CONFERENCE COMMITTEE REPORT ON S.F. No. 651

A bill for an act

relating to the environment; restricting the manufacture and sale of certain polybrominated diphenyl ethers; requiring a report; providing penalties; amending Minnesota Statutes 2007 Supplement, sections 325E.386; 325E.387, by adding a subdivision.

May 6, 2008

The Honorable James P. Metzen
President of the Senate

The Honorable Margaret Anderson Kelliher
Speaker of the House of Representatives

We, the undersigned conferees for S.F. No. 651 report that we have agreed upon the items in dispute and recommend as follows:

That the House recede from its amendment and that S.F. No. 651 be further amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 2007 Supplement, section 144.651, subdivision 9, is amended to read:

Subd. 9. **Information about treatment.** (a) Patients and residents shall be given by their physicians complete and current information concerning their diagnosis, treatment, alternatives, risks, and prognosis as required by the physician's legal duty to disclose. This information shall be in terms and language the patients or residents can reasonably be expected to understand. Patients and residents may be accompanied by a family member or other chosen representative, or both. This information shall include the likely medical or major psychological results of the treatment and its alternatives. In cases where it is medically inadvisable, as documented by the attending physician in a patient's or resident's medical record, the information shall be given to the patient's or resident's guardian or other person designated by the patient or resident as a representative. Individuals have the right to refuse this information.

(b) Every patient or resident suffering from any form of breast cancer shall be fully informed, prior to or at the time of admission and during her stay, of all alternative effective methods of treatment of which the treating physician is knowledgeable, including surgical, radiological, or chemotherapeutic treatments or combinations of treatments and the risks associated with each of those methods.

(c) Every patient receiving maternity care has the right to continuous support from a doula of her choice, in addition to her family, during her stay at the facility, so long as the doula performs doula services within an accepted scope of practice and the hospital's standard of care. Nothing in this paragraph prohibits or restricts a hospital from excluding a doula who has violated an accepted scope of practice or the hospital's standard of care.

Sec. 2. **[145.907] PAIN RELIEF INFORMATION FOR PREGNANT PATIENTS.**

Physicians, traditional midwives, and other licensed health care professionals providing prenatal care to women must include as part of their prenatal education, information regarding all methods of pain relief, including evidence-based nonpharmacological methods.

Sec. 3. Minnesota Statutes 2007 Supplement, section 325E.386, is amended to read:

325E.386 PRODUCTS CONTAINING CERTAIN POLYBROMINATED DIPHENYL ETHERS BANNED; EXEMPTIONS.

Subdivision 1. **Penta- and octabromodiphenyl ethers.** Except as provided in subdivision ~~3~~ 2, beginning January 1, 2008, a person may not manufacture, process, or distribute in commerce a product or flame-retardant part of a product containing more than one-tenth of one percent of pentabromodiphenyl ether or octabromodiphenyl ether by mass.

Subd. 2. **Exemptions; penta- and octabromodiphenyl ethers.** The following products containing polybrominated diphenyl ethers are exempt from subdivision 1 and section 325E.387, subdivision 2:

(1) the sale or distribution of any used transportation vehicle with component parts containing polybrominated diphenyl ethers;

(2) the sale or distribution of any used transportation vehicle parts or new transportation vehicle parts manufactured before January 1, 2008, that contain polybrominated diphenyl ethers;

(3) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of equipment containing polybrominated diphenyl ethers and used primarily for military or federally funded space program applications. This exemption does not cover consumer-based goods with broad applicability;

(4) the sale or distribution by a business, charity, public entity, or private party of any used product containing polybrominated diphenyl ethers;

(5) the manufacture, sale, or distribution of new carpet cushion made from recycled foam containing more than one-tenth of one percent polybrominated diphenyl ether;

(6) medical devices; or

(7) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of telecommunications equipment containing polybrominated diphenyl ethers used by entities eligible to hold authorization in the Public Safety Pool under Code of Federal Regulations, title 47, part 90.

