

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to
3 which was referred Senate Bill No. 239 entitled “An act relating to the
4 regulation of toxic substances” moves to amend the recommendation of
5 amendment of the Committee on Health and Welfare by striking out all after
6 the enacting clause and inserting in 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
17 in the United States. However, TSCA grandfathered approximately
18 62,000 chemicals from regulation under the Act. Consequently, the
19 U.S. Environmental Protection Agency (EPA) is not required to assess the risk
20 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) 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 ether,
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 product that is regularly used or
2 purchased to be used for personal, family, or household purposes. “Consumer
3 product” shall not mean:

4 (A) a product primarily used or purchased for industrial or
5 business use that does not enter the consumer product market or is not
6 otherwise sold at retail.

7 (B) a food or beverage or an additive to a food or beverage;

8 (C) a tobacco product;

9 (D) a pesticide regulated by the U.S. Environmental Protection
10 Agency;

11 (E) a drug or biologic regulated by the federal Food and Drug
12 Administration, or the packaging of a drug or biologic that is regulated by the
13 federal Food and Drug Administration;

14 (F) an item sold for outdoor residential use that consists of a
15 composite material made from polyester resins; or

16 (G) ammunition or components thereof, firearms, hunting or fishing
17 equipment or components thereof, including lead pellets from air rifles.

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

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

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

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

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

11 (5) “Manufacturer” means:

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

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

1 (6) “Priority chemical” means a chemical that:

2 (A) is on the list of chemicals published by the Department as
3 required under section 1773 of this title; and

4 (B) is found in a consumer product.

5 (7) “Practical quantification limit (PQL)” means the lowest
6 concentration that can be reliably measured within specified limits of
7 precision, accuracy, representativeness, completeness, and comparability
8 during routine laboratory operating conditions.

9 § 1773. CHEMICALS OF HIGH CONCERN

10 (a) List of chemicals. On or before July 1, 2016, the Commissioner of
11 Health, in consultation with the Secretary of Natural Resources, shall adopt
12 and publish a list of chemicals of high concern to human health or the
13 environment. Beginning on July 1, 2018, and biennially thereafter, the
14 Commissioner of Health shall review, revise, update, and reissue the list of
15 chemicals of high concern to human health or the environment.

16 (b) Criteria. The Commissioner of Health shall designate a chemical as a
17 chemical of high concern if it is a chemical that meets, on the basis of credible
18 scientific evidence, both of the following criteria in subdivisions (1) and (2) of
19 this subsection:

1 (1) The chemical has been demonstrated to:

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

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

5 (C) disrupt the endocrine system;

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

8 (E) be persistent and bioaccumulative.

9 (2) The chemical has been found through:

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

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

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

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

19 (d) Publication of list. On or before July 1, 2016, the list of chemicals of
20 concern shall be posted on the Department of Health website.

1 (e) PQL value. A PQL value established under this chapter for individual
2 chemicals shall depend on the analytical method used for each chemical. The
3 PQL value shall be based on scientifically defensible, standard analytical
4 methods as advised by guidance published by the Department.

5 § 1774. CHEMICALS OF HIGH CONCERN ADVISORY COMMITTEE

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

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

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

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

15 (b)(1) The Commissioner of Health shall appoint the members of the
16 Chemicals of High Concern Advisory Committee established by this section.
17 The Chemicals of High Concern Advisory Committee shall be composed of
18 the following members:

19 (A) the Commissioner of Environmental Conservation or his or her
20 designee;

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

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

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

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

8 (F) **three other members** appointed by the Commissioner of Health.

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

14 (3) Members of the Chemicals of High Concern Advisory Committee
15 whose participation is not supported through their employment or association
16 shall receive per diem compensation pursuant to 32 V.S.A. § 1010 and
17 reimbursement of travel expenses. A per diem authorized by this section shall
18 be paid from the budget of the Department of Health.

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

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

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

7 § 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF
8 HIGH CONCERN

9 (a) No later than one year after a chemical is placed on the list of chemicals
10 of high concern under section 1773 of this title, and biennially thereafter, a
11 manufacturer of a consumer product shall submit to the Department the notice
12 described in subsection (b) of this section if a chemical of high concern is:

13 (1) added to a consumer product at a level above the PQL produced by
14 the manufacturer; or

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

17 (b) The Commissioner shall specify the format for submission of the notice
18 required by subsection (a) of this section, provided that the required format
19 shall be generally consistent with the format for submission of notice in other
20 states with requirements substantially similar to the requirements of this

1 section. Any notice submitted under subsection (a) shall contain the following
2 information:

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

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

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

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

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

1 not disclose trade secret information or other information designated as
2 confidential by law under a reciprocal data-sharing agreement.

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

8 (e) Information submitted to or acquired by the Department under
9 subsection (b), (c), or (d) of this section shall be exempt from public inspection
10 and copying under 1 V.S.A. § 317(c)(9), provided that:

11 (1) the Department may share submitted or acquired information with
12 other states under a reciprocal data-sharing agreement; and

13 (2) the Commissioner shall publish on the Department website
14 information submitted by a manufacturer under this section except for trade
15 secretary information or information otherwise designated confidential by law.

16 It shall be the burden of the manufacturer to assert that information submitted
17 under this section is a trade secret or is otherwise designated confidential
18 by law.

19 (f) A manufacturer required under this section to provide information on its
20 use of a chemical of high concern shall, within 30 days of receipt of an invoice
21 from the Department, pay a fee of \$2,000.00 per chemical included on the list

1 of chemicals of high concern. Fees collected under this subsection shall be
2 deposited in the Chemicals of High Concern Fund for the purposes of that
3 Fund.

