

1 S.239

2 Introduced by Senators Lyons, Mullin, Ashe, and Pollina

3 Referred to Committee on

4 Date:

5 Subject: Health; environmental health; toxic substances; consumer products

6 Statement of purpose of bill as introduced: This bill proposes to require the
7 Department of Health to identify and publish a list of chemicals of high
8 concern. The Department of Health would designate a chemical as one of high
9 concern if certain conditions are met. The bill would also require a
10 manufacturer of a consumer product containing a chemical of high concern to
11 notify the Commissioner of Health of the use of the chemical in the product
12 and to replace the chemical with a safer alternative. If a manufacturer fails to
13 replace the chemical of high concern in the consumer product or fails to obtain
14 a waiver, the bill would prohibit the sale of that consumer product in the State.

15 An act relating to the regulation of toxic substances

16 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. FINDINGS

2 The General Assembly finds that:

3 (1) There are more than 84,000 chemicals used commercially in the
4 United States, and each year approximately 1,000 chemicals are added to the
5 list of registered chemicals.

6 (2) More than 90 percent of the chemicals in commercial use in the
7 United States have never been fully tested for potential impacts on human
8 health or the environment.

9 (3) In 1976, the federal government passed the Toxic Substances
10 Control Act (TSCA) in an attempt to improve the regulation of chemicals in
11 the United States. However, TSCA grandfathered approximately 62,000
12 chemicals from regulation under the Act. Consequently, the U.S.
13 Environmental Protection Agency (EPA) is not required to assess the risk of
14 these chemicals. Since TSCA became law, EPA only has required testing for
15 approximately 200 chemicals, and has banned or restricted the use of only five
16 of those chemicals. No chemicals have been banned in over 20 years.

17 (4) Biomonitoring studies reveal that toxic chemicals are in the bodies
18 of people, including chemicals linked to cancer, brain and nervous damage,
19 birth defects, developmental delays, and reproductive harm. Even newborn
20 babies have chemical body burdens, proving that they are being polluted while
21 in the womb.

1 (5) A growing body of scientific evidence demonstrates that these
2 chemical exposures are taking a toll on public health and are playing a role in
3 the incidence and prevalence of many diseases and disorders, including
4 leukemia, breast cancer, asthma, reproductive difficulties, birth defects, and
5 autism.

6 (6) The societal and health care costs attributed to toxic exposures are
7 extraordinary. More than \$2.3 billion are spent every year just on the medical
8 costs of cancer, asthma, and neurobehaviorial disorders associated with toxic
9 chemicals.

10 (7) Vermont has regulated the use of individual chemicals of concern,
11 including lead, mercury, bisphenol A, phthalates, Deca, and chlorinated Tris,
12 but reviewing chemicals individually, one at a time, is inefficient and
13 inadequate for addressing the issues posed by chemicals of concern.

14 (8) Other states and countries, including Maine, Washington, California,
15 and the European Union, are already taking a more comprehensive approach to
16 chemical regulation in consumer products, and chemical regulation in Vermont
17 should harmonize with these efforts.

18 (9) The Department of Health and the Agency of Natural Resources
19 have experience monitoring and regulating chemical use through the toxic use
20 and hazardous waste reduction programs.

1 Sec. 2. 18 V.S.A. chapter 38A is added to read:

2 CHAPTER 38A. TOXIC CHEMICAL IDENTIFICATION

3 § 1771. POLICY

4 It is the policy of the State of Vermont to protect public health and the
5 environment by reducing exposure of its citizens and vulnerable populations,
6 such as children, to toxic chemicals, particularly when safer alternatives exist.

7 § 1772. DEFINITIONS

8 As used in this chapter:

9 (1) “Agency” means the Agency of Natural Resources.

10 (2) “Alternative” means a substitute process, product, material,
11 chemical, strategy, or combination of these that serves a functionally
12 equivalent purpose to a chemical of high concern.

