

# ASSEMBLY, No. 4758

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED OCTOBER 11, 2022

**Sponsored by:**

**Assemblywoman SHAMA A. HAIDER**

**District 37 (Bergen)**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**Assemblywoman LISA SWAIN**

**District 38 (Bergen and Passaic)**

**Co-Sponsored by:**

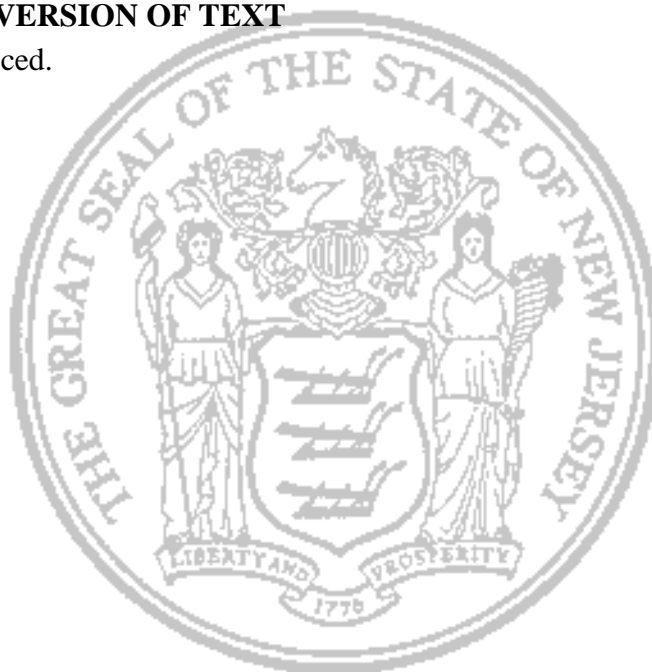
**Assemblyman Verrelli, Assemblywomen Speight, Lampitt and Jaffer**

**SYNOPSIS**

“Protecting Against Forever Chemicals Act”; establishes requirements, prohibitions, and programs for regulation of perfluoroalkyl and polyfluoroalkyl substances (PFAS).

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/20/2023)**

1 AN ACT concerning perfluoroalkyl and polyfluoroalkyl substances,  
2 supplementing Title 13 of the Revised Statutes, and making an  
3 appropriation.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. This act shall be known and may be cited as the “Protecting  
9 Against Forever Chemicals Act.”

10  
11 2. The Legislature finds and declares: that perfluoroalkyl and  
12 polyfluoroalkyl substances, or PFAS, are man-made chemical  
13 compounds that have multiple fluorine atoms bonded to a chain of  
14 carbon atoms; that there are over 12,000 different types of PFAS,  
15 and new types are invented on a nearly daily basis; that since the  
16 1930s, PFAS have been widely used in countless consumer  
17 products because they repel oil, water, and grease; and that PFAS  
18 continue to be used across a variety of industries for a variety of  
19 purposes and are ultimately contained in many of the products sold  
20 in the State.

21 The Legislature further finds and declares: that the carbon-  
22 fluorine bond that forms PFAS is one of the strongest chemical  
23 bonds found in nature and does not break down under typical  
24 environmental conditions; that PFAS are nicknamed “forever  
25 chemicals” because they accumulate in the environment, rather than  
26 break down, over time; that PFAS enters the environment through  
27 manufacturing processes and waste streams, and humans are  
28 exposed through contaminated food, dust, air, drinking water, and  
29 certain consumer products; that human exposure to these chemicals  
30 has been linked to endocrine disruption, cancer, immuno-toxicity,  
31 and developmental impacts; and that PFAS have been detected in  
32 the blood serum of 98 percent of humans tested.

33 The Legislature further finds and declares: that contamination of  
34 air, soil, and water in the State from PFAS poses a significant threat  
35 to the environment of the State and to the health of its citizens; that  
36 the full extent of PFAS contamination in the State is not presently  
37 known, but is anticipated to be widespread and to require a  
38 significant expenditure of resources to identify and remediate; and  
39 that, to address the imminent threat of further contamination of air,  
40 soil, and water in the State and protect the public health of citizens  
41 in the State, it is imperative to conduct PFAS-related research  
42 within the State and to phase out the sale of certain nonessential  
43 products containing PFAS.

