

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred Senate Bill No.  
3 20 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 House propose to the Senate that the bill be amended by striking out all  
7 after the enacting clause and 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. PFAS IN FIREFIGHTING AGENTS AND EQUIPMENT

11 § 1661. DEFINITIONS

12 As used in this chapter:

13 (1) “Class B fire” means a fire with a flame spread index of 26-75 and  
14 smoke developed index of 0-450.

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

17 (3) “Chemical plant” means a large integrated plant or that portion of  
18 such a plant other than a refinery or distillery where flammable liquids are  
19 produced by chemical reactions or used in chemical reactions.

20 (4) “Department” means the Vermont Department of Health.

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

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

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

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

14          (9) “Other facility” means a facility that is not a terminal, chemical  
15          plant, or oil refinery.

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

19          (11) “Terminal” means a fuel storage and distribution facility that has  
20          been assigned a terminal control number by the U.S. Internal Revenue Service.

1 § 1662. PROHIBITION OF CERTAIN CLASS B FIREFIGHTING FOAM

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

5 § 1663. RESTRICTION ON MANUFACTURE, SALE, AND

6 DISTRIBUTION; EXCEPTIONS

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

11 (2) Notwithstanding subdivision (1) of this subsection, the restriction on  
12 the manufacture, sale, offer for sale, or distribution of class B firefighting foam  
13 for use at a bulk gasoline terminal, chemical plant, or oil refinery shall not  
14 apply until January 1, 2024.

15 (3) The Department may assist other State agencies and municipalities  
16 to avoid purchasing or using class B firefighting foams to which PFAS have  
17 been intentionally added.

18 (b) Notwithstanding subsection (a) of this section, any manufacture, sale,  
19 or distribution of class B firefighting foam where the inclusion of PFAS is  
20 required by federal law, including the requirements of 14 C.F.R. 139.317  
21 (aircraft rescue and firefighting; equipment and agents), as that section existed

1 as of January 1, 2020, is allowed. In the event that applicable federal  
2 regulations change after that date to allow the use of alternative firefighting  
3 agents that do not contain PFAS, the Department shall adopt rules that restrict  
4 PFAS for the manufacture, sale, and distribution of firefighting foam for uses  
5 that are addressed by federal regulation.

6 A person operating a terminal, chemical plant, or oil refinery after January  
7 1, 2024, or other facility either prior or after that date, and who seeks to  
8 purchase class B firefighting foam containing intentionally added PFAS for the  
9 purpose of fighting emergency class B fires, may apply to the [Department of  
10 Public Safety’s Division of Fire Safety OR Department of Environmental  
11 Conservation] for a temporary exemption from the restrictions on the  
12 manufacture, sale, offer for sale, or distribution of class B firefighting foam for  
13 use at a terminal, chemical plant, oil refinery, or other facility pursuant to  
14 subsection (a) of this section. An initial exemption shall not exceed a two-year  
15 term and may only be extended by the Department for one additional two-year  
16 term. The [Department of Public Safety’s Division of Fire Safety OR  
17 Department of Environmental Conservation] may grant an exemption under  
18 this subsection (b) if the applicant provides:

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

21 (A) does not contain intentionally added PFAS; and

1           (B) is capable of suppressing a large atmospheric tank fire or  
2           emergency class B fire at the terminal, chemical plant, oil refinery, or other  
3           facility;

4           (2) information on the amount of class B firefighting foam containing  
5           intentionally added PFAS that is annually stored, used, or released at the  
6           terminal, chemical plant, oil refinery, or other facility;

7           (3) a report on the progress being made by the applicant to transition to  
8           class B firefighting foam at the terminal, chemical plant, oil refinery, or other  
9           facility that does not contain intentionally added PFAS; and

10          (4) an explanation of how:

11           (A) all releases of class B firefighting foam containing intentionally  
12           added PFAS shall be fully contained at the terminal, chemical plant, oil  
13           refinery, or other facility; and

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

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

1     § 1664. SALE OF PERSONAL PROTECTIVE EQUIPMENT

2             CONTAINING PFAS

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

8             (b) The manufacturer or person selling personal protective equipment and  
9             the purchaser of the personal protective equipment shall retain the notice for at  
10            least three years from the date of the transaction. Upon request of the  
11            Department, a person, manufacturer, or purchaser shall furnish the notice or  
12            written copies and associated sales documentation to the Department within  
13            60 days.

