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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 250

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The bill was read for the first time and referred to the Committee on Health Care and Human Services Policy and Oversight

February 9, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Environment Policy and Oversight

February 16, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Commerce and Labor

April 1, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to public health; protecting the health of children from toxic chemicals
1.3 in products; requiring disclosure by manufacturers of children's products that
1.4 contain chemicals of high concern; authorizing the Department of Health to
1.5 designate priority chemicals of high concern and require replacement with safer
1.6 alternatives; authorizing participation in an interstate clearinghouse; requiring
1.7 reports to the legislature; proposing coding for new law in Minnesota Statutes,
1.8 chapter 116.

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

1.10 Section 1. [116.9401] DEFINITIONS.

1.11 (a) For the purposes of sections 116.9401 to 116.9411, the following terms have
1.12 the meanings given them.

1.13 (b) "Agency" means the Pollution Control Agency.

1.14 (c) "Alternative" means a substitute process, product, material, chemical, strategy,
1.15 or combination of these that serves a functionally equivalent purpose to a chemical in a
1.16 children's product.

1.17 (d) "Chemical" means a substance with a distinct molecular composition or a group
1.18 of structurally related substances and includes the breakdown products of the substance or
1.19 substances that form through decomposition, degradation, or metabolism.

1.20 (e) "Chemical of high concern" means a chemical identified on the basis of credible
1.21 scientific evidence by a governmental entity or the United Nations' World Health
1.22 Organization as being known or suspected with a high degree of probability to:

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

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

1.26 (3) disrupt the endocrine or hormone system;

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

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

2.4 (6) be very persistent and very bioaccumulative.

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

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

2.8 (h) "Commissioner" means the commissioner of the Pollution Control Agency.

2.9 (i) "Department" means the Department of Health.

2.10 (j) "Distributor" means a person who sells consumer products to retail establishments  
2.11 on a wholesale basis.

2.12 (k) "Green chemistry" means an approach to designing and manufacturing products  
2.13 in ways that minimize the use and generation of toxic substances.

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

2.20 (m) "Priority chemical" means a chemical identified by the commissioner as a  
2.21 chemical of high concern that is contained in a children's product offered for sale in  
2.22 Minnesota and meets the criteria in section 116.9403.

2.23 (n) "Safer alternative" means an alternative whose potential to harm human health is  
2.24 less than that of a priority chemical that it could replace.

2.25 **Sec. 2. [116.9402] IDENTIFICATION OF CHEMICALS OF HIGH CONCERN.**

2.26 (a) By July 1, 2010, the department shall, after consultation with the agency, publish  
2.27 in the State Register and on the agency's Internet Web site a list of chemicals of high  
2.28 concern.

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

2.32 (c) The agency shall consider, among others, chemicals listed in the following  
2.33 sources for possible inclusion on the list of chemicals of high concern:

2.34 (1) chemicals identified as "Group 1 carcinogens" or "Group 2A carcinogens" by the  
2.35 United Nations' World Health Organization, International Agency for Research on Cancer;

3.1 (2) chemicals identified as "known to be a human carcinogen" and "reasonably  
3.2 anticipated to be a human carcinogen" by the secretary of the United States Department  
3.3 of Health and Human Services;

3.4 (3) chemicals identified as "Group A carcinogens" or "Group B carcinogens" by the  
3.5 United States Environmental Protection Agency;

3.6 (4) chemicals identified as reproductive or developmental toxicants by:

3.7 (i) the United States Department of Health and Human Services, National  
3.8 Toxicology Program, Center for the Evaluation of Risks to Human Reproduction; and

3.9 (ii) the California Environmental Protection Agency, Office of Environmental Health  
3.10 Hazard Assessment pursuant to the California Health and Safety Code, Safe Drinking  
3.11 Water and Toxic Enforcement Act of 1986, chapter 6.6, section 25249.8;

3.12 (5) chemicals identified as known or likely endocrine disruptors through screening  
3.13 or testing conducted in accordance with protocols developed by the United States  
3.14 Environmental Protection Agency pursuant to the federal Food, Drug, and Cosmetic Act,  
3.15 United States Code, title 21, section 346a(p), as amended by the federal Food Quality  
3.16 Protection Act, Public Law 104-170, or the federal Safe Drinking Water Act, United States  
3.17 Code, title 42, section 300j-17;