44 The Legislature therefore determines that it is in the best interest  
45 of the residents of New Jersey for PFAS to be prohibited from  
46 being intentionally added to certain products being manufactured  
47 and sold within the State, for manufacturers of products containing  
48 PFAS to notify the Department of Environmental Protection of the

1 presence of PFAS in their products, and for educational  
2 programming and research concerning PFAS to be available to  
3 residents in the State.

4

5 3. As used in this act:

6 “Carpet” means a rug or fabric marketed or intended for use as a  
7 floor covering.

8 “Commissioner” means the Commissioner of Environmental  
9 Protection.

10 “Cookware” means durable houseware items that are used in  
11 homes and restaurants to prepare, dispense, or store food,  
12 foodstuffs, or beverages. “Cookware” includes, but is not limited to,  
13 pots, pans, skillets, grills, baking sheets, baking molds, trays,  
14 bowls, and cooking utensils.

15 “Cosmetic” means (1) articles intended to be rubbed, poured,  
16 sprinkled, or sprayed on, introduced into, or otherwise applied to  
17 the human body or any part thereof for cleansing, beautifying,  
18 promoting attractiveness, or altering the appearance, and (2) articles  
19 intended for use as a component of any such articles; except that  
20 such term shall not include soap.

21 “Department” means the Department of Environmental  
22 Protection.

23 “Fabric treatment” means a substance applied to fabric to give  
24 the fabric one or more characteristics, including, but not limited to,  
25 stain resistance or water resistance.

26 “Food packaging” means a nondurable package, packaging  
27 component, or food service ware that is intended to contain, serve,  
28 store, handle, protect, or market food, foodstuffs, or beverages, and  
29 is composed, in substantial part, of paper, paperboard, or other  
30 materials originally derived from plant fibers. “Food packaging”  
31 includes food or beverage containers, take-out food containers, unit  
32 product boxes, liners, wrappers, serving vessels, eating utensils,  
33 straws, food boxes, and disposable plates, bowls, or trays.

34 “Intentionally added PFAS” means PFAS added to a product or  
35 intentionally used during the development of a product or one of its  
36 product components to provide a specific characteristic, appearance,  
37 or quality or to perform a specific function. “Intentionally added  
38 PFAS” also includes any degradation byproducts of PFAS.

39 “Manufacturer” means the person that manufactures a product or  
40 whose brand name is affixed to the product. In the case of a  
41 product imported into the United States, “manufacturer” includes  
42 the importer or first domestic distributor of the product if the person  
43 that manufactured or assembled the product or whose brand name is  
44 affixed to the product does not have a presence in the United States.

45 “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS”  
46 means substances that include any member of the class of  
47 fluorinated organic chemicals containing at least one fully  
48 fluorinated carbon atom.

1       “Product” means an item manufactured, assembled, packaged, or  
2 otherwise prepared for sale to consumers, including its product  
3 components, which is sold or distributed for personal, residential,  
4 commercial, or industrial use, including for use in making other  
5 products.

6       “Product component” means an identifiable component of a  
7 product, regardless of whether the manufacturer of the product is  
8 the manufacturer of the component.

9       “Product label” means a display of written, printed, or graphic  
10 material that appears on, or is affixed to, the exterior of a product,  
11 or its exterior container or wrapper that is visible to a consumer, if  
12 the product has an exterior container or wrapper.

13

14       4. a. Beginning one year after the effective date of this act, a  
15 manufacturer of a product for sale in the State that contains  
16 intentionally added PFAS shall submit to the department a written  
17 notification that includes:

18       (1) a brief description of the product;

19       (2) the purpose for which PFAS are used in the product,  
20 including in any product components;

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

26       (4) the name and address of the manufacturer;

27       (5) the name, address, email address, and phone number of a  
28 contact person for the manufacturer; and

29       (6) any additional information determined by the department to  
30 be necessary.

31       b. Upon submission of the required information pursuant to  
32 subsection a. of this section, a manufacturer shall also pay the  
33 department the fee imposed pursuant to section 5 of this act.

34       c. A manufacturer may submit the information required  
35 pursuant to subsection a. of this section to the department for a  
36 category of products that are substantially similar, as determined by  
37 the department, rather than for each individual product.

38       d. The department may waive all or part of the notification  
39 criteria required pursuant to subsection a. of this section if the  
40 department determines that substantially equivalent information is  
41 already publicly available, or if the information is already provided  
42 to the department pursuant to other State or federal law.