In-state retailers in possession of products on January 1, 2008, that are banned for sale under subdivision 1 may exhaust their stock through sales to the public. Nothing in this section restricts the ability of a manufacturer, importer, or distributor from transporting products containing polybrominated diphenyl ethers through the state, or storing such products in the state for later distribution outside the state.

Subd. 3. **Commercial decabromodiphenyl ether.** (a) Except as provided in subdivision 4, beginning July 1, 2011, a person may not manufacture, process, or distribute in commerce any of the following products containing more than one-tenth of one percent of commercial decabromodiphenyl ether by mass:

(1) the exterior casing of a television, computer, or computer monitor;

(2) upholstered furniture or textiles intended for indoor use in a home or other residential occupancy; or

(3) mattresses and mattress pads.

(b) The sale or distribution by a business, charity, public entity, or private party of any used product containing commercial decabromodiphenyl ether is exempted from this subdivision.

(c) In-state retailers in possession of products on January 1, 2011, that are banned for sale under this subdivision may exhaust their stock of products located in the state as of that date through sales to the public. Nothing in this section restricts a manufacturer, importer, or distributor from transporting products containing commercial decabromodiphenyl ether through the state or storing such products in the state for later distribution outside the state.

Subd. 4. **Exemption process; commercial decabromodiphenyl ether.** (a) A manufacturer or user of a product prohibited from manufacture, sale, or distribution under subdivision 3 may apply for an exemption for a specific use of commercial decabromodiphenyl ether under this section by filing a written request with the commissioner. The commissioner may grant an exemption for a term not to exceed three

years. The exemption is renewable upon written request. An initial or renewal request for exemption must include at least the following:

(1) a policy statement articulating upper management support for eliminating or reducing to the maximum feasible extent the use of commercial decabromodiphenyl ether;

(2) a description of the product and the amount of commercial decabromodiphenyl ether distributed for sale and use in the state on an annual basis;

(3) a description of the recycling and disposal system used for the product in the state and an estimate of the amount of product or commercial decabromodiphenyl ether that is recycled or disposed of in the state on an annual basis;

(4) a description of the manufacturer's or user's past and ongoing efforts to eliminate or reduce the amount of commercial decabromodiphenyl ether used in the product;

(5) an assessment of options available to reduce or eliminate the use of commercial decabromodiphenyl ether, including any alternatives that do not contain commercial decabromodiphenyl ether, perform the same technical function, are commercially available, and are economically practicable;

(6) a statement of objectives in numerical terms and a schedule for achieving the elimination of commercial decabromodiphenyl ether and an environmental assessment of alternative products, including but not limited to human health, solid waste, hazardous waste, and wastewater impacts associated with production, use, recycling, and disposal of the alternatives;

(7) a listing of options considered not to be technically or economically practicable; and

(8) certification of the accuracy of the information contained in the request, signed and dated by an official of the manufacturer or user.

(b) The commissioner may grant an initial or renewal exemption for a specific use of commercial decabromodiphenyl ether, with or without conditions, upon finding that the applicant has demonstrated that there is no alternative that performs the same technical function, is commercially available, is economically practicable, and provides net health and environmental benefits to the state.

Subd. 5. **Fees for exemption applicants.** The application fee for an exemption under subdivision 4 is $2,000 per exemption. The fee is exempt from section 16A.1285. Revenues from application fees must be deposited in the environmental fund.

Sec. 4. Minnesota Statutes 2007 Supplement, section 325E.387, is amended by adding a subdivision to read:

Subd. 3. **Participation in interstate clearinghouse.** The commissioner may participate in a regional or national multistate clearinghouse to assist in carrying out the requirements of this section. The clearinghouse is authorized to maintain information on behalf of Minnesota, including, but not limited to:

(1) a list of all products containing polybrominated diphenyl ethers; and

(2) information on all exemptions granted by the state.

Sec. 5. **[325F.172] DEFINITIONS.**

For the purposes of sections 325F.172 to 325F.174, the following terms have the meanings given them.

(a) "BBP" means benzyl butyl phthalate, CAS # 85-68-7.

(b) "Child" means a person under three years of age.

