

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Fish, Wildlife and Water Resources to which was
3 referred Senate Bill No. 239 entitled “An act relating to the regulation of toxic
4 substances” respectfully reports that it has considered the same and
5 recommends that the House propose to the Senate that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. FINDINGS

9 The General Assembly finds that:

10 (1) There are more than 84,000 chemicals used commercially in the
11 United States, and each year approximately 1,000 chemicals are added to the
12 list of registered chemicals.

13 (2) More than 90 percent of the chemicals in commercial use in the
14 United States have never been fully tested for potential impacts on human
15 health or the environment.

16 (3) In 1976, the federal government passed the Toxic Substances
17 Control Act (TSCA) in an attempt to improve the regulation of chemicals
18 in the United States. However, TSCA grandfathered approximately
19 62,000 chemicals from regulation under the Act. Consequently, the
20 U.S. Environmental Protection Agency (EPA) is not required to assess the risk
21 of these chemicals. Since TSCA became law, EPA only has required testing

1 for approximately 200 chemicals, and has banned or restricted the use of five
2 of those chemicals. No chemicals have been banned in over 20 years.

3 (4) Biomonitoring studies reveal that toxic chemicals are in the bodies
4 of people, including chemicals linked to cancer, brain and nervous damage,
5 birth defects, developmental delays, and reproductive harm. Even newborn
6 babies have chemical body burdens, proving that they are being polluted while
7 in the womb.

8 (5) Vermont has regulated the use of individual chemicals of concern,
9 including lead, mercury, bisphenol A, phthalates, decabromodiphenyl ether,
10 tris(1,3-dichloro-2-propyl) phosphate, and tris(2-chloroethyl) phosphate, but
11 reviewing chemicals individually, one at a time, is inefficient and inadequate
12 for addressing the issues posed by chemicals of concern.

13 (6) Other states and countries, including Maine, Washington, California,
14 and the European Union, are already taking a more comprehensive approach to
15 chemical regulation in consumer products, and chemical regulation in Vermont
16 should harmonize with these efforts.

17 (7) The State has experience monitoring and regulating chemical use
18 through the toxic use and hazardous waste reduction programs.

19 (8) In order to ensure that the regulation of toxic chemicals is robust and
20 protective, parties affected by the regulation of chemical use shall have ample

1 opportunity to comment on proposed regulation so that the legal and financial
2 risks of regulation are minimized.

3 Sec. 2. 18 V.S.A. chapter 38A is added to read:

4 CHAPTER 38A. CHEMICALS OF HIGH CONCERN
5 TO CHILDREN

6 § 1771. POLICY

7 It is the policy of the State of Vermont:

8 (1) to protect public health and the environment by reducing exposure of
9 its citizens and vulnerable populations, such as children, to toxic chemicals,
10 particularly when safer alternatives exist; and

11 (2) that the State attempt, when possible, to regulate toxic chemicals in a
12 manner that is consistent with regulation of toxic chemicals in other states.

13 § 1772. DEFINITIONS

14 As used in this chapter:

15 (1) “Aircraft” shall have the same meaning as in 5 V.S.A. § 202.

16 (2) “Chemical” means a substance with a distinct molecular composition
17 or a group of structurally related substances and includes the breakdown
18 products of the substance or substances that form through decomposition,
19 degradation, or metabolism. “Chemical” shall not mean crystalline silica in
20 any form, as derived from ordinary sand or as present as a naturally occurring

1 component of any other mineral raw material, including granite, gravel,
2 limestone, marble, slate, soapstone, and talc.

3 (3) “Chemical of high concern to children” means a chemical listed
4 under section 1773 or designated by the Department as a chemical of high
5 concern by rule under section 1776 of this title.

6 (4) “Child” or “children” means an individual or individuals under
7 12 years of age.

8 (5) “Children’s cosmetics” means cosmetics that are made for, marketed
9 for use by, or marketed to children. “Children’s cosmetics” includes cosmetics
10 that meet any of the following conditions:

11 (A) are represented in its packaging, display, or advertising as
12 appropriate for use by children;

13 (B) are sold in conjunction with, attached to, or packaged together
14 with other products that are packaged, displayed, or advertised as appropriate
15 for use by children; or

16 (C) are sold in any of the following:

17 (i) a retail store, catalogue, or online website, in which a person
18 exclusively offers for sale consumer products that are packaged, displayed, or
19 advertised as appropriate for use by children; or

1 (ii) a discrete portion of a retail store, catalogue, or online website,
2 in which a person offers for sale products that are packaged, displayed, or
3 advertised as appropriate for use by children.

