

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 212

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE PER- AND POLY-
FLUOROALKYL SUBSTANCES PROTECTION ACT; PROHIBITING CERTAIN
PRODUCTS THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-
FLUOROALKYL SUBSTANCE; AUTHORIZING THE ENVIRONMENTAL
IMPROVEMENT BOARD TO ADOPT RULES PROHIBITING CERTAIN PRODUCTS
THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-FLUOROALKYL
SUBSTANCE; REQUIRING DISCLOSURE OF INFORMATION AND TESTING OF
PRODUCTS SOLD, OFFERED FOR SALE OR DISTRIBUTED FOR SALE IN THIS
STATE THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-
FLUOROALKYL SUBSTANCE; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Per- and Poly-Fluoroalkyl Substances Protection
Act".

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1 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
2 Per- and Poly-Fluoroalkyl Substances Protection Act:

3 A. "adult mattress" means a mattress other than a
4 crib or toddler mattress;

5 B. "board" means the environmental improvement
6 board;

7 C. "carpet or rug" means a fabric marketed or
8 intended for use as a floor covering;

9 D. "chemical" means a substance with a distinct
10 molecular composition or a group of structurally related
11 substances and includes the breakdown of products of the
12 substance or substances that form through decomposition,
13 degradation or metabolism;

14 E. "cleaning product" means a finished product used
15 for general cleaning purposes, including:

16 (1) a polish or floor maintenance product;

17 (2) an air care product labeled for the
18 intended use of enhancing or conditioning the indoor
19 environment by eliminating unpleasant odors or freshening the
20 air; and

21 (3) an automotive maintenance product labeled
22 for the intended use of maintaining the appearance of a motor
23 vehicle, but does not include automotive paint or paint repair
24 products;

25 F. "consumer product" means a tangible personal

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1 property that is distributed in commerce and normally used for
2 personal, family or household use, including product categories
3 that are normally used in households but designed for or sold
4 to businesses, such as commercial carpet or floor waxes;

5 G. "cookware" means durable houseware items used to
6 prepare, dispense or store food, foodstuffs or beverages;

7 H. "cosmetic" means a product or product component,
8 other than soap, intended to be applied to the human body for
9 cleansing, beautifying or promoting attractiveness;

10 I. "currently unavoidable use" means a use of a
11 per- or poly-fluoroalkyl substance that the board has
12 determined by rule to be essential for health, safety or the
13 functioning of society and for which alternatives are not
14 reasonably available;

15 J. "department" means the department of
16 environment;

17 K. "fabric treatment" means a substance applied to
18 fabric for stain, grease or water resistance or flame
19 retardance;

20 L. "feminine hygiene product" means a disposable or
21 reusable product to collect menstruation and vaginal discharge,
22 including tampons, pads, sponges, menstruation underwear,
23 discs, applicators and menstruation cups;

24 M. "firefighting foam" means a class B firefighting
25 foam intended for use to control or extinguish a fire;

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1 N. "food packaging" means a container, unit
2 package, intermediate package or shipping container applied to
3 or providing a means to market, protect, handle, deliver,
4 serve, contain or store a food or beverage, including an
5 individual assembled part of a food package;

6 O. "intentionally added" means a per- or poly-
7 fluoroalkyl substance deliberately added or used during the
8 manufacture of a product where the continued presence, at any
9 level or concentration, of the per- or poly-fluoroalkyl
10 substance is desired or expected in the final product or one of
11 the product's components;

12 P. "juvenile product" means a product designed or
13 marketed for use by children under twelve years old, including
14 children's car seats, clothing and toys, but does not include
15 an electronic product;

16 Q. "manufacturer" means:

17 (1) a person, a firm, an association, a
18 partnership, a corporation, an organization, a combination or a
19 joint venture that creates, produces or assembles a product or
20 whose brand name is affixed to a product; or

21 (2) in the case of a product imported into the
22 United States, an importer or first domestic distributor of the
23 product; provided that the person that created, produced or
24 assembled the product or whose brand name is affixed to the
25 product does not have an office or employees in the United

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1 States;

2 R. "medical device" means an instrument, apparatus,
3 an implement, a machine, an implant, an in vitro reagent or
4 other similar or related device, including any component or
5 accessory, that is a product regulated as a drug or medical
6 device by the United States food and drug administration under
7 the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et
8 seq.:

