

HB 1589-FN - AS INTRODUCED

2022 SESSION

22-2174

08/04

HOUSE BILL                    ***1589-FN***

AN ACT                    prohibiting the sale of products containing intentionally-added PFAS.

SPONSORS:            Rep. B. Boyd, Hills. 21

COMMITTEE:          Commerce and Consumer Affairs

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ANALYSIS

This bill prohibiting the sale of products containing intentionally-added PFAS.

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Explanation:          Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT prohibiting the sale of products containing intentionally-added PFAS.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; Prohibition on Sale of Products Containing  
2 Intentionally-Added PFAS. Amend RSA by inserting after chapter 485-I the following new chapter:

3 CHAPTER 485-J

4 PROHIBITION ON SALE OF PRODUCTS CONTAINING

5 INTENTIONALLY-ADDED PFAS

6 485-J:1 Definitions. In this chapter:

7 I. "Carpet or rug" means a fabric marketed or intended for use as a floor covering.

8 II. "Currently unavoidable use" means a use of PFAS that the department has determined  
9 by rule under this section to be essential for health, safety, or the functioning of society and for  
10 which alternatives are not reasonably available.

11 III. "Department" means the department of environmental services.

12 IV. "Fabric treatment" means a substance applied to fabric to give the fabric one or more  
13 characteristics, including but not limited to stain resistance or water resistance.

14 V. "Intentionally-added PFAS" means PFAS added to a product or one of its product  
15 components to provide a specific characteristic, appearance or quality or to perform a specific  
16 function, "intentionally-added PFAS" also includes any degradation by-products of PFAS.

17 VI. "Manufacturer" means the person that manufactures a product or whose brand name is  
18 affixed to the product. In the case of a product imported into the United States, "manufacturer"  
19 includes the importer or first domestic distributor of the product if the person that manufactured or  
20 assembled the product or whose brand name is affixed to the product does not have a presence in the  
21 United States.

22 VII. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means substances that  
23 include any member of the class of fluorinated organic chemicals containing at least one fully  
24 fluorinated carbon atom.

25 VIII. "Product" means an item manufactured, assembled, packaged or otherwise prepared  
26 for sale to consumers, including its product components, sold or distributed for personal, residential,  
27 commercial, or industrial use, including for use in making other products.

28 IX. "Product component" means an identifiable component of a product, regardless of  
29 whether the manufacturer of the product is the manufacturer of the component.

30 X. "Wastewater treatment plant" has the same meaning as in RSA 485-A:2, XVI-a.

31 485-J:2 Notification.

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1           I. Beginning January 1, 2023, a manufacturer of a product for sale in this state that  
2 contains intentionally-added PFAS shall submit to the department a written notification that  
3 includes:

- 4                   (a) A brief description of the product;
- 5                   (b) The purpose for which PFAS are used in the product, including in any product  
6 components;
- 7                   (c) The amount of each of the PFAS, identified by its chemical abstracts service registry  
8 number, in the product, reported as an exact quantity determined using commercially available  
9 analytical methods or as falling within a range approved for reporting purposes by the department;
- 10                  (d) The name and address of the manufacturer, and the name, address and phone  
11 number of a contact person for the manufacturer; and
- 12                  (e) Any additional information established by the department by rule as necessary to  
13 implement the requirements of this section.

14           II. With the approval of the department, a manufacturer may supply the information  
15 required in paragraph I for a category or type of product rather than for each individual product.

16           III. In accordance with rules adopted by the department, a manufacturer shall update and  
17 revise the information in the written notification whenever there is significant change in the  
18 information or when requested to do so by the department.

19           485-J:3 Waiver of Notification; Coordination with Other States; Extension of Deadline. The  
20 department may waive all or part of the notification requirement under RSA 485-J:2 if the  
21 department determines that substantially equivalent information is already publicly available. The  
22 department may enter into an agreement with one or more other states or political subdivisions of a  
23 state to collect notifications and may accept notifications to a shared system as meeting the  
24 notification requirement under RSA 485-J:2. The department may extend the deadline for  
25 submission by a manufacturer of the information required under RSA 485-J:2 if the department  
26 determines that more time is needed by the manufacturer to comply with the submission  
27 requirement.

28           485-J:4 Exemptions. Products for which federal law governs the presence of PFAS in the  
29 product in a manner that preempts state authority shall be exempt from the provisions of this  
30 chapter.

31           485-J:5 Prohibition on Sale of Products Containing intentionally-added PFAS.

