

1 H.484

2 Introduced by Representatives Jewett of Ripton, Ancel of Calais, Bissonnette
3 of Winooski, Botzow of Pownal, Donovan of Burlington, Evans
4 of Essex, Fisher of Lincoln, French of Shrewsbury, French of
5 Randolph, Geier of South Burlington, Grad of Moretown, Head
6 of South Burlington, Hooper of Montpelier, Howard of Rutland
7 City, Keenan of St. Albans City, Kitzmiller of Montpelier,
8 Lanpher of Vergennes, Leriche of Hardwick, Lippert of
9 Hinesburg, Macaig of Williston, Marek of Newfane, Milkey of
10 Brattleboro, Mook of Bennington, Mrowicki of Putney, O'Brien
11 of Richmond, Pellett of Chester, Potter of Clarendon, Pugh of
12 South Burlington, Shand of Weathersfield, Smith of Mendon,
13 Stevens of Waterbury, Taylor of Barre City, Till of Jericho, Toll
14 of Danville, Waite-Simpson of Essex, Wizowaty of Burlington
15 and Young of St. Albans City

16 Referred to Committee on

17 Date:

18 Subject: Conservation; toxic substances; advisory council on toxic substances

19 Statement of purpose: This bill proposes to require the secretary of natural
20 resources to establish a toxic chemical identification and reduction program.

21 Under the program, the secretary of natural resources would identify chemicals

1 of high concern. The secretary would be authorized to designate a chemical of
2 high concern as a priority chemical. Children's products containing a priority
3 chemical would be prohibited from sale or distribution in the state.

4 An act relating to the regulation of toxic substances

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

6 Sec. 1. 10 V.S.A. chapter 159, subchapter 4 is added to read:

7 Subchapter 4. Toxic Chemical Identification and Reduction

8 § 6671. POLICY

9 It is the policy of the state of Vermont to protect public health and the
10 environment by reducing exposure of its citizens and vulnerable populations,
11 such as children, from exposure to toxic chemicals when safer alternatives
12 exist.

13 § 6672. DEFINITIONS

14 As used in this subchapter:

15 (1) "Alternative" means a substitute process, product, material,
16 chemical, strategy, or combination of such that serves a functionally equivalent
17 purpose to a priority chemical or chemical of high concern.

18 (2) "Chemical" means a substance with a distinct molecule composition
19 or a group of structurally related substances and includes the breakdown

1 products of the substance or substances that form through decomposition or
2 metabolism.

3 (3) “Chemical of high concern” means a chemical identified by the
4 secretary of natural resources under section 6673 of this title.

5 (4) “Chemical of low concern” means a chemical for which adequate
6 toxicity and environmental data are available to determine that it is not a
7 chemical of high concern, a chemical of moderate concern, or a chemical of
8 unknown concern.

9 (5) “Chemical of moderate concern” means a chemical identified by an
10 authoritative governmental entity on the basis of credible scientific evidence as
11 being suspected of causing one or more of the adverse health or environmental
12 effects set forth under subsection 6673(a) of this title.

13 (6) “Chemical of unknown concern” means a chemical for which
14 insufficient data are available to classify it as a chemical of high concern, a
15 chemical of moderate concern, or a chemical of low concern.

16 (7) “Children’s product” means:

17 (A) a consumer product intended for use by children, such as a baby
18 product, toy, car seat, personal care product, or clothing; and

19 (B) any consumer product containing a chemical of high concern that
20 when used or disposed of will likely result in a child being exposed to that
21 chemical.

1 (8) “Consumer product” means any item sold for residential or
2 commercial use, including any component or packaging. “Consumer product”
3 does not include:

4 (A) a food or beverage or an additive to a food or beverage;

5 (B) a tobacco product;

6 (C) a paper or forest product;

7 (D) a pesticide regulated by the U.S. Environmental Protection

8 Agency;

9 (E) a drug or biologic regulated by the U.S. Food and Drug

10 Administration or the packaging of such a drug or biologic if the U.S. Food
11 and Drug Administration regulates the drug or biologic’s packaging.

12 (9) “Distributor” means a person who sells a consumer product to a
13 retail establishment on a wholesale basis.

14 (10) “Manufacturer” means any person who manufactures a final
15 consumer product or whose brand name is affixed to the consumer product. In
16 the case of a consumer product imported into the state and distributed, sold, or
17 offered for sale in the state, “manufacturer” includes the importer or domestic
18 distributor of the consumer product if the person who manufactured or
19 assembled the consumer product or whose brand name is affixed to the
20 consumer product does not have a presence in the United States.

1 (11) “Priority chemical” means a chemical identified as such by the
2 secretary of natural resources under section 6674 of this title.