14            (c) The Department may assist other State agencies, town fire districts, and  
15            other municipalities to give priority and preference to the purchase of personal  
16            protective equipment that does not contain PFAS.

17     § 1665. NOTIFICATION; RECALL OF PROHIBITED PRODUCTS

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

1       (b) Unless a product is intended for use at a terminal, chemical plant, or oil  
2 refinery, and if after January 1, 2024, holds a temporary exemption pursuant to  
3 subsection (b) of section 1663, or meets the definition of an “other facility”, a  
4 manufacturer that produces, sells, or distributes a class B firefighting foam  
5 prohibited pursuant to section 1663 of this title shall recall the product and  
6 reimburse the retailer or any other purchaser for the product.

7       § 1666. CERTIFICATE OF COMPLIANCE

8       (a) The Department Attorney General may request a certificate of  
9 compliance from a manufacturer of class B firefighting foam or firefighting  
10 personal protective equipment. Within 30 days of receipt of the Attorney  
11 General’s request for a certificate of compliance, the manufacturer shall:

12           (1) A provide the Attorney General with a certificate of compliance  
13 attests attesting that a the manufacturer’s product or products meet comply  
14 with the requirements of this chapter; or

15           (2) notify persons in the State who are selling a product of the  
16 manufacturer’s that is not in compliance with this chapter that the sale is  
17 prohibited and submit to the Attorney General a list of the names and addresses  
18 of those notified.

19       (b) The Department shall assist other State agencies and municipalities to  
20 avoid purchasing or using class B firefighting foams to which PFAS have been  
21 intentionally added. The Department shall assist other State agencies, town

1 ~~fire districts, and other municipalities to give priority and preference to the~~  
2 ~~purchase of personal protective equipment that does not contain PFAS.~~

3 § 1667. PENALTIES

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

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

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

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

13 CHAPTER 33A. CHEMICALS OF CONCERN IN FOOD PACKAGING

14 § 1671. DEFINITIONS

15 As used in this chapter:

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

19 **OR**

20 (1) “Bisphenols” means endocrine active industrial chemical compounds  
21 used primarily in the manufacture of polycarbonate plastic and epoxy resins in



1 which bisphenols are present in any amount greater than an incidental  
2 presence.

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

4 (3) “Food packaging” means a package that is designed for direct food  
5 contact, including food or beverage products contained in such packaging as  
6 well as the packaging itself, a packaging component of a food package, and  
7 plastic disposable gloves used in commercial or institutional food service.

8 **OR**

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

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

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

16 **OR**

17 (X) “Phthalates” means any member of the class of organic chemicals  
18 that are esters of phthalic acid except that it does not include those phthalates  
19 authorized in food contact use by the U.S. Food and Drug Administration  
20 (FDA) and subject to review by the FDA under a Food Additive Petition.



1           (1) To demonstrate compliance with this subsection, the Department  
2           may require a manufacturer, wholesaler, or retailer, of food packaging to  
3           certify in writing that any substance containing intentionally added PFAS is the  
4           subject of an effective food contact notification.

5           (2) The restrictions in this subsection shall not apply to affected  
6           products that are already in commerce in this State as on July 1, 2021.

7           (b)(1) Pursuant to 3 V.S.A. chapter 25, the Department may adopt rules  
8           prohibiting a manufacturer, supplier, or distributor from selling or offering for  
9           sale or for promotional distribution a food package or the packaging  
10           component of a food package to which bisphenols have been intentionally  
11           added and are present in any amount greater than an incidental presence.

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

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

1 or the packaging component of a food package in accordance with this  
2 subsection, the prohibition shall not take effect until two years after the  
3 Department determines that a safer alternative to bisphenols is available adopts  
4 rules.

5 OR

6 (b) Pursuant to 3 V.S.A. chapter 25, the Department may adopt rules  
7 prohibiting a manufacturer, supplier, or distributor from selling or offering for  
8 sale or for promotional distribution a food package to which bisphenols or  
9 phthalates have been intentionally added and are present in any amount greater  
10 than an incidental presence.

