

1 H.744

2 Introduced by Representatives Webb of Shelburne, Deen of Westminster, and  
3 McCullough of Williston

4 Referred to Committee on

5 Date:

6 Subject: Conservation; environmental health; toxic substances

7 Statement of purpose of bill as introduced: This bill proposes to require the  
8 Secretary of Natural Resources to establish a toxic chemical identification and  
9 reduction program. Under the program, the Secretary of Natural Resources  
10 would identify chemicals of high concern. The Secretary would be authorized  
11 to designate a chemical of high concern as a priority chemical. Children's  
12 products containing a priority chemical would be prohibited from sale or  
13 distribution in the State.

14 An act relating to the regulation of toxic substances

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

16 Sec. 1. 10 V.S.A. chapter 159, subchapter 5 is added to read:

17 Subchapter 5. Toxic Chemical Identification and Reduction

18 § 6701. POLICY

19 It is the policy of the State of Vermont to protect public health and the  
20 environment by reducing exposure of its citizens and vulnerable populations.

1 such as children, from exposure to toxic chemicals when safer alternatives  
2 exist.

3 § 6702. DEFINITIONS

4 As used in this subchapter:

5 (1) “Alternative” means a substitute process, product, material,  
6 chemical, strategy, or combination of such that serves a functionally equivalent  
7 purpose to a priority chemical or chemical of high concern.

8 (2) “Chemical” means a substance with a distinct molecule composition  
9 or a group of structurally related substances and includes the breakdown  
10 products of the substance or substances that form through decomposition or  
11 metabolism.

12 (3) “Chemical of high concern” means a chemical identified by the  
13 Secretary of Natural Resources under section 6703 of this title.

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

18 (5) “Chemical of moderate concern” means a chemical identified by an  
19 authoritative governmental entity on the basis of credible scientific evidence as  
20 being suspected of causing one or more of the adverse health or environmental  
21 effects set forth under subsection 6703(a) of this title.

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

4           (7) “Children’s product” means:

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

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

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

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

14                   (B) a tobacco product;

15                   (C) a paper or forest product;

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

17           Agency;

18                   (E) a drug or biologic regulated by the U.S. Food and Drug  
19           Administration or the packaging of such a drug or biologic if the U.S. Food  
20           and Drug Administration regulates the drug or biologic’s packaging.

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

3           (10) “Manufacturer” means any person who manufactures a final  
4 consumer product or whose brand name is affixed to the consumer product. In  
5 the case of a consumer product imported into the State and distributed, sold, or  
6 offered for sale in the State, “manufacturer” includes the importer or domestic  
7 distributor of the consumer product if the person who manufactured or  
8 assembled the consumer product or whose brand name is affixed to the  
9 consumer product does not have a presence in the United States.

10           (11) “Priority chemical” means a chemical identified as such by the  
11 Secretary of Natural Resources under section 6704 of this title.

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

17           (13) “Secretary” means the Secretary of Natural Resources.

18           § 6703. CHEMICAL OF HIGH CONCERN

19           (a) On or before January 1, 2015, the Secretary shall publish a list of  
20 chemicals of high concern to public health or the environment of the State of  
21 Vermont. The Secretary shall update the list of chemicals of high concern as

1 necessary and at least annually. A chemical or other substance may be  
2 included on the list of chemicals of high concern if the Secretary determines  
3 that it has been identified by an authoritative governmental entity on the basis  
4 of credible scientific evidence as being known as:

5 (1) a carcinogen;

6 (2) a mutagen;

7 (3) a reproductive or developmental toxin;

8 (4) an endocrine disruptor; or

9 (5) a persistent or bioaccumulative toxin.

10 (b) The Secretary may revise the list as needed and may add a chemical to  
11 the list of chemicals of high concern if it meets one or more of the criteria of  
12 subsection (a) of this section. The Secretary may remove a chemical from the  
13 list of chemicals of high concern if, based on evidence, the Secretary  
14 determines that the chemical does not meet or no longer meets one or more of  
15 the criteria of subsection (a) of this section.

16 § 6704. PRIORITY CHEMICALS

17 (a) The Secretary shall designate as a priority chemical any chemical  
18 classified as “known to be a human carcinogen” in the most recent report on  
19 carcinogens by the National Toxicology Program in the U.S. Department of  
20 Health and Human Services.

1       (b) The Secretary may designate a chemical of high concern as a priority  
2 chemical if the Secretary finds that:

3           (1) The chemical has been found through biomonitoring to be present in  
4 human blood, umbilical cord blood, breast milk, urine, or other bodily tissues  
5 or fluids.

6           (2) The chemical has been found through sampling and analysis to be  
7 present in household dust, indoor air, drinking water, or elsewhere in the home  
8 environment.

9           (3) The chemical has been found through monitoring to be present in  
10 fish, wildlife, or the natural environment.

