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H.238

Introduced by Representatives Sheldon of Middlebury and Chapin of East
Montpelier

Referred to Committee on

Date:

Subject: Conservation and development; toxic substances; consumer products;
perfluoroalkyl and polyfluoroalkyl substances

Statement of purpose of bill as introduced: This bill proposes to phase out and ultimately prohibit the manufacture, sale, or distribution for sale of consumer products containing added perfluoroalkyl and polyfluoroalkyl substances (PFAS). The bill would authorize both the Secretary of Natural Resources and the Attorney General to enforce the requirements for consumer products containing PFAS, with the Attorney General enforcing under consumer protection laws. In addition, a consumer harmed by a consumer product containing PFAS would be authorized to bring a consumer protection action for damages.

An act relating to the phaseout of consumer products containing added perfluoroalkyl and polyfluoroalkyl substances

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

2 Sec. 1. 10 V.S.A. chapter 169 is added to read:

3 CHAPTER 169. PHASEOUT OF PFAS-ADDED CONSUMER PRODUCTS

4 § 7601. DEFINITIONS

5 As used in this chapter:

6 (1) “Adult mattress” means a mattress other than a crib or toddler
7 mattress.

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

13 (3) “Alternative” means a substitute process, product, material,
14 chemical, strategy, or combination of these that has been evaluated and serves
15 a functionally equivalent purpose to PFAS in a product that presents a lesser
16 hazard to human health and the environment than use of PFAS in the product.

17 (4) “Apparel” means any of the following:

18 (A) Clothing items intended for regular wear or formal occasions,
19 including undergarments, shirts, pants, skirts, dresses, overalls, bodysuits,
20 costumes, vests, dancewear, suits, saris, scarves, tops, leggings, school
21 uniforms, leisurewear, athletic wear, sports uniforms, everyday swimwear,

1 formal wear, onesies, bibs, reusable diapers, footwear, and everyday uniforms
2 for workwear. Clothing items intended for regular wear or formal occasions
3 do not include clothing items for exclusive use by the U.S. Armed Forces and
4 personal protective equipment.

5 (B) Outdoor apparel.

6 (5) “Aqueous film forming foam” or “AFFF” means a fire suppressant
7 used to extinguish flammable liquid fires such as fuel fires.

8 (6) “Artificial turf” means a surface of synthetic fibers that is used in
9 place of natural grass in recreational, residential, or commercial applications.

10 (7) “Carpet or rug” means a fabric product marketed or intended for use
11 as a floor covering.

12 (8) “Cleaning product” means a compound intended for routine
13 cleaning, including general purpose cleaners, bathroom cleaners, glass
14 cleaners, carpet cleaners, floor care products, and hand soaps. “Cleaning
15 product” does not mean an antimicrobial pesticide.

16 (9) “Complex durable goods” means a consumer product that is a
17 manufactured good composed of 100 or more manufactured components, with
18 an intended useful life of five or more years, where the product is typically not
19 consumed, destroyed, or discarded after a single use. This includes
20 replacement parts for complex durable goods not subject to a phaseout under
21 this chapter. “Complex durable goods” does not include food.

1 (10) “Consumer product” means any tangible personal property that is
2 distributed in commerce and that is used for personal, family, or household
3 purposes. “Consumer products” includes product categories that are normally
4 used by households but sold to businesses, such as commercial carpets or
5 commercial floor waxes. Beginning on January 1, 2033, “consumer product”
6 includes complex durable goods.

7 (11) “Cookware” means durable houseware items used to prepare,
8 dispense, or store food, foodstuffs, or beverages and that are intended for direct
9 food contact, including pots, pans, skillets, grills, baking sheets, baking molds,
10 trays, bowls, and cooking utensils.

11 (12) “Cosmetic product” means an article or a component of an article
12 intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or
13 otherwise applied to the human body or any part thereof for cleansing,
14 promoting attractiveness, or improving or altering appearance, including those
15 intended for use by professionals. “Cosmetic product” does not mean soap,
16 dietary supplements, or food and drugs approved by the U.S. Food and Drug
17 Administration.

