ASSOCIATED INDUSTRIES OF VERMONT
REPRESENTING THE VERMONT INDUSTRIAL AND BUSINESS COMMUNITY SINCE 1920

**Comments on H.238 and Regulation of PFAS in Consumer Products**
**Senate Committee on Health and Welfare**

**William Driscoll, Vice President**

April 7, 2025

Dear Chair Lyons and Committee Members:

AIV appreciates the opportunity to follow up on our testimony from April 4 with our key points and recommendations for H.238. They are outlined below in reference to H.238 as passed by the House, and we will be happy to provide further updates as warranted as the bill 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**

- **Clarify the definition of "dental floss" (page 2, line 15).**

  There is some concern that the current definition of dental floss could include electronic flossers that use string as described. While producing electronic flossers without PFAS in the floss itself is not a concern, it would not be realistic to prohibit PFAS in internal electronics. This situation is analogous to juvenile products, where the definition of juvenile products excludes electronics. We would recommend an analogous exemption for dental floss.

- **Possibly clarify the definition of "fluorine treated container" (page 2, line 19).**

  Some concerns have been raised that the definition of fluorine treated container is somewhat circular and does not capture the fluorination process. While we are investigating offering a clearer definition, we would also note that Maine, the only other state that has included fluorine treated containers in a PFAS ban, is addressing this definition issue through rulemaking, and it might be possible for Vermont to address this issue in the same way.

- **Retain the current statutory definition of "intentionally added" (page 3, line 4). Add recommendations, if any, for changing that definition to the reports called for from ANR.**

  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 Rhode Island.

  There are at least three possible ways to address this issue, either alone or in combination:

  1. Retain the existing definition already in statute (and used in all other states banning PFAS other than Rhode Island) and have ANR include any possible changes in the reports already called for in the bill.

2. Include a currently unavoidable use exemption mechanism so that there is an administrative path to exempt any critical uses of PFAS that don't have reasonable alternatives.
3. Move back the effective date of a new definition for intentionally added so that any challenges in Rhode Island (effective 2027) can be identified and any necessary changes to Vermont's law can be considered and acted on by the Legislature, ideally 2029 or 2030.

We also support the existing language in H.238 as passed by the House addressing potential contamination from the use of water in the manufacturing process. The intent of the House language is to ensure that manufacturers are not prohibited from operating if they are dependent on water sources that contain PFAS through no fault of their own. To condition this exemption on water quality standards, such as for drinking water, that have no correlation to how water is used in manufacturing and any resulting presence of PFAS in a product or exposure to consumers or the environment, is not justifiable. This issue was specifically considered by the House and industry stakeholders support the language they decided on.

- **Clarify covered rugs and carpets to be residential rugs and carpets (page 8, line 3).**

  The language being inserted here and struck at page 9, line 16 is supposed to refer to residential rugs and carpets. This would be consistent with the existing statute, the intent for H.238 to simply reorganize existing prohibitions, and to address consumer products. Alternatively, this could be clarified in the definitions section.

- **Retain the currently unavoidable use exemption process for fluorinated containers.**

  Currently only Maine has included fluorinated containers in listed covered products for PFAS bans. However, Maine also has exemptions, including for federally regulated uses, that H.238 does not. Fluorinated containers serve critical purposes for the transportation and containment of a range of products, and there are concerns that reasonable alternatives might not be available for all critical applications in the timeframe mandated in H.238. To address this concern, the House included an unavoidable use exemption process for fluorinated containers (page 11, line 4). Industry stakeholders supported this provision.

  In expressing their concerns about including an unavoidable use exemption, both the AGO and ANR raised the possible alternative approach of pushing back the effective date for fluorinated containers – one option being to 2032, the date when Minnesota would also effectively ban fluorinated containers for consumer products. Such a change would allow more time for developing reasonable alternatives, allow time to observe and respond to any problems in Maine or any other new state that acts to restrict fluorinated containers, and provide a larger market territory with such a ban. In light of this, AIV would support a delay if the unavoidable use exemption is struck, although we would prefer its retention.

  We would also recommend clarifying that the ban on fluorinated containers generally (page 11, line 1) apply to "a ***consumer*** fluorine treated container" (at page 11, line 2), to be consistent with the bill's focus on consumer products and avoid concerns about transportation and storage of manufacturing inputs.

- **Include exemptions taken from "§ 7602. EXEMPTIONS" in the Act 131 report's draft legislation, including but not limited to recycled content, effective on passage (see here: H.238~Michael O'Grady~20241122 PFAS Working Group Proposed Legislation v.5.1~1-30-2025.pdf).**

  In particular, we recommend restoring an exemption for 50% recycled content, or a threshold determined by rule as appropriate for a given product category. Maximizing recycling in products and minimizing PFAS are both important goals that are not always completely compatible. We believe that such an exemption is a reasonable and ultimately beneficial compromise to be able to support both public policy goals.

- **Restore the effective date for new covered products to July 1, 2028 as was the case in the Act 131 report's draft legislation.**

**Proposed Integration of H.250, Relating to PFAS in Firefighting PPE and Station Wear**

With regard to the question of integrating H.250 into H.238, we would recommend that the current statute that provides for notification of PFAS in firefighting PPE be retained and that informed consumer decisions drive purchasing choices. That being said, we would not currently oppose the expansion of this notification requirement to station wear – if we become aware of any concerns with this we will let the Committee know.

Although there are alternatives to PFAS in certain clothing applications, that market is still growing and questions of cost and durability (which also impacts replacement cycles and costs) would benefit from more experience. Of particular concern, however, is the availability of alternatives to PFAS in other covered equipment, such as respirators, which can have critical components containing PFAS. In assessing the availability of alternatives in firefighting equipment, Washington state recently noted the lack of alternatives for several firefighting PPE and other equipment (see here: **https://apps.ecology.wa.gov/publications/documents/2404023.pdf**).

In light of these concerns, we would strongly recommend retaining current law, with the possible exception of adding station wear, as noted above. This would allow for consumer choice without risking unintended consequences for cost, performance, and availability.

However, should the Committee decide to incorporate other elements of H.250, we would make the following recommendations:

1. Delay implementation for clothing items, such as to 2032, to allow for increased market penetration of PFAS free clothing and better understanding of cost and durability issues.
2. Exempt non-clothing items, such as self-contained breathing apparatuses (SCBAs) and other respiratory protection products, hearing protection, and protective communication devices.

**Conclusion**

Thank you for your consideration of these recommendations. We look forward to continuing to work with the Committee and stakeholders on this legislation. Please do not hesitate to contact us regarding any of the recommendations above or any other related issues.