

SENATE, No. 1042

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

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District 14 (Mercer and Middlesex)

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District 17 (Middlesex and Somerset)

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SYNOPSIS

“Protecting Against Forever Chemicals Act”; establishes requirements, prohibitions, and programs for regulation of perfluoroalkyl and polyfluoroalkyl substances (PFAS).

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning perfluoroalkyl and polyfluoroalkyl substances,
2 supplementing Title 13 of the Revised Statutes, and making an
3 appropriation.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. This act shall be known and may be cited as the “Protecting
9 Against Forever Chemicals Act.”
10

11 2. The Legislature finds and declares: that perfluoroalkyl and
12 polyfluoroalkyl substances, or PFAS, are man-made chemical
13 compounds that have multiple fluorine atoms bonded to a chain of
14 carbon atoms; that there are several thousand different types of
15 PFAS, and new types are invented on a nearly daily basis; that since
16 the 1930s, PFAS have been widely used in countless consumer
17 products because they repel oil, water, and grease; and that PFAS
18 continue to be used across a variety of industries for a variety of
19 purposes and are ultimately contained in many of the products sold
20 in the State.

21 The Legislature further finds and declares: that the carbon-
22 fluorine bond used to make PFAS is one of the strongest chemical
23 bonds and does not break down under typical environmental
24 conditions; that PFAS are nicknamed “forever chemicals” because
25 they accumulate in the environment, rather than break down, over
26 time; that PFAS enters the environment through manufacturing
27 processes and waste streams, and humans are exposed through
28 contaminated food, dust, air, drinking water, and certain consumer
29 products; that human exposure to these chemicals has been linked to
30 endocrine disruption, cancer, immuno-toxicity, and developmental
31 impacts; and that PFAS have been detected in the blood serum of 98
32 percent of humans tested.

33 The Legislature further finds and declares: that contamination of
34 air, soil, and water in the State from PFAS poses a significant threat
35 to the environment of the State and to the health of its citizens; that
36 the full extent of PFAS contamination in the State is not presently
37 known, but is anticipated to be widespread and to require a
38 significant expenditure of resources to identify and remediate; and
39 that, to address the imminent threat of further contamination of air,
40 soil, and water in the State and protect the public health of citizens
41 in the State, it is imperative to conduct PFAS-related research
42 within the State and to phase out the sale of certain nonessential
43 products containing PFAS.

44 The Legislature therefore determines that it is in the best interest
45 of the residents of New Jersey for PFAS to be prohibited from
46 being intentionally added to certain products being manufactured
47 and sold within the State, for manufacturers of cookware products
48 containing PFAS to notify consumers about the presence of PFAS

1 in their products, and for educational programming and research
2 concerning PFAS to be available to residents in the State.

3

4 3. As used in this act:

5 “Carpet” means a rug or fabric marketed or intended for use as a
6 floor covering.

7 “Commissioner” means the Commissioner of Environmental
8 Protection.

9 “Cookware” means durable houseware items that are used in
10 homes and restaurants to prepare, dispense, or store food,
11 foodstuffs, or beverages. “Cookware” includes, but is not limited to,
12 pots, pans, skillets, grills, baking sheets, baking molds, trays,
13 bowls, and cooking utensils.

14 “Cosmetic” means (1) articles intended to be rubbed, poured,
15 sprinkled, or sprayed on, introduced into, or otherwise applied to
16 the human body or any part thereof for cleansing, beautifying,
17 promoting attractiveness, or altering the appearance, and (2) articles
18 intended for use as a component of any such articles; except that
19 such term shall not include soap.

20 “Department” means the Department of Environmental
21 Protection.

22 “Fabric treatment” means a substance applied to fabric to give
23 the fabric one or more characteristics, including, but not limited to,
24 stain resistance or water resistance.

25 “Food packaging” means a nondurable package, packaging
26 component, or food service ware that is intended to contain, serve,
27 store, handle, protect, or market food, foodstuffs, or beverages, and
28 is composed, in substantial part, of paper, paperboard, or other
29 materials originally derived from plant fibers. “Food packaging”
30 includes food or beverage containers, take-out food containers, unit
31 product boxes, liners, wrappers, serving vessels, eating utensils,
32 straws, food boxes, and disposable plates, bowls, or trays.

