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To: Rep. Ann Pugh, Chair
House Committee on Human Services

From: Charity R. Clark, Chief of Staff
Attorney General's Office

Date: April 22, 2021

Re: Compliance provisions of latest draft of S.20, An act relating to restrictions on PFAS and other chemicals of concern in consumer products

To assist the Committee as it considers S.20, the following is a summary of the Attorney General's Office's suggestions and observations regarding the "Certificate of Compliance" sections of the bill. As I mentioned in my testimony today, the structure of these sections is similar to those in other Vermont statutes and there is nothing novel in this approach.

Penalties

Manufacturers of four types of products addressed in S.20 are subject to a "Certificate of Compliance" section. Those sections include: § 1666 (firefighting foam and personal protective equipment); § 1673 (food packaging); § 1684 (carpets and aftermarket treatments); and § 1693 (ski wax). Of these products, only firefighting foam and personal protective equipment, however, explicitly includes a penalties section (§1667). I recommend clarifying the penalties available for failure to comply as to the three remaining products.

Retailers Receiving Notice

The bill requires that a manufacturer that is not in compliance "notify persons in the State who are selling a product of the manufacturers...." I recommend amending this language in each of the Certificate of Compliance sections to reflect that the triggering event for receiving notice is the location of the product, not the location of the seller. In other words, retailers selling the PFAS-containing product in Vermont should receive notice regardless of the retailer's location.

Specifically, I would revise the language as follows: “...notify persons ~~in the State~~ who are selling a product of the manufacturer’s in the State...”

Notice to Consumers

Regarding notice, the bill does not include a provision to notify consumers. While reaching consumers directly may pose a logistical challenge, the Committee may wish to consider adding a mechanism to notify the general public. By way of example, the Security Breach Notice Act allows for “substitute notice” when direct notice is not practicable. *See* 9 V.S.A. § 2435(b)(6)(B)(ii). The Attorney General’s Office’s “[Vermont Security Breach Notice Act Guidance](#)” describes in greater detail what this might look like. Generally, adequate substitute notice would be posting notice on a website and issuing a press release.

Definitions of “Certificate of Compliance” and Notification

Finally, neither “Certificate of Compliance” nor the nature of the notification to retailers are defined in the bill. The Committee may decide there is no need to elaborate. Nonetheless, I flag the possibility of providing further instruction to manufacturers as to the content of both “Certificate of Compliance” and the notice to retailers. For example, retailers may benefit from notice of the requirements under this statute.

Conclusion

To summarize, I suggest the Committee:

- Clarify the penalties available for failure to comply as to food packaging, carpets and aftermarket treatments, and ski wax.
- Make the event that triggers notification to retailers whether the PFAS-containing product is being sold in the State rather than where the retailer is located.
- Consider including a mechanism for manufacturers to notify consumers via a public notice when a product subject to the PFAS ban contains PFAS.
- Consider elaborating on the content of the Certificate of Compliance and/or notice to retailers.