4 § 1776. PRIORITY CHEMICALS; PROHIBITION OF SALE;

5 DEPARTMENT OF HEALTH RULEMAKING

6 (a) The Commissioner may, after consultation with the Secretary of Natural
7 Resources and the Chemicals of High Concern Advisory Committee, designate
8 by rule that one or more chemicals of high concern are a priority chemical
9 under the criteria found in subsection 1773(b) of this chapter and require by
10 rule that a consumer product containing the priority chemical be:

11 (1) prohibited from sale, offer for sale, or distribution in the State; or

12 (2) labeled prior to sale, offer for sale, or distribution in the State.

13 (b)(1) Beginning on July 1, 2017, and biennially thereafter, the
14 Commissioner shall review at least two priority chemicals in consumer
15 products for regulation under subsection (a) of this section.

16 (2) In adopting any rule under this section that prohibits the sale, offer
17 for sale, or distribution in the State of a consumer product that contains a
18 priority chemical, the Commissioner may consider whether a safer alternative
19 to the priority chemical exists.

20 (c)(1) In any rule adopted under this section, the Commissioner shall adopt
21 reasonable time frames for manufacturers, distributors, and retailers to comply

1 with the requirements of the rules. No prohibition on sale or manufacture of a
2 consumer product in the State shall take effect sooner than two years after the
3 adoption of a rule adopted under this subsection unless the Commissioner
4 determines that an earlier effective date is required to protect human health and
5 the new effective date is established by rule.

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

10 (A) criteria for evaluation of priority chemicals in a consumer
11 product, including criteria for whether the consumer product should be
12 prohibited from sale, subject to labeling, or subject to no regulation;

13 (B) requirements or time frames for phasing out the sale or
14 distribution of a consumer product containing a priority chemical, including
15 whether retailers selling the consumer product shall be afforded an inventory
16 exception;

17 (C) requirements or time frames afforded to a manufacturer to
18 replace a priority chemical in a consumer product; and

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

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

9 § 1777. EXEMPTIONS

10 The requirements and prohibitions of this chapter shall not apply to a
11 consumer product that:

12 (1) is an electronic device; contains a chemical of high concern solely
13 within the internal components of the device; and the internal components are
14 in a housing or casing or are otherwise inaccessible to a consumer using the
15 product as intended; and

16 (2) is manufactured from calcium carbonate or granite and the only
17 chemical of high concern present in the consumer product is silica.

18 § 1778. CHEMICALS OF HIGH CONCERN FUND

19 (a) The Chemicals of High Concern Fund is established in the State
20 Treasury, separate and distinct from the General Fund, to be administered by
21 the Commissioner of Health. Interest earned by the Fund shall be credited to

1 the Fund. Monies in the Fund shall be made available to the Department of
2 Health and the Agency of Natural Resources to pay costs incurred in
3 administration of the requirements of this chapter.

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

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

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

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

10 § 1779. VIOLATIONS; ENFORCEMENT

11 A violation of this chapter shall be considered a violation of the Consumer
12 Protection Act, in 9 V.S.A. chapter 63. The Attorney General has the same
13 authority to make rules, conduct civil investigations, enter into assurances of
14 discontinuance, and bring civil actions and private parties have the same rights
15 and remedies as provided under 9 V.S.A. chapter 63, subchapter 1.

16 Sec. 3. REPORT TO GENERAL ASSEMBLY; TOXIC CHEMICAL
17 IDENTIFICATION

18 (a) On or before January 15, 2015, and biennially thereafter, the
19 Commissioner of Health shall submit to the Senate Committee on Health and
20 Welfare, the House Committee on Human Service, the House Committee on
21 Ways and Means, the Senate Committee on Finance, and the Senate and House

1 Committees on Appropriations, a report concerning implementation,
2 administration, and financing by the Department of Health of the toxic
3 chemical identification requirements of 18 V.S.A. chapter 38A. The report
4 shall include:

5 (1) any updates to the list of chemicals of high concern required under
6 10 V.S.A. § 1773;

7 (2) the number of manufacturers providing notice under 10 V.S.A.
8 § 1775 regarding whether a consumer product includes a chemical of high
9 concern;

10 (3) the number of priority chemicals in consumer products identified or
11 regulated by the Department of Health under 10 V.S.A. § 1776;

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

14 (5) the number of Department of Health employees needed to
15 implement the toxic chemical identification program;

16 (6) an estimate of additional funding that the Department may require to
17 implement the toxic chemical identification program; and

18 (7) a recommendation of how the State should collaborate with other
19 states in implementing the requirements of the toxic chemical identification
20 program.

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 priority chemical in a consumer
4 product. A recommendation under this subsection may include recommended
5 legislative changes, rulemaking, public notice requirements, or reference to
6 other publicly available resources that identify priority chemicals in consumer
7 products.

8 Sec. 4. 10 V.S.A. § 1775(e) is amended to read

9 (e)(1) Information submitted to or acquired by the Department under
10 subsection (b), (c), or (d) of this section shall be ~~exempt from public inspection~~
11 ~~and copying under 1 V.S.A. § 317(c)(9), provided that:~~

12 ~~(1) the Department may share submitted or acquired information with~~
13 ~~other states under a reciprocal data sharing agreement; and~~

14 ~~(2) the Commissioner shall publish on the Department website~~
15 ~~submitted or acquired information in a summary or aggregate form that does~~
16 ~~not directly or indirectly identify individual manufacturers available for public~~
17 ~~inspection and copying, provided that:~~

18 (A) Information protected under the Uniform Trade Secrets Act, as
19 codified under 9 V.S.A. chapter 143, or under the trade secret exemption under
20 1 V.S.A. § 317(c)(9) shall be exempt from public inspection and copying under
21 the Public Records Act;

