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## **OLR Bill Analysis**

**sSB 292 (File 306, as amended by Senate "A")\***

### ***AN ACT CONCERNING THE USE OF PFAS IN CERTAIN PRODUCTS.***

#### **SUMMARY**

This bill generally regulates the sale and use of certain products containing per- and polyfluoroalkyl substances (PFAS) (see BACKGROUND). It authorizes the Department of Energy and Environmental Protection (DEEP) commissioner to enforce the bill's provisions. She may also coordinate with the agriculture, consumer protection, and public health commissioners to do so.

Beginning October 1, 2024, the bill bans using, selling, or offering for sale as a soil amendment any biosolids (i.e., residue from treating domestic sewage) or wastewater sludge that contains PFAS.

Beginning July 1, 2026, the bill allows the manufacturing, selling, or offering or distributing for sale, of 12 categories of products if they contain intentionally added PFAS only if the manufacturer labels the products and gives prior written notice to DEEP. Without labeling and notice, their manufacturing, selling, or offering or distributing for sale is banned. The covered product categories are apparel, carpets or rugs, cleaning products, cookware, cosmetics, dental floss, fabric treatments, children's products, menstruation products, ski wax, textile furnishings, and upholstered furniture. Beginning January 1, 2028, the bill bans manufacturing, selling, or offering or distributing for sale, these products if they contain intentionally added PFAS. (This ban applies to new products only and to any identifiable component of them, even if the product's manufacturer is not the component's manufacturer.)

Beginning January 1, 2026, the bill allows the distribution, sale, or offering for sale of new (or not previously used) outdoor apparel for

severe wet conditions that contains PFAS only if the product (and any online listing for it) includes a clear disclosure stating, “Made with PFAS chemicals.” Also beginning on January 1, 2026, the bill requires anyone selling turnout gear (e.g., protective clothing for firefighters and emergency medical service personnel) that contains intentionally added PFAS to provide written notice to the purchaser at the time of sale of this fact and the reason PFAS are in the gear. Beginning January 1, 2028, the bill bans manufacturing, selling, or offering or distributing for sale, outdoor apparel for severe wet conditions and turnout gear if they contain intentionally added PFAS.

To help with carrying out the bill’s various provisions, the bill allows DEEP to participate in creating a multijurisdictional clearinghouse for manufacturers’ information, including a database for products containing intentionally added PFAS. It also allows DEEP to impose fees to cover the department’s costs related to the bill.

Lastly, the bill explicitly specifies that school districts are eligible for funding from the General Fund’s PFAS Testing account to test for and remediate PFAS contamination in drinking water supplies. By law, the DEEP commissioner uses the account, in consultation with the public health commissioner, to provide grants or reimbursements to municipalities, which includes school districts. The bill also expands the purpose of the PFAS Testing account to include implementing the bill’s regulation of PFAS in various products, including administrative costs, enforcement, and costs associated with the department’s participation in a multijurisdictional clearinghouse.

\*Senate Amendment “A” replaces the underlying bill with related provisions. In doing do, it adds product labeling and notification requirements; extends the date of the product ban from 2026 to 2028; adds turnout gear to the list of regulated products; expands the purpose of the PFAS Testing account; and makes other minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2024, except that the provisions on the PFAS Testing account are effective upon passage.

## **PRODUCTS WITH INTENTIONALLY ADDED PFAS**

Under the bill, “intentionally added PFAS” is any PFAS deliberately added during a product’s manufacturing process where PFAS are desired for a specific function.

The bill defines most of the products regulated or banned under the bill, often with a generally accepted meaning along with specific examples and, in some cases, exclusions. For example, under the bill, “apparel” excludes personal protective equipment or clothing used exclusively by the U.S. military or in aerospace or defense applications and outdoor apparel intended for severe wet conditions. “Carpet or rug” excludes a covering meant only for use in vehicles or aircraft. “Children’s product” is generally a product designed for an infant or child under age 12, but specifically excludes adult mattresses and electronic devices and related equipment (e.g., computer, wireless phone, game console, mouse, keyboard, or power cord). “Textile furnishings” excludes those intended solely for use in vehicles, boats, or aircraft, among other things. “Cosmetic product” excludes soap and a product that requires a prescription.

With respect to cosmetic products, if the product is made through a manufacturing process that is intended to comply with the bill but still contains an unavoidable trace quantity of PFAS, that will not cause the product to violate the bill. This applies if the unavoidable trace quantity of PFAS is attributable to impurities of natural or synthetic ingredients, the manufacturing process, storage, or migration from packaging.

## **EXEMPTIONS**

The bill specifies that it does not apply to the sale or resale of a used product or the following:

1. those for which federal law governs or requires the presence of PFAS in a way that preempts state authority;
2. Class B firefighting foam;
3. packaging with intentionally added lead, cadmium, mercury, or hexavalent chromium;

4. food packaging with intentionally added PFAS;
5. prosthetic or orthotic devices or medical devices or drugs used in medical settings that the U.S. Food and Drug Administration regulates;
6. products made with at least 85% recycled content; and
7. products (or their replacement parts) manufactured before a ban is imposed under the bill.

