the information provided under
6.6 section 116.9408, the commissioner must determine whether there is an available and
6.7 technically feasible alternative to using the priority chemical in the product and must notify
6.8 the manufacturer or distributor of the determination in writing.

6.9 Subd. 2. **Replacement timeline.** Upon making a determination that a safer and technically
6.10 feasible alternative is available, the commissioner must specify a reasonably expeditious
6.11 timeline, not to exceed two years, by which date the manufacturer or distributor must replace
6.12 the priority chemical with the safer alternative in all units of the product offered for sale in
6.13 the state.

6.14 Subd. 3. **Compliance plan.** Within 90 days of receiving notice from the commissioner
6.15 of a determination that a technically feasible safer alternative is available, the manufacturer
6.16 or distributor of a prohibited product must file a compliance plan with the commissioner or
6.17 seek a waiver under section 116.9411. A compliance plan must:

6.18 (1) identify the product that contains the priority chemical;

6.19 (2) specify whether compliance will be achieved by discontinuing the sale of the product
6.20 in the state or by substituting a safer alternative for the priority chemical in the product; and

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

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

6.24 Sec. 7. **[116.941] SALE PROHIBITION.**

6.25 Subdivision 1. **Action against product containing priority chemical.** The commissioner
6.26 must prohibit sale or distribution in the state of a product containing a priority chemical if:

6.27 (1) the department finds that distributing and using the product directly or indirectly
6.28 results in human exposure to the priority chemical and one or more safer alternatives to the
6.29 priority chemical are available and are technically feasible replacements for the specific
6.30 function of the priority chemical in the product; or

7.1 (2) the manufacturer or distributor fails to obtain a waiver for the priority chemical in
7.2 the product under section 116.9411.

7.3 Subd. 2. **Notice of prohibition.** The commissioner must notify a manufacturer or
7.4 distributor of a decision to prohibit sale or distribution under subdivision 1. The notice of
7.5 prohibition must contain the effective date of the prohibition, which must be at least 270
7.6 days after the date of the notice.

7.7 Subd. 3. **Certificate of compliance.** No less than 60 days before the effective date of
7.8 the sale or distribution prohibition, a manufacturer or distributor must file with the
7.9 commissioner, in writing, a certificate of compliance certifying that after the effective date
7.10 of the prohibition, the manufacturer or distributor will not offer the product containing the
7.11 priority chemical for sale in the state.

7.12 Subd. 4. **Notifying retailers.** A manufacturer or distributor of a product issued a notice
7.13 of prohibition under subdivision 2 must notify, in writing, persons that offer the product
7.14 for sale or distribution in the state of the requirements of sections 116.9401 to 116.9413
7.15 and the effective date of the sale or distribution prohibition. Notice under this subdivision
7.16 must be issued within 30 days after the notice of prohibition is issued unless the manufacturer
7.17 or distributor applies for a waiver under section 116.9411, in which case the notice must
7.18 be issued within 30 days after the commissioner denies the waiver.

7.19 Subd. 5. **Retailers; exhausting inventory.** A retailer selling a product containing a
7.20 priority chemical that is the subject of a prohibition issued under subdivision 1 may not
7.21 offer the product for sale in the state after the effective date of the prohibition, except that
7.22 a retailer may exhaust stock that was at the retailer's premises 90 days before the effective
7.23 date of the prohibition. Before selling remaining stock, a retailer must provide evidence to
7.24 the commissioner that the stock was at the retailer's premises 90 days before the effective
7.25 date of the prohibition.

7.26 Subd. 6. **Exceptions.** A product containing a priority chemical designated by the
7.27 department may continue to be sold or offered for sale in the state if:

7.28 (1) the manufacturer or distributor obtains a waiver under section 116.9411; or

7.29 (2) in the commissioner's judgment, the lack of availability of the product could pose
7.30 an unreasonable risk to public health, safety, or welfare.

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

8.1 Sec. 8. **[116.9411] WAIVERS FOR SPECIFIC USES.**

8.2 Subdivision 1. **Application for waiver.** The manufacturer or distributor of a product
8.3 that contains a priority chemical and is subject to a prohibition under section 116.941 may
8.4 apply to the commissioner for a waiver in a form prescribed by the commissioner for one
8.5 or more specific uses of the priority chemical. The waiver application must, at a minimum:

8.6 (1) identify the specific product use for which the waiver is sought;

8.7 (2) identify the alternatives considered to replace the priority chemical;

8.8 (3) include evidence supporting the conclusion that the use of an alternative is not
8.9 technically or economically feasible; and

8.10 (4) identify steps that the manufacturer or distributor has taken and will take to minimize
8.11 the use of the priority chemical in the product.

8.12 Subd. 2. **Term of waiver.** The commissioner may grant a waiver with or without
8.13 conditions upon finding that there are no technically or economically feasible alternatives
8.14 for using the priority chemical in the product. Waivers may be granted for a term not to
8.15 exceed four years and may be renewed for one or more additional four-year terms upon
8.16 written application demonstrating that technically or economically feasible alternatives
8.17 remain unavailable. The commissioner must deny or grant waiver requests within 60 days
8.18 after receiving a completed waiver application.

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

8.20 Sec. 9. **[116.9413] ENFORCEMENT.**

8.21 The commissioner must enforce sections 116.9401 to 116.9411 in the manner provided
8.22 by sections 115.071, subdivisions 1 to 6, and 116.072.

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

8.24 Sec. 10. **REPORT REQUIRED.**

8.25 By January 15, 2023, the commissioner of the Pollution Control Agency must report to
8.26 the chairs and ranking minority members of the legislative committees with jurisdiction
8.27 over environment and natural resources, commerce, and public health regarding the
8.28 commissioner's plan to implement sections 116.9408 to 116.9413. The report must include
8.29 recommendations for funding implementation of sections 116.9408 to 116.9413 and for
8.30 promoting and providing incentives to manufacturers to design products that minimize using
8.31 harmful chemicals.

9.1 Sec. 11. **RULEMAKING REQUIRED.**

9.2 The commissioner of the Pollution Control Agency must adopt rules under Minnesota
9.3 Statutes, chapter 14, to implement Minnesota Statutes, sections 116.9408 to 116.9413, no
9.4 later than October 1, 2024.

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