LFC Requester:	Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/30/2025

Bill Number: HB 212

Check all that apply:

Original X Correction ____

Amendment ____ Substitute ____

Sponsor: Rep. Joanne J. Ferrary; Rep. Debra M. Sariñana; and Rep. Kathleen Cates.

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: Per- & Poly-Fluoroalkyl Protection Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis

HB 212 seeks to prohibit the sale and distribution of products with intentionally added (IA) per- and poly-fluoroalkyl substances (PFAS) in the State of New Mexico, subject to several exemptions.

Section 1: states that the bill's short title is the "Per- and Poly-Fluoroalkyl Substances Protection Act."

Section 2: gives twenty-four definitions of words and terms within the Act; it defines "manufacturer" to include importers or first domestic distributors of foreign products.

Section 3:

- Subsection (A) provides exemptions to the Act's general prohibition on IA PFAS products for: products regulated by federal law; used products; medical devices or drugs regulated by the U.S. FDA; and consumer products that may be approved for sale by the environmental improvement board (EIB) pursuant to a PFAS stewardship program.
- Subsection (B) prohibits the State or a person acting on behalf of the state from purchasing a product that contains IA PFAS, beginning January 1, 2027.
- Subsection (C) prohibits manufacturers from selling or distributing products that contain IA PFAS in a certain set of categories, effective January 1, 2027.
- Subsection (D) extends that prohibition to a broader set of categories with an effective date of January 1, 2028.
- Subsection (D) authorizes the EIB to promulgate rules to prohibit consumer products that contain IA PFAS, "upon a finding that a prohibition on the product is necessary to protect human health or the environment."
- Subsection (F) prohibits manufacturers from selling or distributing any products containing IA PFAS, effective January 1, 2028, unless the EIB designates the use of IA PFAS in such products as "a currently unavoidable use." It prohibits the product categories in subsections (C) and (D) from being exempted under subsection (F).
- Subsection (G) provides that the New Mexico Environment Department (NMED) will consult with the New Mexico Department of Agriculture before petitioning the EIB to prohibit agricultural products such as fertilizer and pesticides under the Act.

Section 4: authorizes the EIB to adopt rules to create ranges for measuring the amount of IA PFAS in products for reporting purposes; and adopt rules to identify "currently unavoidable uses" of IA PFAS that are "essential for health, safety or the functioning of society and for which alternatives are not reasonably available." It also gives the EIB the authority to promulgate any "other rules the board deems necessary" to carry out the Act.

Section 5:

- Subsection (A) authorizes the EIB to adopt rules that "enumerate the information required of a manufacturer" and that are necessary for NMED to implement the Act, and lists five types of information, such as product description and the purpose for which PFAS is used in the product.
- Subsection (B) requires manufacturers selling or distributing products in the state to submit to NMED the information required in Subsection (A) by January 1, 2027.
- Subsection (C) prohibits the sale and distribution of products that NMED has discovered though testing contain IA PFAS and for which the manufacturers have not provided the information required in Subsection (A).
- Subsection (D) prohibits manufacturers from selling or distributing products with IA PFAS unless the manufacturer has submitted the information required in (A).
- Subsection (E) requires manufacturers to submit revised product information within 30 days of a significant change or upon NMED's request.
- Subsection (F) provides that a manufacturer may provide information "for a category or type of product or product component," if NMED approves.
- Subsection (G) provides that NMED may waive a manufacturer's information submission requirement if "substantially equivalent information is already publicly available," and this waiver may be granted to a group of manufacturers or a product category.
- Subsection (H) allows NMED to enter into agreements with other states or political subdivisions to share information.
- Subsection (I) allows NMED to extend the deadline for information submission if NMED determines an extension is merited.
- Subsection (J) provides that NMED will notify the manufacturer either that sufficient information has been received or that additional information is required.

Section 6:

- Subsection (A) authorizes NMED to order a manufacturer to provide it with test results showing which PFAS substances are in its product, and in what exact quantities, within thirty days.
- Subsection (B) provides that, if no IA PFAS are detected in that testing, a manufacturer may provide NMED with a certificate of compliance.
- Subsection (C) provides that if testing shows that a product contains IA PFAS, the manufacturer must provide NMED with the information required under the Act, notify persons that sell or distribute the product that the product is prohibited, and provide NMED with a list of and contact information for the retailers and distributors for that product.
- Subsection (D) allows NMED to notify a seller that a product is prohibited in this state.
- Subsection (E) exempts FDA-regulated medical devices and drugs from this section.

Section 7:

- Subsection (A) provides that a person who violates the Act will incur a civil penalty up to $15,000, and a daily fee covering administrative costs.
- Subsection (B) provides that failure to comply with an administrative order will incur a civil penalty up to $25,000 "for each day of noncompliance."
- Subsection (C) provides that these penalties are "independent of any damages, remediation or cleanup costs," and any nonmonetary remedies that may be imposed.
- Subsection (D) relates to enforcement actions and states that NMED will be represented by the attorney general or NMED, that municipalities may be represented by the attorney general or the municipality, and counties will be represented by their district attorneys.
- Subsection (E) provides for a private right of action against a person or governmental instrumentality or agency alleged to be in violation of the Act or for an alleged failure to perform a nondiscretionary act or duty.
- Subsection (F) directs that penalties collected under this section will go to the school fund.

FISCAL IMPLICATIONS

The proposed legislation creates new duties for the New Mexico Department of Justice to enforce the Act's provisions, in conjunction with NM Environment Department and municipalities under section 7(D). This additional enforcement duty may have fiscal implications for the New Mexico Department of Justice, as additional resources will be required to meet its obligations. It is unclear how many, if any, additional Full-Time Equivalent (FTE's) may be necessary to monitor complaints, conduct investigations across the state, and issue civil penalties. The bill does not specify which agency will receive the civil penalties collected through enforcement actions. Investigating complaints can be time-consuming and resource intensive, often without resulting in civil penalties. If the legislation allows the NMDOJ to use civil penalties to offset oversight costs, such funding would likely be insufficient to cover the expenses associated with this mandate.

SIGNIFICANT ISSUES

None noted.

PERFORMANCE IMPLICATIONS

As drafted, HB 212 would add enforcement responsibilities to the NMDOJ.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None detected.

TECHNICAL ISSUES

Section 5(C) and (D): these subsections state that they are effective "*Prior to* January 1, 2028." Is this correct? If so, does the Legislature intend that these provisions take effect on the default effective date for this legislation (and before other provisions)?

“Firefighting foam” is defined in Section 2 but is not referenced anywhere else in the bill. Is this intentional?

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A