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S.197

Introduced by Senators Lyons, Gulick, Watson and Wrenner

Referred to Committee on Health and Welfare

Date: January 3, 2024

Subject: Human services; public health; perfluoroalkyl and polyfluoroalkyl
substances; government procurement; public education; health
monitoring; pesticides

Statement of purpose of bill as introduced: This bill proposes to restrict the procurement of certain products containing PFAS by school districts and municipal and State government. It would also require the Department of Health to establish a registry to monitor adverse health conditions and diseases that may be attributable to PFAS exposure. This bill proposes to require the Department of Health to issue a public health advisory regarding the presence of PFAS in drinking water. It further proposes to restrict perfluoroalkyl and polyfluoroalkyl substances as ingredients in pesticides. The bill also proposes to restrict the use of pesticides that have been stored, distributed, or packaged in a fluorinated, high-density polyethylene container that has a perfluoroalkyl and polyfluoroalkyl substance content exceeding 20 parts per trillion.

~~An act relating to the procurement and distribution of products containing perfluoroalkyl and polyfluoroalkyl substances and monitoring adverse health conditions attributed to perfluoroalkyl and polyfluoroalkyl substances.~~ *An act relating to restricting perfluoroalkyl and polyfluoroalkyl substances in consumer products*

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

2 ~~*** Restriction on the Procurement of Products Containing PFAS ***~~

3 Sec. 1. 16 V.S.A. § 3746 is added to read:

4 § 3746. PROCUREMENT OF PRODUCTS CONTAINING PFAS

5 (a) A school district shall not procure a product, including carpets and
6 furniture, to which regulated PFAS have been intentionally added in any
7 amount.

8 (b) As used in this section:

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

12 (2) “Procure” means to purchase, lease, or obtain by gift.

13 (3) “Regulated perfluoroalkyl and polyfluoroalkyl substances” or
14 “regulated PFAS” means:

15 (A) PFAS that a manufacturer has intentionally added to a product
16 and that have a functional or technical effect in the product, including PFAS
17 components of intentionally added chemicals and PFAS that are intentional
18 breakdown products of an added chemical that also have a functional or
19 technical effect in the product, or

1 ~~(B) the presence of PFAS in a product or product component at or~~
2 ~~above 100 parts per million, as measured in total organic fluorine.~~

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

4 CHAPTER 33D. PROCUREMENT OF PRODUCTS CONTAINING PFAS

5 § 1696. DEFINITIONS

6 As used in this chapter:

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

10 (2) “Procure” means to purchase, lease, or obtain by gift.

11 (3) “Regulated perfluoroalkyl and polyfluoroalkyl substances” or
12 “regulated PFAS” means:

13 (A) PFAS that a manufacturer has intentionally added to a product
14 and that have a functional or technical effect in the product, including PFAS
15 components of intentionally added chemicals and PFAS that are intentional
16 breakdown products of an added chemical that also have a functional or
17 technical effect in the product; or

18 (B) the presence of PFAS in a product or product component at or
19 above 100 parts per million, as measured in total organic fluorine.

20 § 1697. STATE PROCUREMENT OF PRODUCTS CONTAINING PFAS

21 ~~The State shall not procure a product, including carpets and furniture, to~~

1 ~~which regulated PFAS have been intentionally added in any amount.~~

2 Sec. 3. 24 V.S.A. § 603 is added to read:

3 § 603. PROCUREMENT OF PRODUCTS CONTAINING PFAS

4 (a) A municipality shall not procure a product, including carpets and
5 furniture, to which regulated PFAS have been intentionally added in any
6 amount.

7 (b) As used in this section:

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

11 (2) “Procure” means to purchase, lease, or obtain by gift.

