

1 TO THE HONORABLE SENATE:

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

7 Sec. 1. FINDINGS

8 The General Assembly finds that:

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

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

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

1 approximately 200 chemicals, and has banned or restricted the use of only 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) A growing body of scientific evidence demonstrates that these
9 chemical exposures are taking a toll on public health and are playing a role in
10 the incidence and prevalence of many diseases and disorders, including
11 leukemia, breast cancer, asthma, reproductive difficulties, birth defects, and
12 autism.

13 (6) The societal and health care costs attributed to toxic exposures are
14 extraordinary. More than \$2.3 billion are spent every year just on the medical
15 costs of cancer, asthma, and neurobehaviorial disorders associated with toxic
16 chemicals.

17 (7) Vermont has regulated the use of individual chemicals of concern,
18 including lead, mercury, bisphenol A, phthalates, decabromodiphenyl,
19 tris(1,3-dichloro-2-propyl) phosphate, and tris(2-chloroethyl) phosphate, but
20 reviewing chemicals individually, one at a time, is inefficient and inadequate
21 for addressing the issues posed by chemicals of concern.

1 (8) Other states and countries, including Maine, Washington, California,
2 and the European Union, are already taking a more comprehensive approach to
3 chemical regulation in consumer products, and chemical regulation in Vermont
4 should harmonize with these efforts.

5 (9) The State has experience monitoring and regulating chemical use
6 through the toxic use and hazardous waste reduction programs.

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

8 CHAPTER 38A. TOXIC CHEMICAL IDENTIFICATION

9 § 1771. POLICY

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

13 § 1772. DEFINITIONS

14 As used in this chapter:

15 (1) “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.

19 (2) “Chemical of high concern” means a chemical identified by the
20 Department pursuant to section 1773 of this title.

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

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

5 (B) a tobacco product;

6 (C) a pesticide regulated by the U.S. Environmental Protection
7 Agency;

8 (D) a drug or biologic regulated by the federal Food and Drug
9 Administration, or the packaging of a drug or biologic that is regulated by the
10 federal Food and Drug Administration;

11 (E) an item sold for outdoor residential use that consists of a
12 composite material made from polyester resins; or

13 (F) ammunition of components thereof, hunting or fishing equipment
14 or components thereof, including lead pellets from air rifles.

15 (4) “Contaminant” means a chemical that is not an intentionally added
16 ingredient in a product, and the source or sources of the chemical in the
17 product are one or more of the following:

18 (A) a naturally occurring contaminant commonly found in raw
19 materials that are frequently used to manufacture the product;

20 (B) air or water frequently used as a processing agent or an ingredient
21 to manufacture the product;

1 (C) a contaminant commonly found in recycled materials that are
2 frequently used to manufacture the product; or

3 (D) a processing reagent, processing reactant, by-product, or
4 intermediate frequently used to promote certain chemical or physical changes
5 during manufacturing, and the incidental retention of a residue is not desired or
6 intended.

7 (5) “Manufacturer” means:

8 (A) any person who manufactures a consumer product or whose
9 name is affixed to a consumer product or its packaging or advertising, and the
10 consumer product is sold or offered for sale in Vermont; or

11 (B) any person who sells a consumer product to a retailer in Vermont
12 when the person who manufactures the consumer product or whose name is
13 affixed to a consumer product or its packaging or advertising does not have a
14 presence in the United States other than the sale or offer for sale of the
15 manufacturer’s products.

16 (6) “Priority chemical” means a chemical on the list of chemicals
17 published by the Department as required under section 1776 of this title.

18 § 1773. CHEMICALS OF CONCERN

19 (a) List of chemicals. On or before July 1, 2016, the Commissioner of
20 Health, in consultation with the Secretary of Natural Resources, shall adopt

1 and publish a list of chemicals of high concern to human health or the
2 environment.