43

44       5. a. Each manufacturer of a product containing PFAS that is  
45 required to submit written notification to the department pursuant to  
46 section 4 of this act, shall pay a fee of \$1,000 to the department  
47 upon submission of the written notification.

1       b. The department shall use the fee to cover the costs of  
2 assessing and reviewing the written notifications submitted by  
3 manufacturers pursuant to section 4 of this act and administering,  
4 implementing, and enforcing the provisions of this act.

5  
6       6. a. Beginning two years after the effective date of this act, a  
7 manufacturer that has failed to provide the department with the  
8 notification information required pursuant to section 4 of this act or  
9 pay the fee required pursuant section 5 of this act shall not sell,  
10 offer for sale, or distribute for sale in the State a product containing  
11 intentionally added PFAS.

12       b. The prohibition in subsection a. of this section shall not apply  
13 to a retailer in the State unless the retailer sells, offers for sale, or  
14 distributes for sale in the State a product for which the retailer has  
15 received a notification pursuant to section 7 of this act that the sale  
16 of the product is prohibited.

17  
18       7. If the department has reason to believe that a product  
19 containing intentionally added PFAS is being offered for sale or  
20 distribution in the State in violation of the provisions of section 6 of  
21 this act, the department shall direct the manufacturer of the product  
22 to, within 30 days:

23       a. certify, in writing, to the department that the product does  
24 not contain intentionally added PFAS; or

25       b. notify persons who sell that product in this State that the sale  
26 of that product is prohibited in the State and provide the department  
27 with a list of the names and addresses of those notified.

28  
29       8. a. Beginning two years after the effective date of this act, no  
30 person shall sell, offer for sale, or distribute for sale in the State any  
31 cosmetic product that contains intentionally added PFAS.

32       b. If a cosmetic product contains a technically unavoidable  
33 trace quantity of PFAS, which stems from impurities of natural or  
34 synthetic ingredients or the manufacturing process, storage, or  
35 migration from packaging of the cosmetic product, that trace  
36 quantity shall not cause the product to be in violation of this  
37 section.

38  
39       9. a. Beginning two years after the effective date of this act, no  
40 person shall sell, offer for sale, or distribute for sale in the State a  
41 carpet or fabric treatment that contains intentionally added PFAS.  
42 This prohibition shall not apply to the sale or resale of a used carpet  
43 or fabric treatment.

44       b. If a carpet or fabric treatment contains a technically  
45 unavoidable trace quantity of PFAS, which stems from impurities of  
46 natural or synthetic ingredients or the manufacturing process,  
47 storage, or migration from packaging of the product, that trace

1 quantity shall not cause the product to be in violation of this  
2 section.

3

4 10. a. Beginning two years after the effective date of this act, no  
5 person shall sell, offer for sale, or distribute for sale in the State any  
6 food packaging that contains intentionally added PFAS.

7 b. If a food packaging product contains a technically  
8 unavoidable trace quantity of PFAS, which stems from impurities of  
9 natural or synthetic ingredients or the manufacturing process,  
10 storage, or migration from packaging of the product, that trace  
11 quantity shall not cause the product to be in violation of this  
12 section.

13

14 11. a. Beginning two years after the effective date of this act, a  
15 manufacturer of cookware sold in the State that contains  
16 intentionally added PFAS in the handle of the product or in any  
17 product surface that comes into contact with food, foodstuffs, or  
18 beverages shall list the presence of PFAS on the product label.

19 b. The product label of a cookware product containing PFAS  
20 shall include a statement, in both English and Spanish, that reads:  
21 “This product contains PFAS.”

22 c. A manufacturer of cookware sold in the State shall ensure  
23 that the statement required on the product label pursuant to  
24 subsection b. of this section is visible and legible to the consumer,  
25 including on the product listing for online sales.

26 d. Beginning two years after the effective date of this act, a  
27 manufacturer shall not make a claim, on the product label or  
28 Internet website for the cookware product, that the cookware is free  
29 of PFAS if PFAS was intentionally added to the cookware.

30 e. Cookware that meets both of the following requirements shall  
31 be exempt from the requirements of this section:

32 (1) the surface area of the cookware cannot fit a product label of  
33 at least two square inches; and

34 (2) the cookware does not have either of the following:

35 (a) an exterior container or wrapper on which a product label can  
36 appear or be affixed; or

37 (b) a tag or other attachment with information about the product  
38 attached to the cookware.