33 “Intentionally added PFAS” means PFAS added to a product or
34 intentionally used during the development of a product or one of its
35 product components to provide a specific characteristic, appearance,
36 or quality or to perform a specific function. “Intentionally added
37 PFAS” also includes any degradation byproducts of PFAS.

38 “Manufacturer” means the person that manufactures a product or
39 whose brand name is affixed to the product. In the case of a
40 product imported into the United States, “manufacturer” includes
41 the importer or first domestic distributor of the product if the person
42 that manufactured or assembled the product or whose brand name is
43 affixed to the product does not have a presence in the United States.

44 “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS”
45 means substances that include any member of the class of
46 fluorinated organic chemicals containing at least one fully
47 fluorinated carbon atom.

1 “Product” means an item manufactured, assembled, packaged, or
2 otherwise prepared for sale to consumers, including its product
3 components, which is sold or distributed for personal, residential,
4 commercial, or industrial use, including for use in making other
5 products.

6 “Product component” means an identifiable component of a
7 product, regardless of whether the manufacturer of the product is
8 the manufacturer of the component.

9 “Product label” means a display of written, printed, or graphic
10 material that appears on, or is affixed to, the exterior of a product,
11 or its exterior container or wrapper that is visible to a consumer, if
12 the product has an exterior container or wrapper.

13

14 4. a. Beginning two years after the effective date of this act, no
15 person shall sell, offer for sale, or distribute for sale in the State any
16 cosmetic product that contains intentionally added PFAS.

17 b. If a cosmetic product contains a technically unavoidable trace
18 quantity of PFAS, which stems from impurities of natural or
19 synthetic ingredients or the manufacturing process, storage, or
20 migration from packaging of the cosmetic product, that trace
21 quantity shall not cause the product to be in violation of this
22 section.

23

24 5. a. Beginning two years after the effective date of this act, no
25 person shall sell, offer for sale, or distribute for sale in the State a
26 carpet or fabric treatment that contains intentionally added PFAS.
27 This prohibition shall not apply to the sale or resale of a used carpet
28 or fabric treatment.

29 b. If a carpet or fabric treatment contains a technically
30 unavoidable trace quantity of PFAS, which stems from impurities of
31 natural or synthetic ingredients or the manufacturing process,
32 storage, or migration from packaging of the product, that trace
33 quantity shall not cause the product to be in violation of this
34 section.

35

36 6. a. Beginning two years after the effective date of this act, no
37 person shall sell, offer for sale, or distribute for sale in the State any
38 food packaging that contains intentionally added PFAS.

39 b. If a food packaging product contains a technically
40 unavoidable trace quantity of PFAS, which stems from impurities of
41 natural or synthetic ingredients or the manufacturing process,
42 storage, or migration from packaging of the product, that trace
43 quantity shall not cause the product to be in violation of this
44 section.

45

46 7. a. Beginning two years after the effective date of this act, a
47 manufacturer of cookware sold in the State that contains
48 intentionally added PFAS in the handle of the product or in any