3 (12) “Safer alternative” means an alternative that, when compared to a
4 priority chemical that it could replace, would reduce the potential for harm to
5 human health or the environment or that has not been shown to pose the same
6 or greater potential for harm to human health or the environment as the priority
7 chemical.

8 (13) “Secretary” means the secretary of natural resources.

9 § 6673. CHEMICAL OF HIGH CONCERN

10 (a) On or before January 1, 2012, the secretary shall publish a list of
11 chemicals of high concern to public health or the environment of the state of
12 Vermont. The secretary shall update the list of chemicals of high concern as
13 necessary and at least annually. A chemical or other substance may be
14 included on the list of chemicals of high concern if the secretary determines
15 that it has been identified by an authoritative governmental entity on the basis
16 of credible scientific evidence as being known as:

17 (1) a carcinogen;

18 (2) a mutagen;

19 (3) a reproductive or developmental toxin;

20 (4) an endocrine disruptor; or

21 (5) a persistent or bioaccumulative toxin.

1 (b) The secretary may revise the list as needed and may add a chemical to
2 the list of chemicals of high concern if it meets one or more of the criteria of
3 subsection (a) of this section. The secretary may remove a chemical from the
4 list of chemicals of high concern if, based on evidence, the secretary
5 determines that the chemical does not meet or no longer meets one or more of
6 the criteria of subsection (a) of this section.

7 § 6674. PRIORITY CHEMICALS

8 (a) The secretary of natural resources shall designate as a priority chemical
9 any chemical classified as “known to be a human carcinogen” in the most
10 recent report on carcinogens by the National Toxicology Program in the U.S.
11 Department of Health and Human Services.

12 (b) The secretary may designate a chemical of high concern as a priority
13 chemical if the secretary finds that:

14 (1) the chemical has been found through biomonitoring to be present in
15 human blood, umbilical cord blood, breast milk, urine, or other bodily tissues
16 or fluids.

17 (2) the chemical has been found through sampling and analysis to be
18 present in household dust, indoor air, drinking water, or elsewhere in the home
19 environment;

20 (3) the chemical has been found through monitoring to be present in
21 fish, wildlife, or the natural environment;

1 (4) the chemical has been found to be present in a consumer product
2 used or present in the home;

3 (5) the chemical has been identified as a high production volume
4 chemical by the U.S. Environmental Protection Agency; or

5 (6) the sale or use of the chemical or a product containing the chemical
6 has been banned in another state within the United States.

7 (c) In reviewing the list of chemicals of high concern for designation as a
8 priority chemical under subsection (b) of this section, the secretary shall
9 prioritize designation of chemicals that have been:

10 (1) Characterized as “reasonably anticipated to be a human carcinogen”
11 in the most recent report on carcinogens by the National Toxicology Program
12 in the U.S. Department of Health and Human Services;

13 (2) Classified as “likely to be carcinogenic to humans” in the U.S.
14 Environmental Protection Agency’s most recent list of chemicals evaluated for
15 carcinogenic potential; or

16 (3) Identified by the U.S. Environmental Protection Agency as causing
17 birth defects, hormone disruption, or harm to reproduction or development.

18 (d) Beginning January 1, 2012, the secretary shall report annually to the
19 house and senate committees on natural resources and energy, house
20 committee on fish, wildlife and water resources, senate committee on health
21 and welfare, and house committee on human services with a summary of the

1 chemicals reviewed for designation under this section, a description of such
2 review, and the number of chemicals designated as priority chemicals under
3 this section.

4 § 6675. PRIORITY CHEMICAL NOTIFICATION OF USE

5 (a) No later than 180 days after the secretary designates a priority chemical
6 under section 6674 of this title, a manufacturer or distributor of a children's
7 product that is distributed, sold, or offered for sale in Vermont and that
8 contains the priority chemical designated by the secretary shall notify the
9 secretary in writing of the presence of the priority chemical in the children's
10 product. The notification shall:

11 (1) identify the children's product;

12 (2) disclose the number of units of the children's product sold or
13 distributed in the state;

14 (3) specify the priority chemical or chemicals and the amount of
15 chemical or chemicals contained in the children's product; and

16 (4) describe the intended purpose or use of the priority chemical in the
17 children's product.

18 (b) The manufacturer or distributor of a children's product that contains a
19 priority chemical shall provide the following additional information if
20 requested by the secretary:

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

5 (2) information on the extent to which the chemical is present in the
6 environment or human body;

7 (3) an assessment of the availability, cost, feasibility, and performance,
8 including potential for harm to public health and the environment, or
9 alternatives to the priority chemical and the reason the priority chemical was
10 used in the manufacture of the children's product in lieu of the identified
11 alternatives, If an assessment acceptable to the secretary is not timely
12 submitted, the secretary may assess the manufacturer or distributor the cost of
13 a report conducted by an independent contractor of the secretary's choice on
14 the availability of safer alternatives.

