A BILL FOR AN ACT

RELATING TO HYDROFLUOROCARBONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that hydrofluorocarbons, or HFCs, are synthetic gases that pose a significant risk to our environment and therefore should be phased out and replaced with available alternatives that are safer and more cost-effective. Hydrofluorocarbons are greenhouse gases that are hundreds to thousands of times more potent than carbon dioxide in contributing to climate change. If left unchecked, hydrofluorocarbon emissions will increase to seven to nineteen per cent of global greenhouse gas emissions by 2050.

Hydrofluorocarbons are widely used as cooling agents in air conditioners and refrigerators and in aerosol propellants, solvents, and foaming agents. These gases enter the environment through the manufacture, leakage, and disposal of these products.

Prior to the use of hydrofluorocarbons, chlorofluorocarbons (CFCs) were used for these applications. Beginning in 1987, chlorofluorocarbons were globally phased out by the Montreal
Protocol due to the role of these gases in ozone depletion.

Hawaii banned the sale and release of chlorofluorocarbons through Act 77, Session Laws of Hawaii 1989; Act 316, Session Laws of Hawaii 1990; and Act 264, Session Laws of Hawaii 1992; however, hydrofluorocarbons were excluded from these prohibitions.

Now, following nearly three decades of widespread use, there is an increased awareness of the significant impacts that hydrofluorocarbons have on climate change. While hydrofluorocarbons do not deplete ozone like chlorofluorocarbons, they are long-lived and have more than a thousand times more warming potential than carbon dioxide.

Given this understanding, there has been action nationally and internationally to phase out the use of hydrofluorocarbons. California and Washington have both passed legislation to replace hydrofluorocarbons with safer alternatives, and the Kigali Amendment to the Montreal Protocol provides a framework to transition from hydrofluorocarbons to substances having low to zero global warming potential.

Given Hawaii's efforts to reduce greenhouse gas emissions and mitigate the effects of climate change, the phase-out of
hydrofluorocarbons aligns with many existing goals and
priorities. This is especially important now because federal
action to address hydrofluorocarbons has stalled. Although the
United States Environmental Protection Agency, recognizing the
impacts of hydrofluorocarbons on climate change, previously
implemented a rule under the Clean Air Act that imposed stricter
requirements on hydrofluorocarbons emission monitoring and
disposal, the agency subsequently proposed a reversal of this
rule, thereby jeopardizing the increased regulation of
hydrofluorocarbons at the federal level.

In the absence of federal action, states must provide
leadership by addressing hydrofluorocarbons now because the
impacts of climate change will not wait for federal law to
regulate these harmful emissions. The legislature finds that
substituting or reducing the use of hydrofluorocarbons with the
highest global warming potential will provide a significant
boost to the State's efforts to reduce its greenhouse gas
emissions to established limits. The legislature also finds
that hydrofluorocarbons will be comparatively easy to reduce and
eliminate without widespread detriment to industry consumers.
While phasing out hydrofluorocarbons is essential to reducing greenhouse gas emissions, disposal of hydrofluorocarbons currently in use is also a necessary consideration. Because the State does not regulate hydrofluorocarbons in the same way that it regulates chlorofluorocarbons, there are currently no standards addressing the disposal of products containing hydrofluorocarbons. However, hydrofluorocarbons are recyclable and it is estimated that if thirty per cent of hydrofluorocarbons currently in use globally were recycled, approximately eighteen billion metric tons of carbon dioxide-equivalent emissions would be prevented over the next twenty-five years.

The purpose of this Act is to:

(1) Preserve federal regulations on the use of hydrofluorocarbons in state law;

(2) Establish a preference for products that do not contain hydrofluorocarbons in the state procurement code; and

(3) Direct the state energy office and the environmental management division of the department of health to study how to increase the use of refrigerants with low...
global warming potential and recommend how to
establish a state program that supports the
elimination of legacy uses of hydrofluorocarbons.

SECTION 2. Chapter 342B, Hawaii Revised Statutes, is
amended by adding a new part to be appropriately designated and
to read as follows:

"PART  . REGULATION OF HYDROFLUOROCARBONS

§342B-A Definitions. As used in this part, unless the
context otherwise requires:

"Class I substance" and "class II substance" means those
substances listed in 42 United States Code section 7671a, as it
read on November 15, 1990, or those listed in Appendix A or B of
Subpart A of 40 Code of Federal Regulations part 82, as those
read on January 3, 2017.

