

- has been identified by the federal Environmental Protection Agency as a high-production volume chemical (1 million pounds annually); and
- is either present in humans, wildlife, indoor air, or drinking water, or is prohibited by another state.

4 [116.9404] Identification of safer alternatives.

Subd. 1. Agency determination. 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.

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 chemical of high concern;
- 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.

Subd. 2. Agency designation. Requires the agency to designate a priority chemical as Level 1 if it determines a safer alternative is available and is a technically feasible replacement for a priority chemical; otherwise, it is designated as a Level 2 priority chemical. The agency must designate at least 5 Level 1 and 2 chemicals by January 1, 2011, and publish the lists in the State Register and place them on the agency website. An additional five chemicals must be designated by January 1, 2013. The agency must review the lists at least every two years.

5 [116.9405] 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 priority chemical to notify the agency of that fact within 180 days of the chemical's designation under section 4. 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.

6 [116.9406] Prohibition of sale.

Subd. 1. Agency action against product containing priority chemical.

Provides that the agency may prohibit the sale in this state of a product containing a priority chemical within no more than three years if it finds that a safer alternative is 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 180 days before the effective date of the prohibition.

Subd. 3. Manufacturer's options. Requires a manufacturer of a product containing a Level 1 priority chemical to discontinue selling the product, obtain a waiver under section 8, or replace the product with a safer chemical.

Subd. 4. Compliance plan. Within 180 days of the agency's prohibition of sale of a product under this section, 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.

Subd. 5. 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. 6. 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. 7. 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. 8. 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] **Manufacturer’s responsibilities regarding Level 2 priority chemicals.** Requires a manufacturer of a children’s product that contains a Level 2 priority chemical to report to the agency at least every two years on the manufacturer’s efforts to find a safer alternative and any product design changes considered to remove the priority chemical from the product.
- 9** [116.9409] **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.
- 10** [116.9410] **Donations to the state.** Allows the commissioner to accept donations or grants to carry out the purposes of this act.
- 11** [116.9411] **Participation in interstate chemicals clearinghouse.** Authorizes the agency to participate in an interstate chemicals clearinghouse to promote safer chemicals in consumer products.
- 12** [116.9412] **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.
- 13** [116.9413] **Enforcement.** Specifies that the agency will enforce the bill’s provisions under sections 115.071, subdivisions 3 to 6.