- 1 product surface that comes into contact with food, foodstuffs, or
2 beverages shall list the presence of PFAS on the product label.
- 3 b. The product label of a cookware product containing PFAS
4 shall include a statement, in both English and Spanish, that reads:
5 “This product contains PFAS.”
- 6 c. A manufacturer of cookware sold in the State shall ensure that
7 the statement required on the product label pursuant to subsection b.
8 of this section is visible and legible to the consumer, including on
9 the product listing for online sales.
- 10 d. Beginning two years after the effective date of this act, a
11 manufacturer shall not make a claim, on the product label or
12 Internet website for the cookware product, that the cookware is free
13 of PFAS if PFAS was intentionally added to the cookware.
- 14 e. Cookware that meets both of the following requirements shall
15 be exempt from the requirements of this section:
- 16 (1) the surface area of the cookware cannot fit a product label of
17 at least two square inches; and
- 18 (2) the cookware does not have either of the following:
- 19 (a) an exterior container or wrapper on which a product label can
20 appear or be affixed; or
- 21 (b) a tag or other attachment with information about the product
22 attached to the cookware.
- 23
- 24 8. a. Beginning two years after the effective date of this act, no
25 person shall sell, offer for sale, or distribute for sale within the State
26 cookware that contains PFAS unless the cookware and the
27 manufacturer of the cookware have complied with the labeling
28 requirements established pursuant to section 7 of this act.
- 29 b. If a cookware product contains a technically unavoidable
30 trace quantity of PFAS, which stems from impurities of natural or
31 synthetic ingredients or the manufacturing process, storage, or
32 migration from packaging of the product, that trace quantity shall
33 not cause the product to be in violation of this section.
- 34
- 35 9. a. The department shall recommend to the Legislature
36 products, in addition to those prohibited from being sold, offered
37 for sale, or distributed pursuant to this act, by category or use, that
38 should not be sold, offered for sale, or distributed for sale in this
39 State if they contain intentionally added PFAS.
- 40 b. In determining which additional products containing PFAS
41 should be prohibited for sale or distribution within the State, the
42 department shall prioritize the prohibition of the sale of product
43 categories or uses that, in the department's judgment, pose the
44 greatest risk to public health or are most likely to cause
45 contamination of the State's air, land, or water resources if they
46 contain intentionally added PFAS.

1 10. The department may audit or investigate a manufacturer to
2 assess the manufacturer's compliance with the requirements of this
3 act. Each year, the department may audit, or cause to be audited, a
4 random sample of manufacturers in order to determine compliance
5 with this act. A manufacturer shall cooperate fully with any audit
6 or investigation conducted pursuant to this section. The department
7 may require a manufacturer to pay the costs of an audit conducted
8 pursuant to this section.

9
10 11. a. Whenever the Commissioner of Environmental Protection
11 finds that a person has violated any provision of this act, or any rule
12 or regulation adopted pursuant thereto, including violating the
13 provisions of subsection d. of section 7 of this act by making a false
14 claim on the product label or Internet website for a cookware
15 product, the commissioner may:

16 (1) issue an order requiring the person found to be in violation
17 to comply in accordance with subsection b. of this section;

18 (2) bring a civil action in accordance with subsection c. of this
19 section;

20 (3) levy a civil administrative penalty in accordance with
21 subsection d. of this section;

22 (4) bring an action for a civil penalty in accordance with
23 subsection e. of this section;

24 (5) direct a manufacturer or other person that is not in
25 compliance with the requirements of this act to stop offering for
26 sale or distributing certain products that contain intentionally-added
27 PFAS; or

28 (6) notify the public of a manufacturer that is not in compliance
29 with the requirements of this act.

30 The exercise of any of the remedies provided in this section shall
31 not preclude the seeking of any other remedy specified.

32 b. Whenever the commissioner finds that a person has violated
33 this act, or any rule or regulation adopted pursuant thereto, the
34 commissioner may issue an administrative enforcement order
35 specifying the provision or provisions of this act, or the rule or
36 regulation adopted pursuant thereto, of which the person is in
37 violation, citing the action that constituted the violation, requiring
38 compliance with the provision violated, and giving notice to the
39 person of the person's right to a hearing on the matters contained in
40 the administrative enforcement order. The ordered person shall
41 have 20 calendar days from receipt of the order within which to
42 deliver to the commissioner a written request for a hearing. After
43 the hearing and upon finding that a violation has occurred, the
44 commissioner may issue a final order. If no hearing is requested,
45 the order shall become final after the expiration of the 20-day
46 period. A request for hearing shall not automatically stay the effect
47 of the order.

1 c. The commissioner is authorized to institute a civil action in
2 Superior Court for appropriate relief from any violation of the
3 provisions of this act, or any rule or regulation adopted pursuant
4 thereto. This relief may include an assessment against the violator
5 for the costs of any investigation, inspection, or audit that led to the
6 discovery and establishment of the violation, and for the reasonable
7 costs of preparing and litigating the case under this subsection.

