

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 TO CHILDREN

5 § 1771. POLICY

6 It is the policy of the State of Vermont:

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

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

12 § 1772. DEFINITIONS

13 As used in this chapter:

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

15 (2) “Chemical” means a substance with a distinct molecular composition
16 or a group of structurally related substances and includes the breakdown
17 products of the substance or substances that form through decomposition,
18 degradation, or metabolism. “Chemical” shall not mean crystalline silica in
19 any form, as derived from ordinary sand or as present as a naturally occurring
20 component of any other mineral raw material, including granite, gravel,
21 limestone, marble, slate, soapstone, and talc.

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

4 (4) “Child” or “children” means an individual or individuals under
5 12 years of age.

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

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

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

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

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

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

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

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

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

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

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

11 (i) a vending machine;

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

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

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

21 (i) toys;

1 (ii) children’s cosmetics;

2 (iii) children’s jewelry;

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

6 (v) child car seats.

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

8 (i) batteries;

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

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

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

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

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

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

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

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

10 (C) a tobacco product;

11 (D) a pesticide regulated by the U.S. Environmental Protection
12 Agency;

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

18 (F) ammunition or components thereof, firearms, air rifles, hunting or
19 fishing equipment or components thereof;

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

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

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

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

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

16 (12) “Manufacturer” means:

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

20 (B) any person who sells a children’s product to a retailer in Vermont
21 when the person who manufactures the children’s product or whose name is

1 affixed to the children’s product or its packaging or advertising does not have a
2 presence in the United States other than the sale or offer for sale of the
3 manufacturer’s products.

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

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

11 (A) the chemical can persist in the environment as demonstrated by
12 the fact that:

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

15 (ii) the half-life of the chemical in soil is greater than or equal to
16 60 days; or

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

19 (B) the chemical has a high potential to bioaccumulate based on
20 credible scientific information that the bioconcentration factor or
21 bioaccumulation factor in aquatic species for the chemical is greater than 1,000

1 or, in the absence of such data, that the log-octanol water partition coefficient
2 (log Kow) is greater than five; and

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

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

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

9 (iii) the chemical or chemical group has a chronic no observed
10 effect concentration (NOEC) or equivalent toxicity measure that is less than
11 0.1 mg/L or an acute NOEC or equivalent toxicity measure that is less than
12 1.0 mg/L.

13 (15) “Practical quantification limit (PQL)” means the lowest
14 concentration that can be reliably measured within specified limits of
15 precision, accuracy, representativeness, completeness, and comparability
16 during routine laboratory operating conditions.

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

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

1 § 1773. CHEMICALS OF HIGH CONCERN TO CHILDREN

2 (a) List of chemicals of high concern to children. The following chemicals
3 are designated as chemicals of high concern to children for the purposes of the
4 requirements of this chapter:

5 (1) Formaldehyde.

6 (2) Aniline.

7 (3) N-Nitrosodimethylamine.

8 (4) Benzene.

9 (5) Vinyl chloride.

10 (6) Acetaldehyde.

11 (7) Methylene chloride.

12 (8) Carbon disulfide.

13 (9) Methyl ethyl ketone.

14 (10) 1,1,2,2-Tetrachloroethane.

15 (11) Tetrabromobisphenol A.

16 (12) Bisphenol A.

17 (13) Diethyl phthalate.

18 (14) Dibutyl phthalate.

19 (15) Di-n-hexyl phthalate.

20 (16) Phthalic anhydride.

21 (17) Butyl benzyl phthalate (BBP).

- 1 (18) N-Nitrosodiphenylamine.
- 2 (19) Hexachlorobutadiene.
- 3 (20) Propyl paraben.
- 4 (21) Butyl paraben.
- 5 (22) 2-Aminotoluene.
- 6 (23) 2,4-Diaminotoluene.
- 7 (24) Methyl paraben.
- 8 (25) p-Hydroxybenzoic acid.
- 9 (26) Ethylbenzene.
- 10 (27) Styrene.
- 11 (28) 4-Nonylphenol; 4-NP and its isomer mixtures including CAS
12 84852-15-3 and CAS 25154-52-3.
- 13 (29) para-Chloroaniline.
- 14 (30) Acrylonitrile.
- 15 (31) Ethylene glycol.
- 16 (32) Toluene.
- 17 (33) Phenol.
- 18 (34) 2-Methoxyethanol.
- 19 (35) Ethylene glycol monoethyl ester.
- 20 (36) Tris(2-chloroethyl) phosphate.
- 21 (37) Di-2-ethylhexyl phthalate.