11           (4) The chemical has been found to be present in a consumer product  
12 used or present in the home.

13           (5) The chemical has been identified as a high production volume  
14 chemical by the U.S. Environmental Protection Agency.

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

17       (c) In reviewing the list of chemicals of high concern for designation as a  
18 priority chemical under subsection (b) of this section, the Secretary shall  
19 prioritize designation of chemicals that have been:

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

4           (2) classified as “likely to be carcinogenic to humans” in the  
5           U.S. Environmental Protection Agency’s most recent list of chemicals  
6           evaluated for carcinogenic potential; or

7           (3) identified by the U.S. Environmental Protection Agency as causing  
8           birth defects, hormone disruption, or harm to reproduction or development.

9           (d) Beginning January 1, 2015, the Secretary shall report annually to the  
10           House and Senate Committees on Natural Resources and Energy, House  
11           Committee on Fish, Wildlife and Water Resources, Senate Committee on  
12           Health and Welfare, and House Committee on Human Services with a  
13           summary of the chemicals reviewed for designation under this section, a  
14           description of such review, and the number of chemicals designated as priority  
15           chemicals under this section.

16           § 6705. PRIORITY CHEMICAL NOTIFICATION OF USE

17           (a) No later than 180 days after the Secretary designates a priority chemical  
18           under section 6704 of this title, a manufacturer or distributor of a children’s  
19           product that is distributed, sold, or offered for sale in Vermont and that  
20           contains the priority chemical designated by the Secretary shall notify the

1 Secretary in writing of the presence of the priority chemical in the children's  
2 product. The notification shall:

3 (1) identify the children's product;

4 (2) disclose the number of units of the children's product sold or  
5 distributed in the State;

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

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

10 (b) The manufacturer or distributor of a children's product that contains a  
11 priority chemical shall provide the following additional information if  
12 requested by the Secretary:

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

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

19 (3) an assessment of the availability, cost, feasibility, and performance,  
20 including potential for harm to public health and the environment, or  
21 alternatives to the priority chemical and the reason the priority chemical was



1 used in the manufacture of the children's product in lieu of the identified  
2 alternatives, If an assessment acceptable to the Secretary is not timely  
3 submitted, the Secretary may assess the manufacturer or distributor the cost of  
4 a report conducted by an independent contractor of the Secretary's choice on  
5 the availability of safer alternatives.

6 § 6706. PROHIBITION ON SALE

7 (a) The Secretary may prohibit, by rule, the manufacture, sale, or  
8 distribution in the State of a children's product containing a priority chemical  
9 if the Secretary determines, after consideration of the information submitted  
10 under section 6705 of this title and other relevant information obtained by the  
11 Secretary, that:

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

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

16 (b) If, under subsection (a) of this section, the Secretary identifies several  
17 safer alternatives to a priority chemical, the Secretary may ban the sale of  
18 children's products that do not contain the alternative that is the least toxic to  
19 public health or the environment.

1       (c) A prohibition adopted by rule under this section shall have an effective  
2       date of at least 12 months from the date the proposed rule is filed with the  
3       Secretary of State under 3 V.S.A. § 838.

4       (d) For the purpose of determining whether a safer alternative is available  
5       under subsection (a) of this section, the Secretary may, in the absence of  
6       persuasive evidence to the contrary:

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

9             (2) presume that a safer alternative is available if the sale of the  
10            children's product containing the priority chemical has been banned by another  
11            country or by a state within the United States;

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

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

16        (e) At least 180 days prior to the effective date of a prohibition of a priority  
17        chemical adopted under subsection (a) of this section, a manufacturer or  
18        distributor of a children's product that contains the priority chemical that is  
19        subject to the prohibition shall file a compliance plan with the Secretary or  
20        shall seek a waiver from the Secretary under subsection (g) of this section. A  
21        compliance plan submitted under this subsection shall:

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

2           (2) specify whether compliance with a prohibition on a priority chemical

3 will be achieved by discontinuing the sale of the children's product in the State

4 or by substituting a safer alternative in the product; and

5           (3) if compliance is to be achieved by substitution of a safer alternative

6 in the product, identify the safer alternative and the timetable for substitution.

7           (f) A manufacturer or distributor of a children's product that contains a

8 priority chemical shall notify all persons that offer the children's product for

9 sale or distribution in the State of the requirements of this subchapter and

10 whether the children's product is subject to a prohibition on sale adopted under

11 subsection (a) of this section.