11 (1) The Department may only prohibit a manufacturer, supplier, or  
12 distributor from selling or offering for sale or for promotional distribution a  
13 food package or the packaging component of a food package in accordance  
14 with this subsection if the Department has determined that a safer alternative is  
15 readily available in sufficient quantity and at a comparable cost and that the  
16 safer alternative performs as well as or better than bisphenols or phthalates, as  
17 appropriate, in a specific application of bisphenol or phthalates, respectively,  
18 to a food package or the packaging component of a food package.

19 (2) If another state prohibits a manufacturer, supplier, or distributor  
20 from selling or offering for sale or for promotional distribution a food package  
21 or the packaging component of a food package after formally determining in

1 accordance with the state's laws that a safer alternative performs as well as or  
2 better than either bisphenols or phthalates, respectively, in a specific  
3 application of bisphenols or phthalates to a food package or the packaging  
4 component of a food package, the Department shall report to the General  
5 Assembly the action taken in that state and make a recommendation as to  
6 whether the General Assembly should adopt similar legislation.

7 (3) If the Department prohibits a manufacturer, supplier, or distributor  
8 from selling or offering for sale or for promotional distribution a food package  
9 or the packaging component of a food package in accordance with this  
10 subsection, the prohibition shall not take effect until two years after the  
11 Department determines that a safer alternative to bisphenols of phthalates,  
12 respectively, is available.

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

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

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

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

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

17     § 1674. RULEMAKING

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

21             \* \* \* Rugs, Carpets, and Aftermarket Stain and Water Resistant

1 Treatments \* \* \*

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

3 CHAPTER 33B. PFAS IN RUGS, CARPETS, AND AFTERMARKET

4 STAIN AND WATER RESISTANT TREATMENTS

5 § 1681. DEFINITIONS

6 As used in this chapter:

7 (1) “Aftermarket stain and water resistant treatments” means treatments  
8 for textile and leather consumer products used in residential settings that have  
9 been treated during the manufacturing process for stain, oil, and water  
10 resistance, but excludes products marketed or sold exclusively for use at  
11 industrial facilities during the manufacture of a carpet, rug, clothing, or shoe.

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

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

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

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

18 § 1682. RUGS AND CARPETS

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

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

2        § 1683. AFTERMARKET STAIN AND WATER RESISTANT

3                TREATMENTS

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

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

9        § 1684. CERTIFICATE OF COMPLIANCE

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

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

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





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

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

6        § 1693. CERTIFICATE OF COMPLIANCE

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

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

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

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

1     § 1694. RULEMAKING

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

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

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

7     § 1773. CHEMICALS OF HIGH CONCERN TO CHILDREN

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

11   \* \* \*

12             (67) ~~Perfluoroalkyl and polyfluoroalkyl substances, the class for~~  
13     ~~fluorinated organic chemicals containing at least one fully fluorinated carbon~~  
14     ~~atom~~ PFH<sub>x</sub>S (perfluorohexane sulfonic acid).

15             (68) PFHpA (perfluoroheptanoic acid).

16             (69) PFNA (perfluorononanoic acid).

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

19   \* \* \*

1 (f) Notwithstanding any provisions of this chapter to the contrary, the  
2 following chemicals are not subject to removal by rulemaking under 3 V.S.A.  
3 chapter 25:

4 (1) PFHxS (perfluorohexane sulfonic acid).

5 (2) PFHpA (perfluoroheptanoic acid).

6 (3) PFNA (perfluorononanoic acid).

7 \* \* \* Effective Dates \* \* \*

8 Sec. 6. EFFECTIVE DATES

9 (a) This act shall take effect on July 1, 2021, except that Secs. 1 (class B  
10 firefighting foam) and 5 (chemicals of high concern to children) shall take  
11 effect on July 1, 2022 and Secs. 2 (food packaging), 3 (rugs and carpets), and  
12 4 (ski wax) shall take effect on July 1, 2023.

13

14

15

16

17

18

19 (Committee vote: \_\_\_\_\_)

1

\_\_\_\_\_

2

Representative \_\_\_\_\_

3

FOR THE COMMITTEE