

No. 36. An act relating to restrictions on perfluoroalkyl and polyfluoroalkyl substances and other chemicals of concern in consumer products.

(S.20)

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

* * * PFAS in Class B Firefighting Foam * * *

Sec. 1. 18 V.S.A. chapter 33 is added to read:

CHAPTER 33. PFAS IN FIREFIGHTING AGENTS AND EQUIPMENT

§ 1661. DEFINITIONS

As used in this chapter:

(1) “Class B firefighting foam” means chemical foams designed for flammable liquid fires.

(2) “Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.

(3) “Manufacturer” means any person, firm, association, partnership, corporation, organization, joint venture, importer, or domestic distributor of firefighting agents or equipment. As used in this subsection, “importer” means the owner of the product.

(4) “Municipality” means any city, town, incorporated village, town fire district, or other political subdivision that provides firefighting services pursuant to general law or municipal charter.

(5) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(6) “Personal protective equipment” means clothing designed, intended, or marketed to be worn by firefighting personnel in the performance of their duties, designed with the intent for use in fire and rescue activities, and includes jackets, pants, shoes, gloves, helmets, and respiratory equipment.

(7) “Terminal” means an establishment primarily engaged in the wholesale distribution of crude petroleum and petroleum products, including liquefied petroleum gas from bulk liquid storage facilities.

§ 1662. PROHIBITION OF CERTAIN CLASS B FIREFIGHTING FOAM

A person, municipality, or State agency shall not discharge or otherwise use for training or testing purposes class B firefighting foam that contains intentionally added PFAS.

§ 1663. RESTRICTION ON MANUFACTURE, SALE, AND DISTRIBUTION; EXCEPTIONS

(a)(1) Unless otherwise required under federal law, but not later than October 1, 2023, a manufacturer of class B firefighting foam shall not manufacture, sell, offer for sale, or distribute for sale or use in this State class B firefighting foam to which PFAS have been intentionally added.

(2) Notwithstanding subdivision (1) of this subsection, the restriction on the manufacture, sale, offer for sale, or distribution of class B firefighting foam

containing intentionally added PFAS for use at a terminal shall not apply until January 1, 2024.

(b) A person operating a terminal after January 1, 2024, and who seeks to purchase class B firefighting foam containing intentionally added PFAS for the purpose of fighting emergency class B fires, may apply to the Department of Environmental Conservation for a temporary exemption from the restrictions on the manufacture, sale, offer for sale, or distribution of class B firefighting foam for use at a terminal. An exemption shall not exceed one year. The Department of Environmental Conservation, in consultation with the Department of Health, may grant an exemption under this subsection if the applicant provides:

(1) clear and convincing evidence that there is not a commercially available alternative that:

(A) does not contain intentionally added PFAS; and

(B) is capable of suppressing a large atmospheric tank fire or emergency class B fire at the terminal;

(2) information on the amount of class B firefighting foam containing intentionally added PFAS that is annually stored, used, or released at the terminal;

(3) a report on the progress being made by the applicant to transition at the terminal to class B firefighting foam that does not contain intentionally added PFAS; and

(4) an explanation of how:

(A) all releases of class B firefighting foam containing intentionally added PFAS shall be fully contained at the terminal; and

(B) existing containment measures prevent firewater, wastewater, runoff, and other wastes from being released into the environment, including into soil, groundwater, waterways, and stormwater.

(c) Nothing in this section shall prohibit a terminal from providing class B firefighting foam in the form of aid to another terminal in the event of a class B fire.

§ 1664. SALE OF PERSONAL PROTECTIVE EQUIPMENT

CONTAINING PFAS

(a) A manufacturer or other person that sells firefighting equipment to any person, municipality, or State agency shall provide written notice to the purchaser at the time of sale, citing to this chapter, if the personal protective equipment contains PFAS. The written notice shall include a statement that the personal protective equipment contains PFAS and the reason PFAS are added to the equipment.

(b) The manufacturer or person selling personal protective equipment and the purchaser of the personal protective equipment shall retain the notice for at least three years from the date of the transaction.

§ 1665. NOTIFICATION; RECALL OF PROHIBITED PRODUCTS

(a) A manufacturer of class B firefighting foam containing intentionally added PFAS shall provide written notice to persons that sell the manufacturer's products in this State about the restrictions imposed by this chapter not less than one year prior to the effective date of the restrictions.