9 (1) recognized in an official compendium;

10 (2) intended for use in the diagnosis of
11 disease or other conditions, or in the cure, mitigation,
12 treatment or prevention of disease, in a human or an animal; or

13 (3) intended to affect the structure or
14 function of the body of a human or an animal and that does not
15 achieve its principal intended purposes through chemical action
16 within or on the body of a human or an animal and that is not
17 dependent on being metabolized for achievement of its principal
18 intended purpose;

19 S. "per- or poly-fluoroalkyl substance" means a
20 substance in a class of fluorinated organic chemicals
21 containing at least one fully fluorinated carbon atom;

22 T. "product" means an item created, produced,
23 assembled, packaged or otherwise prepared for sale to a
24 consumer, including a product component sold or distributed for
25 personal, residential, commercial or industrial use or for use

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1 in making a product;

2 U. "ski wax" means a lubricant applied to the
3 bottom of a snow runner, including a ski or snowboard, to
4 improve grip or glide properties and includes associated tuning
5 products;

6 V. "textile" means an item made in whole or in part
7 from a natural or synthetic fiber, yarn or fabric, including
8 leather, cotton, silk, jute, hemp, wool, viscose, nylon or
9 polyester;

10 W. "textile furnishings" means a textile product
11 made in whole or part from a natural or synthetic fiber, yarn
12 or fabric that is used as furniture or a decorative accessory;
13 and

14 X. "upholstered furniture" means furniture that is
15 wholly or partially stuffed with a filling material.

16 SECTION 3. [NEW MATERIAL] PROHIBITION ON PRODUCTS
17 CONTAINING PER- OR POLY-FLUOROALKYL SUBSTANCES--EXEMPTIONS.--

18 A. Subsections B through G of this section do not
19 apply to:

20 (1) a product for which federal law governs
21 the presence of a per- or poly-fluoroalkyl substance in the
22 product in a manner that preempts state authority;

23 (2) used products offered for sale or resale;

24 (3) medical devices or drugs that are
25 regulated by the United States food and drug administration; or

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1 (4) cooling, heating, ventilation, air
2 conditioning or refrigeration equipment that contains
3 intentionally added per- or poly-fluoroalkyl substances or
4 refrigerants listed as acceptable, acceptable subject to use
5 conditions or acceptable to narrowed use limits by the United
6 States environmental protection agency pursuant to the
7 significant new alternatives policy program, 40 Code of Federal
8 Regulations, Part 82, Subpart G and sold, offered for sale or
9 distributed for sale for the use for which the refrigerant is
10 listed pursuant to that program;

11 (5) a veterinary product intended for use in
12 or on animals, including diagnostic equipment or test kits and
13 their components and any product that is a veterinary medical
14 device, drug, biologic or parasiticide or that is otherwise
15 used in a veterinary medical setting or in veterinary medical
16 applications that are regulated by or under the jurisdiction
17 of:

18 (a) the United States food and drug
19 administration;

20 (b) the United States department of
21 agriculture pursuant to the federal Virus-Serum-Toxin Act; or

22 (c) the United States environmental
23 protection agency pursuant to the Federal Insecticide,
24 Fungicide, and Rodenticide Act, except that any such products
25 approved by the United States environmental protection agency

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1 pursuant to that law for aerial and land application are not
2 exempt from this section;

3 (6) a product developed or manufactured for
4 the purpose of public health or environmental or water quality
5 testing;

6 (7) a motor vehicle or motor vehicle equipment
7 regulated under a federal motor vehicle safety standard, as
8 defined in 49 United States Code, Section 30102(a)(10), and any
9 other motor vehicle, including an off-highway vehicle or
10 specialty motor vehicle, such as an all-terrain vehicle, side-
11 by-side vehicle, farm equipment or personal assistive mobility
12 device, except that the exemption under this paragraph does not
13 apply to any textile article or refrigerant that is included in
14 or as a component part of such products;

15 (8) a watercraft or seaplane, except that the
16 exemption under this paragraph does not apply to any textile
17 article or refrigerant that is included in or as a component
18 part of such products;

19 (9) a semiconductor, including semiconductors
20 incorporated in electronic equipment and materials used in the
21 manufacture of semiconductors;

22 (10) non-consumer electronics and non-consumer
23 laboratory equipment not ordinarily used for personal, family
24 or household purposes;

