

HB 1649-FN - AS INTRODUCED

2024 SESSION

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08/02

HOUSE BILL **1649-FN**

AN ACT relative to prohibiting certain products with intentionally added PFAS.

SPONSORS: Rep. Ebel, Merr. 7; Rep. Simpson, Rock. 33; Rep. Spier, Hills. 6; Rep. Rung, Hills. 12; Rep. B. Boyd, Hills. 12; Rep. Mooney, Hills. 12; Rep. Dunn, Rock. 16; Rep. J. Sullivan, Graf. 2; Rep. N. Murphy, Hills. 12; Rep. W. Thomas, Hills. 12; Sen. Ricciardi, Dist 9; Sen. Chandley, Dist 11; Sen. Watters, Dist 4; Sen. Prentiss, Dist 5; Sen. Avard, Dist 12

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill restricts the use of per and polyfluoroalkyl substances in certain consumer products sold in New Hampshire.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Four

AN ACT relative to prohibiting certain products with intentionally added PFAS.

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

1 1 New Section; Consumer Protection; Per and Polyfluoroalkyl Substance Use Restricted. Amend
2 RSA 149-M by inserting after section 63 the following new section:

3 149-M:64 Consumer Products; Per and Polyfluoroalkyl Substance Use Restricted.

4 I. In this section:

5 (a) "Adult mattress" means a mattress other than a crib mattress or toddler mattress.

6 (b) "Alternative" means a substitute process, product, material, chemical, strategy, or
7 combination of these that has been evaluated and serves a functionally equivalent purpose to a
8 PFAS in a product that has less risk to human health or the environment than the use of PFAS in
9 the product.

10 (c) "Carpet or rug" means a fabric product marketed or intended for use as a floor
11 covering in households or businesses.

12 (d) "Chemical" means a substance with a distinct molecular composition or a group of
13 structurally related substances and includes the breakdown products of the substance or substances
14 that form through decomposition, degradation or metabolism.

15 (e) "Consumer product" means any tangible personal property which is distributed in
16 commerce and which is normally used for personal, family, or household purposes. "Consumer
17 products" includes product categories that are normally used by households, but designed for or sold
18 to businesses, such as commercial carpets or commercial floor waxes.

19 (f) "Cosmetic" means an article for retail sale or professional use intended to be rubbed,
20 poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for
21 cleansing, beautifying, promoting attractiveness, or altering the appearance.

22 (g) "Department" means the department of environmental services.

23 (h) "Distributor" has the same meaning as RSA 149-M:33, II.

24 (i) "Fabric" means a textile or any item made in whole or part from a natural, man
25 made, or synthetic fiber or yarn, and includes but is not limited to, leather cotton, silk, jute, hemp,
26 wool, viscose, nylon or polyester.

27 (j) "Fabric treatment" means a product intended to be applied to fabric to give or
28 enhance one or more characteristics, including but not limited to stain resistance or water
29 resistance. "Fabric treatment" does not include fabric dye.

1 (k) "Feminine hygiene product" means a product used to collect menstruation and
2 vaginal discharge, including tampons, pads, sponges, menstruation underwear, disks, applicators,
3 and menstrual cups, whether disposable or reusable.

4 (l) "Fluorine-treated containers" means a fluorinated high-density polyethylene plastic
5 container or another fluorinated container listed by the department by rule.

6 (m) "Food packaging and containers" means a container applied to or providing a means
7 to market, protect, handle, deliver, serve, contain, or store a food or beverage. Food packaging
8 includes: (1) a unit package, an intermediate package, and a shipping container; (2) unsealed
9 receptacles, such as carrying cases, crates, cups, plates, bowls, pails, rigid foil and other trays,
10 wrappers and wrapping films, bags, and tubs; and (3) an individual assembled part of a food
11 package, such as any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior
12 strapping, coatings, closures, inks and labels.

13 (n) "Intentionally added PFAS" means

14 (1) PFAS that a manufacturer has intentionally added to a product or product
15 component and that have a functional or technical effect in the product or product component,
16 including PFAs components of intentionally added chemicals and PFAS that are intentional
17 breakdown products of an added chemical that also have a functional or technical effect in the
18 product; or

19 (2) The presence of PFAS in a product or product component above thresholds
20 established by the department in rule.