15 § 6676. PROHIBITION ON SALE

16 (a) The secretary may prohibit, by rule, the manufacture, sale, or
17 distribution in the state of a children's product containing a priority chemical if
18 the secretary determines, after consideration of the information submitted
19 under section 6675 of this title and other relevant information obtained by the
20 secretary, that:

1 (1) distribution of the children's product directly or indirectly exposes
2 children and vulnerable populations to the priority chemical; and

3 (2) one or more safer alternatives to the priority chemical are available
4 at a comparable cost.

5 (b) If, under subsection (a) of this section, the secretary identifies several
6 safer alternatives to a priority chemical, the secretary may ban the sale of
7 children's products that do not contain the alternative that is the least toxic to
8 public health or the environment.

9 (c) A prohibition adopted by rule under this section shall have an effective
10 date of at least 12 months from the date the proposed rule is filed with the
11 secretary of state under section 838 of Title 3.

12 (d) For the purpose of determining whether a safer alternative is available
13 under subsection (a) of this section, the secretary may, in the absence of
14 persuasive evidence to the contrary:

15 (1) presume that an alternative is a safer alternative if the alternative is
16 not a chemical of high concern;

17 (2) presume that a safer alternative is available if the sale of the
18 children's product containing the priority chemical has been banned by another
19 state within the United States;

20 (3) presume that a safer alternative is available if the children's product
21 containing the priority chemical is an item of apparel or a novelty; and

1 (4) presume that a safer alternative is available if the alternative is sold
2 in the United States.

3 (e) At least 180 days prior to the effective date of a prohibition of a priority
4 chemical adopted under subsection (a) of this section, a manufacturer or
5 distributor of a children's product that contains the priority chemical that is
6 subject to the prohibition shall file a compliance plan with the secretary or
7 shall seek a waiver from the secretary under subsection (g) of this section. A
8 compliance plan submitted under this subsection shall:

9 (1) identify the children's product that contains a priority chemical;

10 (2) specify whether compliance with a prohibition on a priority chemical
11 will be achieved by discontinuing the sale of the children's product in the state
12 or by substituting a safer alternative in the product; and

13 (3) if compliance is to be achieved by substitution of a safer alternative in
14 the product, identify the safer alternative and the time table for substitution.

15 (f) A manufacturer or distributor of a children's product that contains a
16 priority chemical shall notify all persons that offer the children's product for
17 sale or distribution in the state of the requirements of this subchapter and
18 whether the children's product is subject to a prohibition on sale adopted under
19 subsection (a) of this section.

20 (g)(1) The manufacturer or distributor of a children's product that contains
21 a priority chemical and that is subject to a prohibition adopted under

1 subsection (a) of this section may apply to the secretary for a waiver for one or
2 more specific uses of the priority chemical. The waiver application shall, at a
3 minimum:

4 (A) identify the specific children's product use or uses for which the
5 waiver is sought;

6 (B) identify the alternatives considered for substitution of the priority
7 chemical;

8 (C) explain the alternatives considered for substitution of the priority
9 chemical; and

10 (D) identify the steps that have been and will be taken to minimize
11 the use of the priority chemical.

12 (2) The secretary may grant a waiver under this subsection with or
13 without conditions upon a finding that there is a need for the children's product
14 in which the priority chemical is used and there are no technically or
15 economically feasible alternatives for the use of the priority chemical in the
16 children's product. A waiver may be granted for a term not to exceed five
17 years and may be renewed for one additional five-year term upon written
18 application demonstrating that technically or economically feasible alternatives
19 remain unavailable. The secretary shall grant or deny a request for a waiver
20 under this subsection within 60 days of receipt of an administratively complete
21 application for a waiver.

1 § 6677. EXEMPTIONS

2 The requirements of this subchapter shall not apply to:

3 (1) chemicals in used products;

4 (2) priority chemicals used in or for industry or manufacturing;

5 (3) chemicals in motor vehicles as that term is defined in section 4 of

6 Title 23;

7 (4) priority chemicals generated solely as a combustion byproduct or
8 that are present in combustible fuels;

9 (5) a person selling a children's product at retail unless the person
10 knowingly sells a children's product containing a priority chemical after the
11 effective date of a prohibition adopted under section 6676 of this title; or

12 (6) a container or packaging for a food or beverage product unless the
13 product is intentionally marketed for the use of children under three years of
14 age.

