

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Fish, Wildlife & Water Resources to which was referred  
3 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 chemical that is not an intentionally added  
4 ingredient in a product, and the source or sources of the chemical in the  
5 product are one or more of the following:

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

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

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

12          (D) a processing reagent, processing reactant, unintended by-product,  
13 trace impurities in feedstock, incompletely reacted chemical mixtures, and  
14 degradation products, or intermediate frequently used to promote certain  
15 chemical or physical changes during manufacturing, and the incidental  
16 retention of a residue is not desired or intended.

17          (10) “Cosmetics” means articles intended to be rubbed, poured,  
18 sprinkled, or sprayed on, introduced into, or otherwise applied to the human  
19 body or any part thereof for cleansing, beautifying, promoting attractiveness,  
20 or altering appearance, and articles intended for use as a component of such an



1 article. “Cosmetics” shall not mean soap, dietary supplements, or food and  
2 drugs approved by the U.S. Food and Drug Administration.

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

5 (12) “Manufacturer” means:

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

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

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

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

1           (15) “Vessel” means every description of watercraft used or capable of  
2           being used as a means of transportation on water.

3           § 1773. CHEMICALS OF HIGH CONCERN TO CHILDREN

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

7           (1) Formaldehyde.

8           (2) Aniline.

9           (3) N-Nitrosodimethylamine.

10          (4) Benzene.

11          (5) Vinyl chloride.

12          (6) Acetaldehyde.

13          (7) Methylene chloride.

14          (8) Carbon disulfide.

15          (9) Methyl ethyl ketone.

16          (10) 1,1,2,2-Tetrachloroethane.

17          (11) Tetrabromobisphenol A.

18          (12) Bisphenol A.

19          (13) Diethyl phthalate.

20          (14) Dibutyl phthalate.

21          (15) Di-n-hexyl phthalate.

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

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

1           (56) Mercury & mercury compounds including methyl mercury  
2           (22967-92-6).

3           (57) Molybdenum and molybdenum compounds.

4           (58) Antimony and Antimony compounds.

5           (59) Arsenic and Arsenic compounds, including arsenic trioxide  
6           (1327-53-3) and dimethyl arsenic (75-60-5).

7           (60) Cadmium and cadmium compounds.

8           (61) Cobalt and cobalt compounds.

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

10          (63) Butylated hydroxyanisole; BHA.

11          (64) Hexabromocyclododecane

12          (65) Diisodecyl phthalate (DIDP).

13          (66) Diisononyl phthalate (DINP).

14          (67) any other chemical designated as a high priority chemical under  
15          this chapter.

16          (b) Additional chemicals of high concern to children. The Commissioner  
17          of Health, in consultation with the Secretary of Natural Resources, may adopt  
18          by rule under section 1776 of this title additional chemicals to be added to the  
19          list of chemicals of high concern to children under subsection (a) of this  
20          section, provided that any chemical added to the list of chemicals of high

1 concern to children shall meet both of the following criteria in subdivision (1)  
2 and (2) of this subsection:

3 (1) An authoritative governmental entity or accredited research  
4 university has, on the basis of the weight of credible, scientific evidence,  
5 demonstrated that the chemical:

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

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

9 (C) disrupts the endocrine system;

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

12 (E) is persistent and bioaccumulative.

13 (2) Children are exposed to the chemical in a children's product or  
14 products in a manner that poses a public health risk, as that term is defined  
15 under subdivision 2(10) of this title.

16 (c) Beginning on July 1, 2016, and biennially thereafter, the Commissioner  
17 of Health shall review the list of chemicals of high concern to children to  
18 determine if additional chemicals should be added to the list under subsection  
19 1776(a) of this title.

20 (d) Resources for consideration. In determining the list of chemicals of  
21 high concern to children, the Commissioner of Health may consider

1 designations made by other states, the federal government, other countries, or  
2 other governmental agencies.

3 (e) Publication of list. The Commissioner shall post the list of chemicals of  
4 high concern on the Department of Health website by its name and its  
5 Chemical Abstracts Service number..

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

10 § 1774. CHEMICALS OF HIGH CONCERN TO CHILDREN WORKING  
11 GROUP

12 (a) Creation. A Chemicals of High Concern to Children Working Group  
13 (Working Group) is created for the purpose of advising the Commissioner of  
14 Health regarding implementation of the requirements of this chapter.

15 (b) Membership.

