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S.295

Introduced by Senators Lyons, Bray and Campion

Referred to Committee on Health and Welfare

Date: January 15, 2020

Subject: Health; public health; perfluoroalkyl and polyfluoroalkyl substances;
class B firefighting foam; food packaging; rugs and carpets

Statement of purpose of bill as introduced: This bill proposes to: (1) impose
restrictions on the use, manufacture, sale, and distribution of class B
firefighting foam containing perfluoroalkyl and polyfluoroalkyl substances;
(2) impose restrictions on the manufacture, sale, and distribution of food
packaging to which perfluoroalkyl and polyfluoroalkyl substances, phthalates,
or bisphenols have been added; (3) impose restrictions on the manufacture,
sale, and distribution of residential rugs and carpets to which perfluoroalkyl
and polyfluoroalkyl substances have been added; and (4) include
perfluoroalkyl and polyfluoroalkyl substances on the list of chemicals of high
concern to children.

An act relating to restrictions on perfluoroalkyl and polyfluoroalkyl
substances and other chemicals of concern in consumer products

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

2 ~~*** PEAS in Class B Firefighting Foam ***~~

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

4 CHAPTER 33. FIREFIGHTING AGENTS AND EQUIPMENT

5 § 1661. DEFINITIONS

6 As used in this chapter:

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

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

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

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

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

1 ~~(6) "Municipality" means any city, town, incorporated village, town fire~~
2 ~~district, or other political subdivision that provides firefighting services~~
3 ~~pursuant to general law or municipal charter.~~

4 ~~(7) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a~~
5 ~~class of fluorinated organic chemicals containing at least one fully fluorinated~~
6 ~~carbon atom.~~

7 § 1662. PROHIBITION OF CERTAIN CLASS B FIREFIGHTING FOAM

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

11 § 1663. RESTRICTION ON MANUFACTURE, SALE, AND

12 DISTRIBUTION; EXCEPTIONS

13 (a) A manufacturer of class B firefighting foam shall not manufacture, sell,
14 offer for sale, or distribute for sale or use in this State class B firefighting foam
15 to which PFAS have been intentionally added.

16 (b) Notwithstanding subsection (a), the following products are allowed:

17 (1) Any manufacture, sale, or distribution of class B firefighting foam
18 where the inclusion of PFAS is required by federal law, including the
19 requirements of 14 C.F.R. 139.317 (aircraft rescue and firefighting: equipment
20 and agents), as that section existed as of January 1, 2020. In the event that
21 applicable federal regulations change after that date to allow the use of

1 alternative firefighting agents that do not contain PFAS, the Department shall

2 adopt rules that restrict PFAS for the manufacture, sale, and distribution of

3 firefighting foam for uses that are addressed by federal regulation.

4 (2) Any manufacture, sale, or distribution of class B firefighting foam to
5 a person for use at a terminal operated by the person or an oil refinery operated
6 by the person.

7 (3) Any manufacture, sale, or distribution of class B firefighting foam to
8 a person for use at a chemical plant operated by the person.

9 § 1664. SALE OF PERSONAL PROTECTIVE EQUIPMENT

10 CONTAINING PFAS

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

16 (b) The manufacturer or person selling personal protective equipment and
17 the purchaser of the personal protective equipment shall retain the notice for at
18 least three years from the date of the transaction. Upon request of the
19 Department, a person, manufacturer, or purchaser shall furnish the notice or
20 written copies and associated sales documentation to the Department within
21 60 days.

1 § 1665. NOTIFICATION; RECALL OF PROHIBITED PRODUCTS

2 (a) A manufacturer of class B firefighting foam prohibited pursuant to
3 section 1663 of this title shall notify, in writing, persons that sell the
4 manufacturer's products in this State about the provisions of this chapter not
5 less than one year prior to the effective date of the restrictions.

6 (b) A manufacturer that produces, sells, or distributes a class B firefighting
7 foam prohibited pursuant to section 1663 of this title shall recall the product
8 and reimburse the retailer or any other purchaser for the product.

9 § 1666. CERTIFICATE OF COMPLIANCE

10 (a) The Department may request a certificate of compliance from a
11 manufacturer of class B firefighting foam or firefighting personal protective
12 equipment. A certificate of compliance attests that a manufacturer's product
13 or products meet the requirements.

14 (b) The Department shall assist other State agencies and municipalities to
15 avoid purchasing or using class B firefighting foams to which PFAS has been
16 intentionally added. The Department shall assist other State agencies, town
17 fire districts, and other municipalities to give priority and preference to the
18 purchase of personal protective equipment that does not contain PFAS.