4 (6) “Children’s jewelry” means jewelry that is made for, marketed for
5 use by, or marketed to children and shall include jewelry that meets any of the
6 following conditions:

7 (A) is represented in its packaging, display, or advertising as
8 appropriate for use by children;

9 (B) is sold in conjunction with, attached to, or packaged together
10 with other products that are packaged, displayed, or advertised as appropriate
11 for use by children;

12 (C) is sized for children and not intended for use by adults; or

13 (D) is sold in any of the following:

14 (i) a vending machine;

15 (ii) a retail store, catalogue, or online website, in which a person
16 exclusively offers for sale products that are packaged, displayed, or advertised
17 as appropriate for use by children; or

18 (iii) a discrete portion of a retail store, catalogue, or online
19 website, in which a person offers for sale products that are packaged,
20 displayed, or advertised as appropriate for use by children.

1 (7)(A) “Children’s product” means any consumer product, marketed for
2 use by, marketed to, sold, offered for sale, or distributed to children in the State
3 of Vermont, including:

4 (i) toys;

5 (ii) children’s cosmetics;

6 (iii) children’s jewelry;

7 (iv) a product designed or intended by the manufacturer to help a
8 child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a
9 child, or to be worn as clothing by children; or

10 (v) child car seats.

11 (B) “Children’s product” shall not mean or include the following:

12 (i) batteries;

13 (ii) consumer electronic products, including personal computers,
14 audio and video equipment, calculators, wireless phones, game consoles, and
15 hand-held devices incorporating a video screen used to access interactive
16 software intended for leisure and entertainment and their associated
17 peripherals;

18 (iii) interactive software, intended for leisure and entertainment,
19 such as computer games, and their storage media, such as compact discs;

20 (iv) snow sporting equipment, including skis, poles, boots, snow
21 boards, sleds, and bindings;

1 (v) inaccessible components of a consumer product that during
2 reasonably foreseeable use and abuse of the consumer product would not come
3 into direct contact with a child’s skin or mouth; and

4 (vi) used consumer products that are sold in second-hand product
5 markets.

6 (8) “Consumer product” means any product that is regularly used or
7 purchased to be used for personal, family, or household purposes. “Consumer
8 product” shall not mean:

9 (A) a product primarily used or purchased for industrial or
10 business use that does not enter the consumer product market or is not
11 otherwise sold at retail;

12 (B) a food or beverage or an additive to a food or beverage;

13 (C) a tobacco product;

14 (D) a pesticide regulated by the U.S. Environmental Protection
15 Agency;

16 (E) a drug, or biologic regulated by the U.S. Food and Drug
17 Administration (FDA), or the packaging of a drug, or biologic that is regulated
18 by the FDA, including over the counter drugs, prescription drugs, dietary
19 supplements, medical devices, or products that are both a cosmetic and a drug
20 regulated by the FDA;

1 (F) ammunition or components thereof, firearms, air rifles, hunting or
2 fishing equipment or components thereof;

3 (G) an aircraft, motor vehicle, vessel; or

4 (H) the packaging in which a consumer product is sold, offered for
5 sale, or distributed.

6 (9) “Contaminant” means a trace amount of a chemical or chemicals that
7 is incidental to manufacturing and serves no intended function in the children’s
8 product or component of the children’s product, including an unintended
9 by-product of chemical reactions during the manufacture of the children’s
10 product, a trace impurity in feed-stock, an incompletely reacted chemical
11 mixture, and a degradation product.

12 (10) “Cosmetics” means articles intended to be rubbed, poured,
13 sprinkled, or sprayed on, introduced into, or otherwise applied to the human
14 body or any part thereof for cleansing, beautifying, promoting attractiveness,
15 or altering appearance, and articles intended for use as a component of such an
16 article. “Cosmetics” shall not mean soap, dietary supplements, or food and
17 drugs approved by the U.S. Food and Drug Administration.

18 (11) “Intentionally added” means the addition of a chemical in a product
19 that serves an intended function in the product component.

