H.536

Introduced by Representatives Stone of Burlington, Arsenault of Williston, and Graning of Jericho

Referred to Committee on

Date:

Subject: Health; adulterated food; baby food products; testing; labeling

Statement of purpose of bill as introduced: This bill proposes to prohibit the sale and distribution of a baby food product in the State that contains a toxic heavy metal. It further proposes labeling requirements and regular laboratory testing of baby food products for toxic heavy metals.

An act relating to toxic heavy metals in baby food products

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. chapter 82 is amended to read:

CHAPTER 82. LABELING OF FOOD, DRUGS, COSMETICS, AND HAZARDOUS SUBSTANCES

Subchapter 1. ~~Labeling and Marketing for Sale~~ General Provisions

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Subchapter 3. Testing and Labeling of Certain Products

~~§ 4091. BABY FOOD PRODUCTS~~

(a) As used in this section:

(1) "Baby food product" means any food manufactured, packaged, and labeled in a jar, pouch, tub, or box sold specifically for babies and children younger than two years of age. "Baby food product" does not include infant formula.

(2) "Commissioner" means the Commissioner of Health.

(3) "Final baby food product" means the finished baby food product and not the constituent ingredients.

(4) "Infant formula" means a commercially available milk-based or soy-based powder, concentrated liquid, or ready-to-feed substitute for human breast milk that is intended for infant consumption.

(5) "Production aggregate" means a quantity of product that is intended to have uniform composition, character, and quality and is produced according to a master manufacturing order.

(6) "Proficient laboratory" means a laboratory that:

(A) is accredited under the standards of the International Organization for Standardization or the International Electrotechnical Commission pursuant to standard ISO/IEC 17025:2017;

(B) uses an analytical method as sensitive as the analytical method described in the U.S. FDA's Elemental Analysis Manual for Food Related Products; and

(C) demonstrates proficiency in quantifying each toxic element to at least six micrograms of the toxic element to kilogram of food through an independent proficiency test by achieving a z-score that is less than or equal to plus or minus two.

(7) "QR code" means a two-dimension matrix barcode consisting of blocks arranged in a grid that can be read by an imaging device.

(8) "Representative sample" means a sample that consists of a number of units that are drawn based on rational criteria, including random sampling, and intended to ensure that the sample accurately portrays the material being sampled.

(9) "Toxic heavy metal" means arsenic, cadmium, lead, and mercury.

(10) "URL" means a uniform resource locator.

(11) "U.S. FDA" means the U.S. Food and Drug Administration.

(b) A person shall not sell, distribute, or offer for sale any baby food product that contains a toxic heavy metal that exceeds the limits established by the U.S. FDA. The provisions of this subsection shall not restrict the continued sale of inventory in stock before January 1, 2026.

(c) A manufacturer of a baby food shall test a representative sample of each production aggregate of the manufacturer's final baby food product for toxic heavy metals. Testing of a baby food product shall be conducted by a proficient laboratory at least once a month. A manufacturer of baby food may

test the final baby food product before packaging individual units for sale or distribution. Upon request of the Commissioner, a manufacturer shall provide the results of the test conducted pursuant to this subsection.

(d) A manufacturer of baby food shall make publicly available on its website for the duration of the product shelf life of a final baby food product, plus one month, for each baby food product sold, manufactured, delivered, held, or offered for sale in the State:

(1) the name and level of each toxic heavy metal in the final baby food product as determined by the testing conducted pursuant to subsection (c) of this section;

(2) sufficient information, including the product name, universal product code, or lot or batch number, to enable consumers to identify the final baby food product; and

(3) a link to the U.S. FDA's website that provides the most recent U.S. FDA guidance and information about the health effects of toxic heavy metals on children.

(e) If a baby food product is tested for a toxic heavy metal subject to an action level, regulatory limit, or tolerance established by the U.S. FDA under 21 C.F.R. § 109, the manufacturer shall display on the baby food product:

(1) a label stating in a clear, legible, conspicuous manner that more information about toxic element testing on the product is available by scanning the QR code; and

(2) a QR code or other machine-readable code that directs the consumers to the manufacturer's website or the baby food product information page providing:

(A) the test results for the toxic heavy metal; and

(B) a URL to the web page on the U.S. FDA's website that includes the most recent guidance and information about the health effects of toxic heavy metals in children.

(f) If a consumer reasonably believes, based on the information provided on the baby food product, that the baby food product is being sold in the State in violation of this section, the consumer shall report the baby food product to the Commissioner.

(g) A violation of this section shall be deemed a violation of the Consumer Protection Act, 9 V.S.A. chapter 63. The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and private parties have the same rights and remedies, as provided under 9 V.S.A. chapter 63, subchapter 1.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2026.

Sec. 1. 18 V.S.A. chapter 82 is amended to read:

CHAPTER 82. LABELING OF FOODS, DRUGS, COSMETICS, AND HAZARDOUS SUBSTANCES

Subchapter 1. ~~Labeling for Marketing and Sale~~ General Provisions

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Subchapter 3. Testing and Labeling of Certain Products

§ 4091. BABY FOOD PRODUCTS

(a) As used in this section:

(1) "Baby food product" means any food manufactured, packaged, and labeled in a jar, pouch, tub, or box sold specifically for babies and children younger than two years of age. "Baby food product" does not include infant formula.

(2) "Final baby food product" means the finished baby food product and not the constituent ingredients.

(3) "Infant formula" means a commercially available milk-based or soy-based powder, concentrated liquid, or ready-to-feed substitute for human breast milk that is intended for infant consumption.