## **NOTIFICATION AND LABELING REQUIREMENTS FOR MANUFACTURERS**

### ***Notification to DEEP***

Beginning July 1, 2026, the bill requires manufacturers of certain products manufactured, sold, or offered or distributed for sale in the state with intentionally added PFAS to give prior written notification to DEEP. If the manufacturer fails to do so, the bill prohibits anyone from selling, or offering or distributing for sale, any of the affected products. The products included are apparel, carpets or rugs, cleaning products, cookware, cosmetics, dental floss, fabric treatments, children’s products, menstruation products, ski wax, textile furnishings, and upholstered furniture.

Under the bill, a “manufacturer” is the person who creates or produces the product or whose brand name is on it. For products imported into the United States, this includes the importer or first domestic distributor if that person does not have a U.S. presence. A “product” is any item manufactured, assembled, packaged, or prepared for sale to consumers, including product components, or sold or distributed for personal, residential, commercial, or industrial use.

A manufacturer may give the required information for a product category or type, rather than for each individual product. The manufacturer’s notification to DEEP must include the following:

1. a brief product description, including the product category and PFAS’ function in the product;

2. all relevant chemical abstract service registry numbers, if applicable, or the molecular formulas and weights for all intentionally added PFAS in the product; and
3. information for each product category, as follows:
  - a. the amount of each PFAS or subgroups in each category;
  - b. the range of PFAS in the product category by percent weight;
  - c. if no analytical method exists, the amount of total fluorine present in the product category;
  - d. why the PFAS are used in the product; and
  - e. the manufacturer's name and address and a contact person's name, address, and phone number.

The bill requires the manufacturer to update the above information whenever it changes or when DEEP requests it to do so.

### ***Labeling***

Beginning July 1, 2026, the bill prohibits the manufacturing, selling, or offering or distributing for sale in the state, any of the above listed products unless they are labeled in line with the bill's requirements.

The bill requires that each label must (1) be clearly visible before the sale; (2) inform the purchaser, using words or symbols DEEP approves, that PFAS are present in the product; and (3) be constructed of sufficiently durable materials that will remain legible for the product's useful life. Whenever a product contains intentionally added PFAS and is a component of another product, the product that contains the component must be labeled.

The bill requires the manufacturer to apply the required labels unless the wholesaler or retailer agrees to accept this responsibility.

The bill specifies that it does not require or replace a disclosure, notice, or labeling that federal law prohibits or prescribes.

## **CLEARINGHOUSE**

The bill allows DEEP to participate in establishing and implementing a multijurisdictional clearinghouse. Under the bill, the clearinghouse may help in carrying out the bill's requirements by (1) coordinating the review of manufacturer obligations under the bill and (2) maintaining a database of products with intentionally added PFAS and exemptions granted by the participating jurisdictions.

Additionally, regardless of any provision of the state's Freedom of Information Act, the bill allows the DEEP commissioner to provide the multistate clearinghouse (which exists under law) that tracks information on chemicals in commercial goods, among other things, with information relating to the administration of this bill. It also allows her, in consultation with that multistate clearinghouse, to compile or publish analyses or summaries of the information, as long as they do not identify any manufacturer or disclose confidential information.

## **FEES**

The bill allows the DEEP commissioner to impose fees to cover the costs of administering the bill's PFAS provisions. (Presumably, the fees are to be imposed upon manufacturers, though the bill does not specify.) The fees must be (1) set annually based on an actual accounting of program costs, (2) posted on DEEP's website, (3) used by the commissioner to cover DEEP's costs related to the bill, and (4) deposited in the state's existing PFAS Testing account.

## **ENFORCEMENT**

The bill specifies that the DEEP commissioner may enforce the bill's provisions under her general powers granted by state law. She may also coordinate with the agriculture, consumer protection, and public health commissioners to do so.

### ***Certificate of Compliance***

Upon DEEP's written request, the product's manufacturer or supplier must give DEEP a certificate of compliance stating that a product complies with the bill's provisions. The bill requires anyone to give the DEEP commissioner, upon her request, any information that

the person may have or can reasonably get that is relevant to show compliance.

The manufacturer's or supplier's authorized official must sign a certificate of compliance. Additionally, the manufacturer or supplier must keep the certificate of compliance on file and may make it available on its website or through its authorized representative (including a multijurisdictional clearinghouse).

## **BACKGROUND**

### ***PFAS***

Per- and polyfluoroalkyl substances, commonly known as PFAS, are a class of man-made chemicals that are resistant to heat, water, and oil. They have been used in industrial applications and various consumer products since the 1940s. PFAS are persistent in the environment and the human body; they bioaccumulate (i.e., concentrations increase over time) and do not break down.

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 34    Nay 0    (03/20/2024)