

2022 -- S 2449

LC004625

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO HEALTH AND SAFETY -- COMPREHENSIVE PFAS BAN ACT OF 2022

Introduced By: Senators DiMario, Euer, Seveney, Cano, Burke, Miller, DiPalma, Felag,
Valverde, and Murray

Date Introduced: March 01, 2022

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 18.18

4 COMPREHENSIVE PFAS BAN ACT OF 2022

5 **23-18.18-1. Short title.**

6 This act shall be known and may be cited as the "Comprehensive PFAS Ban Act of 2022".

7 **23-18.18-2. Legislative intent.**

8 It is the intent of the legislature to ban all uses of PFAS by December 31, 2031, unless the
9 use of PFAS in a product is considered unavoidable.

10 **23-18.18-3. Definitions.**

11 For purposes of this chapter, the following definitions shall apply:

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

13 (2) "Apparel" means any of the following:

14 (i) Clothing items intended for regular wear or formal occasions. This includes, but is not
15 limited to, undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, vests, dancewear, suits,
16 saris, scarves, tops, leggings, school uniforms, leisurewear, everyday swimwear, formal wear,
17 onesies, bibs, diapers, and footwear, apparel, costumes, accessories (including handbags and
18 backpacks) and everyday professional uniforms; and

19 (ii) Clothing items intended primarily for outdoor activities. This includes, but is not

1 limited to, clothing intended for hiking, camping, skiing, climbing, bicycling, boating and fishing.
2 "Outdoor apparel" means clothing intended to be worn over common apparel including, but not
3 limited to, jackets, coats, snow pants, ski pants, etc. "Outdoor apparel" does not include professional
4 uniforms. Apparel does not include professional uniforms that are worn to protect the wearer from
5 health or environmental hazards.

6 (3) "Bisphenols" means any member of a class of industrial chemicals that contain two (2)
7 hydroxyphenyl groups. Bisphenols are used primarily in the manufacture of polycarbonate plastic
8 and epoxy resins.

9 (4) "Carpet or rug" means a fabric marketed or intended for use as a floor covering.

10 (5) "Class B firefighting foam" means foams designed for flammable liquid fires.

11 (6) "Cookware" means durable houseware items that are used in homes and restaurants to
12 prepare, dispense, or store food, foodstuffs, or beverages. "Cookware" includes pots, pans, skillets,
13 grills, baking sheets, baking molds, trays, bowls, and cooking utensils.

14 (7) "Cosmetic" or "cosmetic product" means any personal care product intended for
15 cleaning or cleansing any part of the body, or beautifying, promoting attractiveness or altering the
16 appearance such as the skin and hair, and including but not limited to, hair shampoo, hair
17 conditioner, soap, bath gels and other bath products. The term "personal care product" shall not
18 include any product for which a prescription is required for distribution or dispensation.

19 (8) "Fabric treatment" means a substance applied to fabric to give the fabric one or more
20 characteristics, including but not limited to stain resistance or water resistance.

21 (9) "Feasible and available" means a safer alternative that is:

22 (i) Available in the marketplace; or

23 (ii) Used or marketed for the application of interest in a product or a similar application; or

24 (iii) Identified by a scientific or governmental agency as a safer alternative to PFAS in a
25 product, similar product or analogous product; or

26 (iv) Is already used in similar or analogous products to achieve a similar function.

27 (10) "Firefighting personal protective equipment" means any clothing designed, intended,
28 or marketed to be worn by firefighting personnel in the performance of their duties, designed with
29 the intent for the use in fire and rescue activities, including jackets, pants, shoes, gloves, helmets,
30 and respiratory equipment designed exclusively for fighting fires.

31 (11) "Intentionally added PFAS" means PFAS that a manufacturer has intentionally added
32 to a product and that have a functional or technical effect in the product, including the PFAS
33 components of intentionally added chemicals and PFAS that are intentional breakdown products
34 of an added chemical that also have a functional or technical effect in the product.

1 (12) "Juvenile product" means a product designed for use by infants and children under
2 twelve (12) years of age, including, but not limited to, a baby or toddler foam pillow, bassinet,
3 bedside sleeper, booster seat, changing pad, child restraint system for use in motor vehicles and
4 aircraft, co-sleeper, crib mattress, floor playmat, highchair, highchair pad, infant bouncer, infant
5 carrier, infant seat, infant sleep positioner, infant swing, infant travel bed, infant walker, nap cot,
6 nursing pad, nursing pillow, playmat, playpen, play yard, polyurethane foam mat, pad, or pillow,
7 portable foam nap mat, portable infant sleeper, portable hook-on chair, soft-sided portable crib,
8 stroller, and toddler mattress. "Juvenile product" does not include any of the following:

9 (i) A children's electronic product, including, but not limited to, a personal computer, audio
10 and video equipment, calculator, wireless phone, game console, handheld device incorporating a
11 video screen, or any associated peripheral such as a mouse, keyboard, power supply unit, or power
12 cord;

13 (ii) Any medical device as defined in subsection (h) of Section 321 of Title 21 of the United
14 States Code; or

15 (iii) An adult mattress.