3 (b) Criteria. The Commissioner of Health shall designate a chemical as a
4 chemical of high concern if it is a chemical that meets, on the basis of credible
5 scientific evidence, the following criteria:

6 (1) the chemical has been demonstrated to:

7 (A) harm the normal development of a fetus or child or cause other
8 developmental toxicity;

9 (B) cause cancer, genetic damage, or reproductive harm;

10 (C) disrupt the endocrine system;

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

13 (E) be persistent and bioaccumulative.

14 (2) the chemical has been found through:

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

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

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

1 (c) Resources for consideration. In determining the list of chemicals of
2 concern, the Commissioner of Health may consider designations made by other
3 states, the federal government, other countries, or other governmental agencies.

4 (d) Publication of list. On or before July 1, 2016, the list of chemicals of
5 concern shall be posted on the Department of Health website. For each
6 chemical on the list, the Commissioner of Health shall post information
7 regarding the known and potential health impacts associated with exposure to
8 the chemical.

9 § 1774. CHEMICALS OF HIGH CONCERN ADVISORY COMMITTEE

10 (a)(1) A Chemicals of High Concern Advisory Committee is created for the
11 purpose of advising the Commissioner of Health regarding:

12 (A) the listing of chemicals of high concern under section 1773 of
13 this title; and

14 (B) the adoption of rules under section 1776 of this title regulating
15 the sale or distribution of a product containing a priority chemical.

16 (2) The Chemicals of High Concern Advisory Committee shall serve an
17 advisory function and all authority and decisions to act under this chapter
18 remain solely the authority of the Commissioner of Health.

19 (b)(1) The Commissioner of Health shall appoint the members of the
20 Chemicals of High Concern Advisory Committee established by this section.

1 The Chemicals of High Concern Advisory Committee shall be composed of
2 the following members:

3 (A) the Commissioner of Environmental Conservation or his or her
4 designee;

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

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

9 (D) two representatives of businesses in the State that use chemicals
10 in a manufacturing or production process;

11 (E) a scientist with expertise in the toxicity of chemicals; and

12 (F) any other member appointed by the Commissioner of Health.

13 (2) The members of the Chemicals of High Concern Advisory
14 Committee shall serve staggered three-year terms. The Commissioner may
15 remove members of the Chemicals of High Concern Advisory Committee who
16 fail to attend three consecutive meetings and may appoint replacements. The
17 Commissioner may reappoint members to serve more than one term.

18 (3) Members of the Chemicals of High Concern Advisory Committee
19 whose participation is not supported through their employment or association
20 shall receive per diem compensation pursuant to 32 V.S.A. § 1010 and

1 reimbursement of travel expenses. A per diem authorized by this section shall
2 be paid from the budget of the Department of Health.

3 (c) The Commissioner may convene the Chemicals of High Concern
4 Advisory Committee at any time, but no less frequently than at least once
5 every other year.

6 (d) The Advisory Committee shall have an opportunity to review and
7 comment on the list of chemicals of high concern required under section 1773
8 of this title or of any rule proposed under section 1776 of this title.

9 (e) A majority of the members of the Advisory Committee shall constitute
10 a quorum, and all action shall be taken upon a majority vote of the members
11 present and voting.

12 § 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF
13 HIGH CONCERN

14 (a) No later than one year after a chemical is placed on the list of chemicals
15 of concern under section 1773 of this title, a manufacturer of a consumer
16 product shall submit to the Department the notice described in subsection (b)
17 of this section if a chemical of concern is:

18 (1) is added to a consumer product produced by the manufacturer; or

19 (2) is present in a consumer product produced by the manufacturer as a
20 contaminant at a concentration of 100 parts per million or greater.