8 d. The commissioner is authorized to impose a civil
9 administrative penalty of not less than \$1,000 nor more than
10 \$20,000 for each violation, provided that each day during which the
11 violation continues shall constitute an additional, separate and
12 distinct offense. In assessing a civil administrative penalty, the
13 commissioner shall consider the severity of the violation, the
14 measures taken to prevent further violations, and whether the
15 penalty will maintain an appropriate deterrent. Prior to assessment
16 of a civil administrative penalty, the person committing the
17 violation shall be notified by certified mail or personal service that
18 the penalty is being assessed. The notice shall identify the section
19 of the statute, rule, regulation, or order violated; recite the facts
20 alleged to constitute a violation; state the basis for the amount of
21 the civil administrative penalties to be assessed; and affirm the
22 rights of the alleged violator to a hearing. The ordered party shall
23 have 35 days from receipt of the notice within which to deliver to
24 the commissioner a written request for a hearing. After the hearing
25 and upon finding that a violation has occurred, the commissioner
26 may issue a final order after assessing the amount of the fine
27 specified in the notice. If no hearing is requested, the notice shall
28 become a final order after the expiration of the 35-day period.
29 Payment of the assessment is due when a final order is issued or the
30 notice becomes a final order. The authority to levy an
31 administrative order is in addition to all other enforcement
32 provisions in this act, and the payment of any assessment shall not
33 be deemed to affect the availability of any other enforcement
34 provisions in connection with the violation for which the
35 assessment is levied. The department may compromise any civil
36 administrative penalty assessed under this section in an amount and
37 with conditions the department determines appropriate.

38 e. A person who violates any provision of this act, or any rule or
39 regulation adopted pursuant thereto, or an administrative order
40 issued pursuant to subsection b. of this section, or a court order
41 issued pursuant to subsection c. of this section, or who fails to pay a
42 civil administrative penalty in full pursuant to subsection d. of this
43 section, or who knowingly makes any false or misleading statement
44 on any application, record, report, or other document required to be
45 submitted to the department, shall be subject, upon order of a court,
46 to a civil penalty not to exceed \$25,000 per day of the violation, and
47 each day during which the violation continues shall constitute an
48 additional, separate, and distinct offense. Any civil penalty

1 imposed pursuant to this subsection may be collected with costs in a
2 summary proceeding pursuant to the "Penalty Enforcement Law of
3 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or may be collected in
4 a civil action commenced by the commissioner. In addition to any
5 penalties, costs or interest charges, the Superior Court, or the
6 municipal court as the case may be, may assess against the violator
7 the amount of economic benefit accruing to the violator from the
8 violation.

9

10 12. a. No later than one year after the effective date of this act,
11 the department shall establish and implement a source reduction
12 program to reduce the presence of PFAS in the State's air, water,
13 and soil by encouraging the proper management of materials that
14 contain PFAS and the use of safer alternatives. The program shall
15 include, at a minimum:

16 (1) informational resources targeted to industrial and commercial
17 users of PFAS;

18 (2) education of the general public concerning PFAS and its
19 environmental and health impacts;

20 (3) to the extent funds are available, grants to operators of
21 publicly owned treatment works for the purposes of developing,
22 expanding, or implementing pretreatment standards for PFAS and
23 education of users on sources of PFAS and proper management;

24 (4) to the extent funds are available, grants to municipalities for
25 the purposes of educating solid waste disposal users on sources of
26 PFAS and its proper management; and

27 (5) any other information and efforts that are determined by the
28 department to be beneficial in reducing the presence and impact of
29 PFAS in the State.

30 b. No later than two years after the effective date of this act, and
31 annually thereafter until 10 years after the effective date of this act,
32 the department shall submit a report to the Governor and the
33 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
34 19.1), on the effectiveness of the program in reducing PFAS
35 discharges to air, water, and soil within the State, and educating
36 industrial and commercial users of PFAS and residents of the State
37 on PFAS and its proper management.

