

1 HOUSE BILL 212

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; ENACTING THE PER- AND POLY-
12 FLUOROALKYL SUBSTANCES PROTECTION ACT; PROHIBITING CERTAIN
13 PRODUCTS THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-
14 FLUOROALKYL SUBSTANCE; AUTHORIZING THE ENVIRONMENTAL
15 IMPROVEMENT BOARD TO ADOPT RULES PROHIBITING CERTAIN PRODUCTS
16 THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-FLUOROALKYL
17 SUBSTANCE; REQUIRING DISCLOSURE OF INFORMATION AND TESTING OF
18 PRODUCTS SOLD, OFFERED FOR SALE OR DISTRIBUTED FOR SALE IN THIS
19 STATE THAT CONTAIN AN INTENTIONALLY ADDED PER- OR POLY-
20 FLUOROALKYL SUBSTANCE; PROVIDING PENALTIES.
21

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

23 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
24 cited as the "Per- and Poly-Fluoroalkyl Substances Protection
25 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

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

1 States;

2 R. "medical device" means an instrument, apparatus,
3 implement, machine, implant, in vitro reagent or other similar
4 or related device, including any component or accessory, that
5 is:

6 (1) recognized in an official compendium;

7 (2) intended for use in the diagnosis of
8 disease or other conditions, or in the cure, mitigation,
9 treatment or prevention of disease, in a human or animal; or

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

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

19 T. "product" means an item created, produced,
20 assembled, packaged or otherwise prepared for sale to a
21 consumer, including a product component sold or distributed for
22 personal, residential, commercial or industrial use or for use
23 in making a product;

24 U. "ski wax" means a lubricant applied to the
25 bottom of a snow runner, including a ski or snowboard, to

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1 improve grip or glide properties and includes associated tuning
2 products;

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

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

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

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

15 A. Subsections B through G of this section do not
16 apply to:

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

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

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

23 (4) any consumer product that contains
24 intentionally added per- or poly-fluoroalkyl substances that
25 are approved for sale by the board pursuant to the following:

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1 (a) the board may adopt rules to create,
2 enforce or terminate a per- and poly-fluoroalkyl substance
3 stewardship program. In establishing a stewardship program,
4 the board may consider statewide collection systems that
5 provide access to the public for the drop-off of consumer
6 products containing an intentionally added per- or
7 poly-fluoroalkyl substance at no cost to the consumer; and

8 (b) if the board adopts rules to create
9 a per- and poly-fluoroalkyl substance stewardship program, the
10 board shall adopt rules necessary for the implementation and
11 operation of the program, including rules to establish what
12 criteria manufacturers, other entities or organizations must
13 meet to qualify for the program.

14 B. Beginning January 1, 2027, the state or a person
15 on behalf of the state shall not purchase a product that
16 contains an intentionally added per- or poly-fluoroalkyl
17 substance.

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

- 23 (1) cookware;
24 (2) food packaging;
25 (3) dental floss; and

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1 (4) juvenile products.

2 D. Beginning January 1, 2028, 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) carpets or rugs;
- 8 (2) cleaning products;
- 9 (3) cosmetics;
- 10 (4) fabric treatments;
- 11 (5) feminine hygiene products;
- 12 (6) textiles;
- 13 (7) textile furnishings;
- 14 (8) ski wax; and
- 15 (9) upholstered furniture.

16 E. The board may adopt rules to prohibit consumer
17 products that contain an intentionally added per- or poly-
18 fluoroalkyl substance by category or use that a manufacturer
19 may not sell, offer for sale or distribute for sale in this
20 state, directly or indirectly or through intermediaries, upon a
21 finding that a prohibition on the product is necessary to
22 protect human health or the environment. The board shall set
23 effective dates for a prohibition established by rule pursuant
24 to this subsection; provided that the board shall not set an
25 effective date for the prohibition of a product less than six

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1 months after the adoption of the final rule to prohibit the
2 product or earlier than January 1, 2027. The board shall
3 prioritize the prohibition of consumer products containing an
4 intentionally added per- or poly-fluoroalkyl substance that are
5 most likely to harm human health or contaminate the
6 environment.

7 F. Beginning January 1, 2028, a manufacturer shall
8 not sell, offer for sale or distribute for sale in this state,
9 directly or indirectly or through intermediaries, a product
10 containing an intentionally added per- or poly-fluoroalkyl
11 substance, unless the board has adopted a rule providing that
12 the use of the per- or poly-fluoroalkyl substance in that
13 product is a currently unavoidable use. The board may adopt
14 rules to designate that the use of a per- or poly-fluoroalkyl
15 substance in a certain product is a currently unavoidable use;
16 provided that the use of a per- or poly-fluoroalkyl substance
17 in a product listed in Subsection C or D of this section is
18 prohibited and shall not be designated as a currently
19 unavoidable use.

20 G. The department shall consult with the New Mexico
21 department of agriculture before petitioning the board pursuant
22 to Subsection E or F of this section with respect to a
23 pesticide, fertilizer, agricultural liming material or plant or
24 soil amendment that contains an intentionally added per- or
25 poly-fluoroalkyl substance.

