

# Vermont and Other States Consider Chemical Monitoring Bills

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Product Stewardship and Sustainability Report

A bill introduced in the Vermont State Legislature, HB 268, would amend the Vermont State Toxics Use Reduction and Hazardous Waste Program to build upon the state's current reporting requirements for 66 chemicals in children's products and expand the program to a broad range of other consumer products. The enactment of TSCA reform at the federal level does not preempt reporting requirements such as the one proposed in Vermont. The introduction of this bill at this juncture, before EPA has even had time to get implementation rules for existing chemical reviews in place, signals that in Vermont, there is continued interest in pursuing consumer product regulation.

The Vermont bill seeks to establish an Interagency Committee on Chemical Management. This Committee would evaluate chemical inventories and identify potential risks from the inventories. The bill would also establish a private right of action for medical monitoring damages and authorizes a citizen suit of action for relief for violation of solid waste or hazardous waste permits, standards, regulations, etc.

The bill would require testing of new groundwater sources and potable water supplies for specified chemical parameters. It would expand the current reporting requirement for children's products to require manufacturers of all consumer products—not just children's products—to notify the Department of Health of the presence of any of the 66 chemicals currently listed by the state as chemicals of high concern to children as well as any new high concern chemical designations by the state.

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## Practice Areas

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Environment & Product Regulation

Beginning July 1, 2017, the list of chemicals would be reviewed biennially to provide opportunity for additional chemicals of high concern to be included in the reporting requirements. The definition of a “consumer product” is proposed to mean “any product that is regularly used or purchased to be used for personal, family, or household purposes” with a number of exceptions, including but not limited to:

- products primarily used or purchased for industrial or business use that does not enter the consumer product market or is not otherwise sold at retail;
- foods and beverages; tobacco products; EPA-regulated pesticides; and FDA-regulated drugs;
- consumer electronic products;
- inaccessible components of a consumer product; and
- batteries.

Additionally, the bill would prohibit the manufacture, sale, or distribution in the State of dental floss or food contact substances that contain perfluorooctanesulfonic acid.

According to figures collected by NGO Safer States, Vermont’s measure is one of almost 100 chemical regulations that are under consideration in 23 states. For example, last Spring, Washington State banned five flame retardants used in children’s products and residential furniture. Although several states that have previously enacted flame retardant restrictions in certain products, Washington is the first to include tetrabromobisphenol A (TBBPA). Additionally, the Washington Department of Ecology is required to review six additional flame retardants to be considered as high concern to children. Industry opposition to the measure had hoped the state would have allowed the federal review of flame retardant clusters to play out before taking regulatory action at the state level.

To add to the list, Minnesota has recently introduced SB 716. The bill would amend Minnesota statutes that regulate chemicals of high concern in children’s products. The bill would require both proposed and adopted changes to the list of priority chemicals to be published on the Department of Health’s website and the State Register. The bill also lays out reporting requirements for manufacturers and distributors of children’s products that contain designated priority chemicals unless identified as exempt.

As our readers are aware, and as summarized in this Newsletter, TSCA is currently undergoing major reform. A central issue in ongoing discussions is the extent to which federal regulation of these substances will preempt state activities. Several state attorneys general and NGOs have advocated the preservation of states’ regulatory authority, while industry groups have pushed for stronger federal preemption. However, it is likely that state legislative efforts to ban specific chemicals that the EPA has acted on will be preempted under a reformed law.