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H.650

Introduced by Representatives McCullough of Williston, Stebbins of
Burlington, and Rachelson of Burlington

Referred to Committee on

Date:

Subject: Conservation and development; solid waste; water quality; PFAS;
biosolids

Statement of purpose of bill as introduced: This bill proposes to prohibit the
intentional use of perfluoroalkyl and polyfluoroalkyl substances in products to
be sold in Vermont. This bill also proposes to prohibit the use and import of
wastes that contain microplastics.

An act relating to prohibiting perfluoroalkyl and polyfluoroalkyl substances
in products to be sold in Vermont and the use and import of wastes
containing microplastics

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

Sec. 1. REDESIGNATION

(a) 18 V.S.A. §§ 1681–1686, as enacted by 2021 Acts and Resolves No. 36
and as effective on July 1, 2023, shall be redesignated as 18 V.S.A. §§ 1676–
1681 on effect.

1 (b) 18 V.S.A. §§ 1691–1695, as enacted by 2021 Acts and Resolves No. 36
2 and as effective on July 1, 2023, shall be redesignated as 18 V.S.A. §§ 1682–
3 1686 on effect.

4 Sec. 2. 18 V.S.A. chapter 33D is added to read:

5 CHAPTER 33D. PROHIBITING PFAS IN PRODUCTS

6 § 1691. DEFINITIONS

7 As used in this chapter:

8 (1) “Currently unavoidable use” means a use of PFAS that the
9 Department has determined by rule under this chapter to be essential for health,
10 safety, or the functioning of society and for which alternatives are not
11 reasonably available.

12 (2) “Department” means the Department of Health.

13 (3) “Intentionally added” means the addition of a chemical in a product,
14 or one of its product components, that serves an intended function or provides
15 a specific characteristic, appearance, or quality.

16 (4) “Manufacturer” means a person who:

17 (A) manufactures or manufactured a product with intentionally added
18 PFAS under its own brand or label for sale in or into the State;

19 (B) sells in or into the State under its own brand or label a product
20 with intentionally added PFAS produced by another supplier;

1 (C) owns a brand that it licenses or licensed to another person for use
2 on a product with intentionally added PFAS sold in or into the State;

3 (D) imports into the United States for sale in or into the State a
4 product with intentionally added PFAS manufactured by a person without a
5 presence in the United States; or

6 (E) manufactures a product containing intentionally added PFAS for
7 sale in or into the State without affixing a brand name.

8 (5) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” has the
9 same meaning as in section 1661 of this title. For the purposes of this chapter,
10 “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” also includes any
11 degradation byproducts of PFAS.

12 (6) “Product” means an item manufactured, assembled, packaged, or
13 otherwise prepared for sale to consumers, including its product components,
14 sold or distributed for personal, residential, commercial, or industrial use,
15 including for use in making other products.

16 (7) “Product component” means an identifiable component of a product,
17 regardless of whether the manufacturer of the product is the manufacturer of
18 the component.

19 (8) “Retailer” means a person who sells, but does not produce, in or into
20 the State a product with intentionally added PFAS produced by a manufacturer

1 to the public through any means, including a sales outlet, a catalogue, the
2 telephone, the Internet, or any electronic means.

3 (9) “Used product” means a product that has been previously owned,
4 purchased, or sold in commerce and that is resold by a person who is not
5 regularly engaged in the business of making sales of that general type of
6 product at retail where the product was obtained by the person making the sale,
7 through purchase or otherwise, for their own use.

8 § 1692. NOTIFICATION OF USE

9 (a) On or before January 1, 2024, and updated as directed in subsection (c)
10 of this section, a manufacturer of a product for sale in the State that contains
11 intentionally added PFAS shall submit to the Department a written notification
12 that includes:

13 (1) A brief description of product.

14 (2) The purpose for the intentional addition of PFAS in the product and
15 any product components.

16 (3) The amount of each of the PFAS intentionally added to the product,
17 identified by its chemical abstracts services registry number by an independent
18 testing laboratory. The amount shall be reported as an exact quantity
19 determined using commercially available analytical methods or as falling
20 within a range approved for reporting purposes by the department.

1 (4) The name and address of the manufacturer, and the name, address,
2 and phone number of a contact person for the manufacturer.

3 (5) The name of the independent testing laboratory used to determine
4 the amount of PFAS in the product and the name, address, and phone number
5 of a contact person for the independent testing laboratory.

6 (6) Any additional information established by the Department by rule
7 under section 1696 of this chapter that is necessary to implement the
8 requirements of this chapter.

9 (b) With approval of the Department, a manufacturer may supply the
10 information required in subsection (a) of this section for a category, type, or
11 class of products rather than for each individual product.

