

HOUSE RESEARCH

Bill Summary

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Section

1 [325F.172] Definitions.

(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 or immune system, or organs, or cause other systemic toxicity; or
- (5) be persistent, bioaccumulative, and toxic.

(n) "Priority chemical subject to regulation" means a chemical of high concern that meets the requirements of section 3.

2 [325F.1721] Identification of chemicals of high concern.

Requires the Pollution Control Agency ("agency"), after consulting with the Department of Health, to publish a list of chemicals of high concern found in children's projects by July 1, 2010. Allows the agency to add or remove chemicals from the list. Specifies lists of chemicals from several sources that the agency must consider in evaluating criteria for chemicals of high concern. Chemicals listed by another state as harmful to human health may also be considered for inclusion as chemicals of high concern.

3 [325F.1722] Identification of priority chemicals subject to regulation.

Subd. 1. Designation. Establishes criteria for designating a chemical of high concern a priority chemical, including that the chemical:

- has been found in humans through biomonitoring; in indoor air, household dust,

or drinking water; is present in fish, wildlife, or the natural environment;

- has been identified by the federal Environmental Protection Agency as a high-production volume chemical; or
- sale or use of the chemical or a product containing it is banned in another state.

The agency, after consulting with the Department of Health, must designate at least five priority chemicals by January 1, 2011, and five more by January 1, 2013.

Subd. 2. Updates. Requires the agency to review the list of chemicals of high concern at least triennially and to designate additional priority chemicals that meet the criteria established in subdivision 1.

4 [325F.1723] Disclosure of information on priority chemicals.

Subd. 1. Reporting of chemical use. Requires a manufacturer or distributor of a product sold in Minnesota that contains a high priority chemical to notify the agency of that fact within 180 days of the chemical's designation under section 3. Specifies information that must be contained in the notice, including the number of products sold, amount of the chemical in each product unit, and the purpose of the chemical in the product.

Subd. 2. Supplemental information. Requires a manufacturer or distributor of a children's product containing a priority chemical to provide additional information to the agency upon request, including:

- information on the likelihood of the chemical being released to the environment;
- information regarding the potential for specific uses of the chemical to harm human health and the environment; and
- an assessment of the availability, feasibility and cost of substituting a less harmful alternative chemical. If this assessment is not acceptable to the agency, it may assess a fee on the manufacturer or distributor to pay for an independent assessment of safer alternatives by a contractor chosen by the agency.

Subd. 3. Waiver of reporting. The agency may waive any portion of the notification required in subdivision 1 if the commissioner determines that equivalent information is publicly available, or that the specified uses are minor in volume.

Subd. 4. Extension of deadline. Permits the agency to extend the deadline for submission of information for specified uses of a priority chemical.

Subd. 5. Manufacturer or distributor notification. Requires a manufacturer or distributor of a product containing a priority chemical to notify Minnesota retailers of the product of the requirements of this act.

5 [325F.1724] Safer alternatives to priority chemicals and sales prohibition.

Subd. 1. Safer alternative required. Mandates the agency to require a manufacturer or distributor to replace a chemical identified as of high concern under section 3 with a safer alternative whenever the agency determines that the latter is available for use in the

product in question. In making the determination, the agency may presume, in the absence of persuasive contrary evidence, that:

- the alternative is safer if it is not a high priority chemical;
- a safer alternative is available if the children's product containing the chemical has been banned in another state; if the product is an item of clothing or a novelty; or if an alternative chemical is sold in the U.S.

The agency shall specify a deadline, no longer than two years after the determination, by which the substitution must be made. Failure to replace a chemical under this subdivision may result in prohibition of the sale of the product in this state, as described in section 6.

Subd. 2. Compliance plan required. Within 180 days of the agency's prohibition of sale of a product under section 6, the manufacturer or distributor must file a compliance plan with the agency identifying the children's product containing the chemical; specifying whether sale will be discontinued or a safer chemical will be substituted; and, if the latter option is chosen, the date by which the substitution will be made.

6 [325F.1725] Enforcement and implementation.

Subd. 1. Generally. Provides that if a manufacturer or distributor fails to comply with a requirement of this act within 90 days of the requirement's effective date, the agency may enforce the act under this section and assess penalties under chapter 116 and may request the attorney general to seek an injunction preventing sale of the product.

Subd. 2. Department action against product containing priority chemical. Provides that the agency may prohibit the manufacture, sale or distribution in this state of a product containing a priority chemical if it finds that children and vulnerable populations are exposed to the chemical, directly or indirectly, as a result of the product's distribution, and that safer alternatives are available. Substitution of the safest alternative is required.

Subd. 3. Failure to provide notice. Provides that failure to provide notice under section 4 may result in prohibition of sale or distribution of the product, unless lack of the product poses an unreasonable risk to public health, safety or welfare, in the commissioner's estimation.

Subd. 4. Certificate of compliance. Provides that if the agency has grounds to suspect that a children's product is being sold in violation of this act, it may request the manufacturer or distributor to either submit a certificate of compliance to the agency within 10 days of the request that attests that the product does not contain the priority chemical or file notice with sellers of the product that sale of the product is prohibited, and forward the sellers so notified to the agency.

7 [325F.1726] Waiver for specific uses.

Subd. 1. Application for waiver. Allows a manufacturer or distributor of a product whose sale is prohibited under section 6 to apply to the agency for a waiver of one or more specific uses of the priority chemical. Specifies information required in a waiver application.

Subd. 2. Term of waiver. Allows the commissioner of the agency to grant a waiver with or without conditions if there are no technically or economically feasible alternatives to use of the priority chemical. Waivers must be granted within 60 days, may extend up to four years, and may be renewed repeatedly.

- 8** [325F.1727] **Applicability.** Exempts the following from the provisions of this act:
- used products, motor vehicles or watercraft or their parts, except for detachable car seats;
 - priority chemicals present in combustible fuels or generated solely as combustion by-products;
 - retailers, unless acting knowingly to sell a prohibited product;
 - telecommunications carriers whose name appears on a telecommunications device manufactured by another entity; and
 - food or beverage packaging, unless the product is marketed to children under 3 years.
- 9** [325F.1728] **Donations to the state.** Allows the department to accept donations or grants, through the governor, to carry out the purposes of this act.
- 10** [325F.1729] **Participation in interstate chemicals clearinghouse.** Authorizes the agency to participate in an interstate chemicals clearinghouse to promote safer chemicals in consumer products.
- 11** [325F.173] **Reports.** Requires the agency to report to the legislature by January 15, 2010, regarding its plans to implement this act. Requires the agency, and the Departments of Commerce and Human Services, to report to the legislature by January 15, 2012, with recommendations to evaluate and regulate toxic chemicals in all consumer products, and to promote product design that uses green chemistry.