13 (3) “Bioaccumulative” means a substance that increases in concentration
14 in living organisms as they take in contaminated air, water, soil, sediment, or
15 food because the substances are very slowly metabolized or excreted.

16 (4) “Chemical” means an element or a substance with a distinct
17 molecular composition or a group of structurally related substances and
18 includes the breakdown products of the substance or substances that form
19 through decomposition or metabolism.

20 (5) “Chemical of high concern” means a priority chemical identified by
21 the Department of Health under section 1773 of this chapter.

1 (6) “Commissioner” means the Commissioner of Health.

2 (7) “Consumer product” means any item sold for personal use, including
3 any component or packaging. “Consumer product” does not mean a food or
4 beverage, an additive to a food or beverage, a tobacco product, a pesticide
5 regulated by the U.S. Environmental Protection Agency, a drug or biologic
6 regulated by the federal Food and Drug Administration, or the packaging of a
7 drug or biologic that is regulated by the federal Food and Drug Administration.

8 (8) “De minimis level” means 100 parts per million, unless another level
9 is determined by the Commissioner, in consultation with the Secretary, to be
10 anticipated reasonably not to pose a threat to human health or the environment.

11 (9) “Department” means the Department of Health.

12 (10) “Manufacturer” means:

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

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

1 (11) “Persistent” means a chemical that tends to remain in the
2 environment without transformation or breakdown into another chemical form.

3 (12) “Priority chemical” means a chemical that has been identified on
4 the basis of credible scientific evidence by an authoritative state or federal
5 governmental agency, or on the basis of other scientific evidence considered
6 credible by the Department, as being known to or reasonably anticipated to:

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

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

10 (C) disrupt the endocrine system;

11 (D) damage the nervous system, immune system, organs, or other
12 systems of the human body;

13 (E) be persistent, bioaccumulative, and toxic; or

14 (F) be very persistent and very bioaccumulative.

15 (13) “Safer alternative” means a chemical used to replace a chemical of
16 high concern:

17 (A) that is less hazardous according to a peer-reviewed hazard
18 assessment tool currently used by government and business entities; and

19 (B) that is not:

20 (i) classified as “known to be a human carcinogen” or “reasonably
21 anticipated to be a human carcinogen” in the most recent report on carcinogens

1 by the National Toxicology Program in the U.S. Department of Health and
2 Human Services;

3 (ii) classified as “carcinogenic to humans” or “likely to be
4 carcinogenic to humans” in the U.S. Environmental Protection Agency’s most
5 recent list of chemicals evaluated for carcinogenic potential; or

6 (iii) identified by the U.S. Environmental Protection Agency or
7 National Institutes of Health as causing birth defects, hormone disruption,
8 neurotoxicity, or harm to reproduction or development.

9 (14) “Secretary” means the Secretary of Natural Resources.

10 (15) “Toxic” means a substance or mixture of substances that can harm
11 humans, plants, or wildlife.

12 (16) “Very bioaccumulative” means having a bioconcentration factor or
13 bioaccumulation factor equal to or greater than 5,000, or having a log of the
14 octanol-water partition coefficient, known as log Kow, greater than 5.0.

15 (17) “Very persistent” means having:

16 (A) a half-life in soil or sediment of greater than 180 days; or

17 (B) a half-life equal to or greater than 60 days in water or evidence of
18 long-range transport.

19 § 1773. CHEMICAL OF HIGH CONCERN

20 (a) List of chemicals. On or before July 1, 2015, and biennially thereafter,
21 the Commissioner of Health, in consultation with the Secretary of Natural

1 Resources, shall publish a list of priority chemicals that are of a high concern
2 for human health or the environment.

3 (b) Criteria. The Commissioner of Health shall designate a chemical as a
4 chemical of high concern if it is a priority chemical that meets, on the basis of
5 credible scientific evidence, one or more of the following criteria:

6 (1) the chemical has been found through biomonitoring to be present in
7 human blood, umbilical cord blood, breast milk, urine, or other bodily tissues
8 or fluids;

9 (2) the chemical has been found through sampling and analysis to be
10 present in household dust, indoor air, drinking water, or elsewhere in the home
11 environment; or

12 (3) the chemical has been found through monitoring to be present in
13 fish, wildlife, or the natural environment.