1 (12) “Manufacturer” means:

2 (A) any person who manufactures a children’s product or whose
3 name is affixed to a children’s product or its packaging or advertising, and the
4 children’s product is sold or offered for sale in Vermont; or

5 (B) any person who sells a children’s product to a retailer in Vermont
6 when the person who manufactures the children’s product or whose name is
7 affixed to the children’s product or its packaging or advertising does not have a
8 presence in the United States other than the sale or offer for sale of the
9 manufacturer’s products.

10 (13) “Motor vehicle” means every vehicle intended primarily for use
11 and operation on the public highways and shall include snowmobiles,
12 all-terrain vehicles, and farm tractors and other machinery used in the
13 production, harvesting, and care of farm products.

14 (14) “Persistent bioaccumulative toxic” means a chemical or chemical
15 group that, based on credible scientific information, meets each of the
16 following criteria:

17 (A) the chemical can persist in the environment as demonstrated by
18 the fact that:

19 (i) the half-life of the chemical in water is greater than or equal
20 to 60 days;

1 (ii) the half-life of the chemical in soil is greater than or equal to
2 60 days; or

3 (iii) the half-life of the chemical in sediments is greater than or
4 equal to 60 days; and

5 (B) the chemical has a high potential to bioaccumulate based on
6 credible scientific information that the bioconcentration factor or
7 bioaccumulation factor in aquatic species for the chemical is greater than 1,000
8 or, in the absence of such data, that the log-octanol water partition coefficient
9 (log Kow) is greater than five; and

10 (C) the chemical has the potential to be toxic to children as
11 demonstrated by the fact that:

12 (i) the chemical or chemical group is a carcinogen, a
13 developmental or reproductive toxicant, or a neurotoxicant;

14 (ii) the chemical or chemical group has a reference dose or
15 equivalent toxicity measure that is less than 0.003 mg/kg/day; or

16 (iii) the chemical or chemical group has a chronic no observed
17 effect concentration (NOEC) or equivalent toxicity measure that is less than
18 0.1 mg/L or an acute NOEC or equivalent toxicity measure that is less than
19 1.0 mg/L.

20 (15) “Practical quantification limit (PQL)” means the lowest
21 concentration that can be reliably measured within specified limits of

1 precision, accuracy, representativeness, completeness, and comparability
2 during routine laboratory operating conditions.

3 (16) “Toy” means a consumer product designed or intended by the
4 manufacturer to be used by a child at play.

5 (17) “Vessel” means every description of watercraft used or capable of
6 being used as a means of transportation on water.

7 § 1773. CHEMICALS OF HIGH CONCERN TO CHILDREN

8 (a) List of chemicals of high concern to children. The following chemicals
9 are designated as chemicals of high concern to children for the purposes of the
10 requirements of this chapter:

11 (1) Formaldehyde.

12 (2) Aniline.

13 (3) N-Nitrosodimethylamine.

14 (4) Benzene.

15 (5) Vinyl chloride.

16 (6) Acetaldehyde.

17 (7) Methylene chloride.

18 (8) Carbon disulfide.

19 (9) Methyl ethyl ketone.

20 (10) 1,1,2,2-Tetrachloroethane.

21 (11) Tetrabromobisphenol A.

- 1 (12) Bisphenol A.
- 2 (13) Diethyl phthalate.
- 3 (14) Dibutyl phthalate.
- 4 (15) Di-n-hexyl phthalate.
- 5 (16) Phthalic anhydride.
- 6 (17) Butyl benzyl phthalate (BBP).
- 7 (18) N-Nitrosodiphenylamine.
- 8 (19) Hexachlorobutadiene.
- 9 (20) Propyl paraben.
- 10 (21) Butyl paraben.
- 11 (22) 2-Aminotoluene.
- 12 (23) 2,4-Diaminotoluene.
- 13 (24) Methyl paraben.
- 14 (25) p-Hydroxybenzoic acid.
- 15 (26) Ethylbenzene.
- 16 (27) Styrene.
- 17 (28) 4-Nonylphenol; 4-NP and its isomer mixtures, including
18 CAS 84852-15-3 and CAS 25154-52-3.
- 19 (29) para-Chloroaniline.
- 20 (30) Acrylonitrile.
- 21 (31) Ethylene glycol.

