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H.536

An act relating to toxic heavy metals in baby food products

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

* * *

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.

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

4 (5) “Proficient laboratory” means a laboratory that:

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

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

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

15 (6) “QR code” means a two-dimensional matrix barcode consisting of
16 blocks arranged in a grid that can be read by an imaging device.

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

1 (8) “Toxic heavy metal” means arsenic, cadmium, lead, and mercury.

2 (9) “URL” means a uniform resource locator.

3 (10) “U.S. FDA” means the U.S. Food and Drug Administration.

4 (b) A person shall not sell, distribute, or offer for sale any baby food
5 product in the State that contains a toxic heavy metal that exceeds the
6 regulatory limits established by the U.S. FDA. The provisions of this
7 subsection shall not restrict the continued sale of inventory in stock before
8 January 1, 2027.

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

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

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

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

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

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

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

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

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

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

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

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

12 (g) A violation of this section shall be deemed a violation of the Consumer
13 Protection Act, 9 V.S.A. chapter 63. The Attorney General has the same
14 authority, and private parties have the same rights and remedies, as provided
15 under 9 V.S.A. chapter 63, subchapter 1.

16 (h) Nothing in this section shall be construed to conflict with federal law or
17 regulation.

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

19 § 4091. BABY FOOD PRODUCTS

20 (a) As used in this section:

1 Sec. 3. INFANT FORMULA; STOCK SUPPLY

2 The provisions of Sec. 2 (18 V.S.A. § 4091) of this act shall not restrict the
3 continued sale of infant formula inventory in stock in Vermont prior to the
4 effective date of Sec. 2 of this act pursuant to Sec. 4(b) of this act.

5 Sec. 4. EFFECTIVE DATES

6 (a) This section, Sec. 1 (18 V.S.A. chapter 82), and Sec. 3 (infant formula;
7 stock supply) shall take effect on January 1, 2027.

8 (b) Sec. 2 (18 V.S.A. § 4091) shall take effect upon the Attorney General's
9 written confirmation to the Speaker of the House and to the President Pro
10 Tempore of the Senate, which shall be posted on the General Assembly's
11 website, that a law has taken effect in California or two other states with
12 requirements substantially comparable to the requirements of this act regarding
13 all of the following:

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

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

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