

HB 1422-FN - AS INTRODUCED

2022 SESSION

22-2750

05/08

HOUSE BILL ***1422-FN***

AN ACT requiring warning labels on consumer products containing perfluorinated chemicals.

SPONSORS: Rep. Vail, Hills. 30; Rep. Berch, Ches. 1; Rep. Chase, Straf. 18; Rep. Meuse, Rock. 29

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill requires warning labels on consumer products containing PFAS.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 requiring warning labels on consumer products containing perfluorinated chemicals.

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

1 1 New Section; PFAS Warning Label on Consumer Products. Amend RSA 485-H by inserting
2 after section 11 the following new section:

3 485-H:12 PFAS Warning Label on Consumer Products.

4 I. In this section:

5 (a) "Consumer product" or "product" means an article or component part thereof that is
6 produced, distributed, or sold for the personal use, consumption, or enjoyment of a consumer,
7 including, but not limited to, clothing, carpeting, fabric cleaning solutions, cosmetics and toiletries,
8 food, beverages, and water.

9 (b) "Label" means a display of information that is printed on or affixed to a product or its
10 packaging.

11 (c) "Labeling" means any communication that accompanies a product, such as labels
12 provided by the manufacturer to update labels on existing products in stock.

13 (d) "Packaging" means the immediate container or wrapper of a consumer product.

14 (e) "PFAS" means any organic chemical containing at least one fully fluorinated carbon
15 atom.

16 (f) "PFAS consumer product" or "PFAS product" means a consumer product that
17 includes PFAS.

18 (g) "PFAS packaging" means packaging that includes PFAS.

19 (h) "Retail seller" means a person that sells or otherwise provides consumer products
20 directly to consumers by any means, including the Internet. Retail seller includes those functions of
21 a business involved in the sale or other provision of consumer products directly to consumers, even if
22 the business or facility is primarily devoted to non-retail activities.

23 (i) "Sign" means a physical presentation of written, printed, graphic, or electronically
24 provided communication, including a shelf sign, but not including a label or labeling.

25 II.(a) The manufacturer, producer, packager, importer, supplier, or distributor of a PFAS
26 consumer product or PFAS packaging shall do one of the following if that person meets the
27 requirement of subparagraph (b)(5)(B):

28 (1) Beginning January 1, 2024, provide on the product label or labeling a warning
29 that meets the requirements of paragraph III.

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1 (2) By January 1, 2024, and annually thereafter, provide a written notice directly to
2 the authorized agent for a retail seller that sells the product in this state and obtain written
3 confirmation of receipt of the notice. The notice shall meet all of the following requirements:

4 (A) State that the product or the product's packaging may result in exposure to
5 PFAS, an organic chemical containing at least one fully fluorinated carbon atom.

6 (B) Include the exact name or description of the product or specific identifying
7 information for the product such as a universal product code.

8 (C) Be accompanied by labels or labeling that meet the requirements of section 5
9 and, for a product to be sold by the retailer on the Internet, warning language that meets the
10 requirements of section 5.

11 (b) Beginning January 1, 2024, a retail seller of a PFAS consumer product or consumer
12 product with PFAS packaging shall provide on the product label or labeling a warning that meets
13 the requirements of paragraph III if one or more of the following apply:

14 (1) The retail seller is selling the product under a brand or trademark that is owned
15 or licensed by the retail seller or an affiliated entity.

16 (2) The retail seller has knowingly introduced PFAS into the product or packaging,
17 or knowingly caused PFAS to be created in the product or packaging.

18 (3) The retail seller has removed, covered, obscured, or altered a warning provided
19 under subparagraph I(a)(1).

20 (4) The retail seller has received a notice pursuant to subparagraph I(a)(2). If the
21 notice includes a sign, the retail seller shall conspicuously post and display the sign in association
22 with the consumer product under conditions, including lighting conditions, that make it likely to be
23 seen, read, and understood by an ordinary person.

24 (5) The retail seller has actual specific knowledge from a reliable source that the
25 consumer product is a PFAS consumer product or has PFAS packaging and there is no
26 manufacturer, producer, packager, importer, supplier, or distributor of the product that meets both
27 of the following requirements:

28 (A) Has designated an agent for service of process in this state or has a place of
29 business in this state.

30 (B) Is not any of the following:

31 (i) A person employing fewer than 10 employees.

32 (ii) A local unit of government, this state, the federal government, or a
33 department, agency, board, commission, or authority of any of these.

34 (iii) The owner or operator of a public water supply, as defined in RSA 485:1-
35 a, XV.

36 III. A warning required under paragraph II shall:

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1 (a) State that the product or packaging, as applicable, includes PFAS and that exposure
2 to PFAS may have adverse health effects.

3 (b) Meet any other relevant requirements imposed by the department.

4 IV. The department may adopt rules under RSA 541-A to implement this section.

5 V.(a) A person who violates this section may be ordered to pay a civil fine of not more than
6 the following for each day of violation:

7 (1) For a violation committed in 2024, \$250.

8 (2) For a violation committed in 2025, \$1000.

9 (3) For a violation committed after 2025, \$2500.

10 (b) A violation of this section may be prosecuted by the prosecutor of the county in which
11 the violation occurred or by the attorney general. A fine collected under this section by the attorney
12 general shall be deposited in the PFAS remediation loan fund established in RSA 485-H:10.

13 (c) The attorney general or the prosecutor of the county in which a violation occurs may
14 bring an action for injunctive relief for a violation of this section.

15 2 Effective Date. This act shall take effect January 1, 2023.

**HB 1422-FN- FISCAL NOTE
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FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase In Excess of \$90,000	Indeterminable Increase In Excess of \$94,000	Indeterminable Increase In Excess of \$98,000
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill gives the Department of Environmental Services rulemaking authority to implement the use of PFAS warning labels or signs on consumer products and packaging that contain PFAS compounds. The Department makes the following assumptions relative to this bill:

- The Department is expected to implement and enforce the program which would require it to make rules and administer them. In order to administer such a program, the Department would need to assess what type of consumer products and packaging materials are currently being sold or are in use with PFAS present and where they are being sold or used throughout the State which would be a time intensive and complicated endeavor given the hundreds of products and packaging known to potentially contain PFAS coupled with the volume of retail and food establishments in New Hampshire. This information will allow for education and outreach to affected businesses prior to the compliance date of January 1, 2024 and to ensure compliance of these businesses.

- As new products come into the consumer marketplace, the Department would need to evaluate such new products and provide technical assistance to affected businesses on an on-going basis.

The Department states this new responsibility would overextend its existing program resources, and therefore would require the hiring of a new Environmentalist IV position (labor grade 26). The estimated salary and benefit costs of this position is approximately \$90,000 in FY 2023, \$94,000 in FY 2024, and \$98,000 in FY 2025. Further, the Department states this bill would likely result in additional indeterminable costs beyond the position, including costs associated with data collection, lab testing and analysis, third party assistance and educational materials.

This bill does not provide an appropriation or authorization for any new positions.

In addition, this bill includes new civil penalties, which may be prosecuted by county prosecutors or the Department of Justice, which may result in increased costs to said entities, as well as the Judicial Branch. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures.

AGENCIES CONTACTED:

Department of Environmental Services, Department of Justice, Judicial Branch, and New Hampshire Association of Counties