

1 H.394

2 Introduced by Representatives Weston of Burlington and Wizowaty of

3 Burlington

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; toxic substances; children's products

7 Statement of purpose: This bill proposes to require the secretary of natural  
8 resources to establish a toxic chemical identification and reduction program.

9 Under the program, the secretary of natural resources would identify chemicals  
10 of high concern. The secretary would be required to designate a chemical of  
11 high concern as a priority chemical if certain conditions are met. Children's  
12 products containing a priority chemical would be prohibited from sale or  
13 distribution in the state.

14 An act relating to the regulation of toxic substances

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

16 Sec. 1. FINDINGS

17 The general assembly finds that:

18 (1) There are more than 80,000 chemicals used commercially in the  
19 United States, and each year 1,000 chemicals are added to the list of  
20 commercially used chemicals.

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

4           (3) In 1976, the federal government passed the Toxic Substances  
5           Control Act (TSCA) in an attempt to better regulate chemicals in the United  
6           States. However, TSCA grandfathered 62,000 chemicals from regulation  
7           under the act, consequently, the U.S. Environmental Protection Agency (EPA)  
8           is not required to assess the risk of these chemicals. Since TSCA became law,  
9           EPA has only required testing for fewer than 200 of the 62,000 grandfathered  
10           chemicals, and has banned only five of those chemicals.

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

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

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

5           (7) Other states and countries, including Maine, Washington, and the  
6           European Union, are already taking a more precautionary approach to chemical  
7           regulation.

8           (8) The agency of natural resources has experience monitoring and  
9           regulating chemical use through the toxic use and hazardous waste reduction  
10           program.

11       Sec. 2. 10 V.S.A. chapter 159, subchapter 4 is added to read:

12           Subchapter 4. Toxic Chemical Identification and Reduction

13       § 6671. POLICY

14           It is the policy of the state of Vermont to protect public health and the  
15           environment by reducing exposure of its citizens and vulnerable populations,  
16           such as children, to toxic chemicals when safer alternatives exist.

17       § 6672. DEFINITIONS

18           As used in this subchapter:

19           (1) “Alternative” means a substitute process, product, material,  
20           chemical, strategy, or combination of such that serves a functionally equivalent  
21           purpose to a priority chemical or chemical of high concern.

1           (2) “Chemical” means a substance with a distinct molecule composition  
2           or a group of structurally related substances and includes the breakdown  
3           products of the substance or substances that form through decomposition or  
4           metabolism.

5           (3) “Chemical of high concern” means a chemical identified by the  
6           secretary of natural resources under section 6673 of this title.

7           (4) “Child” means any person under 18 years of age.

8           (5) “Children’s product” means:

9                   (A) a consumer product intended for use by children, such as a baby  
10                  product, toy, car seat, personal care product, or clothing; and

11                   (B) any consumer product containing a chemical of high concern that  
12                  when used or disposed of will likely result in a child being exposed to that  
13                  chemical.

14           (6) “Consumer product” means any item sold for residential or  
15           commercial use, including any component or packaging.

16           (7) “Distributor” means a person who sells a consumer product to a  
17           retail establishment on a wholesale basis.

18           (8) “Manufacturer” means any person who manufactures a final  
19           consumer product or whose brand name is affixed to the consumer product. In  
20           the case of a consumer product imported into the state and distributed, sold, or  
21           offered for sale in the state, “manufacturer” includes the importer or domestic

1 distributor of the consumer product if the person who manufactured or  
2 assembled the consumer product or whose brand name is affixed to the  
3 consumer product does not have a presence in the United States.

4 (9) "Priority chemical" means a chemical identified as such by the  
5 secretary of natural resources under section 6674 of this title.

6 (10) "Safer alternative" means an alternative that, when compared to a  
7 priority chemical that it could replace, would reduce the potential for harm to  
8 human health or the environment or that has not been shown to pose the same  
9 or greater potential for harm to human health or the environment as the priority  
10 chemical.

11 (11) "Secretary" means the secretary of natural resources.

12 § 6673. CHEMICAL OF HIGH CONCERN

13 (a) On or before July 1, 2012, the secretary shall publish a list of chemicals  
14 of high concern to public health or the environment of the state of Vermont.  
15 The secretary shall update the list of chemicals of high concern as necessary  
16 and at least annually. A chemical or other substance may be included on the  
17 list of chemicals of high concern if the secretary determines that it has been  
18 identified by an authoritative governmental entity on the basis of credible  
19 scientific evidence as being known as:

20 (1) a carcinogen;

21 (2) a mutagen;

1           (3) a reproductive or developmental toxin;

2           (4) an endocrine disruptor;

3           (5) a persistent, bioaccumulative toxin;

4           (6) very persistent and very bioaccumulative.