16 (13) "Local governments" means any city, town, fire district, regional fire protection
17 authority, or other special purpose district that provides firefighting services.

18 (14) "Manufacturer" means any company, entity or person that manufactures a product or
19 whose brand name is affixed to the product. In the case of a product imported into the United States,
20 "manufacturer" includes the importer or first domestic distributor of the product if the person that
21 manufactured or assembled the product or whose brand name is affixed to the product does not
22 have a presence in the United States. For the purposes of this subsection, "importer" means the
23 owner of the product at the time the product is brought into the United States.

24 (15) "Manufacturer of fire prevention products" means any person, firm, association,
25 partnership, corporation, organization, joint venture, importer, or domestic distributor of
26 firefighting agents or firefighting equipment.

27 (16) "Ortho-phthalates" means any member of the class of organic chemicals that are esters
28 of phthalic acid containing two (2) carbon chains located in the ortho position.

29 (17) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means substances that
30 include any member of the class of fluorinated organic chemicals containing at least one fully
31 fluorinated carbon atom.

32 (18) "Priority product" means a product the department of environmental management has
33 identified as a priority product pursuant to the provisions of § 23-18.18-4(a)(i).

34 (19) "Product" means an item manufactured, assembled, packaged or otherwise prepared

1 for sale to consumers, including its product components, sold or distributed for personal,
2 residential, commercial or industrial use, including for use in making other products. Product does
3 not mean used products offered for sale or resale.

4 (20) "Product component" means an identifiable component of a product, regardless of
5 whether the manufacturer of the product is the manufacturer of the component.

6 (21) "Safer alternative" means an alternative that is less hazardous to humans or the
7 environment than PFAS. A "safer alternative" includes a chemical substitute or a change in
8 materials, function or design that eliminates the need for PFAS. A safer alternative shall not be a
9 PFAS chemical.

10 (22) "Sensitive population" means a category of people that is identified by the department
11 of environmental management that may be or is disproportionately or more severely affected by
12 PFAS including but not limited to:

13 (i) Men and women of childbearing age;

14 (ii) Infants and children;

15 (iii) Pregnant women;

16 (iv) Communities that are highly impacted by toxic chemicals;

17 (v) Persons with occupational exposure; and

18 (vi) The elderly.

19 (23) "Sensitive species" means a species or grouping of animals that is identified by the
20 department of environmental management that may be or is disproportionately or more severely
21 affected by PFAS.

22 (24) "Terminal" means an establishment primarily engaged in the wholesale distribution
23 of crude petroleum and petroleum products, including liquefied petroleum gas from bulk liquid
24 storage facilities.

25 (25) "Textile" means any item made in whole or part from a natural or synthetic fiber, yarn,
26 or fabric. Textile includes, but is not limited to, the following: leather, cotton, silk, jute, hemp,
27 wool, nylon, or polyester.

28 (26) "Textile furnishings" means textile goods of a type customarily used in households
29 and businesses. Textile articles include, but are not limited to, draperies, floor coverings,
30 furnishings, beddings, towels, and tablecloths.

31 (27) "Unavoidable" means a use of PFAS that the department of environmental
32 management has determined by rule under this chapter to be essential for health, safety or the
33 functioning of society and for which safer alternatives are not feasible and available at the time of
34 assessment or in the foreseeable future.

1 (28) "Upholstered furniture" means any article of furniture designed to be used for sitting,
2 resting, or reclining that is wholly or partly stuffed or filled with any filling material.

3 **23-18.18-4. Authority to ban PFAS.**

4 (a) The department of environmental management shall use the following procedure to ban
5 the use of PFAS in all products:

6 (1) No later than January 1, 2024, and at least every three (3) years thereafter, the
7 department of environmental management shall by rule, identify priority products by category or
8 use that may not be manufactured, sold, offered for sale or use or distributed for sale in this state if
9 they contain intentionally added PFAS. The department of environmental management shall
10 consider the following factors in prioritizing products:

11 (i) Whether there is the potential for exposure to PFAS to sensitive populations or sensitive
12 species when the product containing PFAS is manufactured, used, disposed of, or has decomposed;

13 (ii) Whether there is the potential for PFAS to contaminate the outdoor environment, with
14 priority given to surface water, groundwater, marine waters, sediments, and other ecologically
15 sensitive areas, when the product containing PFAS is used, disposed of, or has decomposed;

16 (iii) Whether there is the potential for the PFAS to contaminate an indoor environment
17 including presence in indoor air or dust;

18 (iv) The volume of PFAS used in a product or product category;

19 (v) Whether the use of PFAS in a product is currently unavoidable; and

20 (vi) Whether other states or nations have identified or taken regulatory action to restrict or
21 otherwise regulate PFAS in the product.