18 (13) “Dental floss” means a string-like device made of cotton or other
19 fibers intended to remove plaque and food particles from between the teeth to
20 reduce tooth decay. The fibers of the device may be coated with wax for easier
21 use.

1 (14) “Fluorine treated containers” means a fluorinated treated plastic
2 container or another fluorinated container listed by the Secretary by rule.

3 (15) “Food” has the same meaning as defined in 18 V.S.A. § 4051.

4 (16) “Food packaging and containers” means containers applied to or
5 providing a means to market, protect, handle, deliver, serve, contain, or store a
6 food or beverage. “Food packaging and containers” includes:

7 (A) a unit package and an intermediate package;

8 (B) unsealed receptacles, such as carrying cases, crates, cups, plates,
9 bowls, pails, rigid foil and other trays, wrappers and wrapping films, bags, and
10 tubs; and

11 (C) an individual assembled part of a food package, such as any
12 interior or exterior blocking, bracing, cushioning, weatherproofing, exterior
13 strapping, coatings, closures, inks, and labels.

14 (17) “Incontinency protection product” means a disposable, absorbent
15 hygiene product designed to absorb bodily waste for use by individuals 12
16 years of age and older.

17 (18) “Intentionally added” means:

18 (A) when a person manufacturing a product or product component
19 knows or can reasonably ascertain the final product or product component
20 could contain PFAS, including because:

1 (i) PFAS or PFAS precursors are added to the product or product
2 component;

3 (ii) PFAS or PFAS precursors are used in the manufacturing
4 process of the product or product component; or

5 (iii) PFAS are present in the final product as a byproduct or
6 impurity; or

7 (B) the product or a product component contains PFAS above
8 thresholds established by the Secretary.

9 (19) “Juvenile product” means a product designed or marketed for use
10 by infants and children under 12 years of age:

11 (A) including a baby or toddler foam pillow; bassinet; bedside
12 sleeper; booster seat; changing pad; infant bouncer; infant carrier; infant seat;
13 infant sleep positioner; infant swing; infant travel bed; infant walker; nap cot;
14 nursing pad; nursing pillow; play mat; playpen; play yard; polyurethane foam
15 mat, pad, or pillow; portable foam nap mat; portable infant sleeper; portable
16 hook-in chair; soft-sided portable crib; stroller; toddler mattress; and
17 disposable, single-use diaper; and

18 (B) excluding a children’s electronic product, such as a personal
19 computer, audio and video equipment, calculator, wireless phone, game
20 console, handheld device incorporating a video screen, or any associated

1 peripheral such as a mouse, keyboard, power supply unit, or power cord; a
2 medical device; or an adult mattress.

3 (20) “Known or reasonably ascertainable” means all information in a
4 person’s possession or control, plus all information that a reasonable person
5 similarly situated might be expected to possess, control, or know.

6 (21) “Manufacturer” means any person engaged in the business of
7 making or assembling a consumer product for sale to or use by consumers.
8 “Manufacturer” excludes a distributor or retailer, except when a consumer
9 product is made or assembled outside the United States, in which case a
10 “manufacturer” includes the importer or first domestic distributor of the
11 consumer product.

12 (22) “Medical device” has the same meaning given to “device” in 21
13 U.S.C. § 321.

14 (23) “Menstrual product” means a product used to collect menstruation
15 and vaginal discharge, including tampons, pads, sponges, menstruation
16 underwear, disks, applicators, and menstrual cups, whether disposable or
17 reusable.

18 (24) “Outdoor apparel” means clothing items intended primarily for
19 outdoor activities, including hiking, camping, skiing, climbing, bicycling, and
20 fishing.

1 (25) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means
2 a class of fluorinated organic chemicals containing at least one fully
3 fluorinated carbon atom.

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

8 (27) “Pesticide” has the same meaning as defined in 6 V.S.A. § 1101.

9 (28) “PFAS-added consumer product” means a consumer product that
10 was manufactured after the effective date of this chapter where PFAS were
11 intentionally added to that product or a component of the product.

12 (29) “Product component” means a component of a product, regardless
13 of whether the manufacturer of the product is the manufacturer of the
14 component.