19 § 1667. PENALTIES

20 A violation of this chapter shall be deemed a violation of the Consumer
21 Protection Act, 9 V.S.A. Chapter 63. The Attorney General has the same

1 priority to make rules, conduct civil investigations, enter into assurances of
2 discontinuance, and bring civil actions, and private parties have the same
3 rights and remedies as provided under 9 V.S.A. chapter 63, subchapter 1.

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

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

6 CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING

7 § 1671. DEFINITIONS

8 As used in this chapter:

9 (1) “Bisphenols” means industrial chemicals used primarily in the
10 manufacture of polycarbonate plastic and epoxy resins.

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

12 (3) “Food packaging” means a package that is designed for direct food
13 contact, including a food or beverage product that is contained in a food
14 package or to which a food package is applied, a packaging component of a
15 food package, and plastic disposable gloves used in commercial or institutional
16 food service.

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

19 (5) “Package” means a container providing a means of marketing
20 protecting, or handling a product and shall include a unit package, an
21 intermediate package, and a shipping container. “Package” also means

1 ~~aled receptacles, such as carrying cases, crates, cups, pails, rigid foil and other~~
2 ~~trays, wrappers and wrapping films, bags, and tubs.~~

3 (6) “Packaging component” means an individual assembled part of a
4 package, such as any interior or exterior blocking, bracing, cushioning,
5 weatherproofing, exterior strapping, coatings, closures, inks, and labels.

6 (7) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means
7 the same as in section 1661 of this title.

8 (8) “Phthalates” means any member of the class of organic chemicals
9 that are esters of phthalic acid containing two carbon chains located in the
10 ortho position.

11 § 1672. FOOD PACKAGING

12 (a) A person shall not manufacture, sell, offer for sale, distribute for sale,
13 or distribute for use in this State a food package to which PFAS have been
14 intentionally added in any amount.

15 (b) A person shall not manufacture, sell, offer for sale, distribute for sale,
16 or distribute for use in this State a food package that includes inks, dyes,
17 pigments, adhesives, stabilizers, coatings, plasticizers, or any other additives to
18 which phthalates or bisphenols have been intentionally added in any amount
19 greater than an incidental presence.

1 § 1673. CERTIFICATE OF COMPLIANCE

2 A manufacturer subject to the prohibitions under this chapter shall develop
3 a certificate of compliance under this section. A certificate of compliance
4 attests that a manufacturer's product or products meet the requirements of this
5 chapter. If the Department requests such a certificate, the manufacturer shall
6 provide the certificate within 30 calendar days after the request is made.

7 § 1674. RULEMAKING

8 Pursuant to 3 V.S.A. chapter 23, the Commissioner of Health shall adopt
9 any rules necessary for the implementation, administration, and enforcement
10 of this chapter.

11 * * * Rugs and Carpets * * *

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

13 CHAPTER 33B. RUGS AND CARPETS

14 § 1681. DEFINITIONS

15 As used in this chapter:

16 (1) "Department" means the Department of Health.

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

19 (3) "Rug or carpet" means a thick fabric used to cover floors.

20 (4) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means
21 the same as in section 1661 of this title.

1 § 1682. RUGS AND CARPETS

2 A person shall not manufacture, sell, offer for sale, distribute for sale, or
3 distribute for use in this State a residential rug or carpet to which PFAS have
4 been intentionally added in any amount.

5 § 1683. CERTIFICATE OF COMPLIANCE

6 A manufacturer subject to the prohibitions under this chapter shall develop
7 a certificate of compliance under this section. A certificate of compliance
8 attests that a manufacturer's product or products meet the requirements of this
9 chapter. If the Department requests such a certificate, the manufacturer shall
10 provide the certificate within 30 calendar days after the request is made.

11 § 1684. RULEMAKING

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

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

16 Sec. 4. 18 V.S.A. § 1773 is amended to read:

17 § 1773. CHEMICALS OF HIGH CONCERN TO CHILDREN

18 (a) List of chemicals of high concern to children. The following chemicals
19 or a member of a class of chemicals are designated as chemicals of high
20 concern to children for the purposes of the requirements of this chapter:

21

1 ~~(67) Perfluoroalkyl and polyfluoroalkyl substances, the class for~~
2 fluorinated organic chemicals containing at least one fully fluorinated carbon
3 atom.

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

6 * * *

7 * * * Effective Dates * * *

8 Sec. 5. EFFECTIVE DATES

9 This act shall take effect on July 1, 2020, except Sec. 1 (Class B
10 Firefighting Foam) shall take effect on July 1, 2021 and Secs. 2 (Food
11 Packaging) and 3 (Rugs and Carpets) shall take effect on January 1, 2022.