22 (2) If the department of environmental management determines that the use of PFAS in the
23 priority product meets any of the following criteria, the department of environmental management
24 shall commence rulemaking no later than two (2) years after identifying a product as a priority
25 product pursuant to the provisions of subsection (a)(1) of this section and shall adopt rules to
26 prohibit the manufacturing, sale, offering for sale or distribution for sale or use in the state,
27 provided:

28 (i) There are similar or analogous products to the priority product that do not contain PFAS;
29 or

30 (ii) There are similar or analogous products to the priority product that uses a safer
31 alternative to PFAS; or

32 (iii) There are safer, feasible available alternatives to PFAS in the priority products; or

33 (iv) The use of the PFAS in the product is not necessary for the product to achieve its main
34 function; or

1 (v) The product is not necessary enough for the safety of human health, environment or
2 functioning of society so as to justify the use of a hazardous substance.

3 (b) Manufacturers may apply to the department of environmental management for an
4 exemption to the prohibition provided in subsection (a)(2) of this section. The department of
5 environmental management may approve the exemption if the department of environmental
6 management determines that the use of PFAS in the priority product is unavoidable. Exemptions
7 granted by the department shall be governed as follows:

8 (1) Exemptions to the rules adopted pursuant to this section shall expire after five (5) years.

9 (2) A product manufacturer may renew its exemption for an additional five (5) years if it
10 can demonstrate that the use of PFAS in the product is still unavoidable.

11 (3) The department of environmental management in considering a request for exemptions
12 shall determine, based on all available information to include market data and information from
13 product manufacturers whether the use of PFAS in the exempted product or product category is
14 unavoidable. If the department of environmental management determines that the use of PFAS is
15 not unavoidable, the exemption will be denied.

16 (c) The department of environmental management shall have the authority to require
17 product manufacturers to submit information on the use of PFAS or safer alternatives in selected
18 product categories.

19 (d) The department of environmental management may establish by rule and assess a fee
20 payable by a manufacturer upon submission of an exemption request under subsection (b) of this
21 section to cover the department's reasonable costs in developing rules and administering
22 requirements under this section. The department may choose to set fees based upon the volume of
23 PFAS, volume of sales or type of PFAS used in a product or product category.

24 **23-18.18-5. Disclosure of PFAS in products.**

25 (a) Beginning January 1, 2025, a manufacturer of a product for sale in the state that contains
26 intentionally added PFAS shall submit to the department of environmental management a written
27 notification that includes:

28 (1) A brief description of the product;

29 (2) The function served by PFAS in the product, including in any product components;

30 (3) The amount of each of the PFAS, identified by its chemical abstracts service registry
31 number, in the product, reported as an exact quantity determined using commercially available
32 analytical methods or as falling within a range approved for reporting purposes by the department;

33 (4) The name and address of the manufacturer, and the name, address and phone number
34 of a contact person for the manufacturer; and

1 (5) Any additional information established by the department of environmental
2 management by rule as necessary to implement the requirements of this chapter.

3 (b) The department of environmental management may prioritize products subject to
4 requirements under § 23-18.18-4(a) based on the products that, in the department of environmental
5 management's judgment, are most likely to cause contamination of the state's land or water
6 resources if they contain intentionally added PFAS.

7 (c) With the approval of the department of environmental management, a manufacturer
8 may supply the information required in this section for a category or type of product rather than for
9 each individual product.

10 (d) In accordance with rules adopted by the department of environmental management, a
11 manufacturer shall update and revise the information in the written notification whenever there is
12 significant change in the information.

13 (e) The department of environmental management may waive all or part of the notification
14 requirement in this section if the department of environmental management determines that
15 substantially equivalent information is already publicly available. The department of environmental
16 management may enter into an agreement with one or more other states or political subdivisions of
17 a state to collect notifications and may accept notifications to a shared system as meeting the
18 notification requirement under this section. The department of environmental management may
19 extend the deadline for submission by a manufacturer of the information required under this section
20 if the department determines that more time is needed by the manufacturer to comply with the
21 submission requirement.