14 (c) Resources for consideration. The Commissioner, in determining the list
15 of chemicals of high concern, may consider designations made by other states,
16 the federal government, other countries, or other governmental agencies.

17 (d) Publication of list. The list of chemicals of high concern shall be
18 posted on the Department of Health website. For each chemical on the list, the
19 Commissioner of Health shall post information regarding the potential health
20 impacts associated with exposure to the chemical.

1 (e) Revisions. The Commissioner of Health, after consultation with the
2 Secretary of Natural Resources, shall update the list of chemicals of high
3 concern at least every two years, and may add chemicals of high concern to the
4 list. The Commissioner shall promptly update the list on the Department's
5 website as needed.

6 (f) Rulemaking. The Department shall adopt rules to implement the
7 requirements of this section.

8 § 1774. DISCLOSURE OF INFORMATION ON CHEMICALS OF HIGH
9 CONCERN

10 (a) Not later than one year after a chemical is placed on the list of
11 chemicals of high concern, a manufacturer of a consumer product shall submit
12 to the Department the notice described in subsection (b) of this section if:

13 (1) the manufacturer intentionally adds a chemical included in the list of
14 chemicals of high concern to a consumer product; or

15 (2) a consumer product contains a chemical of high concern above a
16 de minimis level.

17 (A) An exemption for a de minimis level in a consumer product
18 applies only if the listed chemical is present in the manufactured product as an
19 impurity and remains in the product distributed in commerce below the level
20 determined by the Department for each chemical.

1 (B) An exemption for a de minimis level in a consumer product does
2 not apply to a by-product manufactured coincidentally as a result of
3 manufacturing, processing, other use, or any waste management activity.

4 (b) The notice required by subsection (a) of this section shall contain the
5 following information:

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

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

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

11 (4) the amount of the chemical used in each unit of the product or
12 product component. The amount may be reported in ranges, rather than the
13 exact amount;

14 (5) the name and address of the manufacturer and the name, address,
15 and telephone number of a contact person for the manufacturer; and

16 (6) any other information the manufacturer deems relevant to the
17 appropriate use of the product.

18 (c) A trade association may, on behalf of its member manufacturers,
19 provide the notice of disclosure required under this section.

20 (d) In order for the Department to obtain the information required in the
21 notice described in subsection (b) of this section, the Department may enter

1 into reciprocal data-sharing agreements with other states in which a
2 manufacturer of consumer products is also required to disclose information
3 related to chemicals of high concern in consumer products. If the Department
4 has entered into a data-sharing agreement with another state, and a
5 manufacturer has reported the information required in the notice described in
6 subsection (b) of this section to that state, the manufacturer may request that
7 the other state provide the Department with the information in lieu of the
8 manufacturer directly reporting the information to the Department.

9 (e) A manufacturer fulfills the notice requirement of subsection (a) of this
10 section when the Department receives the information from the other state and
11 the Department determines that the information received meets the description
12 specified in subsection (b) of this section.

13 (f) The Department shall maintain a website providing consumers with a
14 summary of the chemicals of high concern reported in consumer products.

15 (g) A manufacturer required under this section to provide information on
16 its use of a chemical of high concern shall, within 30 days of receipt of an
17 invoice from the Department, pay a fee, not to exceed \$5,000.00 per disclosure
18 of use of a chemical of high concern in a consumer product, which will be
19 deposited in the Chemicals of High Concern Fund for the purposes of that
20 fund.

1 § 1775. REMOVAL, REPLACEMENT, AND WAIVERS

2 (a) Within three years of the date a manufacturer provides notice that a
3 consumer product contains a chemical of high concern included on the list
4 maintained pursuant to section 1773 of this chapter, a manufacturer shall
5 remove or replace the chemical in the consumer product, or shall obtain a
6 waiver under this section.