12           (g)(1) The manufacturer or distributor of a children's product that contains

13 a priority chemical and that is subject to a prohibition adopted under

14 subsection (a) of this section may apply to the Secretary for a waiver for one or

15 more specific uses of the priority chemical. The waiver application shall, at a

16 minimum:

17           (A) identify the specific children's product use or uses for which the

18 waiver is sought;

19           (B) identify the alternatives considered for substitution of the priority

20 chemical;

1           (C) explain the alternatives considered for substitution of the priority  
2 chemical; and

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

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

15 § 6707. EXEMPTIONS

16           The requirements of this subchapter shall not apply to:

17           (1) chemicals in used products;

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

19           (3) chemicals in motor vehicles as that term is defined in 23 V.S.A. § 4;

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

1           (5) a person selling a children's product at retail unless the person  
2           knowingly sells a children's product containing a priority chemical after the  
3           effective date of a prohibition adopted under section 6706 of this title; or

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

7           § 6708. INTERSTATE CLEARINGHOUSE FOR SAFER CHEMICALS

8           The Secretary is authorized to participate, in cooperation with other states  
9           and governmental entities, in an interstate clearinghouse to classify existing  
10           chemicals and to promote safer chemicals in consumer products. The  
11           Secretary may also cooperate with an interstate clearinghouse in order to:

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

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

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

18           (4) undertake other activities in support of State programs to promote  
19           safer chemicals.

1        § 6709. CERTIFICATE OF COMPLIANCE

2            In addition to any remedies or procedures authorized by this subchapter or  
3        chapter 201 of this title, the Secretary may request the manufacturer or  
4        distributor of a product offered for sale or distribution in the State to provide  
5        the Secretary with a certificate of compliance with the requirements of this  
6        subchapter and rules adopted thereunder. Within 10 days of receipt of a  
7        request from the Secretary under this section, the manufacturer or  
8        distributor shall:

9            (1) provide the Secretary with a certificate attesting that the product  
10        does not contain the priority chemical or is not subject to the requirements of  
11        this subchapter; or

12            (2) notify persons who sell or distribute the product in the State that the  
13        sale of the product is prohibited and shall provide the Secretary with a list of  
14        the names and addresses of those notified.

15        § 6710. EDUCATION AND CONSULTATION

16            The Secretary shall develop educational materials regarding the  
17        requirements of this subchapter for distribution to manufacturers, distributors,  
18        and retailers. The Secretary shall consult with retailers and retailer  
19        associations in order to assist retailers in complying with the requirements of  
20        this subchapter.

1     § 6711. ADVISORY COUNCIL ON TOXIC SUBSTANCES

2           (a) There is created an Advisory Council on Toxic Substances to provide  
3     expert and scientific advice to the Secretary regarding identification of  
4     chemicals of high concern, designation of priority chemicals, and identification  
5     of safer alternative chemicals. The Advisory Council on Toxic Substances  
6     annually shall recommend to the Secretary:

7           (1) strategies or actions to reduce public health risks from exposure to  
8     chemicals of high concern. In identifying public health risks, the Advisory  
9     Council on Toxic Substances shall, with heightened scrutiny, evaluate potential  
10    public health risks to citizens of the State of Vermont;

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

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

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

16          (b) The Advisory Council on Toxic Substances shall consist of the  
17    following members:

18           (1) one member of the House of Representatives, appointed by the  
19    Speaker;

20           (2) one member of the Senate, appointed by the Committee on  
21    Committees;

1           (3) the Secretary of Natural Resources or the Secretary's designee;

2           (4) the Commissioner of Health or the Commissioner's designee;

3           (5) the Secretary of Agriculture, Food and Markets or the Secretary's  
4 designee;

5           (6) the Attorney General of Vermont or the Attorney General's  
6 designee;

7           (7) a representative of a solid waste management district, appointed by  
8 the Governor;

9           (8) a Vermont toxicologist, appointed by the Governor;

10          (9) a representative of the Vermont retail community, appointed by the  
11 Governor;

12          (10) a representative of the Vermont manufacturing community,  
13 appointed by the Governor;

14          (11) a representative of a Vermont college or university, appointed by  
15 the Committee on Committees;

16          (12) a representative of the Vermont medical community, appointed by  
17 the Committee on Committees;

18          (13) a representative of a statewide consumer interest group, appointed  
19 by the Speaker of the House;

20          (14) a representative of a statewide environmental group, appointed by  
21 the Speaker of the House; and



1           (15) a scientist knowledgeable about matters related to toxic substances,  
2           appointed by the Speaker of the House.

3           (c) The Advisory Council on Toxic Substances shall report annually to the  
4           General Assembly by January 15 with a summary of the recommendations  
5           presented to the Secretary under subsection (a) of this section.

6           (d) The Agency of Natural Resources shall provide the Advisory Council  
7           on Toxic Substances with technical, legal, and administrative staff support as  
8           needed.

9           § 6712. RULEMAKING

10           The Secretary may adopt rules to implement the requirements of this  
11           subchapter.

12           Sec. 2. REPEAL OF ADVISORY COMMITTEE ON MERCURY

13                   POLLUTION

14           10 V.S.A. § 7113 (Advisory Committee on Mercury Pollution) is repealed.

15           Sec. 3. EFFECTIVE DATE

16           This act shall take effect on July 1, 2014.