
To: House Committee on Fish, Wildlife, and Water Resources
From: Lauren Hierl, Political Director, Vermont Conservation Voters
Subject: Testimony on S.239, Draft 1.1 (4.11.2014 4:33pm)
Date: April 17, 2014

My name is Lauren Hierl, and I'm the Political Director at Vermont Conservation Voters.

I thank the committee for their hard work on S.239, and appreciate the effort the committee is putting into this important public health issue. I know you all are working diligently to incorporate feedback from a range of interested parties, and thank you for the time to share my perspectives on the latest draft of the bill.

Overall, I think the latest draft offers some **important improvements in how the state deals with toxic chemicals in consumer products** – particularly by giving the experts at the Department of Health the authority to regulate toxic chemicals, with a robust process for stakeholder input and rulemaking to ensure it's pursued in a manner that's feasible for industry to implement, but ultimately moves us toward having safer products on store shelves, without the legislature having to pass a bill chemical-by-chemical, year after year.

The adoption of Washington State's list of chemicals of high concern is a good place to start, while maintaining authority to add additional chemicals through rulemaking. The bill does significantly scale back the scope from what passed the Senate to just children's products, which downgrades the public health protections offered by the bill. The impacts of toxic chemical exposure happen at all ages and stages. Further, even if you just want to focus on protecting children, we know children don't only use products marketed directly to them, and we know prenatal exposure can be most damaging of all, so this scope presents a serious limitation of the bill. Getting the program up and running with a list of chemicals and scope very similar to Washington state is a reasonable starting point, but I encourage you to consider authorizing the Commissioner of Health to propose rulemaking to **expand the scope of products covered by this program in the future.**

Some additional specific recommendations on the language for your consideration:

Definitions:

- "Children's products" (pg 5, line 18): While the definition in this draft incorporates language directly from the Washington statute and rulemaking, Vermont has used a slightly different and definition in previous toxics bills, such as our restriction on lead. The Vermont definition previously used would be more protective of children's health, and would ensure our own statutes are consistent, so we don't have a different standard for lead and other toxic chemicals.
 - Proposed language (as used in Vermont's lead in consumer products law, 9 V.S.A., Chapter 63, Subchapter 1C): "Children's product" means any consumer product marketed for use by children under the age of 12, or whose substantial use or handling by children under 12 years of age is reasonably foreseeable, including toys, furniture,

jewelry, vitamins and other supplements, personal care products, clothing, food, and food containers and packaging.

- Another tweak in the definition of “Children’s product,” where it excludes (pg 6 line 18-20) “(v) inaccessible components of a consumer product that during reasonably foreseeable use and abuse of the consumer product would not come into direct contact with a child’s skin or mouth”
 - This exemption is not in Washington statute, but rather is in their rulemaking, and includes language that authorizes their Department to consider amending this rule on a case-by-case basis where appropriate. This language is very broad, and could exclude numerous children’s products that present an exposure risk. For example, in recent years this body has banned toxic flame retardant chemicals from children’s products like nursing pillows. A manufacturer could argue that the foam from a nursing pillow is not in direct contact with the child, but we know the flame retardants leach from the foam, through the fabric covering and into the air and dust and are ingested by children, posing a threat to their health. We want to make sure products like this aren’t unintentionally excluded from this legislation via this broad exemption provision.
 - **I recommend striking this language** from the definition of children’s product. The Department could consider including a similar provision in rulemaking to what Washington adopted, which would give them flexibility to look at individual products and their potential for exposing a child to a chemical of concern.

