

March 19, 2024

Hon. David A. Bennett
House Environment and Natural Resources Committee
Rhode Island State House
Providence, RI 02903

RE: Oppose – HB 7356 – Comprehensive PFAS Ban

Dear Chairman Bennett and Members of the Committee:

On behalf of the Alliance for Automotive Innovation¹ (Auto Innovators), thank you for the opportunity to provide testimony in opposition to House Bill 7356, seemingly well-intended legislation that would have a far-reaching and disruptive impact across the economy, including unrealistic timelines, and overly broad definitions.

This legislation seeks to address the use of products containing chemicals from the PFAS family. It would likely ban thousands of products from sale and distribution in Rhode Island absent the state undertaking a complex and timely regulatory process to deem these products “a currently unavoidable use” something listed as a possibility at the top of the legislation, but language not included in the bill as drafted. Absent a viable pathway to explain PFAS uses and justify a lack of a suitable alternative, HB 7356 stands as the most draconian approach to this issue, and will surely drive Rhode Island consumers across state boards to access the thousands of consumer products that would be impacted by this legislation as currently drafted.

PFAS in Auto Industry

The expectations for today’s automobiles are high, and the environments in which vehicles must operate are harsh. From the coldest days of winter to summer driving through Death Valley, consumers expect their car or truck to get them there safely. The PFAS family of chemicals has helped provide this resiliency through the application of coatings and products that resist heat, oil, stains, grease, and water. Such qualities are imperative throughout the vehicle. The heat resistance qualities of PFAS allow flexible fuel lines to safely deliver gasoline into a hot engine without causing a fire. Similarly, heat resistance – along with protection from water intrusion – protects the integrity of wire looms, sensors, and brake lines on a vehicle that allow today’s advanced safety systems to function. In addition to these safety benefits, modern vehicles have drastically reduced emissions, in part because of the chemical and heat resistant protections that PFAS provide to gaskets and O-rings, which keep engines tightly sealed, and coatings on cylinder heads and hoses, which reduce fugitive gasoline vapor emissions. Nearly every automotive system depends on certain types of PFAS chemicals to provide a durable, reliable, safer, and cleaner product to consumers.

¹ *From the manufacturers producing most vehicles sold in the U.S., to autonomous vehicle innovators, to equipment suppliers, battery producers, and semiconductor makers – the Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the overall economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer, and smarter personal transportation future. www.autosinnovate.org.*

Automakers and their suppliers consider the impacts of chemicals used to build today's vehicles very seriously and are always looking for substitute compounds that can perform the same job with a lower environmental impact. The industry has even recognized areas where it can reduce the use of PFAS chemicals in specific applications, as it has already ceased use of long-chain PFAS products. Despite all this, however, there are some uses that cannot yet be replicated by any other known chemical.

It is also worth considering that many of the automotive uses of PFAS do not carry a natural or regular human transmission pathways. Of the examples cited above, the vast, vast majority of consumers will never have any contact with any such vehicle parts – engine O-rings, brake/gas lines, etc. – and service professionals who work on vehicle daily regularly use masks and gloves in the course of their day. Add to that the fact that the automobile is one of the most highly recycled consumer products sold. The true exposure pathways of any automotive usage are limited.

Specific PFAS Should Be Regulated Based on Risk

The universe of PFAS chemicals requiring disclosure under HB 7356 is tremendously wide, capturing over 10,000-plus unique chemical substances. This appears to be without discernment regarding the actual levels of risk and concern to humans and the environment of these thousands of chemicals. HB 7356 explicitly ignores that the broad use of the term PFAS incorporates exceptionally different physical, chemical, environmental, and biological properties. Not all PFAS chemistries are the same, and they should not be managed under a single regulatory reporting class. This bill is overly broad, lacks scientific justification, and imposes an extremely onerous obligation on the automotive industry with no apparent or obvious benefits to the public.

Because there is no standard definition for PFAS chemicals, current legislative efforts default to this basic definition which could, according to recent National Institute for Occupational Safety and Health (NIOSH) data include over 9,000 synthetic chemicals²³ including hydrofluorocarbons (HFC), PFOA, PFOS and high molecular weight fluoropolymers to give a few examples. EPA's Toxcast database increases that estimate to 12,034 chemicals.⁴ When defaulting to this definition no distinction is made between chemicals that are harmful and those that are not.