12 (3) “Regulated perfluoroalkyl and polyfluoroalkyl substances” or
13 “regulated PFAS” means:

14 (A) PFAS that a manufacturer has intentionally added to a product
15 and that have a functional or technical effect in the product, including PFAS
16 components of intentionally added chemicals and PFAS that are intentional
17 breakdown products of an added chemical that also have a functional or
18 technical effect in the product; or

19 (B) the presence of PFAS in a product or product component at or
20 above 100 parts per million, as measured in total organic fluorine.

1 ~~*** Adverse Health Conditions and Diseases Attributable to PFAS ***~~

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

3 CHAPTER 4B. REGISTRY; ADVERSE HEALTH OUTCOMES

4 ATTRIBUTED TO PFAS

5 § 181. DEFINITIONS

6 As used in this chapter:

7 (1) “Health care provider” means a person, partnership, corporation,
8 facility, or institution licensed or certified or authorized by law to provide
9 professional health care services in this State to an individual during that
10 individual’s medical care, treatment, or confinement.

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

14 (3) “Registry” means the statewide registry containing data on adverse
15 health conditions and diseases that may be attributable to PFAS exposure.

16 § 182. REGISTRY ESTABLISHED

17 The Commissioner shall establish, maintain, and operate a statewide
18 registry to document and examine the correlation between PFAS exposure and
19 adverse outcomes on human health.

§ 183. DUTY OF HEALTH CARE PROVIDERS

A health care provider that screens for, diagnoses, or provides therapeutic services to patients with adverse health conditions and diseases that may be attributable to PFAS exposure shall report to the Department all individuals diagnosed as having such a disease or condition not later than six months from the date of diagnosis. The report shall include information on each individual's usual occupation and industry of employment, region of residence, and other elements determined by rule to be appropriate.

§ 184. CONFIDENTIALITY

(a)(1) All identifying information regarding an individual patient or health care provider collected pursuant to this chapter is exempt from public inspection and copying under the Public Records Act and shall be kept confidential. The Public Records Act exemptions created in this section shall not be subject to the provisions of 1 V.S.A. § 317(e) (repeal of Public Records Act exemptions).

(2) Notwithstanding subdivision (1) of this subsection, the Commissioner may enter into data sharing and protection agreements with researchers or state, regional, or national registries collecting data on adverse health conditions or diseases that may be attributable to PFAS for bidirectional data exchange, provided access under such agreements is consistent with the privacy, security, and disclosure protections in this chapter. In the case of

1 ~~researchers, the Commissioner shall also first obtain evidence of the approval~~
2 of their academic committee for the protection of human subjects established
3 in accordance with 45 C.F.R. Part 46. The Commissioner shall disclose the
4 minimum information necessary to accomplish a specified research purpose.

5 (b) The Department may disclose aggregated and deidentified information
6 from the registry.

7 § 185. ANNUAL REPORT

8 Annually, on or before January 15, the Department shall submit a written
9 report to the Governor, the House Committee on Human Services, and the
10 Senate Committee on Health and Welfare containing the statewide prevalence
11 and incidence estimates of adverse health conditions or diseases that may be
12 attributable to PFAS exposure, including any trends occurring over time across
13 the State. Reports shall not contain information that directly or indirectly
14 identifies an individual patient or health care provider.

15 § 186. RULEMAKING

16 The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
17 implement this chapter, including rules to govern the operation of the registry,
18 data reported to the registry, and data release protocols.

19 § 187. LIABILITY

20 (a) No action for damages arising from the disclosure of confidential or
21 privileged information shall be maintained against any person, or the employer

1 ~~or employee of any person, who participates in good faith in the reporting of~~
2 registry data or data for morbidity or mortality studies in accordance with this
3 chapter.

4 (b) No license of a health care provider shall be denied, suspended, or
5 revoked for the good faith disclosure of confidential or privileged information
6 in the reporting of registry data or data in accordance with this chapter.

7 (c) Nothing in this section shall be construed to apply to the unauthorized
8 disclosure of confidential or privileged information when such disclosure is
9 due to gross negligence or willful misconduct.

