HB 1649-FN - AS AMENDED BY THE HOUSE

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2024 SESSION

HB 1649-FN

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


COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill restricts the use of per and polyfluoroalkyl substances in certain consumer products sold in New Hampshire. The bill also makes appropriations to the department of environmental services to fund an additional position and to fund the PFAS products control program.

Explanation: Matter added to current law appears in bold italics. Matter removed from current law appears in brackets and struck through. Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 New Section; Consumer Protection; Per and Polyfluoroalkyl Substance Use Restricted. Amend RSA 149-M by inserting after section 63 the following new section:

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

I. In this section:

(a) “Adult mattress” means a mattress other than a crib mattress or toddler mattress.

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

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

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

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

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

(g) “Department” means the department of environmental services.

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

(i) “Feminine hygiene product” means a product used to collect menstruation and vaginal discharge, including tampons, pads, sponges, menstruation underwear, disks, applicators, and menstrual cups, whether disposable or reusable.

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

(k) “Intentionally added PFAS” means:

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

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

(l) “Juvenile product” means any product designed or marketed for use by infants and
children under 12 years of age:

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

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

(m) “Known or reasonably ascertainable” means all information in a person’s possession
or control, plus all information that a reasonable person similarly situated might be expected to
possess, control, or know.

(n) “Manufacturer” means any person, firm, association, partnership, corporation,
organization, combination, or joint venture, which produces a PFAS-added product, or an importer or
domestic distributor of a PFAS-added product, which is produced in a foreign country. In the case of
a multi-component PFAS-added product, the manufacturer is the last manufacturer to produce or
assemble the product. If the multi-component product is produced in a foreign country, the
manufacturer is the importer or domestic distributor.

(o) “Medical device” has the meaning given “device” under 21 U.S.C. section 321(h).

(p) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of
fluorinated organic chemicals containing at least one fully fluorinated carbon.

(q) “Personal protective equipment” means equipment worn to minimize exposure to
hazards that cause serious workplace injuries and illnesses that may result from contact with
chemical, radiological, physical, biological, electrical, mechanical, or other workplace or professional hazards.

(r) “PFAS-added consumer product” means:

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

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

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

(s) “PFAS-added product” means:

(1) A product, including a PFAS-added consumer product, commodity, chemical, or product component that was manufactured after the effective date of this section; and

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

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

(u) “Product component” means an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component.

(v) “Retailer” means a person who sells a PFAS-added product in the state through any means, including a sales outlet, a catalog, the telephone, the Internet, or any electronic means.

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

(x) “Upholstered furniture” means an article of furniture that is designed for sitting, resting, or reclining and is wholly or partly stuffed or filled with filling material.

(y) “Textile” means an item made in whole or part from a natural or synthetic fiber, yarn, or fabric. Textile includes but is not limited to leather, cotton, silk, jute, hemp, wool, viscose, nylon, and polyester.

(z) “Textile furnishings” means textile goods of a type customarily used in households and businesses, including but not limited to, draperies, floor coverings, furnishings, bedding, towels, and tablecloths. “Textile furnishings” does not include textiles used in medical or industrial settings.

(aa) “Textile treatment” means a product intended to be applied to a textile to give or enhance one or more characteristics, including, but not limited to, stain resistance or water resistance. “Textile treatment” does not include textile dye.

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

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

(2) A product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority.
(3) Products regulated as drugs or medical devices by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq.

(4) Public water systems as defined by RSA 485:1-a, XV, wastewater treatment plants as defined by RSA 485-A:2, XVI-a, or a government-owned facility as the term facility is defined in RSA 149-M:4, IX.

(5) Products or substances approved as substitutes under the Significant New Alternatives Policy program of the United States Environmental Protection Agency, pursuant to section 612 of the amended Clean Air Act of 1990, 42 U.S.C. section 7671k, or substitutes needed to execute the American Innovation and Manufacturing Act, 42 U.S.C. section 7675 et seq. This exemption does not apply to PFAS-added products banned by this section.

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

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

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

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

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

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

IV. Prohibitions.

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

(1) Carpets or rugs.

(2) Cosmetics.
(3) Textile treatments.
(4) Feminine hygiene products.
(5) Food packaging and containers.
(6) Juvenile products.
(7) Personal protective equipment.
(8) Upholstered furniture.
(9) Textile furnishings.

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

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

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

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

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

(1) Provide the department with the certificate of compliance attesting that the
product does not contain a chemical regulated under this act; or
(2) Notify persons who sell the product containing chemicals regulated under this
section that the sale of the product is prohibited, and provide the department with a copy of the
notice and a list of the names and addresses of those notified.

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

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

(b) When requested by the department, a person shall furnish to the department any
information that the person may have or may reasonably obtain that is relevant to show compliance
with this section.
2 Department of Environmental Services; Position Established; Appropriation. There is hereby established in the department of environmental services, one full-time classified environmentalist IV position for the purposes of establishing rules, coordinating with the clearinghouse and manufacturers on technical implementation details, recommendations as to any related manufacturer fees and performing ongoing duties such as compliance assurance and enforcement as outlined in this act. The sum necessary to pay the salary, benefits, and other costs related to the position established in this section is hereby appropriated to the department of environmental services for the biennium ending June 30, 2025. This appropriation shall be in addition to any other appropriations made to the department in the biennium. The governor is authorized to draw a warrant for said sum out of any money in treasury not otherwise appropriated. The funds appropriated for this position shall lapse on June 30, 2033.

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

4 Effective Date. This act shall take effect upon its passage.
AN ACT relative to prohibiting certain products with intentionally added PFAS.

FISCAL IMPACT: [X] State  [ ] County  [ ] Local  [ ] None

<table>
<thead>
<tr>
<th>Estimated State Impact - Increase / (Decrease)</th>
</tr>
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<tbody>
<tr>
<td>Revenue</td>
</tr>
<tr>
<td>Revenue Fund(s)</td>
</tr>
<tr>
<td>Expenditures</td>
</tr>
<tr>
<td>Funding Source(s)</td>
</tr>
<tr>
<td>Appropriations</td>
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<tr>
<td>Funding Source(s)</td>
</tr>
</tbody>
</table>

- Does this bill provide sufficient funding to cover estimated expenditures? [X] No
- Does this bill authorize new positions to implement this bill? [X] 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:

<table>
<thead>
<tr>
<th>Environmentalist IV Salary, LG 27, Step 1</th>
<th>FY 2025</th>
<th>FY 2026</th>
<th>FY 2027</th>
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<tr>
<td>Benefits</td>
<td>$36,200</td>
<td>$76,800</td>
<td>$37,400</td>
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<td>Total Salary &amp; Benefits</td>
<td>$100,000</td>
<td>$103,400</td>
<td>$106,900</td>
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<tr>
<td>Other Expenses (Equipment, Office space, DoIT support etc.)</td>
<td>$24,000</td>
<td>$22,600</td>
<td>$23,800</td>
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<tr>
<td>Total Cost</td>
<td>$124,000</td>
<td>$126,000</td>
<td>$129,700</td>
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</table>

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