- 1 (38) Di-n-octyl phthalate (DnOP).
- 2 (39) Hexachlorobenzene.
- 3 (40) 3,3'-Dimethylbenzidine and Dyes Metabolized to
4 3,3'-Dimethylbenzidine.
- 5 (41) Ethyl paraben.
- 6 (42) 1,4-Dioxane.
- 7 (43) Perchloroethylene.
- 8 (44) Benzophenone-2 (Bp-2); 2,2',4,4'-Tetrahydroxybenzophenone.
- 9 (45) 4-tert-Octylphenol; 4(1,1,3,3-Tetramethylbutyl) phenol.
- 10 (46) Estragole.
- 11 (47) 2-Ethylhexanoic acid.
- 12 (48) Octamethylcyclotetrasiloxane.
- 13 (49) Benzene, Pentachloro.
- 14 (50) C.I. Solvent yellow 14.
- 15 (51) N-Methylpyrrolidone.
- 16 (52) 2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209.
- 17 (53) Perfluorooctanyl sulphonic acid and its salts; PFOS.
- 18 (54) Phenol, 4-octyl.
- 19 (55) 2-Ethyl-hexyl-4-methoxycinnamate.
- 20 (56) Mercury & mercury compounds including methyl mercury
21 (22967-92-6).

1 (57) Molybdenum and molybdenum compounds.

2 (58) Antimony and Antimony compounds.

3 (59) Arsenic and Arsenic compounds, including arsenic trioxide
4 (1327-53-3) and dimethyl arsenic (75-60-5).

5 (60) Cadmium and cadmium compounds.

6 (61) Cobalt and cobalt compounds.

7 (62) Tris(1,3-dichloro-2-propyl)phosphate.

8 (63) Butylated hydroxyanisole; BHA.

9 (64) Hexabromocyclododecane

10 (65) Diisodecyl phthalate (DIDP).

11 (66) Diisononyl phthalate (DINP).

12 (67) any other chemical designated by the Commissioner as a chemical
13 of high concern to children by rule under section 1776 of this title.

14 (b) Beginning on July 1, 2017, and biennially thereafter, the Commissioner
15 of Health shall review the list of chemicals of high concern to children to
16 determine if additional chemicals should be added to the list under subsection
17 1776(b) of this title. In reviewing the list of chemicals of high concern to
18 children, the Commissioner of Health may consider designations made by
19 other states, the federal government, other countries, or other governmental
20 agencies.

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

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

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

11 § 1774. CHEMICALS OF HIGH CONCERN TO CHILDREN WORKING
12 GROUP

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

17 (b) Membership.

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

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

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

4 (C) the State toxicologist or designee;

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

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

9 (F) two representatives of businesses in the State that use chemicals
10 in a manufacturing or production process or use chemicals that are used in a
11 consumer product or children’s product manufactured in the State;

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

13 (H) a representative of the children’s products industry with expertise
14 in existing state and national policies impacting children’s products.

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

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

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

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

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

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

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

16 (d) Commissioner of Health recommendation; assistance.

17 (1) Beginning on July 1, 2017, and biennially thereafter, the
18 Commissioner of Health shall recommend chemicals of high concern to
19 children in children's products for review by the Working Group. The
20 Commissioner's recommendations shall be based on the degree of human

1 health risks, exposure pathways, and impact on sensitive populations presented
2 by a chemical of high concern to children.

3 (2) The Working Group shall have the administrative, technical, and
4 legal assistance of the Department of Health and the Agency of Natural
5 Resources.

6 (e) Meetings.

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

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

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

17 § 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF

18 HIGH CONCERN

19 (a) Notice requirement. Unless the Commissioner adopts by rule a
20 phased-in reporting requirement under section 1776, beginning on July 1,
21 2015, and biennially thereafter, a manufacturer of a children's product or a

1 trade association representing a manufacturer of children's products shall
2 submit to the Department the notice described in subsection (b) of this section
3 if a chemical of high concern to children is:

4 (1) intentionally added to a children's product at a level above the PQL
5 produced by the manufacturer; or

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

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

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

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

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

1 (4) the name and address of the manufacturer of the children’s product
2 and the name, address, and telephone number of a contact person for the
3 manufacturer;

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

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

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

16 (d) Waiver of reporting requirement. Upon application of a manufacturer
17 on a form provided by the Department, the Commissioner may waive reporting
18 requirements under this section if a manufacturer submitted the information
19 required by this section to:

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

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

3 (A) the information reported to the third party is publicly
4 available; and

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

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

14 (f) Notice of removal of chemical. A manufacturer who submitted the
15 notice required by subsection (a) of this section may at any time submit to the
16 Department notice that a chemical of high concern to children has been
17 removed from the manufacturer's children's product or that the manufacturer
18 no longer sells, offers for sale, or distributes in the State the children's product
19 containing the chemical of high concern to children. Upon verification of a
20 manufacturer's notice under this subsection, the Commissioner shall promptly

1 remove from the Department website any reference to the relevant children's
2 product of the manufacturer.

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

6 (h) Products for sale out of State. A manufacturer shall not be required to
7 submit notice under this section for a children's product manufactured, stored
8 in, or transported through Vermont solely for use or sale outside of the State of
9 Vermont.

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

15 “The reports on this website are based on data provided to the Department.
16 The presence of a chemical in a children's product does not necessarily mean
17 that the product is harmful to human health or that there is any violation of
18 existing safety standards or laws. The reporting triggers are not health-based
19 values.”