21 (o) "Juvenile product" means any product designed or marketed for use by infants and
22 children under 12 years of age:

23 (1) Including, but not limited to a baby or toddler foam pillow, bassinet, bedside
24 sleeper, booster seat, changing pad, child restraint system for use in motor vehicles and aircraft, co-
25 sleeper, crib mattress, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant
26 sleep positioner, infant swing, infant travel bed, infant walker, nap cot, nursing pad, nursing pillow,
27 playmat, playpen, play-yard, polyurethane foam mat, pad or pillow, portable form nap mat, portable
28 infant sleeper, portable hook-on chair, soft-sided portable crib, stroller, and toddler mattress, and

29 (2) Not including children's electronic products, such as a personal computer, audio
30 and video equipment, calculator, wireless phone, game console, handheld device incorporating a
31 video screen, or any associated peripheral such as a mouse, keyboard, power supply unit or power
32 cord, a medical device or an adult mattress.

33 (p) "Known or reasonably ascertainable" means all information in a person's possession
34 or control, plus all information that a reasonable person similarly situated might be expected to
35 possess, control, or know.

36 (q) "Manufacturer" means any person, firm, association, partnership, corporation,
37 organization, combination, or joint venture, which produces a PFAS-added product, or an importer or

1 domestic distributor of a PFAS-added product, which is produced in a foreign country. In the case of
2 a multi-component PFAS-added product, the manufacturer is the last manufacturer to produce or
3 assemble the product. If the multi-component product is produced in a foreign country, the
4 manufacturer is the importer or domestic distributor.

5 (r) "Medical device" has the meaning given "device" under the United States Code, title
6 21, section 321, subsection (h).

7 (s) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of
8 fluorinated organic chemicals containing at least one fully fluorinated carbon or methylene carbon
9 atom.

10 (t) "Personal protective equipment" means equipment worn to minimize exposure to
11 hazards that cause serious workplace injuries and illnesses that may result from contact with
12 chemical, radiological, physical, biological, electrical, mechanical, or other workplace or professional
13 hazards.

14 (u) "PFAS-added consumer product" means:

15 (1) A product, commodity, chemical, or a product component that was manufactured
16 after the effective date of this act;

17 (2) That contains PFAS intentionally added to the product, commodity, chemical, or
18 product component; and

19 (3) Is a consumer product. These products include formulated PFAS-added
20 products, and fabricated PFAS-added products.

21 (v) "PFAS-added product" means:

22 (1) A product, commodity, chemical, or a product component that was manufactured
23 after the effective date of this act; and

24 (2) That contains PFAS intentionally added to the product, commodity, chemical, or
25 product component.

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

29 (x) "Product component" means an identifiable component of a product, regardless of
30 whether the manufacturer of the product is the manufacturer of the component.

31 (y) "Retailer" means a person who sells a PFAS-added product in the state through any
32 means, including a sales outlet, a catalog, the telephone, the Internet, or any electronic means.

33 (z) "Supplier" has the same meaning as in RSA 149-M:33, X.

34 (aa) "Upholstered furniture" means an article of furniture that is designed for sitting,
35 resting, or reclining and is wholly or partly stuffed or filled with filling material.

36 II.(a) The following are exempt from the requirements of this section:

37 (1) The resale of products manufactured prior to the ban imposed by this section.

1 (2) A product for which federal law governs the presence of PFAS in the product in a
2 manner that preempts state authority.

3 (b) The following are exempt from the PFAS ban imposed by this section:

4 (1) Products made with at least 85 percent recycled content.

5 (2) Products manufactured prior to the ban imposed by this section.

6 (3) Replacement parts for products manufactured prior to the ban imposed by this
7 section.

8 III.(a) The department is authorized to participate in the establishment and implementation
9 of a multi-jurisdictional clearinghouse to assist in carrying out the requirements of this act and to
10 help coordinate applications and reviews of the manufacturer obligations under the act. The
11 clearinghouse may also maintain a database of all products containing PFAS, including PFAS-added
12 products; a file on all exemptions granted by the participating jurisdictions; a file on alternative
13 labeling plans; and a file of all the manufacturers' reports on the effectiveness of any PFAS-added
14 product collection systems they may institute.

15 (b) Public disclosure of confidential business information submitted to the department
16 pursuant to this section shall be governed by the requirements of the state's freedom of information
17 act. Notwithstanding the requirements of the state's freedom of information act, the department
18 may provide the interjurisdictional clearinghouse with copies of such information and the
19 interjurisdictional clearinghouse may compile or publish analyses or summaries of such information
20 provided that the analyses or summaries do not identify any manufacturer or reveal any confidential
21 information. Clearinghouse members and employees shall be viewed as operating under a common
22 interest and conversations among and between members or employees shall not violate any
23 exception to any member jurisdiction's freedom of information act.

24 IV.(a) No later than July 1, 2026, no PFAS-added product banned by this act shall be offered
25 for final sale, use, or distribution for promotional purposes in the state without prior notification in
26 writing by the manufacturer of the product to the department in accordance with the requirements
27 of this section. Such notification shall at a minimum include:

28 (1) A brief description of the product to be offered for sale, used or distributed.
29 Descriptions shall provide the product category and the function category, as defined by rule.