38

39 13. a. The department shall conduct PFAS-related research and
40 comprehensive monitoring and testing of the presence and impact
41 of PFAS on the environmental media within the State, including air,
42 water, biota, and soil. The purpose of the department's research
43 shall be to gain knowledge surrounding the subject of PFAS,
44 provide insight into the proper management and mitigation of PFAS
45 within the State, and to protect the environment from the adverse
46 impacts of PFAS.

47 b. The department's research shall include, at a minimum:

- 1 (1) the collection of soil samples from throughout the State for
2 monitoring and testing for PFAS;
 - 3 (2) the collection of water samples from throughout the State for
4 monitoring and testing for PFAS;
 - 5 (3) the collection of air samples from throughout the State for
6 monitoring and testing for PFAS;
 - 7 (4) the collection of fish, plant, and animal samples from
8 throughout the State for monitoring and testing for PFAS;
 - 9 (5) the comparison of PFAS samples gathered across the State in
10 an effort to measure levels of PFAS contamination and also
11 determine if there are any hotspots of PFAS contamination in the
12 State;
 - 13 (6) research concerning the impact of PFAS on the State's air,
14 water, and soil quality and ways to mitigate the negative impacts of
15 PFAS;
 - 16 (7) data collection of research findings and mitigation efforts
17 concerning PFAS in other States and countries; and
 - 18 (8) any other data collection and research that the department
19 deems necessary to improve the current foundation of knowledge on
20 the subject of PFAS.
- 21 c. No later than two years after the effective date of this act, and
22 annually thereafter, the department shall provide a report to the
23 Governor and the Legislature, pursuant to section 2 of P.L.1991,
24 c.164 (C.52:14-19.1), summarizing their research findings and
25 activities and providing recommendations for programs, policies,
26 and legislation to address the presence of PFAS in the State.
- 27
- 28 14. a. There is appropriated from the General Fund to the
29 department the sum of \$5 million for the purposes of carrying out
30 the source reduction program pursuant to section 12 of this act and
31 conducting PFAS-related research, monitoring, and testing pursuant
32 to section 13 of this act.
 - 33 b. Each year after the date of enactment of this act, the
34 department shall submit as a part of its annual budget, a request for
35 sufficient funds to conduct the air, water, and soil testing and
36 PFAS-related research required pursuant section 13 of this act.
- 37
- 38 15. a. Any proprietary information or trade secrets included in
39 any written notification, certification, or any other record submitted
40 to the department pursuant to this act shall not be made available to
41 the general public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.),
42 commonly known as the open public records act.
 - 43 b. In order to identify the proprietary information or trade
44 secrets to be protected from public disclosure pursuant to
45 subsection a. of this section, a manufacturer shall file a trade secret
46 claim to the department, in a form and manner determined by the
47 department. No later than 90 days after receipt of a trade secret
48 claim, the department shall make a determination on the validity of

1 the trade secret claim. Upon making a determination on the validity
2 of a trade secret claim, the department shall inform the
3 manufacturer of the determination by certified mail. If the
4 department determines that the manufacturer's trade secret claim is
5 not valid, the manufacturer shall have 45 days from the receipt of
6 the department's determination to file with the department a written
7 request for an administrative hearing on the determination. If the
8 manufacturer does not file such a request within 45 days, the
9 department may take action to disclose the information for which
10 the trade secret claim was made, pursuant to the provisions of this
11 act. If an manufacturer requests an administrative hearing pursuant
12 to the provisions of this subsection, the department shall refer the
13 matter to the Office of Administrative Law, for a hearing thereon.
14 At the hearing the manufacturer shall have the burden to show that
15 the trade secret claim is valid. Within 45 days of receipt of the
16 administrative law judge's recommendation, the department shall
17 affirm, reject, or modify the recommendation. The department's
18 action shall be considered the final agency action for the purposes
19 of the "Administrative Procedure Act," P.L. 1968, c. 410 (C.
20 52:14B-1 et seq.), and shall be subject only to judicial review as
21 provided in the Rules of Court. The department shall inform the
22 manufacturer of its decision on the administrative law judge's
23 recommendation by certified mail.