39

40 12. a. Beginning two years after the effective date of this act, no  
41 person shall sell, offer for sale, or distribute for sale within the State  
42 cookware that contains PFAS unless the cookware and the  
43 manufacturer of the cookware have complied with the labeling  
44 requirements established pursuant to section 11 of this act.

45 b. A violation of subsection a. of this section shall be an  
46 unlawful practice pursuant to P.L.1960, c.39 (C.56:8-1 et seq.) and  
47 shall subject the violator to all remedies and penalties available  
48 pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

1 c. If a cookware product contains a technically unavoidable  
2 trace quantity of PFAS, which stems from impurities of natural or  
3 synthetic ingredients or the manufacturing process, storage, or  
4 migration from packaging of the product, that trace quantity shall  
5 not cause the product to be in violation of this section.  
6

7 13. a. The department shall recommend to the Legislature  
8 products, in addition to those prohibited from being sold, offered  
9 for sale, or distributed pursuant to this act, by category or use, that  
10 should not be sold, offered for sale, or distributed for sale in this  
11 State if they contain intentionally added PFAS.

12 b. In determining which additional products containing PFAS  
13 should be prohibited for sale or distribution within the State, the  
14 department shall prioritize the prohibition of the sale of product  
15 categories or uses that, in the department's judgment, pose the  
16 greatest risk to public health or are most likely to cause  
17 contamination of the State's air, land, or water resources if they  
18 contain intentionally added PFAS.  
19

20 14. The department may audit or investigate a manufacturer to  
21 assess the manufacturer's compliance with the requirements of this  
22 act. Each year, the department may audit, or cause to be audited, a  
23 random sample of manufacturers in order to determine compliance  
24 with this act. A manufacturer shall cooperate fully with any audit  
25 or investigation conducted pursuant to this section. The department  
26 may require a manufacturer to pay the costs of an audit conducted  
27 pursuant to this section.  
28

29 15. a. Whenever the Commissioner of Environmental Protection  
30 finds that a person has violated any provision of this act, or any rule  
31 or regulation adopted pursuant thereto, including knowingly making  
32 a false certification to the department pursuant to section 7 of this  
33 act or violating the provisions of subsection d. of section 11 of this  
34 act by making a false claim on the product label or Internet website  
35 for a cookware product, the commissioner may:

36 (1) issue an order requiring the person found to be in violation  
37 to comply in accordance with subsection b. of this section;

38 (2) bring a civil action in accordance with subsection c. of this  
39 section;

40 (3) levy a civil administrative penalty in accordance with  
41 subsection d. of this section;

42 (4) bring an action for a civil penalty in accordance with  
43 subsection e. of this section;

44 (5) direct a manufacturer that is not in compliance with the  
45 requirements of this act to stop offering for sale or distributing  
46 certain products that contain intentionally-added PFAS; or

47 (6) notify the public of a manufacturer that is not in compliance  
48 with the requirements of this act.

1 The exercise of any of the remedies provided in this section shall  
2 not preclude the seeking of any other remedy specified.

3 b. Whenever the commissioner finds that a person has violated  
4 this act, or any rule or regulation adopted pursuant thereto, the  
5 commissioner may issue an administrative enforcement order  
6 specifying the provision or provisions of this act, or the rule or  
7 regulation adopted pursuant thereto, of which the person is in  
8 violation, citing the action that constituted the violation, requiring  
9 compliance with the provision violated, and giving notice to the  
10 person of the person's right to a hearing on the matters contained in  
11 the administrative enforcement order. The ordered person shall  
12 have 20 calendar days from receipt of the order within which to  
13 deliver to the commissioner a written request for a hearing. After  
14 the hearing and upon finding that a violation has occurred, the  
15 commissioner may issue a final order. If no hearing is requested,  
16 the order shall become final after the expiration of the 20-day  
17 period. A request for hearing shall not automatically stay the effect  
18 of the order.

19 c. The commissioner is authorized to institute a civil action in  
20 Superior Court for appropriate relief from any violation of the  
21 provisions of this act, or any rule or regulation adopted pursuant  
22 thereto. This relief may include an assessment against the violator  
23 for the costs of any investigation, inspection, or audit that led to the  
24 discovery and establishment of the violation, and for the reasonable  
25 costs of preparing and litigating the case under this subsection.

26 d. The commissioner is authorized to impose a civil  
27 administrative penalty of not less than \$1,000 nor more than  
28 \$20,000 for each violation, provided that each day during which the  
29 violation continues shall constitute an additional, separate and  
30 distinct offense.