7 (b)(1) When a manufacturer of a consumer product removes a chemical of
8 high concern from a consumer product by replacing it with another chemical,
9 the manufacturer shall submit to the Department an assessment that
10 demonstrates that the proposed replacement is a safer alternative.

11 (2) If the Department determines that the replacement chemical is not a
12 safer alternative, the manufacturer shall submit a revised assessment within 60
13 days, or seek a waiver as described in subsection (c) of this section.

14 (c) To apply for a waiver from the requirements of subsections (a) and (b)
15 of this section, a manufacturer shall submit an application to the Department
16 that adequately addresses the following issues relating to the chemical and the
17 product for which the waiver is sought:

18 (1) toxicity data;

19 (2) quantitative analysis of potential exposure of children to the
20 chemical, including data on leachability and bioavailability;

1 (3) a safer alternative assessment that identifies and compares potential
2 chemical and nonchemical alternatives that may be used as substitutes to
3 replace the chemical;

4 (4) data on the financial and technical feasibility of replacing the
5 chemical with a safer alternative;

6 (5) the importance of the product in providing for consumer safety or
7 health.

8 (d) The Department shall assess whether the manufacturer has replaced the
9 chemical of high concern with a safer alternative. The Department shall
10 approve or disapprove a safer alternative assessment or waiver application, or
11 offer alternative remedies such as labeling, within 180 days of its submittal. If
12 the Department fails to act within 180 days, the safer alternative assessment or
13 waiver application is deemed approved. If the Department disapproves a safer
14 alternative assessment or waiver application, the manufacturer may submit a
15 revised safer alternative assessment or waiver application for consideration
16 within 180 days of the disapproval.

17 (e) Beginning four years after a chemical of high concern is included on the
18 list maintained pursuant to section 1773 of this chapter, no manufacturer shall
19 sell a consumer product in or into the State that contains a listed chemical
20 unless the manufacturer of the consumer product has obtained a waiver under
21 this section.

1 § 1776. CHEMICALS OF HIGH CONCERN FUND

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

7 (b) The Department may accept gifts, grants, or contributions from any
8 public or private source for the purpose of carrying out this chapter.

9 (c) The Chemicals of High Concern Fund shall consist of:

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

12 (2) fees and charges collected under section 1774 of this chapter.

13 § 1777. REPORTING TO GENERAL ASSEMBLY

14 Beginning on January 15, 2016, the Department biennially shall submit to
15 the Senate Committee on Health and Welfare and the House Committee on
16 Human Services a report regarding the implementation of this chapter,
17 including:

18 (1) any updates made to the list of chemicals of high concern required
19 under section 1773 of this chapter;

20 (2) the number of manufacturers in compliance with this chapter and an
21 analysis of the information collected, specifying:

1 (A) the number and types of consumer products sold or offered for
2 sale in this State that contain chemicals of high concern used in consumer
3 products;

4 (B) the types and range of amounts of chemicals of high concern
5 used in consumer products; and

6 (C) recommendations on how to reduce or prevent exposure to
7 chemicals of high concern used in consumer products.

8 (3) a summary of any federal reforms to the Toxic Substances Control
9 Act and potential impacts of the reforms on implementation of this chapter.

10 § 1778. VIOLATIONS AND ENFORCEMENT

11 A violation of this chapter shall be considered a violation of the Consumer
12 Protection Act, 9 V.S.A. chapter 63. The Attorney General has the same
13 authority to make rules, conduct civil investigations, enter assurances of
14 discontinuance, and bring civil actions, and private parties have the same rights
15 and remedies as provided under 9 V.S.A. chapter 63, subchapter 1.

16 § 1779. RULEMAKING

17 The Commissioner may adopt rules to implement the requirements of this
18 chapter.

19 Sec. 3. EFFECTIVE DATE

20 This act shall take effect on July 1, 2014.