



**STATEMENT
OF THE
PERSONAL CARE PRODUCTS COUNCIL**

ON: BILL AMENDING VERMONT'S "TOXIC-FREE FAMILIES ACT" RELATING TO CHEMICALS OF HIGH CONCERN TO CHILDREN

**TO: VERMONT STATE LEGISLATURE
SENATE COMMITTEE ON HEALTH & WELFARE**

DATE: MARCH 18, 2015

**BEFORE THE SENATE COMMITTEE ON HEALTH & WELFARE
LEGISLATIVE HEARING ON A BILL TO AMEND
VERMONT'S "TOXIC-FREE FAMILIES ACT" RELATING TO CHEMICALS OF HIGH
CONCERN TO CHILDREN**

**Written Testimony Prepared and Submitted by
The Personal Care Products Council**

March 18, 2015

The Personal Care Products Council (Council)¹ respectfully submits this statement to the Vermont Senate Health & Welfare Committee regarding the proposed amendment to the Toxic-Free Families Act. The Council is comprised of companies involved in the manufacture and distribution of cosmetics and personal care products in Vermont and throughout the United States, and therefore has a strong interest in the scope and applicability of the Toxic-Free Families law, and the changes proposed by this amendment.

With respect to the proposed amendments, the Council has concerns with several of them, which are set forth below in the order in which they appear in text:

Proposed Amendment: *The Commissioner may by rule add additional chemicals to the list of chemicals of high concern to children, provided that the Commissioner of Health, on the basis of ~~the weight of~~ credible, scientific evidence, has determined that a chemical proposed for addition to the list...*

Concern: The phrase "the weight of" implies a process of review for scientific findings to determine their relevance. That is, it implies that any findings would be replicated, corroborated, and weighed against conflicting evidence to determine relevance. The basic process of sound science demands this weighing of evidence. By removing these words, there is

¹ Based in Washington, D.C., the Council is the leading national trade association representing the global cosmetic and personal care products industry. Founded in 1894, the Council's more than 600 member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the United States. As the makers of a diverse range of products that millions of consumers rely on everyday, from sunscreens, toothpaste, and shampoo to moisturizer, lipstick, and fragrance, member companies are global leaders committed to product safety, quality, and innovation. The Council was previously known as the Cosmetic, Toiletry, and Fragrance Association.

the potential for any single study, relevant or not, to form the basis of a decision to list a chemical. In our estimation, the conscious consideration of all credible evidence ensures a sound approach to the listing process.

Proposed Amendment: *The Commissioner, ~~upon the recommendation of~~ after consultation with the Chemicals of High Concern to Children Working Group, may adopt a rule to regulate the sale or distribution of a children's product containing a chemical of high concern to children...*

Concern: Currently under the law, the Commissioner of Health needs a recommendation from the Chemicals of High Concern to Children (CHCC) Working Group before proposing a rule to regulate the sale of a children's product containing a chemical of high concern to children. Under the proposed amendment, however, the Commissioner only needs to "consult" with the CHCC Working Group, not receive a recommendation. This dilutes the oversight and purpose of the Working Group – comprised of experts, appointed by the Governor – and gives the Commissioner greater authority to unilaterally act on chemicals in products. Since these experts are chosen by the state, their evaluation and expertise should have weight beyond just consultation. The amendment would reduce or eliminate the evaluation process by which the experts in the CHCC Working Group would weigh the scientific evidence to arrive at a recommendation. This process would ensure that data supporting a regulatory decision is credible and that the regulatory action is in the best interest of the children in the State of Vermont.

Proposed Amendment: *The Commissioner...may adopt a rule to regulate the sale or distribution of a children's product containing a chemical of high concern to children upon a determination that: (A) ~~children will be exposed to a chemical of high concern to children in the children's product~~ there is potential for exposure of children to the chemical of high concern.*

Concern: Replacing the "will expose" language with the "potential to expose" eliminates the need for certainty or proof of exposure. This stands in contradiction to the listing process requirements of reasonable evidence of harm ***and*** evidence of exposure. By requiring evidence with the words "will expose", there is some restraint on less likely exposure scenarios that are often presented in an effort to restrict critical ingredients that have been demonstrated to have high margins of safety.

Proposed Amendment: *The Commissioner...may adopt a rule to regulate the sale or distribution of a children's product containing a chemical of high concern to children upon a determination that: (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~~ one or more safer alternatives to the chemical of high concern to children are available.

Concern: The proposed change ignore the reality that potential exposure and degree of exposure are important considerations in determining the possible harm that a chemical of high concern may or may not cause. This is critical for the Commissioner to consider in making a determination as to whether there is a need to adopt a rule to regulate sale of products containing a chemical of high concern to children. The proposed amendments would result in the Commissioner having the ability to adopt a rule to regulate products solely on the basis that a chemical exists in a children's product and that there may be an alternative – it doesn't take into account whether or not that alternative is technically or economically feasible and provides no grounds upon which to determine what "safer alternative" means. These amendments at best minimize alternatives analysis processes and at worst ignores them altogether.

These exposure considerations are necessary for regulation of children's products containing chemicals of high concern to result in measureable and meaningful benefits to children's health.

Further, our member companies have participated in many of the efforts to establish standards for safer substitutes. The best of those have demonstrated that this is a deliberative process requiring consideration of many factors. For example, the recent framework developed under the auspices of the National Academies of Science comprised 13 chapters and hundreds of pages, showing that there are many factors to account for in any safer substitute program.

Finally, we should note that with respect to preservatives, any "safer" alternative must show equal or greater efficacy in reducing the growth of microbial contaminants that may be introduced into the product during reasonably anticipated consumer use.

Proposed Amendment: In determining whether children will be exposed to a chemical of high concern in a children's product, the Commissioner shall review available, credible information regarding: (A) the market presence of the children's product in the State; or ~~(B) the type or occurrence of exposures to the relevant chemical of high concern to children in the children's product;~~ (C) ~~the household and workplace presence of the children's product;~~ or (D) ~~the potential and frequency of exposure of children to the chemical of high concern to children in the children's product~~ the amounts of the chemical of high concern contained in the children's product as reported under section 1775 of this title.

Concern: Under this amendment, the Commissioner would determine exposure of a chemical in a children's product based only on the fact that a product contains a chemical of high concern to children and that it exists on the market in the State. This assumes that presence is equal to exposure and ignores any controls that could be in place to prevent unnecessary exposure of children to a chemical of high concern. This approach again ignores alternatives analysis principles that take into account the likelihood of exposure, the relevance of that exposure and if the frequency of exposure to a chemical is likely to cause harm. Further, such an approach ignores the well-recognized science of toxicology and the practices of risk assessment and risk management. A simple and obvious example would be of electronic circuit boards using highly toxic heavy metals. Should we ban children's learning devices because of those toxic components?

The proposed amendments in totality reduce the role that exposure considerations and scientific evidence play in the creation of rules for children's products that may contain chemicals of high concern for children. Proper consideration of exposure is necessary if regulations for children's products containing chemicals of high concern to children are to result in measurable and meaningful benefits to children's health, which is the ultimate goal of this law. Based on the foregoing, the Council has continuing concerns regarding the proposed amendment to the Toxic-Free Families Act and would therefore oppose it in its current form.

Thank you for the opportunity to testify today, and we would welcome the opportunity to work with you on this and future legislation.