H.650

Introduced by Representatives McCullough of Williston, Stebbins of Burlington, and Rachelson of Burlington

Referred to Committee on

Date:

Subject: Conservation and development; solid waste; water quality; PFAS; biosolids

Statement of purpose of bill as introduced: This bill proposes to prohibit the intentional use of perfluoroalkyl and polyfluoroalkyl substances in products to be sold in Vermont. This bill also proposes to prohibit the use and import of wastes that contain microplastics.

An act relating to prohibiting perfluoroalkyl and polyfluoroalkyl substances in products to be sold in Vermont and the use and import of wastes containing microplastics

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

Sec. 1. REDESIGNATION

(a) 18 V.S.A. §§ 1681–1686, as enacted by 2021 Acts and Resolves No. 36 and as effective on July 1, 2023, shall be redesignated as 18 V.S.A. §§ 1676–1681 on effect.
(b) 18 V.S.A. §§ 1691–1695, as enacted by 2021 Acts and Resolves No. 36 and as effective on July 1, 2023, shall be redesignated as 18 V.S.A. §§ 1682–1686 on effect.

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

CHAPTER 33D. PROHIBITING PFAS IN PRODUCTS

§ 1691. DEFINITIONS

As used in this chapter:

(1) “Currently unavoidable use” means a use of PFAS that the Department has determined by rule under this chapter to be essential for health, safety, or the functioning of society and for which alternatives are not reasonably available.

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

(3) “Intentionally added” means the addition of a chemical in a product, or one of its product components, that serves an intended function or provides a specific characteristic, appearance, or quality.

(4) “Manufacturer” means a person who:

(A) manufactures or manufactured a product with intentionally added PFAS under its own brand or label for sale in or into the State;

(B) sells in or into the State under its own brand or label a product with intentionally added PFAS produced by another supplier;
(C) owns a brand that it licenses or licensed to another person for use on a product with intentionally added PFAS sold in or into the State;

(D) imports into the United States for sale in or into the State a product with intentionally added PFAS manufactured by a person without a presence in the United States; or

(E) manufactures a product containing intentionally added PFAS for sale in or into the State without affixing a brand name.

(5) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” has the same meaning as in section 1661 of this title. For the purposes of this chapter, “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” also includes any degradation byproducts of PFAS.

(6) “Product” means an item manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including its product components, sold or distributed for personal, residential, commercial, or industrial use, including for use in making other products.

(7) “Product component” means an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component.

(8) “Retailer” means a person who sells, but does not produce, in or into the State a product with intentionally added PFAS produced by a manufacturer.
to the public through any means, including a sales outlet, a catalogue, the telephone, the Internet, or any electronic means.

(9) “Used product” means a product that has been previously owned, purchased, or sold in commerce and that is resold by a person who is not regularly engaged in the business of making sales of that general type of product at retail where the product was obtained by the person making the sale, through purchase or otherwise, for their own use.

§ 1692. NOTIFICATION OF USE

(a) On or before January 1, 2024, and updated as directed in subsection (c) of this section, a manufacturer of a product for sale in the State that contains intentionally added PFAS shall submit to the Department a written notification that includes:

(1) A brief description of product.

(2) The purpose for the intentional addition of PFAS in the product and any product components.

(3) The amount of each of the PFAS intentionally added to the product, identified by its chemical abstracts services registry number by an independent testing laboratory. The amount shall be reported as an exact quantity determined using commercially available analytical methods or as falling within a range approved for reporting purposes by the department.
(4) The name and address of the manufacturer, and the name, address, and phone number of a contact person for the manufacturer.

(5) The name of the independent testing laboratory used to determine the amount of PFAS in the product and the name, address, and phone number of a contact person for the independent testing laboratory.

(6) Any additional information established by the Department by rule under section 1696 of this chapter that is necessary to implement the requirements of this chapter.

(b) With approval of the Department, a manufacturer may supply the information required in subsection (a) of this section for a category, type, or class of products rather than for each individual product.

(c) In accordance with rules adopted by the Department, a manufacturer shall:

(1) update and revise the information in the written notification described in subsection (a) of this section whenever there is a significant change in the information that was provided; and

(2) submit a written notification as described in subsection (a) of this section for any products that were not yet sold as of January 1, 2024.