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

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

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

1           (C) the State toxicologist or designee;

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

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

6           (F) two representatives of businesses in the State that use chemicals  
7 in a manufacturing or production process or use chemicals that are used in a  
8 consumer product or children's product manufactured in the State;

9           (G) a scientist from the chemicals industry with expertise regarding  
10 the toxicity of chemicals; and

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

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

16           (B) An adjunct member appointed under this subdivision (2) shall  
17 have expertise or knowledge of the chemical or children's product under  
18 review or shall have expertise or knowledge in the potential health effects of  
19 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 whether the Department of Health should adopt a rule  
14           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 at least two chemicals of high  
19           concern to children in children's products for review by the Working Group.  
20           The 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)(1) 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          (2) The Commissioner may waive reporting requirements under this  
17          section if a manufacturer submitted the information required by this section to:

18               (A) a state with which the Department has entered a reciprocal  
19               data-sharing agreement; or

20               (B) a trade association, the Interstate Chemicals Clearinghouse, or  
21               other independent third party, the information is publicly available, and the

1 information required to be reported for chemicals under this chapter is  
2 provided.

3 (d) Notice of removal of chemical. A manufacturer who submitted the  
4 notice required by subsection (a) of this section may at any time submit to the  
5 Department notice that a chemical of high concern to children has been  
6 removed from the manufacturer's children's product or that the manufacturer  
7 no longer sells, offers for sale, or distributes in the State the children's product  
8 containing the chemical of high concern.

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

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

16 (g) Required disclaimer. When the Commissioner posts on the Department  
17 of Health website information submitted under this section by a manufacturer,  
18 the Commissioner shall provide the following notice:

19 “As required by the law, chemicals on the list are toxic and have either been  
20 found in children's products or have been documented to be present in human  
21 tissue (blood, breast milk, etc.). However, the mere presence of these

1 chemicals in children's products does not necessarily indicate that there is a  
2 risk of harm."

3 (h) Fee. A manufacturer required under this section to provide information  
4 on its use of a chemical of high concern to children shall, within 30 days of  
5 receipt of an invoice from the Department, pay a fee not to exceed \$2,000.00  
6 per chemical included on the list of chemicals of high concern to children. A  
7 fee submitted under this subsection shall be submitted only with the first  
8 submission of notice required under this section, and shall not be required for  
9 each required subsequent biennial notice. Fees collected under this subsection  
10 shall be deposited in the Chemicals of High Concern Fund for the purposes of  
11 that Fund.

12 § 1776. RULEMAKING; ADDITIONAL CHEMICALS OF CONCERN TO  
13 CHILDREN; PROHIBITION OF SALE

14 (a) Additional chemicals of concern to children. The Commissioner, after  
15 consultation with the Chemicals of High Concern to Children Working Group  
16 may adopt by rule additional chemicals as chemicals of high concern to  
17 children, provided that the criteria set forth under section for listing under  
18 subsection 1773(b) of this title are met.

19 (b)(1) Rule to regulate sale or distribution. The Commissioner may adopt a  
20 rule to regulate the sale or distribution of a children's product containing a  
21 chemical of high concern to children if:

1           (A) the Chemicals of High Concern to Children Working Group  
2           recommended regulation of the sale or distribution of the children’s  
3           product; and

4           (B) based on the weight of available, scientific studies, the toxicity of  
5           the chemical of high concern to children in the children’s product and its  
6           potential exposure pathways in the children’s product pose a public health risk  
7           as that term is defined in 18 V.S.A. § 2(10).

8           (2) A rule adopted under this section may:

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

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

14           (c) Safer alternatives review. In adopting a rule under this section that  
15           prohibits the sale, offer for sale, or distribution in the State of a children’s  
16           product that contains a chemical of high concern to children, the  
17           Commissioner may consider whether a safer alternative to the chemical of high  
18           concern to children exists; or

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

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

4 (e)(1) Time frames. In any rule adopted under this section, the  
5 Commissioner shall adopt reasonable time frames for manufacturers,  
6 distributors, and retailers to comply with the requirements of the rules. No  
7 prohibition on sale or manufacture of a children's product in the State shall  
8 take effect sooner than two years after the adoption of a rule adopted under this  
9 section unless the Commissioner determines that an earlier effective date is  
10 required to protect human health and the new effective date is established  
11 by rule.

12 (f) Additional rules.