10 * * * Drinking Water Public Health Advisory * * *

11 Sec. 5. 18 V.S.A. § 1223 is added to read:

12 § 1223. PFAS IN DRINKING WATER

13 The Department of Health shall maintain on its website the following
14 public health advisory: “Private and public drinking water sources contain
15 perfluoroalkyl and polyfluoroalkyl substances (PFAS). The U.S.
16 Environmental Protection Agency has determined PFAS may affect human
17 development, immune and cardiovascular systems, and may cause cancer.”

18 * * * Restricting PFAS in Pesticides * * *

19 Sec. 6. 6 V.S.A. §1101 is amended to read:

20 § 1101. DEFINITIONS

21 As used in this chapter unless the context clearly requires otherwise.

1 ~~(1) “Secretary” shall have has the meaning stated in subdivision 911(4)~~
2 of this title.

3 (2) “Cumulative,” when used in reference to a substance, means that the
4 substance so designated has been demonstrated to increase twofold or more in
5 concentration if ingested or absorbed by successive life forms.

6 (3) “Dealer or pesticide dealer” means any person who regularly sells
7 pesticides in the course of business, but not including a casual sale.

8 (4) “Economic poison” ~~shall have~~ has the meaning stated in subdivision
9 911(5) of this title.

10 (5) “Pest” means any insect, rodent, nematode, fungus, weed, or any
11 other form of terrestrial or aquatic plant or animal life or virus, bacteria, or
12 other microorganisms, ~~which~~ that the Secretary declares as being injurious to
13 health or environment. Pest ~~shall~~ does not mean any viruses, bacteria, or other
14 microorganisms on or in living humans or other living animals.

15 (6) “Pesticide” for the purposes of this chapter ~~shall be~~ is used
16 interchangeably with “economic poison.”

17 (7) “Treated article” means a pesticide or class of pesticides exempt
18 under 40 C.F.R. § 152.25(a) from regulation under the Federal Insecticide,
19 Fungicide, and Rodenticide Act, 7 U.S.C. § 136–136y.

20 (8) “Neonicotinoid pesticide” means any economic poison containing a
21 ~~chemical belonging to the neonicotinoid class of chemicals.~~

1 ~~(9) "Neonicotinoid treated article seeds" are treated article seeds that are~~
2 ~~treated or coated with a neonicotinoid pesticide.~~

3 ~~(10) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means~~
4 ~~a class of organic chemicals containing at least one fully fluorinated carbon~~
5 ~~atom.~~

6 ~~(11) "Intentionally added" means the addition of a chemical in a product~~
7 ~~that serves an intended function in the product component.~~

8 Sec. 7. 6 V.S.A. § 1114 is added to read:

9 § 1114. PFAS IN PESTICIDES

10 (a)(1) A person shall not sell, offer for sale, use, or distribute in the State a
11 pesticide that has been adulterated in an amount exceeding 20 parts per trillion
12 by the following substances:

13 (A) perfluoroheptanoic acid (PFHpA);

14 (B) perfluorohexane sulfonic acid (PFHxS);

15 (C) perfluorononanoic acid (PFNA);

16 (D) perfluorooctane sulfonic acid (PFOS);

17 (E) perfluorooctanic acid (PFOA); and

18 (F) perfluorodecanoic acid (PFDA).

19 (2) A pesticide shall not contain a substance listed in this subsection as
20 an active, inactive, or inert ingredient.

1 ~~(b) Pesticides that do not contain PFAS as an intentionally added ingredient~~
2 ~~and that have been packaged within a fluorinated, high-density polyethylene~~
3 ~~container shall be tested for PFAS prior to sale, offer for sale, or distribution.~~

4 ~~A pesticide containing PFAS due to chemicals leached from the container in an~~
5 ~~amount exceeding 20 parts per trillion is prohibited from sale, offer for sale,~~
6 ~~use, or distribution.~~

