

## **Act No. 188 (S.239). Health; environmental health; toxic substances; children's products**

### **An act relating to the regulation of toxic substances**

This act requires a manufacturer of a children's product to notify the Department of Health (DOH) if the children's product contains a chemical of high concern to children. The act lists 66 chemicals of high concern to children. DOH may adopt by rule additional chemicals of high concern to children if DOH determines that accredited research demonstrates that the chemical: (1) harms child development; causes cancer, genetic damage, or reproductive harm; disrupts the endocrine system; damages the nervous system, immune system, or organs; or is a persistent bioaccumulative toxic; and (2) has been found to be present in blood, breast milk, human tissue, the home environment, or the natural environment.

Under the act, beginning on July 1, 2016, and biennially thereafter, a manufacturer of a children's product containing a chemical of high concern to children shall notify DOH of the presence of the chemical in the product. Notice is not required for an intentionally added chemical that does not exceed the practical quantification level or for a chemical present in a product as a contaminant at a de minimis level. DOH shall specify the format for notice. DOH shall post on its website information submitted by a manufacturer. Trade secrets and confidential business information shall not be public. If a chemical in a product is a trade secret, DOH shall post the class of the chemical and its health effects. DOH may enter reciprocal data sharing agreements with states that collect similar data. A manufacturer shall pay a fee of \$200.00 to DOH for each notice provided. The fees fund the costs to DOH to run the program.

The act establishes a Chemicals of High Concern to Children Working Group to provide DOH with advice and recommendations regarding the requirements for chemicals of high concern to children. The act authorizes DOH, upon recommendation of the Working Group, to adopt by rule requirements for the sale of a children's product containing a chemical of high concern to children upon a determination that: (1) children will be exposed to a chemical of high concern to children in the children's product; and (2) there is a probability that, due to the degree of exposure or frequency of exposure to a chemical of high concern to children, exposure could result in an adverse health impact. Under a rule, DOH could limit or prohibit the sale of the children's product or require labeling of the product. No prohibition on sale of a product shall take effect sooner than two years from adoption of the rule.

A violation of the requirements of the act is deemed a violation of the Consumer Protection Act. A violation is subject to a civil penalty of not more than \$10,000.00 per violation. The Attorney General shall have the same rights and authorities for enforcement under the Consumer Protection Act to enforce the requirements of this act. There is no private right of action under this act.

The act defines "child" or "children" as an individual under 12 years of age. "Children's product" is defined as a consumer product marketed for use by, marketed to, sold, offered for sale, or distributed to children in Vermont, including toys, children's cosmetics, children's jewelry, products to help a child with teething or sleep, products for the feeding of a child; children's clothing, and child car seats. The act includes exemptions from the terms "consumer product" and "children's products," including products

primarily used or purchased for industrial or business use, food, beverages, tobacco, pesticides, drugs, biologics, medical devices, supplements, ammunition, firearms, hunting and fishing equipment, aircraft, motor vehicles, batteries, consumer electronic products, interactive software, snow sporting equipment, inaccessible components of a consumer product, used products; and product packaging.

Effective Date: June 10, 2014