1 (b) The notice required by subsection (a) of this section shall contain the
2 following information in a format specified by the Commissioner:

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

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

7 (3) a description of the function of the chemical in the product;

8 (4) the amount of the chemical used in each unit of the product or
9 product component;

10 (5) the name and address of the manufacturer of the consumer product
11 and the name, address, and telephone number of a contact person for the
12 manufacturer;

13 (6) any other information the manufacturer deems relevant to the
14 appropriate use of the product; and

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

17 (c) In order for the Department to obtain the information required in the
18 notice described in subsection (b) of this section, the Department may enter
19 into reciprocal data-sharing agreements with other states in which a
20 manufacturer of consumer products is also required to disclose information
21 related to chemicals of concern in consumer products.

1 (d) The Department shall maintain a website providing consumers with a
2 summary of the chemicals of concern reported in consumer products.

3 (e) A manufacturer required under this section to provide information on its
4 use of a chemical of high concern shall, within 30 days of receipt of an invoice
5 from the Department, pay a fee, not to exceed \$2,000.00 per disclosure of use
6 of a chemical of high concern in a consumer product. Fees collected under this
7 subsection shall be deposited in the Chemicals of High Concern Fund for the
8 purposes of that fund.

9 § 1776. PRIORITY CHEMICALS; PROHIBITION OF SALE;

10 DEPARTMENT OF HEALTH RULEMAKING

11 (a) The Commissioner may, after consultation with the Secretary of Natural
12 Resources and the Chemicals of High Concern Advisory Committee, designate
13 by rule that a chemical of high concern is a priority chemical under the criteria
14 found in subsection 1773(b) of this chapter and require by rule that a consumer
15 product products containing the chemical be:

16 (1) labeled prior to sale, offer for sale, or distribution in the State; or

17 (2) prohibited from sale, offer for sale, or distribution in the State.

18 (b)(1) In any rule adopted under this section, the Commissioner shall adopt
19 reasonable time frames for manufacturers, distributors, and retailers to comply
20 with the requirements of the rules. No prohibition on sale or manufacture of a
21 consumer product in the State shall take effect sooner than two years after the

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

4 (2) On or before July 1, 2017, the Commissioner of Health shall adopt
5 by rule the process and procedure to be required when the Commissioner of
6 Health adopts a rule under subsection (a) of this section.

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

15 § 1777. CHEMICALS OF HIGH CONCERN FUND

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

1 (b) The Chemicals of High Concern Fund shall consist of:

2 (1) monies accepted by the Department pursuant to subsection (a) of this
3 section;

4 (2) fees and charges collected under section 1774 of this chapter;

5 (3) 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 (4) such sums as may be appropriated by the General Assembly.

9 § 1778. VIOLATIONS; ENFORCEMENT

10 A violation of this chapter shall be considered a violation of the Consumer
11 Protection Act, chapter 63 of this title. The Attorney General has the same
12 authority to make rules, conduct civil investigations, enter into assurances of
13 discontinuance, and bring civil actions and private parties have the same rights
14 and remedies as provided under subchapter 1 of chapter 63 of this title.

15 Sec. 3. REPORT TO GENERAL ASSEMBLY

16 On or before January 15, 2015, the Commissioner of Health shall submit to
17 the Senate Committee on Health and Welfare, the House Committee on
18 Human Service, the House Committee on Ways and Means, the Senate
19 Committee on Finance, and the Senate and House Committees on
20 Appropriations, a report concerning the resources required by the Department

1 of Health to implement and administer the requirements of 18 V.S.A. chapter
2 38A regarding toxic chemical identification. The report shall include:

3 (1) an estimate of the annual cost to the Department of Health to
4 implement the toxic chemical identification program;

5 (2) the number of Department employees needed to implement the toxic
6 chemical identification program;

7 (3) an estimate of additional funding that the Department may require to
8 implement the toxic chemical identification program; and

9 (4) a recommendation of how the State should collaborate with other
10 states in implementing the requirements of this act.

11 Sec. 4. EFFECTIVE DATE

12 This act shall take effect on passage.

13
14
15 (Committee vote: _____)

16 _____

17 Senator [surname]

18 FOR THE COMMITTEE