

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill  
3 No. 295 entitled “An act relating to restrictions on perfluoroalkyl and  
4 polyfluoroalkyl substances and other chemicals of concern in consumer  
5 products” respectfully reports that it has considered the same and recommends  
6 that the bill be amended by striking out all after the enacting clause and  
7 inserting in lieu thereof the following:

8 \* \* \* PFAS in Class B Firefighting Foam \* \* \*

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

10 CHAPTER 33. FIREFIGHTING AGENTS AND EQUIPMENT

11 § 1661. DEFINITIONS

12 As used in this chapter:

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

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

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

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

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

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

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

11           § 1662. PROHIBITION OF CERTAIN CLASS B FIREFIGHTING FOAM

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

15           § 1663. RESTRICTION ON MANUFACTURE, SALE, AND

16                   DISTRIBUTION; EXCEPTIONS

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

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

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

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

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

14           § 1664. SALE OF PERSONAL PROTECTIVE EQUIPMENT  
15           CONTAINING PFAS

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

1       (b) The manufacturer or person selling personal protective equipment and  
2       the purchaser of the personal protective equipment shall retain the notice for at  
3       least three years from the date of the transaction. Upon request of the  
4       Department, a person, manufacturer, or purchaser shall furnish the notice or  
5       written copies and associated sales documentation to the Department within  
6       60 days.

7       § 1665. NOTIFICATION; RECALL OF PROHIBITED PRODUCTS

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

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

15       § 1666. CERTIFICATE OF COMPLIANCE

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

20       (b) The Department shall assist other State agencies and municipalities to  
21       avoid purchasing or using class B firefighting foams to which PFAS has been

1 intentionally added. The Department shall assist other State agencies, town  
2 fire districts, and other municipalities to give priority and preference to the  
3 purchase of personal protective equipment that does not contain PFAS.

4 § 1667. PENALTIES

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

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

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

12 CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING

13 § 1671. DEFINITIONS

14 As used in this chapter:

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

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

18 (3) “Food packaging” means a package that is designed for direct food  
19 contact, including a food or beverage product that is contained in a food  
20 package or to which a food package is applied, a packaging component of a

1 food package, and plastic disposable gloves used in commercial or institutional  
2 food service.

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

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

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

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

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

18 § 1672. FOOD PACKAGING

19 (a) A person shall not manufacture, sell, offer for sale, distribute for sale, or  
20 distribute for use in this State a food package to which PFAS have been  
21 intentionally added in any amount Pursuant to 3 V.S.A. chapter 25, the

1 Department may adopt rules prohibiting a manufacturer, supplier, or distributor  
2 from selling or offering for sale or for promotional distribution a food package  
3 or the packaging component of a food package to which PFAS have been  
4 intentionally added in any amount greater than an incidental presence.

5 (1) The Department may only prohibit a manufacturer, supplier, or  
6 distributor from selling or offering for sale or for promotional distribution a  
7 food package or the packaging component of a food package in accordance  
8 with this subsection (a) if the Department has determined that a safer  
9 alternative is readily available in sufficient quantity and at a comparable cost  
10 and that the safer alternative performs as well or better than PFAS in a specific  
11 application of PFAS to a food package or the packaging component of a food  
12 package.

13 (2) If the Department prohibits a manufacturer, supplier, or distributor  
14 from selling or offering for sale or for promotional distribution a food package  
15 or the packaging component of a food package in accordance with this  
16 subsection (a), the prohibition shall not take effect until two years after the  
17 Department determines that a safer alternative to PFAS is available.

18 (b) A person shall not manufacture, sell, offer for sale, distribute for sale,  
19 or distribute for use in this State a food package that includes inks, dyes,  
20 pigments, adhesives, stabilizers, coatings, plasticizers, or any other additives to

1 which phthalates or bisphenols have been intentionally added in any amount  
2 greater than an incidental presence.

3 § 1673. CERTIFICATE OF COMPLIANCE

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

9 § 1674. RULEMAKING

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

13 \* \* \* Rugs and Carpets \* \* \*

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

15 CHAPTER 33B. RUGS AND CARPETS

16 § 1681. DEFINITIONS

17 As used in this chapter:

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

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

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

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

3           § 1682. RUGS AND CAPRETS

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

7           § 1683. CERTIFICATE OF COMPLIANCE

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

13          § 1684. RULEMAKING

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

17                           \* \* \* Chemicals of High Concern to Children \* \* \*

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

19          § 1773. CHEMICALS OF HIGH CONCERN TO CHILDREN

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

4 \* \* \*

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

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

10 \* \* \*

11 \* \* \* Effective Dates \* \* \*

12 Sec. 5. EFFECTIVE DATES

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

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2 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Senator \_\_\_\_\_

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FOR THE COMMITTEE