"Consumer refrigeration product" shall have the same
meaning as in 10 Code of Federal Regulations section 430.2, as
that section read on January 3, 2017.

"Greenhouse gas" includes carbon dioxide, methane, nitrous
oxide, hydrofluorocarbons, perfluorocarbons, sulfur
hexafluoride, and any other gas designated by the department by
rule.
"Hydrofluorocarbons" means a class of greenhouse gases that are saturated organic compounds containing hydrogen, fluorine, and carbon.

"Manufacturer" means a person that produces, imports, or distributes a product that contains or uses hydrofluorocarbons.

"Retrofit" shall have the same meaning as in 40 Code of Federal Regulations section 82.152 section 152, as that section read on January 3, 2017.

"Substitute" means a chemical, product substitute, or alternate manufacturing process, whether existing or new, that is used to perform a function previously performed by a class I substance or class II substance and any substitute subsequently adopted to perform that function, including but not limited to hydrofluorocarbons; provided that the term shall not include 2-BTP or any compound as applied to its use in aerospace fire extinguishing systems.

§342B-B Regulation of hydrofluorocarbons. (a) No person shall offer any product or equipment for sale, lease, rent, or installation, or otherwise cause the product or equipment to enter commerce in the State if that equipment or product
consists of, uses, or will use a substitute, consistent with the
deadlines established in subsection (b).

(b) The restrictions under subsection (a) for the
following products and equipment identified in Appendixes U and
V, Subpart G of 40 Code of Federal Regulations Part 82, as those
read on January 3, 2017, shall take effect beginning:

(1) January 1, 2021, for:

(A) Propellants;

(B) Rigid polyurethane applications and spray foam,
flexible polyurethane, integral skin
polyurethane, flexible polyurethane foam,
polystyrene extended sheet, polyolefin, phenolic
insulation board, and bunstock; and

(C) Supermarket systems, remote condensing units,
standalone units, and vending machines;

(2) January 1, 2022, for:

(A) Refrigerated food processing and dispensing
equipment;

(B) Compact consumer refrigeration products; and
(C) Polystyrene extruded boardstock and billet, and
rigid polyurethane low-pressure two component
spray foam;

(3) January 1, 2023, for consumer refrigeration products
other than compact and built-in consumer refrigeration
products;

(4) July 1, 2023, for cold storage warehouses;

(5) July 1, 2024, for built-in consumer refrigeration
products;

(6) July 1, 2024, for centrifugal chillers and positive
displacement chillers; and

(7) On either July 1, 2022, or the effective date of the
restrictions identified in appendixes U and V, Subpart
G of 40 Code of Federal Regulations Part 82, as those
read on January 3, 2017, whichever is later, for all
other applications and end uses for substitutes not
covered by the categories listed in paragraphs (1)
through (6) of this subsection.

(c) Except where existing equipment is retrofit, nothing
in this section shall be deemed to require a person who acquired
a restricted product or equipment prior to the effective date of
the restrictions in subsection (b) to cease use of that product or equipment. A product or equipment manufactured prior to the applicable effective date of the restrictions specified in subsection (b) may be sold, imported, exported, distributed, installed, and used after the specified effective date.

(d) The department may adopt rules pursuant to chapter 91 to:

(1) Modify the effective date of a prohibition established in subsection (b) if the department determines that the rule reduces the overall risk to human health or the environment and reflects the earliest date that a substitute is currently or potentially available;

(2) Prohibit the use of a substitute if the department determines that the prohibition reduces the overall risk to human health or the environment and that a lower risk substitute is currently or potentially available;

(3) Adopt a list of approved substitutes, use conditions, or use limits, if any;

(4) Add or remove substitutes, use conditions, or use limits to or from the list of approved substitutes if
the department determines those substitutes reduce the
overall risk to human health and the environment; and

(5) Designate acceptable uses of hydrofluorocarbons for
medical uses that are exempt from the requirements of
subsection (b).