(b) Unless a class B firefighting foam containing intentionally added PFAS is intended for use at a terminal, and if after January 1, 2024, the person operating a terminal holds a temporary exemption pursuant to subsection (b) of section 1663 of this title, a manufacturer that produces, sells, or distributes a class B firefighting foam containing intentionally added PFAS shall:

(1) recall the product and reimburse the retailer or any other purchaser for the product; and

(2) issue either a press release or notice on the manufacturer's website describing the product recall and reimbursement requirement established in this subsection.

§ 1666. CERTIFICATE OF COMPLIANCE

The Attorney General may request a certificate of compliance from a manufacturer of class B firefighting foam or firefighting personal protective equipment. Within 30 days after receipt of the Attorney General's request for a certificate of compliance, the manufacturer shall:

(1) provide the Attorney General with a certificate attesting that the manufacturer's product or products comply with the requirements of this chapter; or

(2) notify persons who are selling a product of the manufacturer's in this State that the sale is prohibited because the product does not comply with this chapter and submit to the Attorney General a list of the names and addresses of those persons notified.

§ 1667. PENALTIES

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

(b) Nothing in this section shall be construed to preclude or supplant any other statutory or common law remedies.

* * * PFAS, Phthalates, and Bisphenols in Food Packaging * * *

Sec. 2. 18 V.S.A. chapter 33A is added to read:

CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING

§ 1671. DEFINITIONS

As used in this chapter:

(1) “Bisphenols” means any member of a class of industrial chemicals that contain two hydroxyphenyl groups. Bisphenols are used primarily in the manufacture of polycarbonate plastic and epoxy resins.

(2) “Department” means the Department of Health.

(3) “Food package” or “food packaging” means a package or packaging component that is intended for direct food contact.

(4) “Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.

(5) “Ortho-phthalates” means any member of the class of organic chemicals that are esters of phthalic acid containing two carbon chains located in the ortho position.

(6) “Package” means a container providing a means of marketing, protecting, or handling a product and shall include a unit package, an intermediate package, and a shipping container. “Package” also means unsealed receptacles, such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(7) “Packaging component” means an individual assembled part of a package, such as any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels, and disposable gloves used in commercial or institutional food service.

(8) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” has the same meaning as in section 1661 of this title.

§ 1672. FOOD PACKAGING

(a) A manufacturer, supplier, or distributor shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State a food package to which PFAS have been intentionally added and are present in any amount.

(b)(1) Pursuant to 3 V.S.A. chapter 25, the Department may adopt rules prohibiting a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package or the packaging component of a food package to which bisphenols have been intentionally added and are present in any amount. The Department may exempt specific chemicals within the bisphenol class when clear and convincing evidence suggests they are not endocrine-active or otherwise toxic.

(2) The Department may only prohibit a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package or the packaging component of a food package in accordance with this subsection if the Department or at least one other state has determined that a safer alternative is readily available in sufficient quantity and at a comparable cost and that the safer alternative performs as well as or better than bisphenols in a specific application of bisphenols to a food package or the packaging component of a food package.

(3) If the Department prohibits a manufacturer, supplier, or distributor from selling or offering for sale or for promotional distribution a food package

or the packaging component of a food package in accordance with this subsection, the prohibition shall not take effect until two years after the Department adopts the rules.

(c) A manufacturer, supplier, or distributor shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State a food package that includes inks, dyes, pigments, adhesives, stabilizers, coatings, plasticizers, or any other additives to which ortho-phthalates have been intentionally added and are present in any amount.

(d) This section shall not apply to the sale or resale of used products.

§ 1673. CERTIFICATE OF COMPLIANCE

The Attorney General may request a certificate of compliance from a manufacturer of food packaging. Within 30 days after receipt of the Attorney General's request for a certificate of compliance, the manufacturer shall:

(1) provide the Attorney General with a certificate attesting that the manufacturer's product or products comply with the requirements of this chapter; or

(2) notify persons who are selling a product of the manufacturer's in this State that the sale is prohibited because the product does not comply with this chapter and submit to the Attorney General a list of the names and addresses of those persons notified.

§ 1674. RULEMAKING

Pursuant to 3 V.S.A. chapter 25, the Commissioner of Health shall adopt any rules necessary for the implementation, administration, and enforcement of this chapter.

§ 1675. PENALTIES

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

(b) Nothing in this section shall be construed to preclude or supplant any other statutory or common law remedies.

* * * Rugs, Carpets, and Aftermarket Stain and Water Resistant
Treatments * * *

Sec. 3. 18 V.S.A. chapter 33B is added to read:

CHAPTER 33B. PFAS IN RUGS, CARPETS, AND AFTERMARKET
STAIN AND WATER RESISTANT TREATMENTS

§ 1681. DEFINITIONS

As used in this chapter:

(1) “Aftermarket stain and water resistant treatments” means treatments for textile and leather consumer products used in residential settings that have been treated during the manufacturing process for stain, oil, and water

resistance but excludes products marketed or sold exclusively for use at industrial facilities during the manufacture of a carpet, rug, clothing, or shoe.

