

Comments on H.238 and Regulation of PFAS in Consumer Products William Driscoll, Vice President

February 27, 2025

AIV appreciates the opportunity to follow up on our testimony from February 21 with our key points and recommendations for H.238. They are outlined below in reference to Draft 1.2 of H.238, and we will be happy to provide further updates as warranted as the draft continues to evolve. Please do not hesitate to reach out to us if you would like to discuss further, and we would appreciate any opportunity to provide updated testimony before the Committee on new language.

Key Recommendations for H.238

- **Retain the current statutory definition of intentionally added. Add recommendations, if any, for changing that definition in the reports called for in the latest draft of H.238, Sec. 3. ANR REPORT ON PFAS REGULATION.**

Currently only Rhode Island has a statutory definition “intentionally added” that includes some aspects of the manufacturing process, but it is not effective until 2027. There is uncertainty about the extent and timing of available alternatives for all essential applications in the manufacturing process. We believe it would be prudent to further study possible consequences of banning PFAS in the manufacturing process before there are such alternatives, including by watching developments in RI.

With regard to the definition in Draft 1.2 of H.238, by banning PFAS that “serves an intended function *in the manufacturing of a product or* the final product”, the bill could appear to ban PFAS in any manufacturing process or equipment, including internal electronics, mechanical operations, etc. Further, it could also appear to ban a product even if there is no direct contact with PFAS or indeed any presence of PFAS in or on the final product, so long as PFAS simply was used in the manufacturing process.

This scope heightens uncertainty about compliance and highlights the value of further review before changing the existing statutory definition.

- **Amend the definition of fluorine treated containers covered to include only those that are both (1) used for one of the covered products (as in Maine) and (2) are listed by rule.**

Currently only Maine has included fluorinated containers in covered products. However, it is not its own separate covered product, rather the law only covers fluorinated containers used for one of the covered products included in the PFAS bans. This recommendation would follow Maine in this regard and avoid unintended consequences in other applications. Further, because of concerns about available alternatives in many applications, including among covered products, we believe it would be prudent to list any covered fluorinated containers by rule to help ensure that any bans are based on identified priorities where alternatives are available.

- **Include exemptions taken from “§ 7602. EXEMPTIONS” in the Act 131 draft legislation, including but not limited to recycled content, effective on passage.**

H.238~Michael O'Grady~20241122 PFAS Working Group Proposed Legislation v.5.1~1-30-2025.pdf

- **Provide for a currently unavoidable use exemption, effective on passage, based on the Maine definition:**

"Currently unavoidable use" means a use of PFAS that the department has determined by rule under this section to be essential for health, safety or the functioning of society and for which alternatives are not reasonably available.

"Essential for health, safety or the functioning of society" means a use of a PFAS in a product when the function provided by the PFAS is necessary for the product to perform as intended, such that the unavailability of the PFAS for use in the product would cause the product to be unavailable, which would result in: (1) A significant increase in negative health outcomes; (2) An inability to mitigate significant risks to human health or the environment; or (3) A significant disruption of the daily functions on which society relies.

It is important that Vermont adopt a “currently unavoidable use” exemption and process, as other states like Maine have done, so as to handle potential situations where there is not yet available a reasonable alternative to PFAS for a critical product by the time compliance is due. Otherwise legislation would be necessary to change compliance dates to avoid Vermonters losing access to such critical products, a potentially cumbersome process that could move too slowly to avoid disruptions.

- **Support recommendations from the cookware industry and others to amend the definition of PFAS to exempt fluoropolymers.**
- **Restore the effective date for new covered products to July 1, 2028 as in the Act 131 draft legislation.**