15 (30) “Retailer” means a person who sells a PFAS-added product in the
16 State through any means, including a sales outlet, a catalogue, the telephone,
17 the internet, or any electronic means. “Retailer” does not mean a person who
18 both manufactures and sells at retail a consumer product with respect to the
19 product that they manufacture.

20 (31) “Secretary” means the Secretary of Natural Resources.

1 (32) “Ski wax” means a lubricant applied to the bottom of snow runners,
2 including skis and snowboards, to improve their grip and glide properties.

3 (33) “Textile” means any item made in whole or part from a natural,
4 human-made, or synthetic fiber, yarn, or fabric, and includes leather, cotton,
5 silk, jute, hemp, wool, viscose, nylon, or polyester. “Textile” does not include
6 a single-use paper hygiene product, including toilet paper, paper towels, paper
7 tissues, or single-use absorbent hygiene products.

8 (34) “Textile articles” means textile goods of a type customarily and
9 ordinarily used in households and businesses and includes apparel, accessories,
10 handbags, backpacks, draperies, shower curtains, furnishings, upholstery,
11 bedding, towels, napkins, and tablecloths. “Textile articles” does not include:

12 (A) a vehicle, as defined in 1 U.S.C. § 4, or its component parts;

13 (B) a vessel, as defined in 1 U.S.C. § 3, or its component parts;

14 (C) an aircraft, as defined in 49 U.S.C. § 40102(a)(6), or its
15 component parts;

16 (D) filtration media and filter products used in industrial applications,
17 including chemical or pharmaceutical manufacturing and environmental
18 control technologies;

19 (E) textile articles used for laboratory analysis and testing; and

20 (F) rugs or carpets.

1 (35) “Upholstered furniture” means any article of furniture that is
2 designed for sitting, resting, or reclining and is wholly or partially stuffed with
3 filling material.

4 § 7602. EXEMPTIONS

5 The following are exempt from the requirements of this chapter:

6 (1) A product for which federal law governs the presence of PFAS in the
7 product in a manner that preempts state authority.

8 (2) Products made with at least 50 percent recycled content, excluding
9 food packaging and containers and PFAS solutions. The Secretary may adopt
10 alternate minimum recycled content exemptions by rule.

11 (3) Products manufactured prior to the phaseout imposed by section
12 7604 of this title.

13 (4) Drugs, medical devices, biologics, or diagnostics approved or
14 authorized by the federal Food and Drug Administration or the U.S.
15 Department of Agriculture or otherwise subject to regulation under the Federal
16 Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 301 et seq. This
17 exemption shall not apply to products phased out pursuant to subdivision
18 7604(a)(1) of this title or for which the Secretary adopts a rule phasing out a
19 PFAS-added consumer product.

20 (5) Pesticides registered or authorized for use under the Federal
21 Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. chapter 6,

1 subchapter II (environmental pest control) and by the Vermont Agency of
2 Agriculture, Food and Markets under 6. V.S.A. Chapter 81, as amended.

3 (6) Replacement parts for products manufactured prior to the phaseout
4 imposed by section 7604 of this title.

5 § 7603. INTERJURISDICTION CLEARINGHOUSE

6 (a) The Secretary is authorized to participate in the establishment and
7 implementation of a multijurisdiction clearinghouse to assist in carrying out
8 the requirements of this chapter and to help coordinate applications and
9 reviews of the manufacturer obligations under this chapter. The clearinghouse
10 may also maintain a database or other collection of relevant information,
11 including all products containing PFAS, including PFAS-added products;
12 applications for designation as a currently unavoidable use; and exemptions
13 granted by the participating jurisdictions.

14 (b) Public disclosure of information submitted to the Secretary pursuant to
15 this section shall be governed by the requirements of 1 V.S.A, chapter 5,
16 subchapter 3. Notwithstanding whether information submitted to the Secretary
17 pursuant to this section is exempt from public disclosure under 1 V.S.A.
18 § 317(c), the Secretary may provide the clearinghouse with copies of such
19 information, provided:

20 (1) the Secretary provides notice of this section to the person submitting
21 the information; and

1 (2) all member jurisdictions of the clearinghouse protect such
2 information from disclosure by law, including as provided in subsection (d) of
3 this section.