- 1 (32) Toluene.
- 2 (33) Phenol.
- 3 (34) 2-Methoxyethanol.
- 4 (35) Ethylene glycol monoethyl ester.
- 5 (36) Tris(2-chloroethyl) phosphate.
- 6 (37) Di-2-ethylhexyl phthalate.
- 7 (38) Di-n-octyl phthalate (DnOP).
- 8 (39) Hexachlorobenzene.
- 9 (40) 3,3'-Dimethylbenzidine and dyes metabolized to
10 3,3'-Dimethylbenzidine.
- 11 (41) Ethyl paraben.
- 12 (42) 1,4-Dioxane.
- 13 (43) Perchloroethylene.
- 14 (44) Benzophenone-2 (Bp-2); 2,2',4,4'-Tetrahydroxybenzophenone.
- 15 (45) 4-tert-Octylphenol; 4(1,1,3,3-Tetramethylbutyl) phenol.
- 16 (46) Estragole.
- 17 (47) 2-Ethylhexanoic acid.
- 18 (48) Octamethylcyclotetrasiloxane.
- 19 (49) Benzene, Pentachloro.
- 20 (50) C.I. Solvent yellow 14.
- 21 (51) N-Methylpyrrolidone.

- 1 (52) 2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209.
- 2 (53) Perfluorooctanyl sulphonic acid and its salts; PFOS.
- 3 (54) Phenol, 4-octyl.
- 4 (55) 2-Ethyl-hexyl-4-methoxycinnamate.
- 5 (56) Mercury and mercury compounds, including methyl mercury
6 (22967-92-6).
- 7 (57) Molybdenum and molybdenum compounds.
- 8 (58) Antimony and antimony compounds.
- 9 (59) Arsenic and arsenic compounds, including arsenic trioxide
10 (1327-53-3) and dimethyl arsenic (75-60-5).
- 11 (60) Cadmium and cadmium compounds.
- 12 (61) Cobalt and cobalt compounds.
- 13 (62) Tris(1,3-dichloro-2-propyl)phosphate.
- 14 (63) Butylated hydroxyanisole; BHA.
- 15 (64) Hexabromocyclododecane
- 16 (65) Diisodecyl phthalate (DIDP).
- 17 (66) Diisononyl phthalate (DINP).
- 18 (67) any other chemical designated by the Commissioner as a chemical
19 of high concern to children by rule under section 1776 of this title.
- 20 (b) Beginning on July 1, 2017, and biennially thereafter, the Commissioner
21 of Health shall review the list of chemicals of high concern to children to

1 determine if additional chemicals should be added to the list under subsection
2 1776(b) of this title. In reviewing the list of chemicals of high concern to
3 children, the Commissioner of Health may consider designations made by
4 other states, the federal government, other countries, or other governmental
5 agencies.

6 (c) Publication of list. The Commissioner shall post the list of chemicals of
7 high concern to children on the Department of Health website by chemical
8 name and Chemical Abstracts Service number.

9 (d) Addition or removal from list. Under 3 V.S.A. § 806, any person may
10 request that the Commissioner add or remove a chemical from the list of
11 chemicals of high concern to children.

12 (e) PQL value. A PQL value established under this chapter for individual
13 chemicals shall depend on the analytical method used for each chemical. The
14 PQL value shall be based on scientifically defensible, standard analytical
15 methods as advised by guidance published by the Department.

16 § 1774. CHEMICALS OF HIGH CONCERN TO CHILDREN WORKING
17 GROUP

18 (a) Creation. A Chemicals of High Concern to Children Working Group
19 (Working Group) is created within the Department of Health for the purpose of
20 providing the Commissioner of Health advice and recommendations regarding
21 implementation of the requirements of this chapter.

1 (b) Membership.

2 (1) The Working Group shall be composed of the following members
3 who, except for ex officio members, shall be appointed by the Governor after
4 consultation with the Commissioner of Health:

5 (A) the Commissioner of Health or designee, who shall be the chair
6 of the Working Group;

7 (B) the Commissioner of Environmental Conservation or designee;

8 (C) the State toxicologist or designee;

9 (D) a representative of a public interest group in the State with
10 experience in advocating for the regulation of toxic substances;

11 (E) a representative of an organization within the State with expertise
12 in issues related to the health of children or pregnant women;

13 (F) two representatives of businesses in the State that use chemicals
14 in a manufacturing or production process or use chemicals that are used in a
15 children's product manufactured in the State;

16 (G) a scientist with expertise regarding the toxicity of chemicals; and

17 (H) a representative of the children's products industry with expertise
18 in existing state and national policies impacting children's products.

