

ASSOCIATED INDUSTRIES OF VERMONT

REPRESENTING THE VERMONT INDUSTRIAL AND BUSINESS COMMUNITY SINCE 1920

Testimony on S.20 House Committee on Human Services William Driscoll, Vice President

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AIV appreciates the opportunity to provide testimony on S.20. As well-intentioned some provisions of S.20 might be, we have concerns about certain definitions and the scope of chemicals and products that it addresses. We also have concerns about criteria for some of the bans and other regulations it would impose on products that are already regulated.

Although the bill as passed by the Senate has flaws, several of these can be addressed through amendments. The following provides an overview of amendments that we would recommend for the Committee's consideration. We would be happy to follow up with specific language and additional input as the Committee's consideration continues.

Key Recommendations:

Firefighting Foam

Thirteen states have enacted legislation limiting firefighting foam containing PFAS. Broadly speaking, these states focus on prohibiting use in training. The majority of those that also ban other uses nevertheless have exemptions for high-risk liquid and related fires. Some states have enacted phase out periods and/or alternatives assessments for exemptions.

We would also note that prohibiting manufacture and sale when there are permitted uses of a product creates unwarranted uncertainties and complications for manufacturers and suppliers. Other states commonly focus on regulating uses, and we would recommend the same here.

We would recommend the following amendments to these sections:

1. Retain the ban on use in testing (§1662 in Section 1).
2. Amend §1663 in Section 1 to prohibit other uses of covered foams except in cases of federal requirements and Class B fires as defined by the National Fire Protection Association Life Safety Code.
3. Amend §1663 in Section 1 to provide for further restrictions on allowable uses other than those required by federal law, but only in accordance with an alternatives review, determination, and phase out period modeled on the process currently included in §1672(b) in Section 2 for food packaging containing bisphenols.

Food Packaging

Only three states have enacted general bans on food packaging containing PFAS: Washington, New York, and Maine.

Definition of Food Packaging

Two out of these three states, Washington and New York, use a simpler and clearer definition of food packaging than is currently in S.20, which appears overly broad and could be interpreted to include packaging and packaging components that do not contact food.

We would recommend that S.20 be amended in Section 2, §1671, to define food packaging as:

"Food packaging" means a package or packaging component that is intended for direct food contact and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers.

This would align with the definitions in Washington and New York. We would further suggest for consideration, however, that everything after "contact" could be deleted as unnecessary.

Regulation of PFAS

Two out of these three states, in this case Washington and Maine, have also included an alternatives review and determination as a requirement for phasing out food packaging containing PFAS. We believe that this is a fair and reasonable requirement.

We would recommend that Section 2, §1672(a), should be amended to include the same alternatives review, determination, and phase out period as currently included in Section 2, §1672(b), for food packaging containing bisphenols.

Regulation of Bisphenols

Although several states have statutes regulating BPA in food packaging for young children, no states have a statute targeting bisphenols in food packaging as broadly as in S.20. We believe that it is not necessary to include bisphenols in S.20. However, if these provisions are retained, we would recommend amending the definition of bisphenols to focus more specifically on bisphenols of highest concern, and we would defer to recommendations we believe will be forthcoming from other stakeholders.

Regulation of Phthalates

No other jurisdiction in the world, and only one state, Maine, has a law banning phthalates in food packaging. Phthalates do not all have the same chemical properties or health concerns, the use of phthalates in food packaging in the US is limited and approved by the FDA, and we believe that it is not necessary to include phthalates in S.20. However, if these provisions are retained, we would recommend two amendments:

1. Exempt phthalates specifically approved for food packaging use by the FDA.
2. Section 2, §1672(c), should be amended to include the same alternatives review, determination, and phase out period as currently included in Section 2, §1672(b), for food packaging containing bisphenols.

Chemicals of High Concern to Children

Of the three other states with laws similar to Vermont's Chemicals of High Concern to Children statutes (Washington, Oregon, and New York), none of them include PFAS as a class on their lists of covered chemicals. There are several problems with including PFAS as a class in this list:

- PFAS chemicals do not all have the same chemical properties or health concerns, and do not necessarily all match the statutory criteria for inclusion on the CHCC list.
- PFAS is an extremely large class of chemicals, and presents significant compliance challenges for manufacturers who would be required to test for the entire class of PFAS whether added intentionally or potentially present as a contaminant without regard to any actual health risk or concern.
- Including PFAS as a class legislatively circumvents the statutory process and criteria by which the Department of Health is already authorized to add chemicals to the list of Chemicals of High Concern to Children – a process this Committee itself amended and reaffirmed through Act 75 in 2019.

In light of these considerations, we would recommend striking Section 5 entirely and allowing the Department of Health to use its existing authority to determine whether any PFAS chemicals should be added to the CHCC list.

Although we do not believe it is necessary, if the Committee feels the statute should be amended to make it more clear that the Department has the authority to add an entire class of chemicals to the list if that class meets the criteria required in statute, we would be happy to offer further recommendations.

Thank you for your consideration of these amendments. As noted above, we will be happy to provide draft language and additional comments and discussion as needed.