

**Vermont Act 188 Analysis  
Research Conducted by:**

*Timothy F. Malloy  
Professor of Law  
Faculty Director, Sustainable Technology & Policy Program  
UCLA School of Law*

1.) The language-

(B) there is a ~~probability~~ that, due to the degree of exposure or frequency of exposure of a child to a chemical of high concern to children in a children's product, exposure could cause or contribute to one or more of the adverse health impacts listed under subdivision (b)(1) of this section.

2.) The problem-

The standard that the Commissioner must meet is potentially onerous. To regulate a chemical, the Commissioner must demonstrate that: (1) children will be exposed to a chemical of high concern in the product; and (2) *a probability* that . . . exposure *could cause or contribute to* one or more of the [listed] adverse health impacts." The level of certainty implied in this formulation is troubling. Typically public health programs look for potential or threatened exposures rather than relying solely on showings of actual exposure. Likewise, the ambiguous reference to the "probability" that the exposure could "cause" disease will likely create substantial mischief, and will lead to either inaction by the agency or extensive litigation by affected stakeholders.

3.) Examples- *Typically public health programs look for potential or threatened exposures rather than relying solely on showings of actual exposure*

**MASS. HAZARDOUS SUBSTANCE LABELING LAW**

"any substance or mixture of substances which is toxic, corrosive, an irritant, a strong sensitizer, flammable or which generates pressure through decomposition, heat, or other means, if such substance or mixture of substances *may cause* substantial personal injury or substantial illness during or as a proximate result of any *customary or reasonably foreseeable* handling or use"

**MONTANA CONSUMER PRODUCT SAFETY ACT**

"any substance or mixture of substances which is toxic, corrosive, an irritant, a strong sensitizer, flammable or which generates pressure through decomposition, heat, or other means, if such substance or mixture of substances *may cause serious injury through foreseeable use.*"

**FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT**

The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics ~~may~~

(A) cause, or *significantly contribute* to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a *substantial present or potential hazard* to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

#### CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008

##### (B) EXAMINATION

—The panel shall, within 18 months after its appointment under subparagraph (A), complete an examination of the full range of phthalates that are used in products for children and shall—

(i) Examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates;

(ii) Consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates;

(iii) Examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products;

(iv) Consider the cumulative effects of total exposure to phthalates, both from children's products and from other sources, such as personal care products;

(v) Review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data collection practices or employ other objective methods;

(vi) Consider the health effects of phthalates not only from ingestion but also as a result of dermal, hand-to-mouth, or other exposure;

(vii) Consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and

(viii) Consider possible similar health effects of phthalate alternatives used in children's toys and child care articles