19 (2)(A) In addition to the members of the Working Group appointed
20 under subdivision (1) of this subsection, the Governor may appoint up to three
21 additional adjunct members.

1 (B) An adjunct member appointed under this subdivision (2) shall
2 have expertise or knowledge of the chemical or children’s product under
3 review or shall have expertise or knowledge in the potential health effects of
4 the chemical at issue.

5 (C) Adjunct members appointed under this subdivision (2) shall have
6 the same authority and powers as a member of the Working Group appointed
7 under subdivision (1) of this subsection (b).

8 (3) The members of the Working Group appointed under subdivision (1)
9 of this subsection shall serve staggered three-year terms. The Governor may
10 remove members of the Working Group who fail to attend three consecutive
11 meetings and may appoint replacements. The Governor may reappoint
12 members to serve more than one term.

13 (c) Powers and duties. The Working Group shall:

14 (1) upon the request of the Chair of the Working Group, review
15 proposed chemicals for listing as a chemical of high concern to children under
16 section 1773 of this title; and

17 (2) recommend to the Commissioner of Health whether rules should be
18 adopted under section 1776 of this title to regulate the sale or distribution of a
19 children’s product containing a chemical of high concern to children.

20 (d) Commissioner of Health recommendation; assistance.

1 (1) Beginning on July 1, 2017, and biennially thereafter, the
2 Commissioner of Health shall recommend chemicals of high concern to
3 children in children’s products for review by the Working Group. The
4 Commissioner’s recommendations shall be based on the degree of human
5 health risks, exposure pathways, and impact on sensitive populations presented
6 by a chemical of high concern to children.

7 (2) The Working Group shall have the administrative, technical, and
8 legal assistance of the Department of Health and the Agency of Natural
9 Resources.

10 (e) Meetings.

11 (1) The Chair of the Working Group may convene the Working Group
12 at any time, but no less frequently than at least once every other year.

13 (2) A majority of the members of the Working Group, including adjunct
14 members when appointed, shall constitute a quorum, and all action shall be
15 taken upon a majority vote of the members present and voting.

16 (f) Reimbursement. Members of the Working Group, including adjunct
17 members, whose participation is not supported through their employment or
18 association shall receive per diem compensation pursuant to 32 V.S.A. § 1010
19 and reimbursement of travel expenses. A per diem authorized by this section
20 shall be paid from the budget of the Department of Health.

1 § 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF
2 HIGH CONCERN

3 (a) Notice requirement. Unless the Commissioner adopts by rule a
4 phased-in reporting requirement under section 1776, beginning on July 1,
5 2015, and biennially thereafter, a manufacturer of a children’s product or a
6 trade association representing a manufacturer of children’s products shall
7 submit to the Department the notice described in subsection (b) of this section
8 if a chemical of high concern to children is:

9 (1) intentionally added to a children’s product at a level above the PQL
10 produced by the manufacturer; or

11 (2) present in a children’s product produced by the manufacturer as a
12 contaminant at a concentration of 100 parts per million or greater.

13 (b) Format for notice. The Commissioner shall specify the format for
14 submission of the notice required by subsection (a) of this section, provided
15 that the required format shall be generally consistent with the format for
16 submission of notice in other states with requirements substantially similar to
17 the requirements of this section. Any notice submitted under subsection (a)
18 shall contain the following information:

19 (1) the name of the chemical used or produced and its chemical abstracts
20 service registry number;

1 (2) a description of the product or product component containing the
2 substance;

3 (3) the amount of the chemical by weight contained in each unit of the
4 product or product component;

5 (4) the name and address of the manufacturer of the children’s product
6 and the name, address, and telephone number of a contact person for the
7 manufacturer;

8 (5) any other information the manufacturer deems relevant to the
9 appropriate use of the product; and

10 (6) any other information required by the Commissioner under rules
11 adopted pursuant to 3 V.S.A. chapter 25.

12 (c) Reciprocal data-sharing. In order for the Department to obtain the
13 information required in the notice described in subsection (b) of this section,
14 the Department may enter into reciprocal data-sharing agreements with other
15 states in which a manufacturer of children’s products is also required to
16 disclose information related to chemicals of high concern to children in
17 children’s products. The Department shall not disclose trade secret
18 information, confidential business information, or other information designated
19 as confidential by law under a reciprocal data-sharing agreement.