25 (11) equipment directly used in the

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1 manufacture or development of the products described in
2 Paragraphs (1) through (10) of this subsection;

3 (12) a product for which the board has adopted
4 a rule providing that the use of the per- or poly-fluoroalkyl
5 substance in that product is a currently unavoidable use; or

6 (13) any consumer product that contains
7 intentionally added per- or poly-fluoroalkyl substances that
8 are approved for sale by the board pursuant to the following:

9 (a) the board may adopt rules to create,
10 enforce or terminate a per- and poly-fluoroalkyl substance
11 stewardship program for products exempted in Subsection A of
12 this act. In establishing a stewardship program, the board may
13 consider statewide collection systems that provide access to
14 the public for the drop-off of consumer products containing an
15 intentionally added per- or poly-fluoroalkyl substance at no
16 cost to the consumer; and

17 (b) if the board adopts rules to create
18 a per- and poly-fluoroalkyl substance stewardship program, the
19 board shall adopt rules necessary for the implementation and
20 operation of the program, including rules to establish what
21 criteria manufacturers, other entities or organizations must
22 meet to qualify for the program.

23 B. Beginning January 1, 2027, the state or a person
24 on behalf of the state shall not purchase a product that
25 contains an intentionally added per- or poly-fluoroalkyl

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1 substance.

2 C. Beginning January 1, 2027, a manufacturer shall
3 not sell, offer for sale or distribute for sale in this state,
4 directly or indirectly or through intermediaries, the following
5 products if that product contains an intentionally added per-
6 or poly-fluoroalkyl substance:

- 7 (1) cookware;
- 8 (2) food packaging;
- 9 (3) dental floss;
- 10 (4) juvenile products; and
- 11 (5) firefighting foam.

12 D. Beginning January 1, 2028, a manufacturer shall
13 not sell, offer for sale or distribute for sale in this state,
14 directly or indirectly or through intermediaries, the following
15 products if that product contains an intentionally added per-
16 or poly-fluoroalkyl substance:

- 17 (1) carpets or rugs;
- 18 (2) cleaning products;
- 19 (3) cosmetics;
- 20 (4) fabric treatments;
- 21 (5) feminine hygiene products;
- 22 (6) textiles;
- 23 (7) textile furnishings;
- 24 (8) ski wax; and
- 25 (9) upholstered furniture.

1 E. The board may adopt rules to prohibit consumer
2 products that contain an intentionally added per- or poly-
3 fluoroalkyl substance by category or use that a manufacturer
4 may not sell, offer for sale or distribute for sale in this
5 state, directly or indirectly or through intermediaries, upon a
6 finding that a prohibition on the product is necessary to
7 protect human health or the environment. The board shall set
8 effective dates for a prohibition established by rule pursuant
9 to this subsection; provided that the board shall not set an
10 effective date for the prohibition of a product less than six
11 months after the adoption of the final rule to prohibit the
12 product or earlier than January 1, 2027. The board shall
13 prioritize the prohibition of consumer products containing an
14 intentionally added per- or poly-fluoroalkyl substance that are
15 most likely to harm human health or contaminate the
16 environment.

17 F. Beginning January 1, 2029, a manufacturer shall
18 not sell, offer for sale or distribute for sale in this state,
19 directly or indirectly or through intermediaries, a product
20 containing an intentionally added per- or poly-fluoroalkyl
21 substance, unless the board has adopted a rule providing that
22 the use of the per- or poly-fluoroalkyl substance in that
23 product is a currently unavoidable use. The board may adopt
24 rules to designate that the use of a per- or poly-fluoroalkyl
25 substance in a certain product is a currently unavoidable use;

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1 provided that the use of a per- or poly-fluoroalkyl substance
2 in a product listed in Subsection C or D of this section is
3 prohibited and shall not be designated as a currently
4 unavoidable use.

5 G. The department shall consult with the New Mexico
6 department of agriculture before petitioning the board pursuant
7 to Subsection E or F of this section with respect to a
8 pesticide, fertilizer, agricultural liming material or plant or
9 soil amendment that contains an intentionally added per- or
10 poly-fluoroalkyl substance.