(4) "Production aggregate" means a quantity of product that is intended to have a uniform composition, character, and quality and is produced according to a master manufacturing order.

(5) "Proficient laboratory" means a laboratory that:

(A) is accredited under the standards of the International Organization for Standardization or the International Electrotechnical Commission pursuant to standard ISO/IEC 17025:2017;

(B) uses an analytical method as sensitive as the analytical method described in the U.S. FDA's Elemental Analysis Manual for Food and Related Products; and

(C) demonstrates proficiency in quantifying each toxic element to at least six micrograms of the toxic element to kilogram of food through an independent proficiency test by achieving a z-score that is less than or equal to plus or minus two.

(6) "QR code" means a two-dimension matrix barcode consisting of blocks arranged in a grid that can be read by an imaging device.

(7) "Representative sample" means a sample that consists of a number of units that are drawn based on rational criteria, including random sampling, and intended to ensure that the sample accurately portrays the material being sampled.

(8) "Toxic heavy metal" means arsenic, cadmium, lead, and mercury.

(9) "URL" means a uniform resource locator.

(10) "U.S. FDA" means the U.S. Food and Drug Administration.

(b) A person shall not sell, distribute, or offer for sale any baby food product in the State that contains a toxic heavy metal that exceeds the limits

established by the U.S. FDA. The provisions of this subsection shall not restrict the continued sale of inventory in stock before January 1, 2027.

(c) A manufacturer of a baby food sold or distributed in the State shall test a representative sample of each production aggregate of the manufacturer's final baby food product for toxic heavy metals. Testing of a baby food product shall be conducted by a proficient laboratory at least once a month. A manufacturer of baby food may test the final baby food product before packaging individual units for sale or distribution. Upon request of the ~~Commissioner of Health~~ Office of the Attorney General, a manufacturer shall provide the results of the test conducted pursuant to this subsection.

(d)(1) Without requiring the provision of a universal product code or proof of purchase, a manufacturer of baby food sold or distributed in the State shall make publicly available on its website for the duration of the product shelf life of a final baby food product, plus one month, for each baby food product sold, manufactured, delivered, held, or offered for sale in the State:

(A) the name and level of each toxic heavy metal in the final baby food product as determined by the testing conducted pursuant to subsection (c) of this section;

(B) sufficient information, including the product name, universal product code, or lot or batch number, to enable consumers to identify the final baby food product; and

(C) a link to the U.S. FDA's website that provides the most recent U.S. FDA guidance and information about the health effects of toxic heavy metals on children.

(2) A baby food product that is sold online to a consumer in Vermont by either a retailer or directly from the manufacturer shall contain on the product's web page a clearly labeled link to an information page containing the information required pursuant to subdivision (1) of this subsection.

(e) If a baby food product sold or distributed in the State is tested for a toxic heavy metal subject to an action level, regulatory limit, or tolerance established by the U.S. FDA under 21 C.F.R. § 109, the manufacturer shall display on the baby food product:

(1) a label stating in a clear, legible, and conspicuous manner that more information about toxic element testing on the product is available by scanning the QR code; and

(2) a QR code or other machine-readable code that directs the consumers to the manufacturer's website or the baby food product information page providing:

(A) the test results for the toxic heavy metal; and

(B) a URL to the web page on the U.S. FDA's website that includes the most recent guidance and information about the health effects of toxic heavy metals in children.

(f) If a consumer reasonably believes, based on the information provided on the baby food product, that the baby food product is being sold in the State in violation of this section, the consumer may report the baby food product to the ~~Department of Health~~ Office of the Attorney General.

(g) A violation of this section shall be deemed a violation of the Consumer Protection Act, 9 V.S.A. chapter 63. The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and private parties have the same rights and remedies, as provided under 9 V.S.A. chapter 63, subchapter 1.

~~*Sec. 2. EFFECTIVE DATE*~~

~~*This act shall take effect on January 1, 2027.*~~

Sec. 2. 18 V.S.A. § 4091 is amended to read:

§ 4091. BABY FOOD PRODUCTS

(a) As used in this section:

(1) "Baby food product" means any infant formula or food manufactured, packaged, and labeled in a jar, pouch, tub, or box sold specifically for babies and children younger than two years of age. ~~"Baby food product" does not include infant formula.~~

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(g) The Attorney General shall suspend the application of this section to infant formula if the Attorney General verifies that there is insufficient infant

formula in the State to meet the need. If the Attorney General suspends application, the Attorney General shall post notice on the Office of the Attorney General's website containing specific dates that the suspension is in effect.

(h) A violation of this section shall be deemed a violation of the Consumer Protection Act, 9 V.S.A. chapter 63. The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and private parties have the same rights and remedies, as provided under 9 V.S.A. chapter 63, subchapter 1.

Sec. 3. EFFECTIVE DATES

(a) This section and Sec. 1 (18 V.S.A. chapter 82) shall take effect on January 1, 2027.

(b) Sec. 2 (18 V.S.A. § 4091) shall take effect upon the Attorney General's written confirmation to the Speaker of the House and to the President Pro Tempore of the Senate, which shall be posted on the General Assembly's website, that either California or two other states have enacted legislation with requirements substantially comparable to the requirements of this act regarding all of the following:

(1) the prohibition on the sale and distribution of infant formula that contains a toxic heavy metal exceeding U.S. Food and Drug Administration limits;

(2) the required testing of infant formula sold or distributed in the State for toxic heavy metals; and

(3) the labeling of infant formula and the provision of information about toxic heavy metals in infant formula.