20 (d) Waiver of reporting requirement. Upon application of a manufacturer
21 on a form provided by the Department, the Commissioner may waive reporting

1 requirements under this section if a manufacturer submitted the information
2 required by this section to:

3 (1) a state with which the Department has entered a reciprocal
4 data-sharing agreement; or

5 (2) a trade association, the Interstate Chemicals Clearinghouse, or other
6 independent third party, if:

7 (A) the information reported to the third party is publicly
8 available; and

9 (B) the information required to be reported for chemicals under this
10 chapter is provided to the third party and access to that information is or will
11 be clearly available from the Department of Health website.

12 (e) Chemical control program. A manufacturer shall be exempt from the
13 requirements of notice under this section for any chemical of high concern to
14 children that is present in a children's product or component of a children's
15 product only as a contaminant if, during manufacture of the children's product,
16 the manufacturer was implementing a manufacturing control program and
17 exercised due diligence to minimize the presence of the contaminant in the
18 children's product.

19 (f) Notice of removal of chemical. A manufacturer who submitted the
20 notice required by subsection (a) of this section may at any time submit to the
21 Department notice that a chemical of high concern to children has been

1 removed from the manufacturer’s children’s product or that the manufacturer
2 no longer sells, offers for sale, or distributes in the State the children’s product
3 containing the chemical of high concern to children. Upon verification of a
4 manufacturer’s notice under this subsection, the Commissioner shall promptly
5 remove from the Department website any reference to the relevant children’s
6 product of the manufacturer.

7 (g) Certificate of compliance. A manufacturer required to submit notice
8 under this section to the Commissioner may rely on a certificate of compliance
9 from suppliers for determining reporting obligations.

10 (h) Products for sale out of State. A manufacturer shall not be required to
11 submit notice under this section for a children’s product manufactured, stored
12 in, or transported through Vermont solely for use or sale outside of the State of
13 Vermont.

14 (i) Publication of information; disclaimer. The Commissioner shall post on
15 the Department of Health website information submitted under this section by
16 a manufacturer. When the Commissioner posts on the Department of Health
17 website information submitted under this section by a manufacturer, the
18 Commissioner shall provide the following notice:

19 “The reports on this website are based on data provided to the Department.
20 The presence of a chemical in a children’s product does not necessarily mean
21 that the product is harmful to human health or that there is any violation of

1 existing safety standards or laws. The reporting triggers are not health-based
2 values.”

3 (j) Fee. A manufacturer required under this section to provide information
4 on its use of a chemical of high concern to children shall pay a fee of
5 \$2,000.00 per chemical of high concern to children used by the manufacturer
6 in the production of children’s products. A fee required under this subsection
7 shall be submitted when the manufacturer provides the first submission of
8 notice required under this section for each chemical of high concern to
9 children. The fee required shall be required only with the first submission of
10 notice required under this section and shall not be required for each required
11 subsequent biennial notice. Fees collected under this subsection shall be
12 deposited in the Chemicals of High Concern Fund for the purposes of that
13 Fund.

14 (k) Application of section. The requirements of this section shall apply
15 unless a manufacturer is exempt or unless notice according to the requirements
16 of this section is specifically preempted by federal law. In the event of conflict
17 between the requirements of this section and federal law, federal law shall
18 control.

1 § 1776. RULEMAKING; ADDITIONAL CHEMICALS OF CONCERN TO
2 CHILDREN; PROHIBITION OF SALE

3 (a) Rulemaking authority. The Commissioner shall, after consultation with
4 the Secretary of Natural Resources, adopt rules as necessary for the purposes
5 of implementing, administering, or enforcing the requirements of this chapter.

6 (b) Additional chemicals of concern to children. The Commissioner may
7 by rule add additional chemicals to the list of chemicals of high concern to
8 children, provided that the Commissioner of Health, on the basis of the weight
9 of credible, scientific evidence, has determined that a chemical proposed for
10 addition to the list meets both of the following criteria in subdivisions (1) and
11 (2) of this subsection:

12 (1) The Commissioner of Health has determined that an authoritative
13 governmental entity or accredited research university has demonstrated that the
14 chemical:

15 (A) harms the normal development of a fetus or child or causes other
16 developmental toxicity;

17 (B) causes cancer, genetic damage, or reproductive harm;

18 (C) disrupts the endocrine system;

19 (D) damages the nervous system, immune system, or organs or cause
20 other systemic toxicity; or

21 (E) is a persistent bioaccumulative toxic.