12 (c) In accordance with rules adopted by the Department, a manufacturer
13 shall:

14 (1) update and revise the information in the written notification
15 described in subsection (a) of this section whenever there is a significant
16 change in the information that was provided; and

17 (2) submit a written notification as described in subsection (a) of this
18 section for any products that were not yet sold as of January 1, 2024.

19 (d) The Department may extend the deadline for submission by a
20 manufacturer of the information required under this section if the Department

1 determines that more time is needed by the manufacturer to comply with the
2 written notification requirement.

3 (e) On or before January 15, 2023, the Department shall submit a report to
4 the General Assembly describing a proposed fee payable by a manufacturer
5 upon submission of the notification required under this section.

6 (1) The funds raised from this fee shall be used to cover the
7 Department's reasonable costs in developing rules and administering the
8 requirements under this chapter.

9 (2) The Department may set the fee based on the volume of PFAS, the
10 volume of sales of PFAS-containing products, or the type of PFAS sold.

11 § 1693. PROHIBITION

12 (a) Notwithstanding subsection (d) of this section, the Department may by
13 rule identify products by category that may not be sold or offered for sale in or
14 into this State if they contain intentionally added PFAS. The Department shall
15 first prioritize the prohibition of the sale of product categories that, in the
16 Department's judgment, affects the health of the public in this State. The
17 Department shall secondly prioritize, in consultation with the Agency of
18 Natural Resources and the Agency of Agriculture, Food and Markets,
19 prohibition of the sale of products and product categories that are most likely
20 to cause contamination of the State's land or water resources if they contain
21 intentionally added PFAS.

1 (1) Products where the intentional use of PFAS is currently unavoidable
2 may be exempted by the Department by rule.

3 (2) The Department shall not prohibit the sale or resale of used products.

4 (b) A manufacturer, other than a retailer, shall not sell or offer for sale a
5 product containing intentionally added PFAS in or into the State unless the
6 manufacturer of that product has provided a written notification required under
7 section 1692 to the Department. This prohibition does not apply to products
8 that have been determined by the Department by rule that the intentional use of
9 PFAS in the product is a currently unavoidable use.

10 (c) A retailer shall not sell or offer for sale a product containing
11 intentionally added PFAS in or into this State if the retailer has received a
12 notification regarding that product required by section 1694 of this chapter.

13 (d) On and after January 1, 2030, a person may not sell or offer for sale any
14 product that contains intentionally added PFAS in or into this State, unless the
15 Department has determined by rule that the use of PFAS in the product is a
16 currently unavoidable use.

17 (1) The Department may specify specific products or product categories
18 by rule in which it has determined the use of PFAS is a currently unavoidable
19 use.

20 (2) This prohibition does not apply to the sale or resale of used products.

1 § 1694. CERTIFICATE OF COMPLIANCE

2 The Attorney General may request a certificate of compliance from a
3 manufacturer. Within 30 days after receipt of the Attorney General’s request
4 for a certificate of compliance, the manufacturer shall:

5 (1) provide the Attorney General with a certificate of compliance
6 attesting that the manufacturer’s product or products comply with the
7 requirements of this chapter; or

8 (2) notify persons who sell that product in the State that the sale of that
9 product is prohibited because the product does not comply with this chapter
10 and submit to the Attorney General a list of names and addresses of those
11 notified.

12 § 1695. PFAS REDUCTION PROGRAM

13 The Department shall develop and implement, in consultation with the
14 Agency of Natural Resources, the Agency of Agriculture, Food and Markets,
15 and other relevant stakeholders, a program to reduce the presence of PFAS in
16 discharges to air, water, and land. The program shall be designed to encourage
17 the replacement of PFAS with safer alternatives but may also support the
18 proper management and treatment of PFAS. Elements of the program may be
19 carried out in conjunction with existing Department efforts for pollution
20 prevention or source reduction. The program shall:

- 1 (1) provide informational resources targeted to industrial and
2 commercial users of PFAS;
3 (2) provide educational resources to the general public;
4 (3) provide grants, to the extent funds are available, to operators of
5 wastewater treatment facilities for the purposes of developing, expanding, or
6 implementing pretreatment standards for PFAS;
7 (4) provide grants, to the extent funds are available, to municipalities
8 and operators of wastewater treatment facilities for the purposes of educating
9 solid waste disposal users on sources of PFAS and proper management; and
10 (5) other efforts determined by the Department to achieve the program's
11 purpose.

12 § 1696. RULEMAKING

13 Pursuant to 3 V.S.A. chapter 25, the Commissioner shall adopt any rules
14 necessary for the implementation, administration, and enforcement of this
15 chapter.