(2) “Department” means the Department of Health.

(3) “Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.

(4) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” has the same meaning as in section 1661 of this title.

(5) “Rug or carpet” means a thick fabric used to cover floors.

§ 1682. RUGS AND CARPETS

(a) A manufacturer, supplier, or distributor shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State a residential rug or carpet to which PFAS have been intentionally added in any amount.

(b) This section shall not apply to the sale or resale of used products.

§ 1683. AFTERMARKET STAIN AND WATER RESISTANT

TREATMENTS

(a) A manufacturer, supplier, or distributor shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State aftermarket stain and water resistant treatments for rugs or carpets to which PFAS have been intentionally added in any amount.

(b) This section shall not apply to the sale or resale of used products.

§ 1684. CERTIFICATE OF COMPLIANCE

The Attorney General may request a certificate of compliance from a manufacturer of rugs, carpets, or aftermarket stain and water resistant treatments. Within 30 days after receipt of the Attorney General's request for a certificate of compliance, the manufacturer shall:

(1) provide the Attorney General with a certificate attesting that the manufacturer's product or products comply with the requirements of this chapter; or

(2) notify persons who are selling a product of the manufacturer's in this State that the sale is prohibited because the product does not comply with this chapter and submit to the Attorney General a list of the names and addresses of those persons notified.

§ 1685. RULEMAKING

Pursuant to 3 V.S.A. chapter 25, the Commissioner shall adopt any rules necessary for the implementation, administration, and enforcement of this chapter.

§ 1686. PENALTIES

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

(b) Nothing in this section shall be construed to preclude or supplant any other statutory or common law remedies.

* * * Ski Wax * * *

Sec. 4. 18 V.S.A. chapter 33C is added to read:

CHAPTER 33C. PFAS IN SKI WAX

§ 1691. DEFINITIONS

As used in this chapter:

(1) “Department” means the Department of Health.

(2) “Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.

(3) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” has the same meaning as in section 1661 of this title.

(4) “Ski wax” means a lubricant applied to the bottom of snow runners, including skis and snowboards, to improve their grip and glide properties.

§ 1692. SKI WAX

(a) A manufacturer, supplier, or distributor shall not manufacture, sell, offer for sale, distribute for sale, or distribute for use in this State ski wax or related tuning products to which PFAS have been intentionally added in any amount.

(b) This section shall not apply to the sale or resale of used products.

§ 1693. CERTIFICATE OF COMPLIANCE

The Attorney General may request a certificate of compliance from a manufacturer of ski wax. Within 30 days after receipt of the Attorney General's request for a certificate of compliance, the manufacturer shall:

(1) provide the Attorney General with a certificate attesting that the manufacturer's product or products comply with the requirements of this chapter; or

(2) notify persons who are selling a product of the manufacturer's in this State that the sale is prohibited because the product does not comply with this chapter and submit to the Attorney General a list of the names and addresses of those persons notified.

§ 1694. RULEMAKING

Pursuant to 3 V.S.A. chapter 25, the Commissioner shall adopt any rules necessary for the implementation, administration, and enforcement of this chapter.

§ 1695. PENALTIES

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

(b) Nothing in this section shall be construed to preclude or supplant any other statutory or common law remedies.

* * * Chemicals of High Concern to Children * * *

Sec. 5. 18 V.S.A. § 1773 is amended to read:

§ 1773. CHEMICALS OF HIGH CONCERN TO CHILDREN

(a) List of chemicals of high concern to children. The following chemicals are designated as chemicals of high concern to children for the purposes of the requirements of this chapter:

* * *

(67) PFHxS (perfluorohexane sulfonic acid).

(68) PFHpA (perfluoroheptanoic acid).

(69) PFNA (perfluorononanoic acid).

(70) Any other chemical designated by the Commissioner as a chemical of high concern to children by rule under section 1776 of this title.

* * * Effective Dates * * *

Sec. 6. EFFECTIVE DATES

This act shall take effect on July 1, 2021, except that Secs. 1 (class B firefighting foam) and 5 (chemicals of high concern to children) shall take effect on July 1, 2022 and Secs. 2 (food packaging), 3 (rugs and carpets), and 4 (ski wax) shall take effect on July 1, 2023.

Date Governor signed bill: May 18, 2021