IBM

# IBM Testimony on

## S. 139 - An act relating to pharmacy benefit managers, hospital observation status, and chemicals of high concern to children

*Sec. 11& Sec. 12 - Chemicals of Concern to Children*

## Senate Committee on Health & Welfare
## Ruma Kohli, Product Stewardship Program Manager
## March 18, 2015

Thank you for the opportunity to testify regarding S.139, a bill proposing amendments to Act 188, the restriction of chemicals in children's products.

IBM is the largest for-profit employer in Vermont, and accounts for 69% of all Vermont exports.[1] The majority of the semiconductor chips manufactured in IBM Microelectronics' Essex Junction facility are incorporated into consumer products such as cell phones, tablets, televisions, routers, and GPS devices, sold here in Vermont and around the globe by our valued clients..

IBM has a long history of proactively evaluating the chemicals proposed for or used in our processes and products; identifying potential substitutes that may have less impact on the environment, health and safety; and eliminating, restricting and/or prohibiting the use of substances for which a more preferable alternative is available that is capable of meeting quality and safety requirements of our processes and products. Our record of voluntary material restrictions and prohibitions stretches back over three decades, and is evidence of our commitment to and expertise in safe and responsible chemical use that is protective of human health and the environment.[2] IBM's product specification currently bans or restricts over 100 chemicals from our supply chain. As Product Stewardship Program Manager for IBM's Microelectronics Division, I ensure that our products meet worldwide chemical content regulations. I also served for several years as a member and as Chair of the Vermont Advisory Committee on Mercury Pollution.

In 2014, we were very pleased to have been able to participate & contribute to the collaborative effort that led to the adoption of Act 188, an act relating to the regulation of toxic substances. However, in 2015, we have before us S.139, a proposal with several key amendments to Sections 11 & 12 with which we have significant concerns.

**1)** The establishment of the Working Group provided for by Act 188 plays a key technical role by providing technical expertise in areas that were beyond the Dept of Health's existing scope. On page 16, lines 1 and 2, the amendment specifically eliminates the need for the Dept of Health and the Working Group to agree on future bans and/or restrictions on chemicals of high concern in children's products. Where there was the need to collaborate with stakeholders and consider information outside of Dept of Health

[1] Based on 2012, the most recent statewide data available.

[2] For more information on IBM's record of environmental leadership and product stewardship, please see www.ibm.com/environment.

expertise, this collaborative process has been discarded. In our view, this amendment makes the decision process less robust and inclusive of all pertinent information.

**2)** The amendments in Sections 11 and 12 proposes a regulatory structure triggered solely by the hazard of a chemical, regardless of the risk (or lack of risk) of exposure. S139 seeks to regulate any detectable presence of a listed chemical over a vast universe of children's products, irrespective of the potential for exposure to harmful concentrations. Such an approach is wasteful and imposes regulatory burden where there may be little risk, and therefore scant prospect for actual health or environmental benefit.

A product should not be subject to regulation in the absence of a credible exposure pathway. The exposure assessment should address whether the chemical is present in a form that would allow absorption by a child at a level of concern. For example, if the chemical in question is completely encapsulated in an impervious substance and is inaccessible during normal and foreseeable use of the product, it is not a risk factor (provided disposal is managed appropriately). Regulation should be focused on actual risks rather than perceived risks.

**3)** In Section 12, the amendment allows for the rule to regulate the sale or distribution of a children's product containing a chemical of high concern to children (CHCC) upon determination that a safer alternative is available. There is no consideration for timelines for alternate chemical assessment and phase out of CHCC in children's products. Timelines need to be realistic and practical keeping into consideration some of the activities the manufacturers of children's products need to complete. Key steps in an alternates assessment and phase out process must include:

- Understanding the chemical composition of a product – many products contain hundreds if not thousands of individual components, each of which may be manufactured by a different supplier or suppliers. It can take six or more months just to contact and receive relevant information and assurances from each of those suppliers.
- Identifying alternate chemicals for evaluation.
- Determining whether those chemicals are available for purchase from a reliable, trustworthy source.
- Negotiating pricing and other terms with any such source.
- Purchasing those alternate chemicals.
- Conducting a regulatory, technical, and economic feasibility analysis of the alternate chemicals.
- Qualifying the selected, alternate chemicals.

For example, IBM's semiconductor facilities conducted a significant, technologically challenging, multi-year effort (over 7 years) to eliminate use of PFOS and PFOA compounds. The work was completed in January 2010. This effort required close collaboration with IBM's chemical suppliers, development partners, external vendors, and other IBM locations through a period of several years. Based on IBM's experience with this and other phase out efforts, we would like to re-emphasize that the assessment and the ultimate selection of an alternate

chemical is an extremely complex and time consuming process that entails consideration of multiple factors

Thank you for your consideration. For additional information or questions, please contact:

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