11 SECTION 4. [NEW MATERIAL] RULES.--

12 A. The board shall adopt rules to:

13 (1) create a series of ranges for the amount
14 of a per- or poly-fluoroalkyl substance in a product that
15 contains an intentionally added per- or poly-fluoroalkyl
16 substance for reporting purposes unless exempted in Subsection
17 A of Section 3 of the Per- and Poly-Fluoroalkyl Substances
18 Protection Act;

19 (2) identify currently unavoidable uses of a
20 per- or poly-fluoroalkyl substance that are essential for
21 health, safety or the functioning of society and for which
22 alternatives are not reasonably available unless exempted in
23 Subsection A of Section 3 of the Per- and Poly-Fluoroalkyl
24 Substances Protection Act; and

25 (3) as pertaining to firefighting foam:

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1 (a) require a periodic inventory of
2 firefighting foam quantifies stored or used in New Mexico;

3 (b) require the use of firefighting foam
4 for emergency purposes only; and

5 (c) require the cleanup of discarded
6 firefighting foam pursuant to the Hazardous Waste Act.

7 For purposes of this subsection, "emergency
8 purposes" does not include training or the use of firefighting
9 foam in fire suppression systems.

10 B. The board may:

11 (1) adopt other rules that the board deems
12 necessary to carry out the provisions of the Per- and Poly-
13 Fluoroalkyl Substances Protection Act; and

14 (2) consider determinations made by other
15 states with respect to currently unavoidable uses for products
16 containing intentionally added per- or poly-fluoroalkyl
17 substances.

18 SECTION 5. [NEW MATERIAL] RULES--INFORMATION REQUIRED--
19 EXTENSIONS--WAIVERS.--

20 A. The board shall adopt rules that enumerate the
21 information required of a manufacturer and necessary for the
22 department to implement the Per- and Poly-Fluoroalkyl
23 Substances Protection Act. The information required shall
24 include:

25 (1) a brief description of the product,

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1 including a universal product code, stock keeping unit or other
2 numeric code assigned to the product;

3 (2) the purpose for which a per- or poly-
4 fluoroalkyl substance is used in the product;

5 (3) the amount of each per- or poly-
6 fluoroalkyl substance in the product, identified by its
7 chemical abstracts service registry number and reported as an
8 exact quantity determined using commercially available
9 analytical methods or as falling within a range approved for
10 reporting purposes by the department;

11 (4) the name and address of the manufacturer
12 and the name, address and phone number of a contact person for
13 the manufacturer; and

14 (5) any additional information requested by
15 the department as necessary.

16 B. On or before January 1, 2027, a manufacturer of
17 a product sold, offered for sale or distributed for sale in the
18 state, directly or indirectly or through intermediaries, that
19 contains an intentionally added per- or poly-fluoroalkyl
20 substance shall submit to the department the information
21 required by Subsection A of this section or a rule adopted
22 pursuant to that subsection.

23 C. Prior to January 1, 2028, a manufacturer shall
24 not sell, offer for sale or distribute for sale in this state,
25 directly or indirectly or through intermediaries, a product if

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1 testing requested by the department demonstrates that the
2 product contains an intentionally added per- or poly-
3 fluoroalkyl substance and the manufacturer has failed to
4 provide the department the information required by Subsection A
5 of this section or a rule adopted pursuant to that subsection.

6 D. Prior to January 1, 2028, a manufacturer shall
7 not sell, offer for sale or distribute for sale in this state,
8 directly or indirectly or through intermediaries, a product
9 that contains an intentionally added per- or poly-fluoroalkyl
10 substance unless the manufacturer has submitted to the
11 department the information required by Subsection A of this
12 section or a rule adopted pursuant to that subsection. A
13 product reported pursuant to this subsection containing an
14 intentionally added per- or poly-fluoroalkyl substance may be
15 prohibited from sale pursuant to the Per- and Poly-Fluoroalkyl
16 Substances Protection Act and to rules adopted pursuant to that
17 act.

18 E. A manufacturer shall submit a revision of the
19 information provided on a product within thirty days of a
20 significant change to the information the manufacturer
21 previously submitted or upon the request of the department.

22 F. Upon written approval from the department, a
23 manufacturer may provide the information required by this
24 section to the department for a category or type of product or
25 product component.

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1 G. The department may waive the obligation of a
2 manufacturer to submit all or part of the information required
3 by this section if the department determines that substantially
4 equivalent information is already publicly available. The
5 department may grant a waiver to a manufacturer or a group of
6 manufacturers for multiple products or a product category.

