

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:

11 (1) to protect public health and the environment by reducing exposure of
12 its citizens and vulnerable populations, such as children, to toxic chemicals,
13 particularly when safer alternatives exist; and

14 (2) that the State attempt, when possible, to regulate toxic chemicals in a
15 manner that is consistent with regulation of toxic chemicals in other states.

16 § 1772. DEFINITIONS

17 As used in this chapter:

18 (1) “Aircraft” shall be defined as in 5 V.S.A. § 202.

19 (2) “Chemical” means a substance with a distinct molecular composition
20 or a group of structurally related substances and includes the breakdown
21 products of the substance or substances that form through decomposition,

1 degradation, or metabolism. “Chemical” shall not mean crystalline silica in
2 any form, as derived from ordinary sand or as present as a naturally occurring
3 component of any other mineral raw material, including granite, gravel,
4 limestone, marble, slate, soapstone, and talc.

5 (3) “Chemical of high concern” means a chemical identified by the
6 Department pursuant to section 1773 of this title.

7 (4) “Consumer product” means any product that is regularly used or
8 purchased to be used for personal, family, or household purposes. “Consumer
9 product” shall not mean:

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

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

14 (C) a tobacco product;

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

17 (E) a drug or biologic regulated by the federal Food and Drug
18 Administration, or the packaging of a drug or biologic that is regulated by the
19 federal Food and Drug Administration;

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

1 (G) ammunition or components thereof, firearms, air rifles, hunting
2 or fishing equipment or components thereof.

3 (5) “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, by-product, or
13 intermediate frequently used to promote certain chemical or physical changes
14 during manufacturing, and the incidental retention of a residue is not desired or
15 intended.

16 (6) “Manufacturer” means:

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

20 (B) any person who sells a consumer product to a retailer in Vermont
21 when the person who manufactures the consumer product or whose name is

1 affixed to the consumer product or its packaging or advertising does not have a
2 presence in the United States other than the sale or offer for sale of the
3 manufacturer's products.

4 (7) "Motor vehicle" means every vehicle intended primarily for use and
5 operation on the public highways and shall include snowmobiles, all-terrain
6 vehicles, and farm tractors and other machinery used in the production,
7 harvesting, and care of farm products.

8 (8) "Practical quantification limit (PQL)" means the lowest
9 concentration that can be reliably measured within specified limits of
10 precision, accuracy, representativeness, completeness, and comparability
11 during routine laboratory operating conditions.

12 (9) "Priority chemical" means a chemical that:

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

15 (B) is found in a consumer product.

16 (10) "Vessel" means every description of watercraft used or capable of
17 being used as a means of transportation on water.

18 § 1773. CHEMICALS OF HIGH CONCERN

19 (a) List of chemicals. On or before July 1, 2016, the Commissioner of
20 Health, in consultation with the Secretary of Natural Resources, shall adopt
21 and publish a list of chemicals of high concern to human health or the

1 environment. Beginning on July 1, 2018, and biennially thereafter, the
2 Commissioner of Health shall review, revise, update, and reissue the list of
3 chemicals of high concern to human health or the environment.

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

8 (1) The chemical has been demonstrated to:

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

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

12 (C) disrupt the endocrine system;

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

15 (E) be persistent and bioaccumulative.

16 (2) The chemical has been found through:

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

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

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

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

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

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

12 § 1774. CHEMICALS OF HIGH CONCERN ADVISORY COMMITTEE

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

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

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

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

1 (b)(1) The Commissioner of Health shall appoint the members of the
2 Chemicals of High Concern Advisory Committee established by this section.
3 The Chemicals of High Concern Advisory Committee shall be composed of
4 the following members:

5 (A) the Commissioner of Environmental Conservation or his or her
6 designee;

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

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

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

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

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

15 (2) The members of the Chemicals of High Concern Advisory
16 Committee shall serve staggered three-year terms. The Commissioner may
17 remove members of the Chemicals of High Concern Advisory Committee who
18 fail to attend three consecutive meetings and may appoint replacements. The
19 Commissioner may reappoint members to serve more than one term.

20 (3) Members of the Chemicals of High Concern Advisory Committee
21 whose participation is not supported through their employment or association

1 shall receive per diem compensation pursuant to 32 V.S.A. § 1010 and
2 reimbursement of travel expenses. A per diem authorized by this section shall
3 be paid from the budget of the Department of Health.

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

7 (d) In order to ensure that the regulation of toxic chemicals is robust and
8 protective, that affected parties have ample opportunity to comment, and that
9 legal and financial risks are minimized, the Advisory Committee shall have an
10 opportunity to review and comment on the list of chemicals of high concern
11 required under section 1773 of this title or of any rule proposed under section
12 1776 of this title.