22 (f) The department of environmental management may establish by rule and assess a fee
23 payable by a manufacturer upon submission of the notification required under subsection (a) of this
24 section to cover the department's reasonable costs in developing rules administering the
25 requirements in this section. The department may choose to set fees based upon the volume of
26 PFAS, volume of sales or type of PFAS.

27 (g) This section shall not apply to the sale or resale of used products.

28 **23-18.18-6. Carpet, upholstered furniture, textile furnishings and after-market**
29 **treatments.**

30 (a) Effective January 1, 2024, no business or person may sell, offer for sale or distribute
31 for sale in this state a carpet or rug that contains PFAS. This prohibition does not apply to the sale
32 or resale of a used carpet or rug.

33 (b) Effective January 1, 2024, no business or person may sell, offer for sale or distribute
34 for sale in this state a fabric treatment that contains PFAS. This prohibition does not apply to the

1 sale or resale of a used fabric treatment.

2 (c) Effective January 1, 2024, no business or person may sell, offer for sale or distribute
3 for sale in this state upholstered furniture that contains PFAS. This prohibition does not apply to
4 the sale or resale of used upholstered furniture.

5 (d) Effective January 1, 2024, no business or person may sell, offer for sale or distribute
6 for sale in this state textile furnishings that contains PFAS. This prohibition does not apply to the
7 sale or resale of used textile furnishing.

8 **23-18.18-7. Apparel including outdoor gear and uniforms.**

9 (a) Beginning January 1, 2024, no business or person shall manufacture, distribute, sell, or
10 offer for sale in this state any common apparel containing PFAS.

11 (b) Beginning January 1, 2025, no business or person shall manufacture, distribute, sell, or
12 offer for sale in this state any outdoor apparel containing PFAS.

13 (c) This section shall not apply to the sale or resale of used products.

14 **23-18.18-8. Cosmetics.**

15 (a) Beginning January 1, 2024, no business or person shall manufacture, distribute, sell, or
16 offer for sale in this state any cosmetic or cosmetic product containing PFAS.

17 **23-18.18-9. Juvenile products.**

18 (a) On and after July 1, 2023, a person, including, but not limited to, a manufacturer, shall
19 not sell or distribute in commerce in this state any new juvenile product that contains PFAS.

20 (b) This section shall not apply to the sale or resale of used products.

21 **23-18.18-10. Cookware.**

22 (a) Commencing on January 1, 2024, no person shall distribute, sell, or offer for sale in the
23 state any cookware that contains PFAS.

24 (b) This section shall not apply to the sale or resale of used products.

25 **23-18.18-11. Firefighting foam.**

26 (a) Beginning January 1, 2023, no person, local government, or state agency may discharge
27 or otherwise use for training purposes class B firefighting foam that contains intentionally added
28 PFAS chemicals.

29 (b) Beginning January 1, 2025, no manufacturer of class B firefighting foam may
30 manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state class
31 B firefighting foam to which PFAS chemicals have been intentionally added.

32 Beginning January 1, 2023, the following shall apply:

33 (1) Any person, local government or state agency that uses class B firefighting foam
34 containing PFAS chemicals shall report the use of the foam to the state fire marshal within five (5)

1 business days of the use, including the identity of the foam, the quantity used, the total PFAS
2 concentration, the application for which the foam was used, and the duration of the fire.

3 (2) Any person, local government or state agency that uses class B firefighting foam
4 containing PFAS chemicals shall do all of the following:

5 (i) Allow no release directly to the environment, such as to unsealed ground, soakage pits,
6 waterways, or uncontrolled drains.

7 (ii) Fully contain all releases onsite.

8 (iii) Implement containment measures such as bunds and ponds that are controlled,
9 impervious to PFAS chemicals, and do not allow firewater, wastewater, runoff, and other wastes
10 to be released to the environment, such as to soils, groundwater, waterways, or stormwater.

11 (iv) Dispose of all firewater, wastewater, runoff, and other wastes in a way that prevents
12 releases to the environment.

13 (v) If there is a release to the environment, report the identity of the foam, the quantity
14 used, the total PFAS concentration, and the form of any waste that contains PFAS chemicals that
15 is released into the environment to the state fire marshal within five (5) business days of the release.

16 (vi) Document the measures undertaken pursuant to this section. In investigating
17 compliance with this section, the attorney general or city/town council, may request all
18 documentation pertaining to the use or release of any substance regulated by this chapter.