32           I. Effective January 1, 2024, no person shall sell, offer for sale, or distribute for sale in this  
33 state a carpet or rug that contains intentionally-added PFAS. This prohibition shall not apply to the  
34 sale or resale of a used carpet or rug.

35           II. Effective January 1, 2024, no person shall sell, offer for sale, or distribute for sale in this  
36 state a fabric treatment that contains intentionally-added PFAS. This prohibition shall not apply to  
37 the sale or resale of a used fabric treatment.

1           III. The department shall adopt rules under RSA 541-A identifying products by category or  
2 use that shall not be sold, offered for sale or distributed for sale in this state if they contain  
3 intentionally-added PFAS. The department shall prioritize the prohibition of the sale of product  
4 categories that, in the department's judgment, are most likely to cause contamination of the state's  
5 land or water resources if they contain intentionally-added PFAS. The department may, as it deems  
6 necessary, exempt by rule products in which the use of PFAS is a currently unavoidable use. The  
7 department shall not prohibit the sale or resale of used products.

8           IV. Effective January 1, 2030, no person shall a sell, offer for sale, or distribute for sale in  
9 this state any product that contains intentionally-added PFAS, unless the department has  
10 determined by rule that the use of PFAS in the product is a currently unavoidable use. The  
11 department may specify a product or product categories in which it has determined the use of PFAS  
12 is a currently unavoidable use. This prohibition shall not apply to the sale or resale of used  
13 products.

14 485-J:6 Fees. The department may establish by rule and assess a fee payable by a manufacturer  
15 upon submission of the notification required under RSA 485-J:2 to cover the department's reasonable  
16 costs in developing and enforcing rules adopted under RSA 485-J:5.

17 485-J:7 Failure to Provide Notice. No person shall sell, offer for sale, or distribute for sale in the  
18 state a product containing intentionally-added PFAS if the manufacturer has failed to provide the  
19 information required under RSA 485-J:2.

20           I. The department may exempt a product from the prohibition under this subsection if the  
21 department determines that the use of PFAS in the product is a currently unavoidable use.

22           II. The prohibition in this section shall not apply to a retailer in this state unless the retailer  
23 sells, offers for sale, or distributes for sale in this state a product for which the retailer has received  
24 a notification pursuant to RSA 485-J:2 that the sale of the product is prohibited.

25 485-J:8 Certificate of Compliance. If the department has reason to believe that a product  
26 contains intentionally-added PFAS and is being offered for sale in violation of RSA 485-J:7, the  
27 department may direct the manufacturer of the product to, within 30 days:

28           I. Provide the department with the certificate attesting that the product does not contain  
29 intentionally-added PFAS; or

30           II. Notify persons who sell that product in this state that the sale of that product is  
31 prohibited in this state and provide the department with a list of the names and addresses of those  
32 notified.

33           2 Effective Date. This act shall take effect upon its passage.

**HB 1589-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT prohibiting the sale of products containing intentionally-added PFAS.

**FISCAL IMPACT:**    ☒ State                    ☐ County                    ☐ Local                    ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	Indeterminable (In Excess of \$96,000)	Indeterminable (In Excess of \$100,000)	Indeterminable (In Excess of \$104,000)
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Restricted Fee Revenue			

**METHODOLOGY:**

This bill creates a program relative to the prohibition on the sale of products containing intentionally added PFAS, which would be administered and enforced by the Department of Environmental Services. Duties of the Department include identifying what type of products are currently being sold in the state that have intentionally added PFAS, assess which of these products use PFAS where it is currently unavoidable to do so, and prioritize prohibition based upon which of these products are most likely to cause contamination of the State's land or water resources. The Department assumes this would be a time intensive and complex endeavor given the hundreds of products known to potentially contain PFAS. The Department assumes that one additional staff member would need to be hired to fulfill its requirements in this bill. The Department states it would need an Environmentalist IV (labor grade 27) at an estimated total cost of \$95,000 in FY 2023, \$100,000 in FY 2024, and \$104,000 in FY 2025 (assuming a start date of July 1, 2022). Further, this bill would likely result in additional indeterminable expenditures beyond the new position, such as costs associated with data collection, lab testing and analysis, third party assistance and educational materials. Lastly, this bill authorizes the Department, through administrative rulemaking, to establish fees payable by a manufacturer upon submission of the notification required by this bill, to cover reasonable costs in developing and enforcing rules adopted pursuant to this program. Any revenue that may be generated through this provision is indeterminable at this time as the fee structure and number of manufacturers subject to said fee are not known.

**AGENCIES CONTACTED:**

Department of Environmental Services