1 (2) The chemical has been found through:

2 (A) biomonitoring to be present in human blood, umbilical cord
3 blood, breast milk, urine, or other bodily tissues or fluids;

4 (B) sampling and analysis to be present in household dust, indoor air,
5 drinking water, or elsewhere in the home environment; or

6 (C) monitoring to be present in fish, wildlife, or the natural
7 environment.

8 (c) Removal of chemical from list. The Commissioner may by rule remove
9 a chemical from the list of chemicals of high concern to children established
10 under section 1773 of this title or rules adopted under this section if the
11 Commissioner determines that the chemical no longer meets both of the
12 criteria of subdivisions (b)(1) and (2) of this section.

13 (d) Rule to regulate sale or distribution.

14 (1) The Commissioner, upon the recommendation of the Chemicals of
15 High Concern to Children Working Group, may adopt a rule to regulate the
16 sale or distribution of a children's product containing a chemical of high
17 concern to children upon a determination that:

18 (A) children will be exposed to a chemical of high concern to
19 children in the children's product; and

20 (B) there is a probability that, due to the degree of exposure or
21 frequency of exposure of a child to a chemical of high concern to children in a

1 children's product, exposure could cause or contribute to one or more of the
2 adverse health impacts listed under subdivision (b)(1) of this section.

3 (2) In determining whether children will be exposed to a chemical of
4 high concern in a children's product, the Commissioner shall review available,
5 credible information regarding:

6 (A) the market presence of the children's product in the State;

7 (B) the type or occurrence of exposures to the relevant chemical of
8 high concern to children in the children's product;

9 (C) the household and workplace presence of the children's product;

10 (D) the potential and frequency of exposure of children to the
11 chemical of high concern to children in the children's product.

12 (3) A rule adopted under this section may:

13 (A) prohibit the children's product containing the chemical of high
14 concern to children from sale, offer for sale, or distribution in the State; or

15 (B) require that the children's product containing the chemical of
16 high concern to children be labeled prior to sale, offer for sale, or distribution
17 in the State.

18 (4) In any rule adopted under this subsection, the Commissioner shall
19 adopt reasonable time frames for manufacturers, distributors, and retailers to
20 comply with the requirements of the rules. No prohibition on sale or
21 manufacture of a children's product in the State shall take effect sooner than

1 two years after the adoption of a rule adopted under this section unless the
2 Commissioner determines that an earlier effective date is required to protect
3 human health and the new effective date is established by rule.

4 (e) Exemption for chemical management strategy. In adopting a rule under
5 this section, the Commissioner may exempt from regulation a children's
6 product containing a chemical of high concern to children if the manufacturer
7 of the children's product is implementing a comprehensive chemical
8 management strategy designed to eliminate harmful substances or chemicals
9 from the manufacturing process.

10 (f) Additional rules.

11 (1) On or before July 1, 2017, the Commissioner of Health shall adopt
12 by rule the process and procedure to be required when the Commissioner of
13 Health adopts a rule under subsection (b) or (c) of this section. The rule shall
14 provide all relevant criteria for evaluation of the chemical, time frames for
15 labeling or phasing out sale or distribution, and other information or process
16 determined as necessary by the Commissioner for implementation of this
17 chapter.

18 (2) The Commissioner may, by rule, authorize a manufacturer to report
19 ranges of the amount of a chemical in a children's product, rather than the
20 exact amount, provided that if there are multiple chemical values for a given

1 component in a particular product category, the manufacturer shall use the
2 largest value for reporting.

3 (3) Notwithstanding the required reporting dates under section 1774 of
4 this title, the Commissioner may adopt by rule phased-in reporting
5 requirements for chemicals of high concern to children in children's products
6 based on the size of the manufacturer, aggregate sales of children's products,
7 or the exposure profile of the chemical of high concern to children in the
8 children's product,

9 (g) Additional public participation. In addition to the public participation
10 requirements of 3 V.S.A. chapter 25 and prior to submitting a rule authorized
11 under this section to the Secretary of State under 3 V.S.A. § 838, the
12 Commissioner shall make reasonable efforts to consult with interested parties
13 within the State regarding any proposed prohibition of a chemical of high
14 concern to children. The Commissioner may satisfy the consultation
15 requirement of this section through the use of one or more workshops, focused
16 work groups, dockets, meetings, or other forms of communication.