(c) "Children's product" means a product designed or intended by a manufacturer to be used by a child:

(1) as a toy or an article of clothing;

(2) to facilitate sleep, relaxation, or feeding; or

(3) to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof, including any article used as a component of such a product.

(d) "DBP" means di-n-butyl phthalate, CAS # 84-74-2.

(e) "DEHP" means di (2-ethylhexyl) phthalate, CAS # 117-81-7.

(f) "DIDP" means di-isodecyl phthalate, CAS # 26761-40-0.

(g) "DINP" means di-iso-nonyl phthalate, CAS # 71549-78-5.

(h) "DNOP" means di-n-octyl phthalate, CAS # 117-84-6.

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

Sec. 6. **[325F.173] PHTHALATES IN CHILDREN'S PRODUCTS; BAN.**

(a) Beginning January 1, 2009, no manufacturer may sell or offer in this state a new children's product that contains one of the following phthalates: DEHP, DBP, or BBP, in concentrations exceeding 0.1 percent, including plastic tubing used to deliver a solution intravenously to a small child.

(b) Beginning January 1, 2009, no manufacturer may sell or offer in this state any new children's product that can be placed in a child's mouth and contains one of the following phthalates: DINP, DIDP, or DNOP, in concentrations exceeding 0.1 percent.

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

Sec. 7. **[325F.174] REPLACEMENT CHEMICALS.**

A manufacturer shall not replace phthalates as a result of the prohibition in section 325F.173 with a chemical that is:

(1) classified as "known to be a human carcinogen" or "reasonably anticipated to be a human carcinogen" in the most recent Report on Carcinogens published by the National Toxicology Program in the United States Department of Health and Human Services; or

(2) identified by the federal Environmental Protection Agency as causing birth defects or reproductive or environmental harm.

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

Sec. 8. **[325F.175] PARTICIPATION IN INTERSTATE CLEARINGHOUSE.**

The Minnesota Pollution Control Agency may participate in the establishment and implementation of a multistate clearinghouse to identify children's products containing bisphenol-A and phthalates and to evaluate safer alternatives that may be substituted for those chemicals.

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

Sec. 9. **REPORT.**

(a) By January 15, 2011, the Pollution Control Agency shall report to the senate and house of representatives committees with jurisdiction over environmental and natural resources, commerce, public safety, and public health regarding specific flame-retardant alternatives available for decabromodiphenyl ether.

(b) The Pollution Control Agency shall convene a fire safety committee to identify and evaluate the safety and effectiveness of flame-retardant alternatives before decabromodiphenyl ether is phased out. The recommendations of the fire safety committee shall be incorporated into the report required under paragraph (a).

(c) The fire safety committee consists of the commissioner or designee of the Pollution Control Agency, as chair and nonvoting member, with the following members:

(1) a representative of the commissioner of health;

(2) a representative of the State Fire Marshal;

(3) a representative appointed by the president of the Minnesota State Fire Chiefs Association;

(4) a representative appointed by the president of the Minnesota Professional Firefighters Association;

(5) a representative appointed by the president of the Fire Marshals Association of Minnesota;

(6) a representative of the Minnesota State Fire Departments Association;

(7) a representative of an environmental health coalition; and

(8) a scientist from the environmental health coalition as a nonvoting member.

Sec. 10. **APPROPRIATION.**

$57,000 is appropriated from the environmental fund to the commissioner of the Pollution Control Agency for the purposes of sections 3, 4, and 9."

Delete the title and insert:

"A bill for an act

relating to health; modifying provisions relating to maternity care; banning the use of certain phthalates, flame retardants, or other polymers or chemicals; requiring reports; appropriating money; amending Minnesota Statutes 2007 Supplement, sections 144.651, subdivision 9; 325E.386; 325E.387, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 145; 325F."

We request the adoption of this report and repassage of the bill.

Senate Conferees: (Signed)

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John Marty	Sandra L. Pappas
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Jim Carlson	Patricia Torres Ray
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Michelle L. Fischbach	

House Conferees: (Signed)

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Karen Clark	Carolyn Laine
.....	.....
Paul Thissen	Shelley Madore
.....	
Jim Abeler	