24 c. The subject of any trade secret claim pending or approved
25 shall be treated as confidential information. The department shall
26 not disclose any confidential information to any person except an
27 officer or employee of the State in connection with the official
28 duties of the officer or employee under any law for the protection of
29 public health or the environment. Any officer or employee of the
30 State who has access to any confidential information, and who
31 willingly and knowingly discloses the confidential information to
32 any person not authorized to receive it, shall be guilty of a crime of
33 the third degree.

34 d. Any written notification containing information for which a
35 trade secret claim is pending or has been approved may be made
36 available to the public with that information concealed.

37
38 16. The department may, pursuant to the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules
40 or regulations necessary to implement the provisions of this act.

41
42 17. This act shall take effect immediately.

43

44

45 STATEMENT

46

47 This bill would prohibit the sale of certain products containing
48 intentionally added perfluoroalkyl and polyfluoroalkyl substances

1 (PFAS), require greater transparency in the labeling of cookware
2 products containing PFAS, establish a source reduction program
3 concerning the proper management of PFAS, and appropriate
4 money for PFAS-related research. As defined in the bill, “PFAS”
5 means substances that include any member of the class of
6 fluorinated organic chemicals containing at least one fully
7 fluorinated carbon atom.

8 Specifically, the bill would prohibit, beginning two years after
9 the bill’s effective date, the sale, offer for sale, or distribution of
10 cosmetics, carpets, fabric treatment, and food packaging that
11 contain intentionally added PFAS. In addition, the bill would
12 require, beginning two years after the bill’s effective date,
13 manufacturers of cookware sold in the State that contains
14 intentionally added PFAS in the handle of the product or in any
15 product surface that comes into contact with food, foodstuffs, or
16 beverages to list the presence of PFAS on the product label.
17 Beginning two years after the bill’s effective date, the sale, offer for
18 sale, and distribution of cookware that contains PFAS would be
19 prohibited unless the cookware product and the manufacturer of the
20 cookware has complied with the bill’s cookware labeling
21 requirements.

22 The bill would also require the DEP to recommend to the
23 Legislature products, in addition to those prohibited from being
24 sold, offered for sale, or distributed pursuant to the bill, by category
25 or use that should not be sold, offered for sale, or distributed for
26 sale in this State if they contain intentionally added PFAS. Under
27 the bill, the DEP would have the authority to audit or investigate a
28 manufacturer to assess the manufacturer's compliance with bill’s
29 provisions. The bill would provide that any proprietary information
30 or trade secrets included in any written notification, certification, or
31 any other record submitted to the DEP pursuant to the bill would be
32 required to be kept confidential from the general public pursuant to
33 P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the open
34 public records act.

35 The bill would require the DEP to establish, no later than one
36 year after the bill’s effective date, a source reduction program to
37 reduce the presence of PFAS in the State’s air, water, and soil by
38 encouraging the proper management of materials that contain PFAS
39 and the use of safer alternatives. The program would be required to
40 include certain items enumerated in subsection a. of section 12 of
41 the bill. The bill would also require the DEP to conduct PFAS-
42 related research and comprehensive monitoring and testing of the
43 presence and impact of PFAS on the environmental media within
44 the State, including air, water, biota, and soil. The DEP’s research
45 would be required to include certain items enumerated in subsection
46 b. of section 13 of the bill. No later than two years after the bill’s
47 effective date, and annually thereafter, the DEP would be required
48 to submit a report to the Governor and the Legislature summarizing

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1 their research findings and activities and providing
2 recommendations for programs, policies, and legislation to address
3 the presence of PFAS in the State.

4 Finally, the bill would appropriate \$5 million to the DEP for the
5 purposes of implementing the source reduction program, conducting
6 PFAS-related research, and monitoring and testing environmental
7 media, such as air, water, and soil, for PFAS pursuant to the bill.