(e) Within twelve months of another state’s enactment or
adoption of restrictions on substitutes applicable to new light
duty vehicles, the department may adopt restrictions applicable
to the sale, lease, rental, or other introduction into commerce
by a manufacturer of new light duty vehicles consistent with the
restrictions identified in Appendix B, Subpart G of 40 Code of
Federal Regulations Part 82, as it read on January 3, 2017. The
department shall not adopt restrictions that take effect prior
to the effective date of the restrictions adopted or enacted in
at least one other state.

(f) If the United States Environmental Protection Agency
approves a previously prohibited hydrofluorocarbon blend with a
global warming potential of seven hundred fifty or less for foam
blowing of polystyrene extruded boardstock and billet and rigid
polyurethane low-pressure two-component spray foam pursuant to
the significant new alternatives policy program under 42 United
States Code section 7671k, the department shall adopt rules to conform its rules to that federal action as soon as practicable.

§ 342B-C Disclosure of the use of substitutes. A manufacturer shall disclose the substitutes used in its products or equipment in the form of:

1. A label on the product or equipment that meets the requirements established by the department by rule; provided that:

   (A) To the extent practicable, the department shall recognize existing labeling that provides sufficient disclosure of the use of substitutes in the product or equipment;

   (B) The department shall consider labels required by state building codes and other safety standards when adopting rules pursuant to this paragraph; and

   (C) The department shall not require the labeling of aircraft and aircraft components subject to certification requirements of the Federal Aviation Administration; and
(2) Submitting information about the use of substitutes to the department, upon request; provided that the submission meets the following deadlines:

(A) By December 31, 2021, all manufacturers shall notify the department of the status of each product class utilizing hydrofluorocarbons or other substitutes restricted under section 342B-A that the manufacturer sells, offers for sale, leases, installs, or rents in the State. This status notification shall identify the substitutes used by the products or equipment in each product or equipment class in a manner determined by rule;

(B) Within one hundred twenty days of the date a restriction is put in place pursuant to this section, any manufacturer affected by the restriction shall provide an updated status notification, which shall indicate whether the manufacturer has ceased the use of hydrofluorocarbons or substitutes restricted under this section within each product class and and,
if not, what hydrofluorocarbons or other
restricted substitutes remain in use; and
(C) After the effective date of a restriction put in
place pursuant to this section, a manufacturer
shall provide an updated status notification when
the manufacturer introduces a new or modified
product or piece of equipment that uses
hydrofluorocarbons or changes the type of
hydrofluorocarbons utilized within a product
class affected by a restriction; provided that
the notification shall occur within one hundred
twenty days of the date the product or equipment
triggering the notification requirement in this
subparagraph is introduced into commerce in the
State.

§342B-D Rules. The department may adopt rules pursuant to
chapter 91 to implement this section; provided that:
(1) The department shall seek, where feasible, to adopt
rules, including rules under section 342B-B(e), that
are consistent with the regulatory standards,
 exemptions, reporting obligations, disclosure
requirements, and other compliance requirements of
other states or the federal government that have
adopted restrictions on the use of hydrofluorocarbons
and other substitutes; and
(2) Prior to the adoption or update of a rule under this
section, the department shall identify the sources of
information it relied on, including peer-reviewed
science.

§342B-E Aircraft maintenance; definition. For the
purposes of implementing the restrictions specified in
Appendix U of Subpart G of 40 C.F.R. Part 82, as it read on
January 3, 2017, consistent with this section, the department
shall interpret the term "aircraft maintenance" to mean
activities to support the production, fabrication, manufacture,
rework, inspection, maintenance, overhaul, or repair of
commercial, civil, or military aircraft, aircraft parts,
aerospace vehicles, or aerospace components.

§342B-F Authority to regulate supplementary. The
authority granted by this part to the department to restrict the
use of substitutes shall be supplementary to the department's
authority to control air pollution pursuant to this chapter.
Nothing in this part shall be construed to limit any authority
granted to the department under any other law.

§342B-G Use of commercial refrigeration equipment after
effective date of restrictions. Except where existing equipment
is retrofit, the restrictions of this part shall not apply to or
limit any use of commercial refrigeration equipment that was
installed or placed in use prior to the effective date of the
restrictions established in this part.