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

16 § 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF
17 HIGH CONCERN

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

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

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

5 (b) The Commissioner shall specify the format for submission of the notice
6 required by subsection (a) of this section, provided that the required format
7 shall be generally consistent with the format for submission of notice in other
8 states with requirements substantially similar to the requirements of this
9 section. Any notice submitted under subsection (a) shall contain the following
10 information:

11 (1) the name of the chemical used or produced and its chemical abstracts
12 service registry number;

13 (2) a description of the product or product component containing the
14 substance;

15 (3) the amount of the chemical used in each unit of the product or
16 product component;

17 (4) the name and address of the manufacturer of the consumer product
18 and the name, address, and telephone number of a contact person for the
19 manufacturer;

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

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

3 (c) In order for the Department to obtain the information required in the
4 notice described in subsection (b) of this section, the Department may enter
5 into reciprocal data-sharing agreements with other states in which a
6 manufacturer of consumer products is also required to disclose information
7 related to chemicals of concern in consumer products. The Department shall
8 not disclose trade secret information or other information designated as
9 confidential by law under a reciprocal data-sharing agreement.

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

15 (e) Information submitted to or acquired by the Department under
16 subsection (b), (c), or (d) of this section shall be exempt from public inspection
17 and copying under 1 V.S.A. § 317(c)(9), provided that the Commissioner shall
18 publish on the Department website information submitted by a manufacturer
19 under this section except for trade secret information or information otherwise
20 designated confidential by law. It shall be the burden of the manufacturer to

1 assert that information submitted under this section is a trade secret or is
2 otherwise designated confidential by law.

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

11 § 1776. PRIORITY CHEMICALS; PROHIBITION OF SALE;

12 DEPARTMENT OF HEALTH RULEMAKING

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

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

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

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

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

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

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

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

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

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

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

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

18 § 1777. EXEMPTIONS

19 The requirements and prohibitions of this chapter shall not apply to a
20 consumer product:

21 (1) that is an electronic device, a motor vehicle, an aircraft, or a vessel;

1 (2) in which the chemical of high concern is present solely within the
2 internal components of the device, motor vehicle, aircraft, or vessel; and

3 (3) the internal components of which are encased in a housing,
4 compartment, or panel or are otherwise inaccessible to a consumer using the
5 product as intended.

6 § 1778. CHEMICALS OF HIGH CONCERN FUND

7 (a) The Chemicals of High Concern Fund is established in the State
8 Treasury, separate and distinct from the General Fund, to be administered by
9 the Commissioner of Health. Interest earned by the Fund shall be credited to
10 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 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 § 1779. VIOLATIONS; ENFORCEMENT

20 A violation of this chapter shall be considered a violation of the Consumer
21 Protection Act, in 9 V.S.A. chapter 63. The Attorney General has the same

1 authority to make rules, conduct civil investigations, enter into assurances of
2 discontinuance, and bring civil actions and private parties have the same rights
3 and remedies as provided under 9 V.S.A. chapter 63, subchapter 1.

4 Sec. 3. REPORT TO GENERAL ASSEMBLY; TOXIC CHEMICAL
5 IDENTIFICATION

6 (a) On or before January 15, 2015, and biennially thereafter, the
7 Commissioner of Health shall submit to the Senate Committee on Health and
8 Welfare, the House Committee on Human Services, the House Committee on
9 Ways and Means, the Senate Committee on Finance, and the Senate and House
10 Committees on Appropriations, a report concerning implementation,
11 administration, and financing by the Department of Health of the toxic
12 chemical identification requirements of 18 V.S.A. chapter 38A. The report
13 shall include:

14 (1) any updates to the list of chemicals of high concern required under
15 18 V.S.A. § 1773;

16 (2) the number of manufacturers providing notice under 18 V.S.A.
17 § 1775 regarding whether a consumer product includes a chemical of high
18 concern;

19 (3) the number of priority chemicals in consumer products identified or
20 regulated by the Department of Health under 18 V.S.A. § 1776;

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

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

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

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

10 (b) As part of the report submitted on or before January 15, 2015, the
11 Commissioner of Health shall recommend a process or method of informing
12 consumers in the State of the presence of a priority chemical in a consumer
13 product. A recommendation under this subsection may include recommended
14 legislative changes, rulemaking, public notice requirements, or reference to
15 other publicly available resources that identify priority chemicals in consumer
16 products.

17 Sec. 4. 18 V.S.A. § 1775(e) is amended to read

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

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

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

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

11 (B) The Commissioner may publish confidential information
12 collected under this section provided that the information is not trade secret
13 information or is not otherwise designated confidential by law. It shall be the
14 burden of the manufacturer to assert that information submitted under this
15 section is a trade secret or is otherwise designated confidential by law.

16 (2) The Commissioner may require, as a part of a report or notice
17 submitted under this chapter, that a manufacturer submit a notice or report that
18 does not contain trade secret information and is available for public inspection
19 and review.

1 Sec. 5. EFFECTIVE DATES

2 (a) This section and Secs. 1 (findings), 2 (toxic chemical identification
3 program), and 3 (Department of Health report) shall take effect on passage.

4 (b) Sec. 4 (trade secret information) shall take effect on July 1, 2018.

5

6

7 (Committee vote: _____)

8

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Senator _____

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FOR THE COMMITTEE