Section 1774 – Working Group

- I was glad to hear the committee discussion about the Working Group’s role, and strongly support making clear their role is advisory to the Commissioner of Health.
- Nonetheless, the Working Group plays an important role in this process, and the Senate worked hard to create balanced representation from interest groups across the spectrum. The latest draft adds an extra industry representative, tipping the balance from 2 public health advocates and 2 industry representatives to 2 public health advocates and 3 industry representatives. I recommend changing the language to;
 - 1774(b)(1)(H) (pg 16, line 6 & line 11)– make (F) one representative from a manufacturer, and (H) one representative from industry with expertise in public policy
- Regarding this provision: Pg 17, line 17 – “Beginning on July 1, **2016**, and biennially thereafter, the Commissioner of Health shall recommend **at least two chemicals** of high concern to children in children’s products for review by the Working Group.”
 - I encourage the committee to consider beginning reviews of chemicals of high concern for regulatory action in 2016. That means the Working Group will then review the chemical, an additional stakeholder process and rulemaking will be undertaken, and then if a rule is adopted, it will be two additional years before a chemical is phased out – quite a long time period.
 - Further, maintaining the language to recommend *at least two chemicals* every two years is an important provision to ensure the Commissioner continues to make progress on this program. In Maine, for example, when Governor LePage came into office, he

basically chose not to exercise the Maine Department's authority to regulate chemicals, effectively halting their progress for years on this issue. I believe it's valuable to include some kind of language to ensure the process will continue moving forward through various administrations.

Section 1775 – Disclosure of Information on Chemicals of High Concern

- 1775 (a)(1) (Pg 19, line 4) – “intentionally added to a children’s product at a level above the PQL produced by the manufacturer”
 - I think this language needs to be cleaned up so it doesn’t inadvertently imply the PQL – as opposed to the product – is produced by the manufacturer
- 1775(e) (pg 21, line 9) – “Certificate of compliance”
 - In order to ensure this law is enforceable, this language should be tightened up to clarify that the certificate from a supplier clearly indicates they have done their due diligence and conducted tests that are scientifically reliable and accurate (it can’t just be, for example, a letter from a supplier in China assuring them there are no chemicals of concern in their products).
- 1775 (f) (pg 21, line 12) – “Products for sale out of State.”
 - This provision asserts it’s fine to manufacture toxic children’s products in Vermont for out-of-state customers that we wouldn’t allow them to sell to our children. This is similar to federal law that bans certain toxic pesticides, but companies continue to manufacture them here and sell them in countries with less stringent protections – which, when it’s come to light, has provoked public outrage.

Sec. 1776 – Rulemaking

- 1776 (b)(1)(B) – (pg 23, line 4) – “based on the weight of available, scientific studies, the toxicity of the chemical of high concern to children in the children’s product and its potential exposure pathways in the children’s product pose a public health risk as that term is defined in 18 V.S.A. Sec 2(10)”
 - This language would be very difficult for the Department of Health to implement. For example, the phrase “weight” of available scientific studies could lead to disagreement over how to weigh a large quantity of industry-funded studies that might outnumber a handful of really strong peer-reviewed independent studies that have conflicting results, thereby stalling or halting progress. I recommend language that focuses on credible scientific studies and the potential for children being exposed to those chemicals.

Sec. 3. – Report to General Assembly

- I question the need for subsection (3) (pg 28, line 17) – recommendations to the legislature on restricting chemicals – given that the Department has authority to pursue those restrictions through rulemaking.

- If the committee determines they would still like additional recommendations on this subject to the legislature as part of the biennial reporting, the language included here is incredibly burdensome on the Department, and requests assessments well outside their expertise. They would be asked, for instance, to weigh the costs of potentially preventing diseases like childhood cancers and birth defects against potential costs to industry for moving to an alternative chemical. This cost-benefit analysis language would be very resource-intensive for the Department to pursue, and is unnecessary for them to make a public health-based recommendation to the legislature regarding a chemical of high concern to children.
- Sec. 3 (8) (pg 29, line 19) – A recommendation as to whether the requirements of this chapter should be expanded to consumer products other than children’s products.
 - To reiterate, rather than just having the Commissioner recommend expanding the scope of this program beyond children’s products in the future, I strongly encourage you to consider giving the Department rulemaking authority to potentially expand the scope of this program to additional products in future years. Limiting it just to products marketed to children doesn’t fully protect children from the range of products they’re exposed to on a daily basis, and doesn’t protect a developing fetus, who are most vulnerable of all to the impacts of toxic chemical exposure.

Again, I sincerely thank the committee for their hard work on this important issue and this bill, and hope you will consider these suggestions to strengthen the public health protections offered by this legislation.