Introduced by Senators Lyons, Campion, Balint, Baruth, Bray, Clarkson, Cummings, Hardy, McCormack, Pearson, Perchlik, Pollina, Ram and Sears

Referred to Committee on

Date:

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, carpets, and aftermarket stain and water resistance treatments to which perfluoroalkyl and polyfluoroalkyl substances have been added; (4) impose restrictions on the manufacture, sale, and distribution of ski wax; and (5) 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

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) “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, and includes 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 or a chemical compound meant to replace perfluoroalkyl and
polyfluoroalkyl substances that has similar chemical properties.

§ 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) of this section, 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 of this chapter.

(b) The Department shall assist other State agencies and municipalities to
avoid purchasing or using class B firefighting foams to which PFAS have 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.
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” has the same meaning 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 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 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, 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

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.
§ 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.

*** 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

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.

§ 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.

*** 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 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 or a chemical compound meant to replace perfluoroalkyl and
d polyfluoroalkyl substances that has similar chemical properties.

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

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*** 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.