30 (2) All relevant chemical abstract service (CAS) registry numbers or, if no CAS
31 number is applicable, the molecular formulas and weights for all PFAS intentionally added to the
32 product.

33 (3) For each product category:

34 (A) The amount of each PFAS or subgroups in each category;

35 (B) The range of PFAS in the product category by percent weight;

36 (C) If no analytical method exists, the amount of total fluorine present in the
37 product category.

1 (4) The purpose for the which the PFAS are used in the product; and

2 (5) The name and address of the manufacturer, and the name, address, and phone
3 number of a contact person for the manufacturer.

4 (b) A manufacturer may supply the information required in subparagraph (a) for a
5 category of type of PFAS-added consumer product rather than for each individual product.

6 (c) The manufacturer shall update and revise information in the notification whenever
7 there is a change in the information or when requested to do so by the department. The department
8 may define and adopt specific requirements in accordance with RSA 541-A for the content and
9 submission of the required notification.

10 (d) A person shall not sell, offer for sale, or distribute for sale in the state a PFAS-added
11 product if the manufacturer has failed to notify pursuant to this section.

12 V.(a) Five years after the effective date of this section, no PFAS-added consumer products
13 shall be offered for final sale, used, or used in promotional materials in the state unless that product
14 is labeled in accordance with this section.

15 (b) Where a PFAS-added consumer product is a component of another product, the
16 product containing the component shall be labeled.

17 (c) All labels must be clearly visible prior to sale and must inform the purchaser, using
18 words or symbols approved by the department, that PFAS is present in the product.

19 (d) Labels affixed to the product shall be constructed of materials that are sufficiently
20 durable to remain legible for the useful life of the product.

21 (e) Responsibility for product and package labels required under this section shall be on
22 the manufacturer, and not on the wholesaler or retailer, unless the wholesaler or retailer agrees
23 with the manufacturer to accept responsibility in conjunction with implementation of an alternative
24 to the labeling requirements of this section approved under subparagraph (f).

25 (f) Alternative labeling requirement:

26 (1) A manufacturer may apply to the department for an alternative to the
27 requirements of this section where:

28 (A) Strict compliance with the requirement is not feasible;

29 (B) The proposed alternative would be at least as effective in providing pre-sale
30 notification of PFAS-content and in providing instructions on proper disposal;

31 (C) Federal law governs labeling in a manner that preempts jurisdiction
32 authority.

33 (2) Applications for an alternative to the requirements of this section shall:

34 (A) Document the justification for the requested alternative;

35 (B) Describe how the alternative ensures that the purchasers or recipients are
36 made aware of the PFAS content prior to purchase or receipt;

1 (C) Document the readiness of all necessary parties to implement the proposed
2 alternative; and

3 (D) Describe the performance measures to be utilized by the manufacturer to
4 demonstrate that the alternative is providing effective pre-sale notification and pre-disposal
5 notification.

6 (g) The department may grant, deny, modify, or condition a request for an alternative to
7 the requirements of this section. Before approving an alternative, the department shall consult with
8 neighboring jurisdictions and others to ensure that its labeling requirements are consistent with
9 those of other governments in the region. Such a waiver shall be for a period of no more than 3 years
10 and may, upon continued eligibility under the criteria of this section and compliance with the
11 conditions of its prior approval, be renewed at 3-year intervals.

12 V. Prohibitions.

13 (a) Product Ban. On July 1, 2028, the following PFAS-added consumer products shall be
14 prohibited from being offered for final sale or use or distributed for promotional purposes in the
15 state:

- 16 (1) Carpets or rugs
- 17 (2) Cosmetics
- 18 (3) Fabric treatments
- 19 (4) Feminine hygiene products
- 20 (5) Fluorine-treated containers
- 21 (6) Food packaging and containers
- 22 (7) Juvenile products
- 23 (8) Personal protective equipment
- 24 (9) Dental floss
- 25 (10) Upholstered furniture.

26 VI.(a) Upon request by the department, a certificate of compliance, or copies thereof, stating
27 that a product is in compliance with the requirements of this section shall be furnished by its
28 manufacturer or supplier to the department.

29 (b) Where compliance is achieved under any jurisdiction exemptions provided in
30 paragraph II, the certificate of compliance shall state the specific basis upon which the exemption is
31 claimed.

32 (c) The certificate of compliance shall be signed by an authorized official of the
33 manufacturer or supplier. The purchaser shall retain the certificate of compliance for as long as the
34 produce is in use. A certificate of compliance shall be kept on file by the manufacturer or supplier.
35 A manufacturer or supplier may make the certificate of compliance available on their company
36 website or through an authorized representative of the company such as a interjurisdictional
37 clearinghouse.