17 § 1777. CHEMICALS OF HIGH CONCERN TO CHILDREN FUND

18 (a) The Chemicals of High Concern to Children Fund is established in the
19 State Treasury, separate and distinct from the General Fund, to be administered
20 by the Commissioner of Health. Interest earned by the Fund shall be credited
21 to the Fund. Monies in the Fund shall be made available to the Department of

1 Health and the Agency of Natural Resources to pay costs incurred in
2 administration of the requirements of this chapter.

3 (b) The Chemicals of High Concern to Children Fund shall consist of:

4 (1) fees and charges collected under section 1775 of this chapter;

5 (2) private gifts, bequests, grants, or donations made to the State from
6 any public or private source for the purposes for which the Fund was
7 established; and

8 (3) such sums as may be appropriated by the General Assembly.

9 § 1778. CONFIDENTIALITY

10 Information submitted to or acquired by the Department or the Chemicals of
11 High Concern to Children Working Group under this chapter may be subject to
12 public inspection or copying or may be published on the Department website,
13 provided that trade secret information and confidential business information
14 shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(9)
15 and information otherwise designated confidential by law shall be exempt from
16 public inspection and copying under 1 V.S.A. § 317(c)(1). It shall be the
17 burden of the manufacturer to assert that information submitted under this
18 chapter is a trade secret, confidential business information, or is otherwise
19 designated confidential by law. When a manufacturer asserts under this
20 section that the specific identity of a chemical of high concern to children in a
21 children's product is a trade secret, the Commissioner shall, in place of the

1 specific chemical identity, post on the Department’s website the generic class
2 or category of the chemical in the children’s product and the potential health
3 effect of the specific chemical of high concern to children.

4 § 1779. VIOLATIONS; ENFORCEMENT

5 A violation of this chapter shall be considered a violation of the Consumer
6 Protection Act in 9 V.S.A. chapter 63. The Attorney General has the same
7 authority to make rules, conduct civil investigations, enter into assurances
8 of discontinuance, and bring civil actions under 9 V.S.A. chapter 63,
9 subchapter 1. Private parties shall not have a private right of action under this
10 chapter.

11 **Sec. 3. REPORT TO GENERAL ASSEMBLY; CHEMICALS OF HIGH**
12 **CONCERN TO CHILDREN**

13 On or before January 15, 2015, and biennially thereafter, the Commissioner
14 of Health, after consultation with the Secretary of Natural Resources, shall
15 submit to the Senate Committee on Health and Welfare, the House Committee
16 on Human Services, the House Committee on Ways and Means, the Senate
17 Committee on Finance, and the Senate and House Committees on
18 Appropriations, a report concerning implementation, administration, and
19 financing by the Department of Health of the requirements of 18 V.S.A.
20 chapter 38A regarding the chemicals of high concern to children. The report
21 shall include:

1 (1) any updates to the list of chemicals of high concern to children
2 required under 18 V.S.A. § 1773;

3 (2) the number of manufacturers providing notice under 18 V.S.A.
4 § 1775 regarding whether a children’s product includes a chemical of high
5 concern to children;

6 (3) the number of chemicals of high concern to children for which
7 manufacturers asserted trade secret protection for the specific identity of the
8 chemical, and a recommendation of whether a process should be established to
9 review the validity of asserted trade secrets;

10 (4) an estimate of the annual cost to the Department of Health to
11 implement the chemicals of high concern to children program;

12 (5) the number of Department of Health employees needed to
13 implement the chemicals of high concern to children program;

14 (6) an estimate of additional funding that the Department may require to
15 implement the chemicals of high concern to children program;

16 (7) a recommendation of how the State should collaborate with other
17 states in implementing the requirements of the chemicals of high concern to
18 children program; and

19 (8) a recommendation as to whether the requirements of this chapter
20 should be expanded to consumer products other than children’s products;

1 Sec. 4. EFFECTIVE DATE

2 This act shall take effect on passage.

3

4

5

6

7 (Committee vote: _____)

8

9

Representative _____

10

FOR THE COMMITTEE