5           (b) The secretary may revise the list as needed and may add a chemical to  
6 the list of chemicals of high concern if it meets one or more of the criteria of  
7 subsection (a) of this section. The secretary may remove a chemical from the  
8 list of chemicals of high concern if, based on evidence, the secretary  
9 determines that the chemical does not meet or no longer meets one or more of  
10 the criteria of subsection (a) of this section.

11           (c) The secretary may consider for possible inclusion in the list of  
12 chemicals of high concern chemicals that are:

13           (1) regulated by Vermont's toxic use and hazardous waste reduction  
14 program; or

15           (2) listed by another state as harmful to human health or the  
16 environment.

17           (d) Beginning July 1, 2012, the secretary shall publish a list of chemicals of  
18 high concern on the agency of natural resources' website and shall update the  
19 published list whenever a new chemical of high concern is designated.

1        § 6674. PRIORITY CHEMICALS

2            (a) The secretary shall designate a chemical of high concern as a priority  
3        chemical if the secretary finds that:

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

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

10           (3) the chemical has been found through monitoring to be present in  
11        fish, wildlife, or the natural environment;

12           (4) the chemical has been found to be present in a consumer product  
13        used or present in the home;

14           (5) the chemical has been identified as a high production volume  
15        chemical by the U.S. Environmental Protection Agency; or

16           (6) the sale or use of the chemical or a product containing the chemical  
17        has been banned in another state within the United States.

18           (b) By July 1, 2013, and annually thereafter, the secretary shall designate at  
19        least two priority chemicals.

1        (c) Beginning July 1, 2013, the secretary shall publish a list of priority  
2        chemicals on the agency of natural resources' website and shall update the  
3        published list whenever a new priority chemical is added.

4        § 6675. PRIORITY CHEMICAL NOTIFICATION OF USE

5        (a) No later than 180 days after the secretary designates a priority chemical  
6        under section 6674 of this title, a manufacturer or distributor of a children's  
7        product that is distributed, sold, or offered for sale in Vermont and that  
8        contains the priority chemical designated by the secretary shall notify the  
9        secretary in writing of the presence of the priority chemical in the children's  
10       product. The notification shall:

11            (1) identify the children's product;

12            (2) disclose the number of units of the children's product sold or  
13        distributed in the state;

14            (3) specify the priority chemical or chemicals and the amount of  
15        chemical or chemicals contained in the children's product; and

16            (4) describe the intended purpose or use of the priority chemical in the  
17        children's product.

18        (b) The manufacturer or distributor of a children's product that contains a  
19        priority chemical shall provide the following additional information if  
20        requested by the secretary:



1           (1) information on the likelihood that the chemical will be released from  
2           the children's product to the environment during the product's life cycle and  
3           the extent to which users of children's products are likely to be exposed to the  
4           chemical;

5           (2) information on the extent to which the chemical is present in the  
6           environment or human body;

7           (3) an assessment of the availability, cost, feasibility, and performance,  
8           including potential for harm to public health and the environment, or  
9           alternatives to the priority chemical and the reason the priority chemical was  
10          used in the manufacture of the children's product in lieu of the identified  
11          alternatives. If an assessment acceptable to the secretary is not timely  
12          submitted, the secretary may assess the manufacturer or distributor the cost of  
13          a report conducted by an independent contractor of the secretary's choice on  
14          the availability of safer alternatives.

15          (c) The secretary shall post all disclosure information related to priority  
16          chemicals in children's products that are provided by a manufacturer or a  
17          distributor on the agency of natural resources' website no later than 15 days  
18          after receiving the information.

19          § 6676. PROHIBITION ON SALE

20          (a) The secretary may prohibit, by rule, the manufacture, sale, or  
21          distribution in the state of a children's product containing a priority chemical if

1 the secretary determines, after consideration of the information submitted  
2 under section 6675 of this title and other relevant information obtained by the  
3 secretary, that:

4 (1) distribution of the children's product directly or indirectly exposes  
5 children and vulnerable populations to the priority chemical; and

6 (2) one or more safer alternatives to the priority chemical are available  
7 at a comparable cost.

8 (b) If, under subsection (a) of this section, the secretary identifies several  
9 safer alternatives to a priority chemical, the secretary may ban the sale of  
10 children's products that do not contain the alternative that is the least toxic to  
11 public health or the environment.

12 (c) A prohibition adopted by rule under this section shall have an effective  
13 date of at least 12 months from the date the proposed rule is filed with the  
14 secretary of state under 3 V.S.A. § 838.

15 (d) For the purpose of determining whether a safer alternative is available  
16 under subsection (a) of this section, the secretary may, in the absence of  
17 persuasive evidence to the contrary:

18 (1) presume that an alternative is a safer alternative if the alternative is  
19 not a chemical of high concern;

1           (2) presume that a safer alternative is available if the sale of the  
2 children's product containing the priority chemical has been banned by another  
3 state within the United States;

4           (3) presume that a safer alternative is available if the children's product  
5 containing the priority chemical is an item of apparel or a novelty; and

6           (4) presume that a safer alternative is available if the alternative is sold  
7 in the United States.