19 (c) A person operating a terminal after January 1, 2025, and who seeks to purchase class B
20 firefighting foam containing intentionally added PFAS for the purpose of fighting emergency class
21 B fires, may apply to the department of environmental management for a temporary exemption
22 from the restrictions on the manufacture, sale, offer for sale, or distribution of class B firefighting
23 foam for use at a terminal. An exemption shall not exceed one year. The department of
24 environmental management, in consultation with the attorney general may grant an exemption
25 under this subsection if the applicant provides:

26 (1) Clear and convincing evidence that there is not a commercially available alternative
27 that:

28 (i) Does not contain intentionally added PFAS; and

29 (ii) Is capable of suppressing a large atmospheric tank fire or emergency class B fire at the
30 terminal;

31 (2) Information on the amount of class B firefighting foam containing intentionally added
32 PFAS that is annually stored, used, or released at the terminal;

33 (3) A report on the progress being made by the applicant to transition at the terminal to
34 class B firefighting foam that does not contain intentionally added PFAS; and

1 (4) An explanation of how:

2 (i) All releases of class B firefighting foam containing intentionally added PFAS shall be
3 fully contained at the terminal; and

4 (ii) Existing containment measures prevent firewater, wastewater, runoff, and other wastes
5 from being released into the environment, including into soil, groundwater, waterways, and
6 stormwater.

7 (d) Nothing in this section shall prohibit a terminal from providing class B firefighting
8 foam in the form of aid to another terminal in the event of a class B fire.

9 (e) A manufacturer of class B firefighting foam restricted under subsection (c) of this
10 section must notify, in writing, persons that sell the manufacturer's products in this state about the
11 provisions of this chapter no less than one year prior to the effective date of the restrictions.

12 (f) A manufacturer that produces, sells, or distributes a class B firefighting foam after the
13 products production, sale or distribution is prohibited under this chapter shall recall the product and
14 reimburse the retailer or any other purchaser for the product. A recall of the product shall include
15 safe transport and storage and documentation of the amount and storage location of the PFAS
16 containing firefighting foam, until the department formally identifies a safe disposal technology.
17 The manufacturer shall provide this documentation to the attorney general and city/town council
18 upon request.

19 (g) The department may request a certificate of compliance from a manufacturer of class
20 B firefighting foam or firefighting personal protective equipment sold in this state. A certificate of
21 compliance attests that a manufacturer's product or products meets the requirements of this chapter.
22 If the department requests such a certificate, the manufacturer shall provide the certificate within
23 thirty (30) calendar days after the request is made.

24 (h) Beginning January 1, 2023, the department of environmental management shall assist
25 state agencies, fire protection districts, and other local governments to avoid purchasing or using
26 class B firefighting foams to which PFAS chemicals have been intentionally added.

27 (i) A manufacturer of class B firefighting foam in violation of this chapter is subject to a
28 civil penalty not to exceed five thousand dollars (\$5000) for each violation in the case of a first
29 offense. Manufacturers, local governments, or persons that are repeat violators are subject to a civil
30 penalty not to exceed ten thousand dollars (\$10,000) for each repeat offense. Penalties collected
31 under this section shall be deposited and made available only to the department of environmental
32 management for remediation efforts and for costs of enforcing the rules and regulations of this
33 chapter.

34 (j) Beginning January 1, 2023, a manufacturer or other person that sells firefighting

1 personal protective equipment to any person, local government, or state agency shall provide
2 written notice to the purchaser at the time of sale if the firefighting personal protective equipment
3 contains any PFAS chemicals. The written notice shall include a statement that the firefighting
4 personal protective equipment contains PFAS chemicals and the reason PFAS chemicals are added
5 to the equipment.

6 (k) The department of environmental management shall assist state agencies, fire
7 protection districts, and other local governments to give priority and preference to the purchase of
8 firefighting personal protective equipment that does not contain PFAS chemicals.

9 (l) The manufacturer or person selling firefighting personal protective equipment and the
10 purchaser of the equipment shall retain the notice on file for at least three (3) years from the date
11 of the transaction. Upon the request of the department of environmental management, a person,
12 manufacturer, or purchaser shall furnish the notice, or written copies, and associated sales
13 documentation to the department within sixty (60) days.

14 SECTION 2. This act shall take effect upon passage.

=====
LC004625
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- COMPREHENSIVE PFAS BAN ACT OF 2022

1 This act would prohibit the use of perfluoroalkyl and polyfluoroalkyl substances or "PFAS"
2 in carpets, upholstered furniture, textile furnishings, apparel, cosmetics juvenile products,
3 cookware and firefighting foam and give authority to the department of environmental management
4 to regulate the use. The act would provide for some limited and/or temporary exemptions to the
5 prohibitions.

6 This act would take effect upon passage.

=====
LC004625
=====