

HOUSE RESEARCH

Bill Summary

FILE NUMBER: H.F. 250 **DATE:** February 10, 2009

Version: Delete everything amendment (H0250DE4)

Authors: Knuth

Subject: Regulating Toxic Chemicals in Children's Products

Analyst: Bob Eleff

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Section

1 [116.9401] 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 is contained in a children's product and that meets the requirements of section 3.

2 [116.9402] 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 products 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. Chemicals listed by another state as harmful to human health may also be considered for inclusion as chemicals of high concern.

3 [116.9403] Identification of priority chemicals subject to regulation. Establishes criteria for designating a chemical of high concern a priority chemical, including that the chemical:

- is contained in a children's product offered for sale in Minnesota;

- 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
- itself or a product containing it is prohibited 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.

4 [116.9404] 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 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.

5 [116.9405] Safer alternatives to priority chemicals.

Subd. 1. Replacement with safer alternative. 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 and is a technically feasible replacement in the product in question.

Subd. 2. Determination of safer alternative. 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.

Subd. 3. Compliance plan. 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 [116.9406] Prohibition of sale.

Subd. 1. Agency 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.

Subd. 2. Notice of prohibition of sale. Requires the agency to notify a manufacturer or distributor of a decision to prohibit sale of a product, unless a waiver has been granted, at least 270 days before the effective date of the prohibition.

Subd. 3. Certificate of compliance. Requires a manufacturer or distributor to certify to the agency in writing that sale of the product containing the priority chemical will be terminated or a safer alternative substituted.

Subd. 4. Retailer notification. Requires a manufacturer or distributor to notify sellers of the product in the state of the requirements of this bill and the effective date of prohibition of sale.

Subd. 5. Sale of inventory. Allows a retailer to sell a children's product prohibited from sale after the effective date of prohibition only from stocks on the retailer's premises 90 days prior to the effective date of the prohibition.

Subd. 6. Exceptions. Provides that a children's product containing a priority chemical is exempt from a prohibition of sale if the commissioner believes that its unavailability could pose an unreasonable risk to public health, safety, or welfare.

7 [116.9407] 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 [116.9408] Applicability. Exempts certain products and actors from the provisions of this act, including:

- 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.

- 9** [116.9409] **Donations to the state.** Allows the commissioner to accept donations or grants to carry out the purposes of this act.
- 10** [116.9410] **Participation in interstate chemicals clearinghouse.** Authorizes the agency to participate in an interstate chemicals clearinghouse to promote safer chemicals in consumer products.
- 11** [116.9411] **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.
- 12** [116.9412] **Enforcement.** Specifies that the agency will enforce the bill's provisions under sections 115.071, subdivisions 1 to 6, and 116.072.
- 13** **Rulemaking.** Specifies that the agency shall adopt rules for sections 4 through 8 by October 1, 2010.