4 (c) The Secretary may publish analyses or summaries of such information,
5 provided that:

6 (1) the analyses or summaries do not reveal any information that is
7 confidential under 1 V.S.A. § 317(c); and

8 (2) if relying on confidential information obtained from another
9 jurisdiction, that jurisdiction does not prohibit disclosure of such analyses or
10 summaries.

11 (d) Communications and information shared among or between members
12 of the clearinghouse, including information maintained by the clearinghouse,
13 shall not lose any otherwise applicable protection from disclosure by virtue of
14 being shared within the clearinghouse.

15 § 7604. PHASEOUTS ON THE SALE OF CERTAIN PFAS-ADDED

16 PRODUCTS

17 (a) Product phaseouts. A manufacturer shall not manufacture, sell, or
18 distribute for sale in the State the following PFAS-added consumer products:

19 (1) AFFF;

20 (2) aftermarket stain and water-resistant treatments;

21 (3) artificial turf;

1 (4) carpets and rugs;

2 (5) cleaning products;

3 (6) cookware;

4 (7) cosmetic products;

5 (8) dental floss;

6 (9) fluorine treated containers;

7 (10) food packaging and containers;

8 (11) incontinency protection products;

9 (12) juvenile products;

10 (13) menstrual products;

11 (14) ski wax; and

12 (15) upholstered furniture.

13 (b) Apparel textiles and textile articles. A manufacturer shall not
14 manufacture, sell, or distribute for sale in the State apparel textiles or textile
15 articles with concentrations of total organic fluorine greater than 50 parts per
16 million.

17 (c) Firefighting; personal protective equipment.

18 (1) A manufacturer or other person that sells firefighting equipment to
19 any person, municipality, or State agency in this State shall provide written
20 notice to the purchaser at the time of sale, citing to this chapter, if the personal
21 protective equipment contains PFAS. The written notice shall include a

1 statement that the personal protective equipment contains PFAS and the reason
2 PFAS are added to the equipment.

3 (2) The manufacturer or person selling personal protective equipment
4 and the purchaser of the personal protective equipment shall retain the notice
5 for at least three years from the date of the transaction.

6 § 7605. CERTIFICATE OF COMPLIANCE

7 (a) The Attorney General or Secretary may request a certificate of
8 compliance from a manufacturer. Within 60 days after receipt of the request
9 for a certificate of compliance, the manufacturer shall:

10 (1) Provide a certificate to the requestor attesting that the manufacturer's
11 product or products comply with the requirements of this chapter. Upon
12 request, the manufacturer shall document the steps taken to reasonably
13 ascertain whether PFAS were present in a product or product component.

14 (2) Notify persons who are selling a product of the manufacturer's in
15 this State that the product does not comply with this chapter and submit to the
16 requestor a list of the names and addresses of those persons notified.

17 (b) A manufacturer required to submit a certificate of compliance pursuant
18 to this section may rely upon a certification under section 7606 of this title
19 provided to the manufacturer by a supplier for the purpose of determining
20 whether the manufacturer's product or products comply with the requirements
21 of this chapter.

1 (c) A certificate of compliance shall be in a form prescribed by the
2 Secretary.

3 § 7606. MANUFACTURER CERTIFICATION; RIGHT OF ACTION

4 (a) A manufacturer may request a certification from a supplier of an input
5 into a product that is manufactured, sold, or distributed in the State of
6 Vermont. That certification may include the following:

7 (1) whether PFAS were intentionally added to the product or product
8 component;

9 (2) whether a commercial chemical product contains PFAS;

10 (3) how PFAS were used in the development of the product or product
11 component; and

12 (4) any additional information reasonably necessary for the
13 manufacturer to ensure compliance with this chapter.

14 (b) A supplier shall have 60 days from the date the manufacturer sends the
15 request for a certification to respond to the request. The manufacturer and
16 supplier may agree to an extension of time in writing. A supplier who needs to
17 send a request for a certification to their suppliers shall respond on or before
18 180 days from the date that the original request was sent, unless otherwise
19 agreed to with the original requestor in writing.

1 (c) Any supplier providing a certification under this section may require the
2 recipient to agree not to disclose information, except to the State of Vermont,
3 that is confidential under 1 V.S.A. § 317(c).