1 (d) If the manufacturer or supplier of a product reformulates or creates a new product,
2 the manufacturer or supplier shall provide an amended or new certificate of compliance for such
3 reformulated or new product to the department.

4 (e) Within 30 days of receipt of a request by the department under this section, the
5 manufacturer or supplier shall:

6 (1) Provide the department with the certificate of compliance attesting that the
7 product does not contain a chemical regulated under this act; or

8 (2) Notify persons who sell the product containing chemicals regulated under this
9 section that the sale of the product is prohibited, and provide the department with a copy of the
10 notice and a list of the names and addresses of those notified.

11 VII. The department may adopt, under RSA 541-A, any rules necessary for the
12 implementation, administration, and enforcement of this section.

13 VIII.(a) The department may enforce this section pursuant to its authority under RSA 149-
14 M:38. The commissioner may coordinate with the commissioner of the department of health and
15 human services in enforcing this section, if necessary.

16 (b) When requested by the department, a person shall furnish to the department any
17 information that the person may have or may reasonably obtain that is relevant to show compliance
18 with this section.

19 2 Department of Environmental Services; Position Established; Appropriation. There is hereby
20 established in the department of environmental services, one full-time classified environmentalist IV
21 position for the purposes of establishing rules, coordinating with the clearinghouse and
22 manufacturers on technical implementation details, recommendations as to any related
23 manufacturer fees and performing ongoing duties such as compliance assurance and enforcement as
24 outlined in this act. The sum necessary to pay the salary, benefits, and other costs related to the
25 position established in this section is hereby appropriated to the department of environmental
26 services for the biennium ending June 30, 2025. This appropriation shall be in addition to any other
27 appropriations made to the department in the biennium. The governor is authorized to draw a
28 warrant for said sum out of any money in treasury not otherwise appropriated.

29 3 Appropriation; Department of Environmental Services. The sum of \$250,000 for the biennium
30 ending June 30, 2025, is hereby appropriated to the department of environmental services to fund
31 administrative costs related to establishment and initial operation of the PFAS-added products
32 control program established by this act, such as costs associated with data collection, lab testing and
33 analysis, third party assistance, educational material development and distribution, and
34 participation in the interjurisdictional clearinghouse authorized herein. The governor is authorized
35 to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

36 4 Effective Date. This act shall take effect upon its passage.

**HB 1649-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to prohibiting certain products with intentionally added PFAS.

FISCAL IMPACT: State County Local None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures	\$0	In Excess of \$424,000	In Excess of \$233,000	In Excess of \$238,000
<i>Funding Source(s)</i>	General Fund			
Appropriations	\$0	In Excess of \$250,000	\$0	\$0
<i>Funding Source(s)</i>	General Fund			

- Does this bill provide sufficient funding to cover estimated expenditures? No
- Does this bill authorize new positions to implement this bill? Yes

METHODOLOGY:

This bill restricts the use of per and polyfluoroalkyl substances in certain consumer products sold in New Hampshire.

The Department of Environmental Services states it is unable to accurately calculate the complete fiscal impact of this bill. The Department estimates the cost of the Environmentalist IV position would be as follows:

	FY 2025	FY 2026	FY 2027
Environmentalist IV Salary, LG 27, Step 1	\$63,800	\$66,600	\$69,500
Benefits	\$36,200	\$76,800	\$37,400
Total Salary & Benefits	\$100,000	\$103,400	\$106,900
Other Expenses (Equipment, Office space, DoIT support etc.)	\$24,000	\$22,600	\$23,800
Total Cost	\$124,000	\$126,000	\$129,700

The Department states based on information from the Northeast Waste Management Officials Association and other states, it is estimated that approximately \$300,000 would be required to

contract for programming a state module for New Hampshire in an existing clearinghouse. The \$250,000 appropriation will be entirely utilized for the clearinghouse. The Department indicates the costs associated with data collection, lab testing and analysis, third party assistance, and development and distribution of educational material are indeterminable costs in excess of the cost of the clearinghouse.

Based on the current membership rates for the Interstate Chemicals Clearinghouse which operates in a similar fashion to the clearinghouse described in this bill, the Department assumes the annual cost of membership in a clearinghouse would be at least \$7,000. Actual membership costs may be higher. In addition to membership costs, there are annual maintenance costs for a state module estimated to be approximately \$100,000 per year.

The Department states it is unknown what recommendations may be made in the future regarding manufacturer fees and enforcement of such fees. The Department assumes it is unlikely that any manufacturer fee revenue would be collected until after FY 2027. The Department does not expect any impact on county or local expenditures or revenue.

It is assumed that any fiscal impact would occur after FY 2024.

AGENCIES CONTACTED:

Department of Environmental Services