(d) The Department may extend the deadline for submission by a manufacturer of the information required under this section if the Department
determines that more time is needed by the manufacturer to comply with the
written notification requirement.

(e) On or before January 15, 2023, the Department shall submit a report to
the General Assembly describing a proposed fee payable by a manufacturer
upon submission of the notification required under this section.

(1) The funds raised from this fee shall be used to cover the
Department’s reasonable costs in developing rules and administering the
requirements under this chapter.

(2) The Department may set the fee based on the volume of PFAS, the
volume of sales of PFAS-containing products, or the type of PFAS sold.

§ 1693. PROHIBITION

(a) Notwithstanding subsection (d) of this section, the Department may by
rule identify products by category that may not be sold or offered for sale in or
into this State if they contain intentionally added PFAS. The Department shall
first prioritize the prohibition of the sale of product categories that, in the
Department’s judgment, affects the health of the public in this State. The
Department shall secondly prioritize, in consultation with the Agency of
Natural Resources and the Agency of Agriculture, Food and Markets,
prohibition of the sale of products and product categories that are most likely
to cause contamination of the State’s land or water resources if they contain
intentionally added PFAS.
(1) Products where the intentional use of PFAS is currently unavoidable may be exempted by the Department by rule.

(2) The Department shall not prohibit the sale or resale of used products.

(b) A manufacturer, other than a retailer, shall not sell or offer for sale a product containing intentionally added PFAS in or into the State unless the manufacturer of that product has provided a written notification required under section 1692 to the Department. This prohibition does not apply to products that have been determined by the Department by rule that the intentional use of PFAS in the product is a currently unavoidable use.

(c) A retailer shall not sell or offer for sale a product containing intentionally added PFAS in or into this State if the retailer has received a notification regarding that product required by section 1694 of this chapter.

(d) On and after January 1, 2030, a person may not sell or offer for sale any product that contains intentionally added PFAS in or into this State, unless the Department has determined by rule that the use of PFAS in the product is a currently unavoidable use.

(1) The Department may specify specific products or product categories by rule in which it has determined the use of PFAS is a currently unavoidable use.

(2) This prohibition does not apply to the sale or resale of used products.
§ 1694. CERTIFICATE OF COMPLIANCE

The Attorney General may request a certificate of compliance from a manufacturer. 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 of compliance attesting that the manufacturer’s product or products comply with the requirements of this chapter; or

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

§ 1695. PFAS REDUCTION PROGRAM

The Department shall develop and implement, in consultation with the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, and other relevant stakeholders, a program to reduce the presence of PFAS in discharges to air, water, and land. The program shall be designed to encourage the replacement of PFAS with safer alternatives but may also support the proper management and treatment of PFAS. Elements of the program may be carried out in conjunction with existing Department efforts for pollution prevention or source reduction. The program shall:
(1) provide informational resources targeted to industrial and
commercial users of PFAS;

(2) provide educational resources to the general public;

(3) provide grants, to the extent funds are available, to operators of
wastewater treatment facilities for the purposes of developing, expanding, or
implementing pretreatment standards for PFAS;

(4) provide grants, to the extent funds are available, to municipalities
and operators of wastewater treatment facilities for the purposes of educating
solid waste disposal users on sources of PFAS and proper management; and

(5) other efforts determined by the Department to achieve the program’s
purpose.

§ 1696. 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.

§ 1697. 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.

§ 1698. EXEMPTIONS

The following are exempt from this chapter:

(1) a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority; and

(2) a product subject to chapter 33, 33A, 33B, or 33C of this title.

§ 1699. COLLABORATION

The Department may enter into an agreement with one or more other states or political subdivisions of a state to collect written notifications and may accept notifications to a shared system as meeting the notification requirement under section 1692 of this chapter.

Sec. 3. 10 V.S.A. chapter 33A is amended to read:

CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING, UTENSILS, AND COOKWARE

§ 1671. DEFINITIONS

As used in this chapter:

* * *

(9) “Cookware” means items used during the processing, preparation, or serving of food, including pots, pans, and baking dishes.
(10) “Used product” means a product that has been previously owned, purchased, or sold in commerce and that is resold by a person who is not regularly engaged in the business of making sales of that general type of product at retail where the product was obtained by the person making the sale, through purchase or otherwise, for their own use.