7 H. The department may enter into an agreement with
8 one or more other states or political subdivisions of a state
9 to collect information and may accept information to a shared
10 system as meeting the information requirements of this section.

11 I. The department may extend the deadline for a
12 manufacturer to submit the information required by this section
13 upon a determination by the department that the circumstances
14 merit an extension of time.

15 J. Upon receiving information from a manufacturer,
16 the department shall notify the manufacturer that adequate
17 information has been received or that additional information is
18 required. A manufacturer shall submit to the department any
19 additional information requested by the department within
20 thirty days of the request.

21 SECTION 6. [NEW MATERIAL] TESTING REQUIRED--CERTIFICATE
22 OF COMPLIANCE--EXEMPTION.--

23 A. If the department has reason to believe that a
24 product containing an intentionally added per- or poly-
25 fluoroalkyl substance is being sold, offered for sale or

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1 distributed for sale in the state, directly or indirectly or
2 through intermediaries, the department may direct the
3 manufacturer of the product to, within thirty days, provide the
4 department with testing results that demonstrate the amount of
5 each per- or poly-fluoroalkyl substance, identified by its
6 chemical abstracts service registry number, in the product,
7 reported as an exact quantity determined using commercially
8 available analytical methods or as falling within a range
9 approved for reporting purposes by the department.

10 B. If testing demonstrates that the product does
11 not contain an intentionally added per- or poly-fluoroalkyl
12 substance, the manufacturer shall provide the department with a
13 certificate of compliance attesting that the product does not
14 contain an intentionally added per- or poly-fluoroalkyl
15 substance, the testing results and any other relevant
16 information.

17 C. If testing demonstrates that the product
18 contains an intentionally added per- or poly-fluoroalkyl
19 substance, the manufacturer shall:

20 (1) provide to the department, within thirty
21 days, the information required for a product pursuant to the
22 Per- and Poly-Fluoroalkyl Substances Protection Act or rules
23 adopted pursuant to that act; and

24 (2) notify a person that sells, offers for
25 sale or distributes the product for sale in this state that the

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1 product is prohibited in this state and provide the department
2 with a list of the names and addresses of the people notified.

3 D. The department may notify a person that sells,
4 offers for sale or distributes for sale in this state a product
5 prohibited by the Per- and Poly-Fluoroalkyl Substances
6 Protection Act or rules adopted pursuant to that act that the
7 product is prohibited in this state.

8 E. The provisions of this section do not apply to a
9 medical device or drug that is regulated by the United States
10 food and drug administration.

11 SECTION 7. [NEW MATERIAL] ENFORCEMENT--CIVIL PENALTY.--

12 A. A person that violates a provision of the Per-
13 and Poly-Fluoroalkyl Substances Protection Act or a rule
14 adopted pursuant to that act shall be assessed a civil penalty
15 not to exceed fifteen thousand dollars (\$15,000), and for each
16 day during which any portion of a violation occurs, the
17 department may assess the person administrative costs the
18 department incurs for enforcement of the Per- and Poly-
19 Fluoroalkyl Substances Protection Act or a rule adopted
20 pursuant to that act.

21 B. A person that fails to comply with an
22 administrative order issued pursuant to the Per- and Poly-
23 Fluoroalkyl Substances Protection Act or a rule adopted
24 pursuant to that act may be assessed, pursuant to a court
25 order, a civil penalty of not more than twenty-five thousand

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1 dollars (\$25,000) for each day of noncompliance.

2 C. Penalties imposed pursuant to this section are
3 independent of any damages, remediation or cleanup costs,
4 environmental restoration costs or other monetary or
5 nonmonetary remedies that may be imposed by statutory,
6 decisional or regulatory laws.

7 D. In an action to enforce the provisions of the
8 Per- and Poly-Fluoroalkyl Substances Protection Act or an
9 ordinance, rule or order adopted, imposed or issued pursuant to
10 that act:

11 (1) the department shall be represented by the
12 attorney general or the department;

13 (2) a municipality shall be represented by the
14 attorney general or the municipality; and

15 (3) a county shall be represented by the
16 district attorney within whose district the county lies.

17 E. Penalties collected pursuant to this section
18 shall be deposited in the recycling and illegal dumping fund.