13 (1) On or before July 1, 2016, the Commissioner of Health shall adopt  
14 by rule the process and procedure to be required when the Commissioner of  
15 Health adopts a rule under subsection (a) of this section. The rule shall  
16 provide:

17 (A) criteria for evaluation of a chemical of high concern to children  
18 in a children's product, including criteria for whether the children's product  
19 should be prohibited from sale, subject to labeling, or subject to no regulation;

20 (B) requirements or time frames for phasing out the sale or  
21 distribution of a children's product containing a chemical of high concern to



1 children, including whether retailers selling the children's product shall be  
2 afforded an inventory exception;

3 (C) requirements or time frames afforded to a manufacturer to  
4 replace a chemical of high concern to children in a children's product; and

5 (D) other criteria, requirements, time frames, processes, or  
6 procedures that the Commissioner determines are necessary for  
7 implementation of rulemaking under subsection (a) of this section.

8 (2) The Commissioner may adopt by rule:

9 (A) authority for a manufacturer to report ranges of the amount of a  
10 chemical in a children's product, rather than the exact amount, provided that if  
11 there are multiple chemical values for a given component in a particular  
12 product category, the manufacturer shall use the largest value for  
13 reporting; and

14 (B) notwithstanding the required reporting dates under section 1774  
15 of this title phased in reporting requirements for chemicals of high concern to  
16 children in children's products based on the size of the manufacturer,  
17 aggregate sales of children's products, or the exposure profile of the chemical  
18 of high concern to children in the children's product.

19 (g) Additional public participation. In addition to the public participation  
20 requirements of 3 V.S.A. chapter 25 and prior to submitting a rule authorized  
21 under this section to the Secretary of State under 3 V.S.A. § 838, the

1 Commissioner shall make reasonable efforts to consult with interested parties  
2 within the State regarding any proposed prohibition of a chemical of high  
3 concern to children. The Commissioner may satisfy the consultation  
4 requirement of this section through the use of one or more workshops, focused  
5 work groups, dockets, meetings, or other forms of communication.

6 § 1777. CHEMICALS OF HIGH CONCERN TO CHILDREN FUND

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

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

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

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

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

19 § 1778. CONFIDENTIALITY

20 Information submitted to or acquired by the Department or the Chemicals of  
21 High Concern to Children Working Group under this chapter may be subject to

1 public inspection or copying or may be published on the Department website,  
2 provided that trade secret information and confidential business information  
3 shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(9)  
4 and information otherwise designated confidential by law shall be exempt from  
5 public inspection and copying under 1 V.S.A. § 317(c)(1). It shall be the  
6 burden of the manufacturer to assert that information submitted under this  
7 chapter is a trade secret, confidential business information, or is otherwise  
8 designated confidential by law. The Commissioner may publish information  
9 submitted or acquired under this chapter that is designated a trade secret,  
10 confidential business information, or otherwise confidential by law, provided  
11 that the information shall be published in a summary or aggregate form and the  
12 information shall not directly or indirectly identify an individual manufacturer  
13 or a business advantage of an individual manufacturer.

14 § 1779. VIOLATIONS; ENFORCEMENT

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

1       Sec. 3. REPORT TO GENERAL ASSEMBLY; TOXIC CHEMICAL  
2                   IDENTIFICATION

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

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

14           (2) The number of manufacturers providing notice under 18 V.S.A.  
15 § 1775 regarding whether a children's product includes a chemical of high  
16 concern to children.

17           (3) Recommendations for specific uses of chemicals of high concern to  
18 children that should be restricted in children's products due to public health  
19 risks, as defined in 18 V.S.A. § 2(10), posed by that chemical when the product  
20 is used as intended. These recommendations shall discuss and consider the  
21 following factors:

1           (A) the human health benefits and costs to citizens of Vermont and  
2 children's product manufacturers if restrictions on chemicals of concern to  
3 children in a product were to be adopted by the General Assembly;

4           (B) the demonstrated public health risk as defined in 18 V.S.A.  
5 § 2(10), to children that would be mitigated by the recommended  
6 restrictions; and

7           (C) the likelihood that there are technologically and readily available  
8 and commercially feasible alternative chemicals that would have an improved  
9 human health safety profile to the chemical of high concern to children.

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  
15 to 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.

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        (b) As part of the report submitted on or before January 15, 2015, the  
2        Commissioner of Health shall recommend a process or method of informing  
3        consumers in the State of the presence of a chemical of high concern to  
4        children in a children's product. A recommendation under this subsection may  
5        include recommended legislative changes, rulemaking, public notice  
6        requirements, or reference to other publicly available resources that identify  
7        chemicals of high concern to children in a children's product.

8        Sec. 4. EFFECTIVE DATE

9        This act shall take effect on passage.

10

11

12        (Committee vote: \_\_\_\_\_)

13

\_\_\_\_\_

14

Representative \_\_\_\_\_

15

FOR THE COMMITTEE