15 § 6678. INTERSTATE CLEARINGHOUSE FOR SAFER CHEMICALS

16 The secretary is authorized to participate, in cooperation with other states
17 and governmental entities, in an interstate clearinghouse to classify existing
18 chemicals and to promote safer chemicals in consumer products. The secretary
19 may also cooperate with an interstate clearinghouse in order to:

20 (1) organize and manage available data on chemicals, including
21 information on uses, hazards, and environmental concerns;

1 (2) produce and inventory information on safer alternatives to uses of
2 chemicals of concern and on model policies and programs;

3 (3) provide technical assistance to businesses and consumers related to
4 safer chemicals; and

5 (4) undertake other activities in support of state programs to promote
6 safer chemicals.

7 § 6679. CERTIFICATE OF COMPLIANCE

8 In addition to any remedies or procedures authorized by this subchapter or
9 chapter 201 of this title, the secretary may request the manufacturer or
10 distributor of a product offered for sale or distribution in the state to provide
11 the secretary with a certificate of compliance with the requirements of this
12 subchapter and rules adopted thereunder. Within 10 days of receipt of a
13 request from the secretary under this section, the manufacturer or distributor
14 shall:

15 (1) provide the secretary with a certificate attesting that the product does
16 not contain the priority chemical or is not subject to the requirements of this
17 subchapter; or

18 (2) notify persons who sell or distribute the product in the state that the
19 sale of the product is prohibited and shall provide the secretary with a list of
20 the names and addresses of those notified.

1 § 6680. EDUCATION AND CONSULTATION

2 The secretary shall develop educational materials regarding the
3 requirements of this subchapter for distribution to manufacturers, distributors,
4 and retailers. The secretary shall consult with retailers and retailer associations
5 in order to assist retailers in complying with the requirements of this
6 subchapter.

7 § 6681. ADVISORY COUNCIL ON TOXIC SUBSTANCES

8 (a) There is created an advisory council on toxic substances to provide
9 expert and scientific advice to the secretary regarding identification of
10 chemicals of high concern, designation of priority chemicals, and identification
11 of safer alternative chemicals. The advisory council on toxic substances shall
12 annually recommend to the secretary:

13 (1) strategies or actions to reduce public health risks from exposure to
14 chemicals of high concern. In identifying public health risks, the advisory
15 council on toxic substances shall with heightened scrutiny evaluate potential
16 public health risks to citizens of the state of Vermont;

17 (2) restrictions on or prohibitions of the distribution, sale, or use of a
18 chemical of high concern;

19 (3) public disclosure requirements for a manufacturer of a chemical of
20 high concern or a product containing a chemical of high concern; and

21 (4) safer alternative chemicals to chemicals of high concern.

1 (b) The advisory council on toxic substances shall consist of the following
2 members:

3 (1) one member of the house of representatives, appointed by the
4 speaker;

5 (2) one member of the senate, appointed by the committee on
6 committees;

7 (3) the secretary of natural resources or the secretary's designee;

8 (4) the commissioner of health or the commissioner's designee;

9 (5) the secretary of agriculture, food and markets or the secretary's
10 designee;

11 (6) the attorney general of Vermont or the attorney general's designee;

12 (7) a representative of a solid waste management district, appointed by
13 the governor;

14 (8) a Vermont toxicologist, appointed by the governor;

15 (9) a representative of the Vermont retail community, appointed by the
16 governor;

17 (10) a representative of the Vermont manufacturing community,
18 appointed by the governor;

19 (11) a representative of a Vermont college or university, appointed by
20 the committee on committees;

1 (12) a representative of the Vermont medical community, appointed by
2 the committee on committees;

3 (13) a representative of a statewide consumer interest group, appointed
4 by the speaker of the house;

5 (14) a representative of a statewide environmental group, appointed by
6 the speaker of the house; and

7 (15) a scientist knowledgeable about matters related to toxic substances,
8 appointed by the speaker of the house.

9 (c) The advisory council on toxic substances shall report annually to the
10 general assembly by January 15 with a summary of the recommendations
11 presented to the secretary under subsection (a) of this section.

12 (d) The agency of natural resources shall provide the advisory council on
13 toxic substances with technical, legal, and administrative staff support as
14 needed.

15 § 6682. RULEMAKING

16 The secretary may adopt rules to implement the requirements of this
17 subchapter.

18 Sec. 2. REPEAL OF ADVISORY COMMITTEE ON MERCURY

19 POLLUTION

20 10 V.S.A. § 7113 (advisory committee on mercury pollution) is repealed.

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on July 1, 2010.