8           (e) At least 180 days prior to the effective date of a prohibition of a priority  
9 chemical adopted under subsection (a) of this section, a manufacturer or  
10 distributor of a children's product that contains the priority chemical that is  
11 subject to the prohibition shall file a compliance plan with the secretary or  
12 shall seek a waiver from the secretary under subsection (g) of this section.

13 A compliance plan submitted under this subsection shall:

14           (1) identify the children's product that contains a priority chemical;

15           (2) specify whether compliance with a prohibition on a priority chemical  
16 will be achieved by discontinuing the sale of the children's product in the state  
17 or by substituting a safer alternative in the product; and

18           (3) if compliance is to be achieved by substitution of a safer alternative in  
19 the product, identify the safer alternative and the time table for substitution.

20           (f) A manufacturer or distributor of a children's product that contains a  
21 priority chemical shall notify all persons that offer the children's product for

1 sale or distribution in the state of the requirements of this subchapter and  
2 whether the children's product is subject to a prohibition on sale adopted under  
3 subsection (a) of this section.

4 (g)(1) The manufacturer or distributor of a children's product that contains  
5 a priority chemical and that is subject to a prohibition adopted under  
6 subsection (a) of this section may apply to the secretary for a waiver for one or  
7 more specific uses of the priority chemical. The waiver application shall, at a  
8 minimum:

9 (A) identify the specific children's product use or uses for which the  
10 waiver is sought;

11 (B) identify the alternatives considered for substitution of the priority  
12 chemical;

13 (C) explain the alternatives considered for substitution of the priority  
14 chemical; and

15 (D) identify the steps that have been and will be taken to minimize  
16 the use of the priority chemical.

17 (2) The secretary may grant a waiver under this subsection with or  
18 without conditions upon a finding that there is a need for the children's product  
19 in which the priority chemical is used, and there are no technically or  
20 economically feasible alternatives for the use of the priority chemical in the  
21 children's product. A waiver may be granted for a term not to exceed five

1 years and may be renewed for one additional five-year term upon written  
2 application demonstrating that technically or economically feasible alternatives  
3 remain unavailable. The secretary shall grant or deny a request for a waiver  
4 under this subsection within 60 days of receipt of an administratively complete  
5 application for a waiver.

6 § 6677. EXEMPTIONS

7 The requirements of this subchapter shall not apply to:

8 (1) chemicals in used products;

9 (2) priority chemicals used in or for industry or manufacturing;

10 (3) chemicals in motor vehicles as that term is defined in 23 V.S.A.

11 § 4; or

12 (4) priority chemicals generated solely as a combustion byproduct or  
13 that are present in combustible fuels.

14 § 6678. INTERSTATE CLEARINGHOUSE FOR SAFER CHEMICALS

15 The secretary is authorized to participate, in cooperation with other states  
16 and governmental entities, in an interstate clearinghouse to classify existing  
17 chemicals and to promote safer chemicals in consumer products. The secretary  
18 may also cooperate with an interstate clearinghouse in order to:

19 (1) organize and manage available data on chemicals, including  
20 information on uses, hazards, and environmental concerns;

1           (2) produce and inventory information on safer alternatives to uses of  
2           chemicals of concern and on model policies and programs;

3           (3) provide technical assistance to businesses and consumers related to  
4           safer chemicals; and

5           (4) undertake other activities in support of state programs to promote  
6           safer chemicals.

7           § 6679. CERTIFICATE OF COMPLIANCE

8           In addition to any remedies or procedures authorized by this subchapter or  
9           chapter 201 of this title, the secretary may request the manufacturer or  
10           distributor of a product offered for sale or distribution in the state to provide  
11           the secretary with a certificate of compliance with the requirements of this  
12           subchapter and rules adopted under this subchapter. Within 10 days of receipt  
13           of a request from the secretary under this section, the manufacturer or  
14           distributor shall:

15           (1) provide the secretary with a certificate attesting that the product does  
16           not contain the priority chemical or is not subject to the requirements of this  
17           subchapter; or

18           (2) notify persons who sell or distribute the product in the state that the  
19           sale of the product is prohibited and shall provide the secretary with a list of  
20           the names and addresses of those notified.

1     § 6680. EDUCATION AND CONSULTATION

2         The secretary shall develop educational materials regarding the  
3     requirements of this subchapter for distribution to manufacturers, distributors,  
4     and retailers. The secretary shall consult with retailers and retailer associations  
5     in order to assist retailers in complying with the requirements of this  
6     subchapter.

7     § 6681. RULEMAKING

8         The secretary may adopt rules to implement the requirements of this  
9     subchapter.

10    § 6682. ASSESSMENT

11         The secretary may assess a manufacturer or distributor of a children's  
12    product containing a priority chemical the costs to the agency of implementing  
13    or regulating the priority chemical under this subchapter.

14    Sec. 3. EFFECTIVE DATE

15         This act shall take effect on July 1, 2011.