7 ~~(c) Manufacturers and distributors of pesticides shall submit a confidential~~
8 ~~statement of formula for each pesticide or pesticide product registered with the~~
9 ~~State and an affidavit to the Secretary. The statement of formula and the~~
10 ~~affidavit are exempt from public inspection and copying under the Public~~
11 ~~Records Act and shall be kept confidential. The Public Records Act~~
12 ~~exemptions created in this subsection shall not be subject to the provisions of~~
13 ~~1 V.S.A. § 317(e) (repeal of Public Records Act exemptions).~~

14 ~~(d) A manufacturer or distributor required to submit forms under~~
15 ~~subsection (b) of this section shall submit the forms during the product~~
16 ~~registration review or during reregistration pursuant to 6 V.S.A. § 918. The~~
17 ~~affidavit shall state whether a pesticide has ever been stored, distributed, or~~
18 ~~packaged in a fluorinated high-density polyethylene container and whether the~~
19 ~~pesticide has been tested for PFAS.~~

20 ~~(e) The Secretary shall specify the format for submission of the notice~~
21 ~~required. Any notice submitted shall contain the following information.~~

1 ~~(1) the name of the intentionally added chemicals in the pesticide~~
2 ~~registered with the U.S. Environmental Protection Agency;~~

3 ~~(2) a description of the product or product component containing PFAS,~~
4 ~~including the brand name, the product model, and the universal product code~~
5 ~~(UPC) if the product has such a code;~~

6 ~~(3) the amount of the chemical contained in each unit of the product or~~
7 ~~product component, reported by weight or parts per trillion as authorized by~~
8 ~~the Secretary;~~

9 ~~(4) the name and address of the manufacturer of the product and the~~
10 ~~name, address, and telephone number of a contact person for the manufacturer;~~
11 ~~and~~

12 ~~(5) any other information the manufacturer deems relevant to the~~
13 ~~appropriate use of the product.~~

14 * * * Effective Dates * * *

15 Sec. 8. EFFECTIVE DATES

16 This act shall take effect on July 1, 2024, except:

17 (1) Secs. 1–3 (restriction on the procurement of products containing
18 PFAS) shall take effect on July 1, 2025; and

19 (2) Secs. 6 and 7 (restricting PFAS in pesticides) shall take effect on
20 January 1, 2025.

*Sec. 1. IMPLEMENTATION PLAN; CONSUMER PRODUCTS
CONTAINING PFAS*

(a) The Agency of Natural Resources, in consultation with the Agency of Agriculture, Food and Markets; the Department of Health; and the Office of the Attorney General shall propose a program requiring the State to identify and restrict the sale and distribution of consumer products containing perfluoroalkyl and polyfluoroalkyl substances (PFAS) that could impact public health and the environment. The proposed program shall:

(1) identify categories of consumer products that could have an impact on public health and environmental contamination;

(2) propose a process by which manufacturers determine whether a consumer product contains PFAS and how that information is communicated to the State;

(3) address how information about the presence or lack of PFAS in a consumer product is conveyed to the public;

(4) describe which agency or department is responsible for administration of the proposed program, including what additional staff, information technology changes, and other resources, if any, are necessary to implement the program;

(5) determine whether and how other states have structured and implemented similar programs and identify the best practices used in these efforts;

(6) propose definitions of “intentionally added,” “consumer product,” and “perfluoroalkyl and polyfluoroalkyl substances”; and

(7) propose a related public service announcement program and website content to inform the public and health care providers about the potential public health impacts of exposure to PFAS and actions that can be taken to reduce risk.

(b) The Agency of Natural Resources shall obtain input on its recommendation from interested parties, including those that represent environmental, agricultural, and industry interests.

(c) On or before November 1, 2024, the Agency of Natural Resources shall submit an implementation plan developed pursuant to this section and corresponding draft legislation to the House Committees on Environment and Energy and on Human Services and the Senate Committees on Health and Welfare and on Natural Resources and Energy.

(d) For the purposes of this section, “consumer products” includes restricted and nonrestricted use pesticides.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2024.