16 § 1697. PENALTIES

17 (a) A violation of this chapter shall be deemed a violation of the Consumer
18 Protection Act, 9 V.S.A. chapter 63. The Attorney General has the same
19 authority to make rules, conduct civil investigations, enter into assurances of
20 discontinuance, and bring civil actions, and private parties have the same rights
21 and remedies as provided under 9 V.S.A. chapter 63, subchapter 1.

1 (1) provide the Attorney General with a certificate attesting that the
2 manufacturer's product or products comply with the requirements of this
3 chapter; or

4 (2) notify persons who are selling a product of the manufacturer's in this
5 State that the sale is prohibited because the product does not comply with this
6 chapter and submit to the Attorney General a list of the names and addresses of
7 those persons notified.

8 * * *

9 Sec. 4. 10 V.S.A. § 1259 is amended to read:

10 § 1259. PROHIBITIONS

11 * * *

12 (k) No person shall cause a discharge of landfill leachate that contains
13 microplastics or PFAS to waters of the State, including when the leachate has
14 been treated by a wastewater treatment facility.

15 (l) On and after July 1, 2027, no new permit or permit renewal under this
16 chapter shall be issued to a wastewater treatment facility with a combined
17 sewer overflow.

18 Sec. 5. 10 V.S.A. § 6605 is amended to read:

19 § 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

20 (a)(1) No person shall construct, substantially alter, or operate any solid
21 waste management facility without first obtaining certification from the

1 Secretary for such facility, site, or activity, except for sludge or septage
2 treatment or storage facilities located within the fenced area of a domestic
3 wastewater treatment plant permitted under chapter 47 of this title. This
4 exemption for sludge or septage treatment or storage facilities shall exist only
5 if:

6 (A) ~~the~~ The treatment facility does not use a process to reduce
7 pathogens further in order to qualify for marketing and distribution; ~~and~~

8 (B) ~~the~~ The facility is not a drying bed, lagoon, or nonconcrete
9 bunker; ~~and~~

10 (C) ~~the~~ The owner of the facility has submitted a sludge and septage
11 management plan to the Secretary and the Secretary has approved the plan.
12 Noncompliance with an approved sludge and septage management plan shall
13 constitute a violation of the terms of this chapter, as well as a violation under
14 chapters 201 and 211 of this title.

15 (D) The facility does not import sludge or septage the contains
16 microplastics or PFAS.

17 * * *

1 Sec. 6. 10 V.S.A. § 6604b is amended to read:

2 § 6604b. TESTING OF SOLID WASTES PRIOR TO BENEFICIAL USE
3 ON LAND OR DISTRIBUTION AND MARKETING

4 (a) The Secretary of Natural Resources, in consultation with the Secretary
5 of Agriculture, Food and Markets and with the Commissioner of Health, shall
6 adopt rules to establish a testing program for all sewage sludge, or similar
7 liquid wastes, prior to their beneficial use on land or prior to distribution and
8 marketing of those wastes in liquid or solid form. The testing program shall
9 establish a process for the determination of minimum testing frequencies and
10 specific parameters for which analysis must be completed and shall detail
11 procedures by which samples are collected, stored, and tested. The testing
12 program shall establish a process for identifying microplastics and PFAS in the
13 waste.

14 * * *

15 Sec. 7. 10 V.S.A. § 6604d is added to read:

16 § 6604d. PROHIBITING THE SPREAD OF MICROPLASTIC-
17 CONTAINING WASTES

18 No person shall apply biosolids, sewage sludge, domestic septage, or
19 similar liquid wastes to the land of this State if they have been found to contain
20 microplastics or PFAS under the testing required by section 6604b of this
21 chapter.

1 Sec. 8. 6 V.S.A. § 5133 is amended to read:

2 § 5133. FOOD RESIDUALS; RULEMAKING

3 (a) The Secretary shall regulate the importation of food residuals or food
4 processing residuals onto a farm. The Secretary shall prohibit importing food
5 residuals or food processing residuals onto a farm if they are shown to contain
6 microplastics or PFAS.

7 * * *

8 Sec. 9. 6 V.S.A. § 369 is amended to read:

9 § 369. ADULTERATION

10 No person shall distribute an adulterated lime, plant amendment, plant
11 biostimulant, soil amendment, or fertilizer product. A fertilizer, plant
12 amendment, plant biostimulant, soil amendment, or lime shall be deemed to be
13 adulterated if:

14 * * *

15 (3) it contains crop seed or weed seed; ~~or~~

16 (4) it contains heavy metals, radioactive substances, or synthetic
17 organics in amounts sufficient to render it injurious to livestock or human
18 health when applied in accordance with directions for use on the label, or if
19 adequate warning statements or directions for use that may be necessary to
20 protect livestock or human health are not shown on the label; or

21 (5) it contains microplastics or PFAS.

1 Sec. 10. EFFECTIVE DATE

2 This act shall take effect on July 1, 2022.