4 (d) A manufacturer may sue a supplier for failure to provide a certificate
5 under this section. A supplier may be liable for actual and consequential
6 damages as a result of its failure to provide a certificate under this section. A
7 manufacturer who prevails in a suit under this section shall be entitled to
8 reasonable attorney's fees.

9 (e) A supplier's failure to comply with this section is deemed to be a
10 violation of 9 V.S.A. § 2453.

11 § 7607. RULEMAKING

12 The Secretary may adopt rules to implement this chapter.

13 § 7608. ENFORCEMENT

14 In addition to the enforcement authority under chapters 201 and 211 of this
15 title, a violation of this chapter is deemed to be a violation of 9 V.S.A. § 2453.

16 Sec. 2. 10 V.S.A. § 8003 is amended to read:

17 § 8003. APPLICABILITY

18 (a) The Secretary may take action under this chapter to enforce the
19 following statutes and rules, permits, assurances, or orders implementing the
20 following statutes, and the Board may take such action with respect to
21 subdivision (10) of this subsection:

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(32) 10 V.S.A. chapter 164B, relating to collection and management of covered household hazardous products; ~~and~~

(33) 10 V.S.A. chapter 24A relating to the Climate Superfund Cost Recovery Program; and

(34) 10 V.S.A. chapter 169, relating to the phaseout of PFAS-added consumer products.

* * *

Sec. 3. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(V) chapter 124 (trade in covered animal parts or products); ~~and~~

(W) chapter 164B (collection and management of covered household hazardous products); and

(X) chapter 169 (phaseout of PFAS-added consumer products).

* * *

1 Sec. 4. 9 V.S.A. § 2494b is amended to read:

2 § 2494b. PROHIBITED CHEMICALS IN COSMETIC AND MENSTRUAL
3 PRODUCTS

4 (a) A manufacturer shall not manufacture, sell, offer for sale, distribute for
5 sale, or distribute for use in this State any cosmetic or menstrual product to
6 which the following chemicals or chemical classes have been intentionally
7 added in any amount:

8 (1) ortho-phthalates;

9 (2) ~~PFAS~~; [Repealed.]

10 (3) formaldehyde (CAS 50-00-0);

11 (4) methylene glycol (CAS 463-57-0);

12 (5) mercury and mercury compounds (CAS 7439-97-6);

13 (6) 1, 4-dioxane (CAS 123-91-1);

14 (7) isopropylparaben (CAS 4191-73-5);

15 (8) isobutylparaben (CAS 4247-02-3);

16 (9) lead and lead compounds (CAS 7439-92-1);

17 (10) asbestos;

18 (11) triclosan (CAS 3380-34-5);

19 (12) m-phenylenediamine and its salts (CAS 108-42-5);

20 (13) o-phenylenediamine and its salts (CAS 95-54-5); and

21 (14) quaternium-15 (CAS 51229-78-8).

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Sec. 5. 9 V.S.A. chapter 63, subchapter 12C is amended to read:

Subchapter 12C. Chemicals of Concern in Food Packaging

§ 2494w. DEFINITIONS

As used in this subchapter:

* * *

(8) ~~“Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. [Repealed.]~~

§ 2494x. FOOD PACKAGING

(a) ~~A manufacturer 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 and are present in any amount. [Repealed.]~~

* * *

Sec. 6. REPEAL

9 V.S.A. chapter 63, subchapter 12a (PFAS in consumer products) and subchapter 12b (PFAS in firefighting agents and equipment) are repealed.

Sec. 7. REPORTS

(a) On or before January 15, 2032, the Secretary of Natural Resources shall provide a recommendation to the House Committees on Human Services and on Environment and Energy and the Senate Committees on Health and Welfare

1 and on Natural Resources and Energy on how to address PFAS in complex
2 durable goods.

3 (b) On or before January 15, 2033, the Secretary of Agriculture, Food and
4 Markets shall provide a recommendation to the House Committees on Human
5 Services and on Environment and Energy and the Senate Committees on
6 Health and Welfare and on Natural Resources and Energy on how to address
7 PFAS in food.

8 Sec. 8. EFFECTIVE DATES

9 (a) This act shall take effect on July 1, 2028.