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1 SECTION 4. ~~[NEW MATERIAL]~~ RULES.--

2 A. The board shall adopt rules to:

3 (1) create a series of ranges for the amount
4 of a per- or poly-fluoroalkyl substance in a product that
5 contains an intentionally added per- or poly-fluoroalkyl
6 substance for reporting purposes; and

7 (2) identify currently unavoidable uses of a
8 per- or poly-fluoroalkyl substance that are essential for
9 health, safety or the functioning of society and for which
10 alternatives are not reasonably available.

11 B. The board may adopt other rules the board deems
12 necessary to carry out the provisions of the Per- and Poly-
13 Fluoroalkyl Substances Protection Act.

14 SECTION 5. ~~[NEW MATERIAL]~~ RULES--INFORMATION REQUIRED--
15 EXTENSIONS--WAIVERS.--

16 A. The board shall adopt rules that enumerate the
17 information required of a manufacturer and necessary for the
18 department to implement the Per- and Poly-Fluoroalkyl
19 Substances Protection Act. The information required shall
20 include:

21 (1) a brief description of the product,
22 including a universal product code, stock keeping unit or other
23 numeric code assigned to the product;

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

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

7 (4) the name and address of the manufacturer
8 and the name, address and phone number of a contact person for
9 the manufacturer; and

10 (5) any additional information requested by
11 the department as necessary.

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

19 C. Prior to January 1, 2028, a manufacturer shall
20 not sell, offer for sale or distribute for sale in this state,
21 directly or indirectly or through intermediaries, a product if
22 testing requested by the department demonstrates that the
23 product contains an intentionally added per- or poly-
24 fluoroalkyl substance and the manufacturer has failed to
25 provide the department the information required by Subsection A

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1 of this section or a rule adopted pursuant to that subsection.

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

14 E. A manufacturer shall submit a revision of the
15 information provided on a product within thirty days of a
16 significant change to the information the manufacturer
17 previously submitted or upon the request of the department.

18 F. Upon written approval from the department, a
19 manufacturer may provide the information required by this
20 section to the department for a category or type of product or
21 product component.

22 G. The department may waive the obligation of a
23 manufacturer to submit all or part of the information required
24 by this section if the department determines that substantially
25 equivalent information is already publicly available. The

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1 department may grant a waiver to a manufacturer or a group of
2 manufacturers for multiple products or a product category.

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

7 I. The department may extend the deadline for a
8 manufacturer to submit the information required by this section
9 upon a determination by the department that the circumstances
10 merit an extension of time.

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

17 SECTION 6. [NEW MATERIAL] TESTING REQUIRED--CERTIFICATE
18 OF COMPLIANCE--EXEMPTION.--

19 A. If the department has reason to believe that a
20 product containing an intentionally added per- or poly-
21 fluoroalkyl substance is being sold, offered for sale or
22 distributed for sale in the state, directly or indirectly or
23 through intermediaries, the department may direct the
24 manufacturer of the product to, within thirty days, provide the
25 department with testing results that demonstrate the amount of

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1 each per- or poly-fluoroalkyl substance, identified by its
2 chemical abstracts service registry number, in the product,
3 reported as an exact quantity determined using commercially
4 available analytical methods or as falling within a range
5 approved for reporting purposes by the department.

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

13 C. If testing demonstrates that the product
14 contains an intentionally added per- or poly-fluoroalkyl
15 substance, the manufacturer shall:

16 (1) provide to the department, within thirty
17 days, the information required for a product pursuant to the
18 Per- and Poly-Fluoroalkyl Substances Protection Act or rules
19 adopted pursuant to that act; and

20 (2) notify a person that sells, offers for
21 sale or distributes the product for sale in this state that the
22 product is prohibited in this state and provide the department
23 with a list of the names and addresses of the people notified.

24 D. The department may notify a person that sells,
25 offers for sale or distributes for sale in this state a product

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1 prohibited by the Per- and Poly-Fluoroalkyl Substances
2 Protection Act or rules adopted pursuant to that act that the
3 product is prohibited in this state.

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

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

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

17 B. A person that fails to comply with an
18 administrative order issued pursuant to the Per- and Poly-
19 Fluoroalkyl Substances Protection Act or a rule adopted
20 pursuant to that act may be assessed, pursuant to a court
21 order, a civil penalty of not more than twenty-five thousand
22 dollars (\$25,000) for each day of noncompliance.

23 C. Penalties imposed pursuant to this section are
24 independent of any damages, remediation or cleanup costs,
25 environmental restoration costs or other monetary or

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1 nonmonetary remedies that may be imposed by statutory,
2 decisional or regulatory laws.

3 D. In an action to enforce the provisions of the
4 Per- and Poly-Fluoroalkyl Substances Protection Act or an
5 ordinance, rule or order adopted, imposed or issued pursuant to
6 that act:

7 (1) the department shall be represented by the
8 attorney general or the department;

9 (2) a municipality shall be represented by the
10 attorney general or the municipality; and

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

13 E. A person may commence a civil action on that
14 person's own behalf against:

15 (1) a person or governmental instrumentality
16 or agency alleged to be in violation of a provision of the Per-
17 and Poly-Fluoroalkyl Substances Protection Act or a rule,
18 standard, limitation, order or condition established pursuant
19 to that act; or

20 (2) the appropriate governmental agency or
21 official where there is an alleged failure to perform a
22 nondiscretionary act or duty.

23 F. Penalties collected pursuant to this section
24 shall be deposited in the current school fund.