20 (j) Fee. A manufacturer required under this section to provide information
21 on its use of a chemical of high concern to children shall pay a fee of

1 \$2,000.00 per chemical of high concern to children used by the manufacturer
2 in the production of children's products. A fee required under this subsection
3 shall be submitted when the manufacturer provides the first submission of
4 notice required under this section for each chemical of high concern to
5 children. The fee required shall be required only with the first submission of
6 notice required under this section and shall not be required for each required
7 subsequent biennial notice. Fees collected under this subsection shall be
8 deposited in the Chemicals of High Concern Fund for the purposes of that
9 Fund.

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

15 § 1776. RULEMAKING; ADDITIONAL CHEMICALS OF CONCERN TO
16 CHILDREN; PROHIBITION OF SALE

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

20 (b) Additional chemicals of concern to children. The Commissioner may
21 by rule add additional chemicals to the list of chemicals of high concern to

1 children, provided that the Commissioner of Health, on the basis of the weight
2 of credible, scientific evidence, has determined that a chemical proposed for
3 addition to the list meets both of the following criteria in subdivisions (1) and
4 (2) of this subsection:

5 (1) The Commissioner of Health has determined that an authoritative
6 governmental entity or accredited research university has demonstrated that the
7 chemical:

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

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

11 (C) disrupts the endocrine system;

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

14 (E) is a persistent bioaccumulative toxic.

15 (2) The chemical has been found through:

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

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

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

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

6 (d) Rule to regulate sale or distribution.

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

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

13 (B) there is a probability that, due to the degree of exposure or
14 frequency of exposure of a child to a chemical of high concern to children in a
15 children's product, exposure could cause or contribute to one or more of the
16 adverse health impacts listed under subdivision (b)(1) of this section.

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

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

1 (B) the type or occurrence of exposures to the relevant chemical of
2 high concern to children in the children’s product;

3 (C) the household and workplace presence of the children’s product;

4 (D) the potential and frequency of exposure of children to the
5 chemical of high concern to children in the children’s product.

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

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

9 (B) require that the children’s product containing the chemical of
10 high concern to children be labeled prior to sale, offer for sale, or distribution
11 in the State.

12 (4) In any rule adopted under this subsection, the Commissioner shall
13 adopt reasonable time frames for manufacturers, distributors, and retailers to
14 comply with the requirements of the rules. No prohibition on sale or
15 manufacture of a children’s product in the State shall take effect sooner than
16 two years after the adoption of a rule adopted under this section unless the
17 Commissioner determines that an earlier effective date is required to protect
18 human health and the new effective date is established by rule.

19 (e) Exemption for chemical management strategy. In adopting a rule under
20 this section, the Commissioner may exempt from regulation a children’s
21 product containing a chemical of high concern to children if the manufacturer

1 of the children's product is implementing a comprehensive chemical
2 management strategy designed to eliminate harmful substances or chemicals
3 from the manufacturing process.

4 (f) Additional rules.

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

12 (2) The Commissioner may, by rule, authorize a manufacturer to report
13 ranges of the amount of a chemical in a children's product, rather than the
14 exact amount, provided that if there are multiple chemical values for a given
15 component in a particular product category, the manufacturer shall use the
16 largest value for reporting.

17 (3) Notwithstanding the required reporting dates under section 1774 of
18 this title, the Commissioner may adopt by rule phased-in reporting
19 requirements for chemicals of high concern to children in children's products
20 based on the size of the manufacturer, aggregate sales of children's products,

1 or the exposure profile of the chemical of high concern to children in the
2 children's product.

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

11 § 1777. CHEMICALS OF HIGH CONCERN TO CHILDREN FUND

12 (a) The Chemicals of High Concern to Children Fund is established in the
13 State Treasury, separate and distinct from the General Fund, to be administered
14 by the Commissioner of Health. Interest earned by the Fund shall be credited
15 to the Fund. Monies in the Fund shall be made available to the Department of
16 Health and the Agency of Natural Resources to pay costs incurred in
17 administration of the requirements of this chapter.

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

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

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

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

5 § 1778. CONFIDENTIALITY

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

21

1 § 1779. VIOLATIONS; ENFORCEMENT

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

8 Sec. 3. REPORT TO GENERAL ASSEMBLY; CHEMICALS OF HIGH
9 CONCERN TO CHILDREN

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

19 (1) Any updates to the list of chemicals of high concern to children
20 required under 18 V.S.A. § 1773.

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

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

8 (4) An estimate of the annual cost to the Department of Health to
9 implement the chemicals of high concern to children program.

10 (5) The number of Department of Health employees needed to
11 implement the chemicals of high concern to children program.

12 (6) An estimate of additional funding that the Department may require
13 to implement the chemicals of high concern to children program.

14 (7) A recommendation of how the State should collaborate with other
15 states in implementing the requirements of the chemicals of high concern to
16 children program.

17 (8) A recommendation as to whether the requirements of this chapter
18 should be expanded to consumer products other than children’s products.

19 Sec. 4. EFFECTIVE DATE

20 This act shall take effect on passage.

21

1

2 (Committee vote: _____)

3

4

Representative _____

5

FOR THE COMMITTEE