3.18 (6) chemicals listed on the basis of endocrine-disrupting properties in Annex  
3.19 XIV, List of Substances Subject to Authorisation, Regulation (EC) No 1907/2006 of  
3.20 the European Parliament concerning the Registration, Evaluation, Authorisation, and  
3.21 Restriction of Chemicals;

3.22 (7) persistent, bioaccumulative, and toxic chemicals identified by:

3.23 (i) the state of Washington Department of Ecology in Washington Administrative  
3.24 Code, Chapter 173-333; or

3.25 (ii) the United States Environmental Protection Agency in Code of Federal  
3.26 Regulations, title 40, part 372; and

3.27 (8) a very persistent, very bioaccumulative chemical listed in Annex XIV, List of  
3.28 Substances Subject to Authorisation, Regulation (EC) No 1907/2006 of the European  
3.29 Parliament concerning the Registration, Evaluation, Authorisation, and Restriction of  
3.30 Chemicals.

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

3.34 **Sec. 3. [116.9403] IDENTIFICATION OF PRIORITY CHEMICALS.**

- 4.1 The department, after consultation with the agency, may designate a chemical of  
4.2 high concern as a priority chemical if the department finds that the chemical:  
4.3 (1) is contained in a children's product offered for sale in Minnesota;  
4.4 (2) has been identified as a high-production volume chemical by the United States  
4.5 Environmental Protection Agency; and  
4.6 (3) meets any of the following criteria:  
4.7 (i) the chemical has been found through biomonitoring to be present in human blood,  
4.8 including umbilical cord blood, breast milk, urine, or other bodily tissues or fluids;  
4.9 (ii) the chemical has been found through sampling and analysis to be present in  
4.10 household dust, indoor air, drinking water, or elsewhere in the home environment;  
4.11 (iii) the chemical has been found through monitoring to be present in fish, wildlife,  
4.12 or the natural environment; or  
4.13 (iv) the sale or use of the chemical or a product containing the chemical has been  
4.14 prohibited in another state within the United States.

4.15 **Sec. 4. [116.9404] IDENTIFICATION OF SAFER ALTERNATIVES.**

4.16 Subdivision 1. **Department determination.** The department shall determine  
4.17 whether a safer alternative to a priority chemical is available and is a technically feasible  
4.18 replacement for the priority chemical. In making this determination, the department:

4.19 (1) must utilize information from current scientific literature, the Interstate  
4.20 Chemicals Clearinghouse, manufacturers of children's products, and other sources it  
4.21 deems appropriate;

4.22 (2) may, in the absence of convincing evidence to the contrary, presume that:

4.23 (i) an alternative is a safer alternative if the alternative is not a chemical of high  
4.24 concern;

4.25 (ii) a safer alternative is available if the sale of the children's product containing the  
4.26 priority chemical has been prohibited by another state within the United States;

4.27 (iii) a safer alternative is available if the children's product containing the priority  
4.28 chemical is an item of apparel or a novelty; and

4.29 (iv) a safer alternative is available if the alternative is sold in the United States.

4.30 Subd. 2. **Department designation.** (a) If the department determines that a safer  
4.31 alternative is available and is a technically feasible replacement for a priority chemical,  
4.32 the department shall designate that priority chemical a Level 1 priority chemical. If the  
4.33 department determines that current information does not indicate that a safer alternative is  
4.34 available or is a technically feasible replacement for a priority chemical, the department  
4.35 shall designate that chemical a Level 2 priority chemical. By February 1, 2011, the

5.1 department shall publish a list of Level 1 and Level 2 priority chemicals in the State  
5.2 Register and on the agency's Internet Web site and shall update the published list whenever  
5.3 a new priority chemical is designated.

5.4 (b) The department shall designate at least five priority chemicals as Level 1 or  
5.5 Level 2 by January 1, 2011, and at least five additional priority chemicals as Level 1  
5.6 or Level 2 by January 1, 2013.

5.7 (c) The department shall, at least every two years:

5.8 (1) review the list of chemicals of high concern and determine, which, if any, should  
5.9 be designated Level 1 or Level 2 priority chemicals; and

5.10 (2) review the reports submitted by manufacturers under section 116.9408 to  
5.11 determine if any Level 2 priority chemicals should be designated as Level 1 priority  
5.12 chemicals.