§342B-H Penalties. (a) The department may fine any
person not more than $25,000 per day for each violation of any
provision of this part or any rule adopted under this part. The
director may also impose an administrative penalty of not more
than $25,000 per day for each violation of any provision of this
part or any rule adopted under this part. Each day of each
violation shall constitute a separate offense for the purpose of
calculating the fine or penalty.

(b) Any person who fails to comply with an order issued
pursuant to this part shall be fined not more than $25,000 for
each day of continued noncompliance.

(c) A fine or administrative penalty incurred but not paid
shall accrue interest, beginning on the ninety-first day
following the date the penalty became due, at the highest rate allowed under chapter 478. If a fine or administrative penalty is appealed, interest shall not begin to accrue until the thirty-first day following the date of the final resolution of the appeal.

(d) The maximum penalty amount established by subsection (a) may be increased annually to adjust for inflation, as calculated by the consumer price index or other acceptable adjustment mechanism as determined by the rule.

(e) All fines collected under this section shall be deposited in the environmental response revolving fund established by section 128D-2.

(f) A public or private entity that receives or is the potential recipient of a grant from the department may have the grant rescinded or withheld by the department for failure to comply with the provisions of this part.

(g) In addition to other penalties provided by this part or by a rule adopted pursuant to this part, any person who knowingly underreports emissions or other information used to set fees, or persons who are required to pay emission or permit fees who are more than ninety days late with regard to the
payment, may be subject to a penalty equal to three times the amount of the original fee owed.

(h) The department shall adopt rules to excuse excess emissions from enforcement action if the emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan."

SECTION 3. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to part X to be appropriately designated and to read as follows:

"§103D- Preference for products that do not contain hydrofluorocarbons. (a) The policy board shall adopt rules that provide a preference for products that:

(1) Are not restricted under section 342B-B;

(2) Do not contain hydrofluorocarbons or contain hydrofluorocarbons with a comparatively low global warming potential;

(3) Are not designed to function only in conjunction with hydrofluorocarbons characterized by a comparatively high global warming potential; and
(4) Were not manufactured using hydrofluorocarbons or were manufactured using hydrofluorocarbons with a low global warming potential.

(b) A government body shall not knowingly purchase a product that is not accorded a preference in the purchasing and procurement rules established by the policy board pursuant to subsection (a) unless there is no cost-effective and technologically feasible option that is accorded a preference.

(c) Nothing in this section shall require an agency to breach an existing contract or dispose of stock that has been ordered or is in the possession of the agency as of the effective date of this section.

(d) As used in this section, "hydrofluorocarbon" shall have the same meaning as in section 342B-A.

SECTION 4. Chapter 107, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

"§107- State building codes; hydrofluorocarbons; updates. (a) When adopting, amending, or updating the codes and standards identified in section 107-25, the council shall establish codes and standards that permit the use of substitutes"
and do not require the use of substitutes that are restricted by section 342B-B.

(b) As used in this section, "substitute" shall have the same meaning as in section 342B-A."

SECTION 5. (a) The state energy office, in conjunction with the environmental management division of the department of health, shall conduct a study that:

(1) Addresses how to increase the use of refrigerants with low global warming potential in mobile sources, utility equipment, and consumer appliances;

(2) Addresses how to reduce other uses of hydrofluorocarbons in the State; and

(3) Provides recommendations for funding, structuring, and prioritizing a state program that incentivizes or provides grants to support the elimination of legacy uses of all hydrofluorocarbons, including hydrofluorocarbons that are not regulated by section 2 of this Act.

(b) The state energy office shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than December 1, 2022.
SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 9. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2020.

INTRODUCED BY: [Signatures]

[Signatures]
Report Title:
Greenhouse Gas Emissions; Hydrofluorocarbons; State Energy Office; Environmental Management Division; DOH; Phase Out; Procurement; Study

Description:
Preserves preexisting federal regulations on the use of hydrofluorocarbons in state law. Phases out hydrofluorocarbons in favor of alternatives with lower global warming potential. Establishes a preference for products that do not contain hydrofluorocarbons in the state procurement code. Directs the State Energy Office and the Environmental Management Division of the Department of Health to study how to increase the use of refrigerants with low global warming potential, reduce the use of hydrofluorocarbons, and recommend how to fund, structure, and prioritize a state program that incentivizes or provides grants to support the elimination of legacy uses of hydrofluorocarbons.

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