

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 239 entitled “An act relating to the regulation of toxic substances”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 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 in
17 the United States. However, TSCA grandfathered approximately 62,000
18 chemicals from regulation under the Act. Consequently, the U.S.
19 Environmental Protection Agency (EPA) is not required to assess the risk of
20 these chemicals. Since TSCA became law, EPA only has required testing for

1 approximately 200 chemicals, and has banned or restricted the use of five of
2 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.

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

7 (C) a tobacco product;

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

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

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

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

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

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

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

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

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

9 (5) “Manufacturer” means:

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

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

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

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

21 (B) is found in a consumer product.

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

5 § 1773. CHEMICALS OF HIGH CONCERN

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

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

16 (1) The chemical has been demonstrated to:

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

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

20 (C) disrupt the endocrine system;

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

3 (E) be persistent and bioaccumulative.

4 (2) The chemical has been found through:

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

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

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

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

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

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

1 § 1774. CHEMICALS OF HIGH CONCERN ADVISORY COMMITTEE

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

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

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

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

11 (b)(1) The Commissioner of Health shall appoint the members of the
12 Chemicals of High Concern Advisory Committee established by this section.
13 The Chemicals of High Concern Advisory Committee shall be composed of
14 the following members:

15 (A) the Commissioner of Environmental Conservation or his or her
16 designee;

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

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

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

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

4 (F) any other member appointed by the Commissioner of Health.

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

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

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

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

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

4 § 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF
5 HIGH CONCERN

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

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

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

14 (b) The Commissioner shall specify the format for submission of the notice
15 required by subsection (a) of this section, provided that the required format
16 shall be generally consistent with the format for submission of notice in other
17 states with requirements substantially similar to the requirements of this
18 section. Any notice submitted under subsection (a) shall contain the following
19 information:

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

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

3 (3) a description of the function of the chemical in the product;

4 (4) the amount of the chemical used in each unit of the product or
5 product component;

6 (5) the name and address of the manufacturer of the consumer product
7 and the name, address, and telephone number of a contact person for the
8 manufacturer;

9 (6) any other information the manufacturer deems relevant to the
10 appropriate use of the product; and

11 (7) any other information required by the Commissioner under rules
12 adopted pursuant to 3 V.S.A. chapter 25.

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

18 (d) A manufacturer who submitted the notice required by subsection (a) of
19 this section may at any time submit to the Department notice that a chemical of
20 high concern has been removed from the manufacturer's consumer product or

1 that the manufacturer no longer sells, offers for sale, or distributes in the State
2 the consumer product containing the chemical of high concern.

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

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

8 (2) the Commissioner shall publish on the Department website
9 submitted or acquired information in a summary or aggregate form that does
10 not directly or indirectly identify individual manufacturers.

11 (f) A manufacturer required under this section to provide information on its
12 use of a chemical of high concern shall, within 30 days of receipt of an invoice
13 from the Department, pay a fee not to exceed \$2,000.00 per chemical included
14 on the list of chemicals of high concern. Fees collected under this subsection
15 shall be deposited in the Chemicals of High Concern Fund for the purposes of
16 that Fund.

17 § 1776. PRIORITY CHEMICALS; PROHIBITION OF SALE;

18 DEPARTMENT OF HEALTH RULEMAKING

19 (a) The Commissioner may, after consultation with the Secretary of Natural
20 Resources and the Chemicals of High Concern Advisory Committee, designate
21 by rule that one or more chemicals of high concern are a priority chemical

1 under the criteria found in subsection 1773(b) of this chapter and require by
2 rule that a consumer product containing the priority chemical be:

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

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

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

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

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

19 (2) On or before July 1, 2017, the Commissioner of Health shall adopt
20 by rule the process and procedure to be required when the Commissioner of

1 Health adopts a rule under subsection (a) of this section. The rule shall
2 provide:

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

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

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

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

15 (d) In addition to the public participation requirements of 3 V.S.A.
16 chapter 25 and prior to submitting a rule authorized under this section to the
17 Secretary of State under 3 V.S.A. § 838, the Commissioner shall make
18 reasonable efforts to consult with interested parties within the State regarding
19 any proposed prohibition of a priority chemical. The Commissioner may
20 satisfy the consultation requirement of this section through the use of one or

1 more workshops, focused work groups, dockets, meetings, or other forms of
2 communication.

3 § 1777. CHEMICALS OF HIGH CONCERN FUND

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

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

11 (1) monies accepted by the Department pursuant to subsection (a) of this
12 section;

13 (2) fees and charges collected under section 1775 of this chapter;

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

17 (4) such sums as may be appropriated by the General Assembly.

18 § 1778. VIOLATIONS; ENFORCEMENT

19 A violation of this chapter shall be considered a violation of the Consumer
20 Protection Act, in 9 V.S.A. chapter 63. The Attorney General has the same
21 authority to make rules, conduct civil investigations, enter into assurances of

1 discontinuance, and bring civil actions and private parties have the same rights
2 and remedies as provided under 9 V.S.A. chapter 63, subchapter 1.

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

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

13 (1) any updates to the list of chemicals of high concern required under
14 10 V.S.A. § 1773;

15 (2) the number of manufacturers providing notice under 10 V.S.A.
16 § 1775 regarding whether a consumer product includes a chemical of high
17 concern;

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

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

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

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

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

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

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

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

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

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

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

9 (B) The Commissioner may publish information confidential under
10 this subsection in a summary or aggregated form that does not directly or
11 indirectly identify individual manufacturers.

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

16 Sec. 5. EFFECTIVE DATES

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

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

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(Committee vote: _____)

Senator

FOR THE COMMITTEE