5.13 **Sec. 5. [116.9405] DISCLOSURE OF INFORMATION ON PRIORITY**  
5.14 **CHEMICALS.**

5.15 Subdivision 1. **Reporting of chemical use.** Not later than 180 days after Level 1  
5.16 and Level 2 priority chemicals are identified under section 116.9404, any person who is  
5.17 a manufacturer or distributor of a children's product for sale in this state that contains a  
5.18 Level 1 or Level 2 priority chemical shall notify the agency of that fact in writing unless  
5.19 the children's product is not subject to regulation under section 116.9409. This written  
5.20 notice must identify the product, the number of units sold or distributed for sale in this  
5.21 state or nationally during the previous calendar year, the priority chemical or chemicals  
5.22 contained in the product, and the intended purpose of the priority chemicals in the product.

5.23 Subd. 2. **Supplemental information.** The manufacturer or distributor of a  
5.24 children's product that contains a Level 1 or Level 2 priority chemical shall provide the  
5.25 following additional information if requested by the agency:

5.26 (1) information on the likelihood that the chemical will be released from the  
5.27 children's product to the environment during the children's product's life cycle and the  
5.28 extent to which users of the children's product are likely to be exposed to the chemical;

5.29 (2) additional information regarding the potential for harm to human health from  
5.30 specific uses of the priority chemical; and

5.31 (3) an assessment of the availability, cost, feasibility, and performance, including  
5.32 potential for harm to human health of alternatives to the priority chemical and the reason  
5.33 the priority chemical is used in the manufacture of the children's product in lieu of  
5.34 identified alternatives. If an assessment acceptable to the agency is not timely submitted as  
5.35 determined by the agency, the agency may assess a fee on the manufacturer or distributor

6.1 to cover the costs to prepare an independent report on the availability of safer alternatives  
6.2 by a contractor of the agency's choice.

6.3 **Sec. 6. [116.9409] APPLICABILITY.**

6.4 The requirements of sections 116.9401 to 116.9411 do not apply to:

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

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

6.8 (3) priority chemicals used in agricultural production;

6.9 (4) motor vehicles as defined in chapter 168 or watercraft as defined in chapter  
6.10 86B or their component parts, except that the use of priority chemicals in detachable  
6.11 car seats is not exempt;

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

6.14 (6) retailers, unless that retailer knowingly sells a children's product containing  
6.15 a priority chemical after the effective date of its prohibition, of which that retailer has  
6.16 received prior notification from a manufacturer, distributor, or the state;

6.17 (7) pharmaceutical products or biologics;

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

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

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

6.28 **Sec. 7. [116.9410] DONATIONS TO THE STATE.**

6.29 The commissioner may accept donations, grants, and other funds to carry out  
6.30 the purposes of sections 116.9401 to 116.9411. All such donations, grants, and other  
6.31 funds must be accepted without preconditions regarding the outcomes of the regulatory  
6.32 oversight processes set forth in sections 116.9401 to 116.9411.

7.1       Sec. 8. **[116.9411] PARTICIPATION IN INTERSTATE CHEMICALS**  
7.2 **CLEARINGHOUSE.**

7.3       The agency may participate in an interstate chemicals clearinghouse to promote  
7.4 safer chemicals in consumer products in cooperation with other states, including the  
7.5 classification of chemicals in commerce; organizing and managing available data on  
7.6 chemicals, including information on uses, hazards, and environmental and health  
7.7 concerns; and producing and evaluating information on safer alternatives to specific uses  
7.8 of chemicals of concern.

7.9       Sec. 9. **REPORTS.**

7.10       (a) By January 15, 2010, the Department of Health, in consultation with the Pollution  
7.11 Control Agency, shall report to the chairs and ranking minority members of the senate  
7.12 and house of representatives committees with primary jurisdiction over environment  
7.13 and natural resources policy, commerce, and public health regarding the progress on  
7.14 implementing Minnesota Statutes, sections 116.9401 to 116.9411.

7.15       (b) By January 15, 2010, the Pollution Control Agency shall report to the chairs and  
7.16 ranking minority members of the senate and house of representatives committees with  
7.17 primary jurisdiction over environment and natural resources policy, commerce, and public  
7.18 health on the agency's plans to implement Minnesota Statutes, section 116.9405, and  
7.19 assess mechanisms to reduce and phase out the use of priority chemicals in children's  
7.20 products, including potential funding mechanisms. The report must include information  
7.21 on the progress of other states in reducing toxic chemicals in children's products. In  
7.22 developing the report, the agency may consult outside experts and groups working to  
7.23 reduce toxic chemicals in children's products in Minnesota and nationally.

7.24       Sec. 10. **EFFECTIVE DATE.**

7.25       Sections 1 to 8 are effective the day following final enactment.