

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred House Bill  
3 No. 536 entitled “An act relating to toxic heavy metals in baby food products”  
4 respectfully reports that it has considered the same and recommends that the  
5 Senate propose to the House that the bill be amended by striking out all after  
6 the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 18 V.S.A. chapter 82 is amended to read:

8 CHAPTER 82. LABELING OF FOODS, DRUGS, COSMETICS, AND  
9 HAZARDOUS SUBSTANCES

10 Subchapter 1. ~~Labeling for Marketing and Sale~~ General Provisions

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12 Subchapter 3. Testing and Labeling of Certain Products

13 § 4091. BABY FOOD PRODUCTS

14 (a) As used in this section:

15 (1) “Baby food product” means any food manufactured, packaged, and  
16 labeled in a jar, pouch, tub, or box sold specifically for babies and children  
17 younger than two years of age. “Baby food product” does not include infant  
18 formula.

19 (2) “Final baby food product” means the finished baby food product and  
20 not the constituent ingredients.

1           (3) “Infant formula” means a commercially available milk-based or soy-  
2           based powder, concentrated liquid, or ready-to-feed substitute for human breast  
3           milk that is intended for infant consumption.

4           (4) “Production aggregate” means a quantity of product that is intended  
5           to have a uniform composition, character, and quality and is produced  
6           according to a master manufacturing order.

7           (5) “Proficient laboratory” means a laboratory that:

8           (A) is accredited under the standards of the International  
9           Organization for Standardization or the International Electrotechnical  
10           Commission pursuant to standard ISO/IEC 17025:2017;

11           (B) uses an analytical method as sensitive as the analytical method  
12           described in the U.S. FDA’s Elemental Analysis Manual for Food and Related  
13           Products; and

14           (C) demonstrates proficiency in quantifying each toxic element to at  
15           least six micrograms of the toxic element to kilogram of food through an  
16           independent proficiency test by achieving a z-score that is less than or equal to  
17           plus or minus two.

18           (6) “QR code” means a two-dimension matrix barcode consisting of  
19           blocks arranged in a grid that can be read by an imaging device.

20           (7) “Representative sample” means a sample that consists of a number  
21           of units that are drawn based on rational criteria, including random sampling,

1 and intended to ensure that the sample accurately portrays the material being  
2 sampled.

3 (8) “Toxic heavy metal” means arsenic, cadmium, lead, and mercury.

4 (9) “URL” means a uniform resource locator.

5 (10) “U.S. FDA” means the U.S. Food and Drug Administration.

6 (b) A person shall not sell, distribute, or offer for sale any baby food  
7 product in the State that contains a toxic heavy metal that exceeds the  
8 regulatory limits established by the U.S. FDA. The provisions of this  
9 subsection shall not restrict the continued sale of inventory in stock before  
10 January 1, 2027.

11 (c) A manufacturer of a baby food sold or distributed in the State shall test  
12 a representative sample of each production aggregate of the manufacturer’s  
13 final baby food product for toxic heavy metals. Testing of a baby food product  
14 shall be conducted by a proficient laboratory at least once a month. A  
15 manufacturer of baby food may test the final baby food product before  
16 packaging individual units for sale or distribution. Upon request of the Office  
17 of the Attorney General, a manufacturer shall provide the results of the test  
18 conducted pursuant to this subsection.

19 (d)(1) Without requiring the provision of a universal product code or proof  
20 of purchase, for each baby food product sold, manufactured, delivered, held, or  
21 offered for sale in the State, a manufacturer of baby food shall make publicly

1 available on its website for the duration of the product shelf life of a final baby  
2 food product, plus one month:

3 (A) the name and level of each toxic heavy metal in the final baby  
4 food product as determined by the testing conducted pursuant to subsection (c)  
5 of this section;

6 (B) sufficient information, including the product name, universal  
7 product code, or lot or batch number, to enable consumers to identify the final  
8 baby food product; and

9 (C) a link to the U.S. FDA’s website that provides the most recent  
10 U.S. FDA guidance and information about the health effects of toxic heavy  
11 metals on children.

12 (2) A baby food product that is sold online to a consumer in Vermont by  
13 either a retailer or directly from the manufacturer shall contain on the product’s  
14 web page a clearly labeled link to an information page containing the  
15 information required pursuant to subdivision (1) of this subsection.

16 (e) If a baby food product sold or distributed in the State is tested for a  
17 toxic heavy metal subject to an action level, regulatory limit, or tolerance  
18 established by the U.S. FDA under 21 C.F.R. § 109, the manufacturer shall  
19 display on the baby food product:

1           (1) a label stating in a clear, legible, and conspicuous manner that more  
2           information about toxic element testing on the product is available by scanning  
3           the QR code; and

4           (2) a QR code or other machine-readable code that directs the  
5           consumers to the manufacturer’s website or the baby food product information  
6           page providing:

7                   (A) the test results for the toxic heavy metal; and

8                   (B) a URL to the web page on the U.S. FDA’s website that includes  
9           the most recent guidance and information about the health effects of toxic  
10           heavy metals in children.

11           (f) If a consumer reasonably believes, based on the information provided  
12           on the baby food product, that the baby food product is being sold in the State  
13           in violation of this section, the consumer may report the baby food product to  
14           the Office of the Attorney General.

15           (g) A violation of this section shall be deemed a violation of the Consumer  
16           Protection Act, 9 V.S.A. chapter 63. The Attorney General has the same  
17           authority, and private parties have the same rights and remedies, as provided  
18           under 9 V.S.A. chapter 63, subchapter 1.

19           Sec. 2. 18 V.S.A. § 4091 is amended to read:

20           § 4091. BABY FOOD PRODUCTS

21           (a) As used in this section:



1 Tempore of the Senate, which shall be posted on the General Assembly’s  
2 website, that either California or two other states have enacted legislation with  
3 requirements substantially comparable to the requirements of this act regarding  
4 all of the following:

5 (1) the prohibition on the sale and distribution of infant formula that  
6 contains a toxic heavy metal exceeding U.S. Food and Drug Administration  
7 limits;

8 (2) the required testing of infant formula sold or distributed in the State  
9 for toxic heavy metals; and

10 (3) the labeling of infant formula and the provision of information about  
11 toxic heavy metals in infant formula.

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18 (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

FOR THE COMMITTEE