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

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

CHAPTER 33. 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) "Department" means the Vermont Department of Health.

(3) "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, including jackets, pants, shoes, gloves, helmets, and respiratory equipment.

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

(5) "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.

(6) "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.

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

§ 1662. PROHIBITION OF CERTAIN CLASS B FIREFIGHTING FOAM

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

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

(a) 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.

(b) Notwithstanding subsection (a), any manufacture, sale, or distribution of class B firefighting foam where the inclusion of PFAS is required by federal law, including the requirements of 14 C.F.R. 139.317 (aircraft rescue and firefighting: equipment and agents), as that section existed as of January 1, 2020 is allowed. In the event that applicable federal regulations change after that date to allow the use of alternative firefighting agents that do not contain PFAS, the Department shall adopt rules that restrict PFAS for the manufacture, sale, and distribution of firefighting foam for uses that are addressed by federal regulation.

§ 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 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. Upon request of the Department, a person, manufacturer, or purchaser shall furnish the notice or

written copies and associated sales documentation to the Department within 60 days.

§ 1665. NOTIFICATION; RECALL OF PROHIBITED PRODUCTS

(a) A manufacturer of class B firefighting foam prohibited pursuant to section 1663 of this title shall notify, in writing, persons that sell the manufacturer's products in this State about the provisions of this chapter not less than one year prior to the effective date of the restrictions.

(b) A manufacturer that produces, sells, or distributes a class B firefighting foam prohibited pursuant to section 1663 of this title shall recall the product and reimburse the retailer or any other purchaser for the product.

§ 1666. CERTIFICATE OF COMPLIANCE

(a) The Department may request a certificate of compliance from a manufacturer of class B firefighting foam or firefighting personal protective equipment. A certificate of compliance attests that a manufacturer's product or products meet the requirements.

(b) The Department shall assist other State agencies and municipalities to avoid purchasing or using class B firefighting foams to which PFAS has been intentionally added. The Department shall assist other State agencies, town fire districts, and other municipalities to give priority and preference to the purchase of personal protective equipment that does not contain PFAS.

§ 1667. PENALTIES

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.

* * * 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 industrial chemicals used primarily in the manufacture of polycarbonate plastic and epoxy resins.

(2) "Department" means the Department of Health.

(3) “Food packaging” means a package that is designed for direct food contact, including a food or beverage product that is contained in a food package or to which a food package is applied, a packaging component of a food package, and plastic disposable gloves used in commercial or institutional food service.

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

(5) “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.

(6) “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.

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

(8) “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.

§ 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 in any amount.

(b) 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 in any amount greater than an incidental presence.

(1) 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 ~~subsection (a) of this section~~ this subsection if the Department 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.

(2) 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 ~~subsection (a) of this section~~ this subsection, the prohibition shall not take effect until two years after the Department determines that a safer alternative to bisphenols is available.

(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 phthalates have been intentionally added in any amount greater than an incidental presence.

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

§ 1673. CERTIFICATE OF COMPLIANCE

A manufacturer subject to the prohibitions under this chapter shall develop a certificate of compliance under this section. A certificate of compliance attests that a manufacturer's product or products meet the requirements of this chapter. If the Department requests such a certificate, the manufacturer shall provide the certificate within 30 calendar days after the request is made.

§ 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.

** * * Rugs and Carpets * * **

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

CHAPTER 33B. RUGS AND CARPETS

§ 1681. 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) "Rug or carpet" means a thick fabric used to cover floors.

(4) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means the same as in section 1661 of this title.

§ 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. CERTIFICATE OF COMPLIANCE

A manufacturer subject to the prohibitions under this chapter shall develop a certificate of compliance under this section. A certificate of compliance attests that a manufacturer's product or products meet the requirements of this chapter. If the Department requests such a certificate, the manufacturer shall provide the certificate within 30 calendar days after the request is made.

§ 1684. 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.

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

Sec. 4. 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 or a member of a class of chemicals are designated as chemicals of high concern to children for the purposes of the requirements of this chapter:

** * **

(67) Perfluoroalkyl and polyfluoroalkyl substances, the class for fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(68) 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. 5. EFFECTIVE DATES

This act shall take effect on July 1, 2020, except Secs. 1 (Class B Firefighting Foam) and 4 (Chemicals of High Concern to Children) shall take effect on July 1, 2021 and Secs. 2 (Food Packaging) and 3 (Rugs and Carpets) shall take effect on July 1, 2022.