(11) “Utensil” means any kitchenware, tableware, cutlery, or other equipment that food or drink comes into contact with during storage, preparation, or serving.

§ 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, utensil, or cookware to which PFAS have been intentionally added and are present in any amount.

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§ 1673. CERTIFICATE OF COMPLIANCE
The Attorney General may request a certificate of compliance from a manufacturer of food packaging, utensils, or cookware. 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.

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Sec. 4. 10 V.S.A. § 1259 is amended to read:

§ 1259. PROHIBITIONS

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(k) No person shall cause a discharge of landfill leachate that contains microplastics or PFAS to waters of the State, including when the leachate has been treated by a wastewater treatment facility.

(l) On and after July 1, 2027, no new permit or permit renewal under this chapter shall be issued to a wastewater treatment facility with a combined sewer overflow.

Sec. 5. 10 V.S.A. § 6605 is amended to read:

§ 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

(a)(1) No person shall construct, substantially alter, or operate any solid waste management facility without first obtaining certification from the
Secretary for such facility, site, or activity, except for sludge or septage
treatment or storage facilities located within the fenced area of a domestic
wastewater treatment plant permitted under chapter 47 of this title. This
exemption for sludge or septage treatment or storage facilities shall exist only
if:

(A) the treatment facility does not use a process to reduce
pathogens further in order to qualify for marketing and distribution; and

(B) the facility is not a drying bed, lagoon, or nonconcrete
bunker; and

(C) the owner of the facility has submitted a sludge and septage
management plan to the Secretary and the Secretary has approved the plan.

Noncompliance with an approved sludge and septage management plan shall
constitute a violation of the terms of this chapter, as well as a violation under
chapters 201 and 211 of this title.

(D) The facility does not import sludge or septage that contains
microplastics or PFAS.

* * *
Sec. 6. 10 V.S.A. § 6604b is amended to read:

§ 6604b. TESTING OF SOLID WASTES PRIOR TO BENEFICIAL USE ON LAND OR DISTRIBUTION AND MARKETING

(a) The Secretary of Natural Resources, in consultation with the Secretary of Agriculture, Food and Markets and with the Commissioner of Health, shall adopt rules to establish a testing program for all sewage sludge, or similar liquid wastes, prior to their beneficial use on land or prior to distribution and marketing of those wastes in liquid or solid form. The testing program shall establish a process for the determination of minimum testing frequencies and specific parameters for which analysis must be completed and shall detail procedures by which samples are collected, stored, and tested. The testing program shall establish a process for identifying microplastics and PFAS in the waste.

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Sec. 7. 10 V.S.A. § 6604d is added to read:

§ 6604d. PROHIBITING THE SPREAD OF MICROPLASTIC-CONTAINING WASTES

No person shall apply biosolids, sewage sludge, domestic septage, or similar liquid wastes to the land of this State if they have been found to contain microplastics or PFAS under the testing required by section 6604b of this chapter.
Sec. 8. 6 V.S.A. § 5133 is amended to read:

§ 5133. FOOD RESIDUALS; RULEMAKING

(a) The Secretary shall regulate the importation of food residuals or food processing residuals onto a farm. The Secretary shall prohibit importing food residuals or food processing residuals onto a farm if they are shown to contain microplastics or PFAS.

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Sec. 9. 6 V.S.A. § 369 is amended to read:

§ 369. ADULTERATION

No person shall distribute an adulterated lime, plant amendment, plant biostimulant, soil amendment, or fertilizer product. A fertilizer, plant amendment, plant biostimulant, soil amendment, or lime shall be deemed to be adulterated if:

* * *

(3) it contains crop seed or weed seed; or

(4) it contains heavy metals, radioactive substances, or synthetic organics in amounts sufficient to render it injurious to livestock or human health when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use that may be necessary to protect livestock or human health are not shown on the label; or

(5) it contains microplastics or PFAS.
Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2022.