Redundant Data Collection Effort

Currently, the EPA is proposing reporting and recordkeeping requirements for PFAS under the Toxic Substances Control Act (TSCA). That proposed rule, when finalized, will require manufacturers (including those who import) to report information regarding uses, production volumes, disposal, exposures, and hazards for any level of PFAS in products. This legislation would implement redundant state-level reporting that would replicate the data elements that will be federally required under TSCA Section 8(a)(7). Considering that implementation of HB 7356 would be extraordinarily costly for the State, the auto industry, and other regulated entities, if Rhode Island wants this sort of information, it should instead leverage the data that will be collected under federal efforts to inform PFAS management policy.

Proposed Timelines are Unachievable

HB 7356 requires reporting on and after January 1, 2028. The bill also calls for rulemaking to address the notice reporting. This aggressive timeline and lack of clear standards, which are essential elements for the

² GAO, 2022, TECHNOLOGY ASSESSMENT Persistent Chemicals: Technologies for PFAS Assessment, Detection, and Treatment, Report <https://www.gao.gov/products/gao-22-105088>

³ <https://www.cdc.gov/niosh/topics/pfas/default.html>

⁴ <https://comptox.epa.gov/dashboard/chemical-lists/pfasmaster>

regulated community to develop complete compliance plans, make HB 7356 challenging from a compliance standpoint. The auto industry produces complex consumer goods. The automotive global supply chain has a very complex structure. The automotive original equipment manufacturer (OEM) is often up to ten tiers removed from the raw material supplier. Collecting the required data to report under HB 7356 would be a tremendous resource and financial burden, one that the auto industry likely would struggle to complete within the timeframe provided for in the bill.

In addition, HB 7356 appears to propose a complete phase-out of PFAS in consumer products by 2027. Without question, a very high number of consumer products contain PFAS, and if this phase-out becomes law, Rhode Island can expect mass numbers of consumer products removed from shelves as not enough time will exist to alter supply chains. Then, assuming the exclusion of an unavoidable use exemption is added back into the bill, the state can expect a deluge of requests to justify PFAS uses. This will be a considerable burden on both regulators and industry respondents.

Carpet

We are also concerned with open-ended language within the definition of “Rug or carpet” could unintentionally be construed to include atypical uses of the products, such as with automobiles or airplanes. We have successfully worked with regulators in both California and Maine to alleviate this concern by adding to similar definitions additional language to clarify that the legislation is targeting carpets and rugs in their most commonly used and expected meanings. For example, the Maine Department of Environmental Protection recently released its proposed regulations (<https://www.maine.gov/dep/bep/2023/01-19-23/Chapter%2090%20Draft.pdf>) to implement their 2021 PFAS law. Within these regulations, the state uses the following definition for such items – *“Carpet or rug” means any consumer product made from natural or synthetic fabric marketed or intended to be used as a floor covering inside commercial, industrial, or residential buildings. This includes carpeted door mats intended for indoor use.*”

Considerations from Other States

Other states have struggled with implementing PFAS reporting and ban statutes or have scrapped legislation altogether. Maine, which passed the first major PFAS reporting and ban legislation of this kind in 2021, is now struggling to implement it and are hoping for legislative reforms to address identified problems. And in the state of California, often at the vanguard of environmental regulation, Governor Newsom in September 2022 vetoed AB 2247, a PFAS reporting bill, citing concerns over costs and the duplication of federal efforts.

The automotive industry recommends that statutes and regulations:

1. Add an unavoidable use exemption;
2. Avoid duplication of regulator efforts and Include reciprocity between states on unavoidable use exemptions;
3. Extend the effective date for complex durable goods such as automobiles, airplanes, and major medical testing equipment;
4. Do not combine PFAS chemicals into one large class of substances for regulatory or reporting purposes, instead focus on PFAS of known health concern;
5. Exclude breakdown products and byproducts of PFAS;
6. Exclude hydrofluorocarbons, hydrofluoro-olefins, hydrochlorofluoro-olefins, fluoroiodocarbons, hydrochlorofluorocarbons, and chlorofluorocarbons that are used refrigerants as defined in ISO 817:2014, Refrigerants — Designation and safety classification;
7. Exclude high molecular weight fluoropolymers.

Thank you for your consideration of our views. If I can provide any further information, please feel free to contact me at jfenelus@autosinnovate.org or Peter Baptista at peter@capcomgrp.com.

Kindest regards,


Judith Fenelus
Director, State Affairs