31 In assessing a civil administrative penalty, the commissioner shall  
32 consider the severity of the violation, the measures taken to prevent  
33 further violations, and whether the penalty will maintain an  
34 appropriate deterrent.

35 Prior to assessment of a civil administrative penalty, the person  
36 committing the violation shall be notified by certified mail or  
37 personal service that the penalty is being assessed. The notice shall  
38 identify the section of the statute, rule, regulation, or order violated;  
39 recite the facts alleged to constitute a violation; state the basis for  
40 the amount of the civil administrative penalties to be assessed; and  
41 affirm the rights of the alleged violator to a hearing. The ordered  
42 party shall have 35 days from receipt of the notice within which to  
43 deliver to the commissioner a written request for a hearing. After  
44 the hearing and upon finding that a violation has occurred, the  
45 commissioner may issue a final order after assessing the amount of  
46 the fine specified in the notice. If no hearing is requested, the  
47 notice shall become a final order after the expiration of the 35-day  
48 period. Payment of the assessment is due when a final order is

1 issued or the notice becomes a final order. The authority to levy an  
2 administrative order is in addition to all other enforcement  
3 provisions in this act, and the payment of any assessment shall not  
4 be deemed to affect the availability of any other enforcement  
5 provisions in connection with the violation for which the  
6 assessment is levied. The department may compromise any civil  
7 administrative penalty assessed under this section in an amount and  
8 with conditions the department determines appropriate.

9 e. A person who violates any provision of this act, or any rule  
10 or regulation adopted pursuant thereto, or an administrative order  
11 issued pursuant to subsection b. of this section, or a court order  
12 issued pursuant to subsection c. of this section, or who fails to pay a  
13 civil administrative penalty in full pursuant to subsection d. of this  
14 section, or who knowingly makes any false or misleading statement  
15 on any application, record, report, or other document required to be  
16 submitted to the department, shall be subject, upon order of a court,  
17 to a civil penalty not to exceed \$25,000 per day of the violation, and  
18 each day during which the violation continues shall constitute an  
19 additional, separate, and distinct offense. Any civil penalty  
20 imposed pursuant to this subsection may be collected with costs in a  
21 summary proceeding pursuant to the "Penalty Enforcement Law of  
22 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or may be collected in  
23 a civil action commenced by the commissioner. In addition to any  
24 penalties, costs or interest charges, the Superior Court, or the  
25 municipal court as the case may be, may assess against the violator  
26 the amount of economic benefit accruing to the violator from the  
27 violation.

28  
29 16. a. No later than one year after the effective date of this act,  
30 the department shall establish and implement a source reduction  
31 program to reduce the presence of PFAS in the State's air, water,  
32 and soil by encouraging the proper management of materials that  
33 contain PFAS and the use of safer alternatives. The program shall  
34 include, at a minimum:

35 (1) informational resources targeted to industrial and commercial  
36 users of PFAS;

37 (2) education of the general public concerning PFAS and its  
38 environmental and health impacts;

39 (3) to the extent funds are available, grants to operators of  
40 publicly owned treatment works for the purposes of developing,  
41 expanding, or implementing pretreatment standards for PFAS and  
42 education of users on sources of PFAS and proper management;

43 (4) to the extent funds are available, grants to municipalities for  
44 the purposes of educating solid waste disposal users on sources of  
45 PFAS and its proper management; and

46 (5) any other information and efforts that are determined by the  
47 department to be beneficial in reducing the presence and impact of  
48 PFAS in the State.

1       b. No later than two years after the effective date of this act,  
2 and annually thereafter until 10 years after the effective date of this  
3 act, the department shall submit a report to the Governor and the  
4 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
5 19.1), on the effectiveness of the program in reducing PFAS  
6 discharges to air, water, and soil within the State, and educating  
7 industrial and commercial users of PFAS and residents of the State  
8 on PFAS and its proper management.

9  
10       17. a. The department shall conduct PFAS-related research and  
11 comprehensive monitoring and testing of the presence and impact  
12 of PFAS on the environmental media within the State, including air,  
13 water, biota, and soil. The purpose of the department's research  
14 shall be to gain knowledge surrounding the subject of PFAS,  
15 provide insight into the proper management and mitigation of PFAS  
16 within the State, and to protect the environment from the adverse  
17 impacts of PFAS.

18       b. The department's research shall include, at a minimum:

19       (1) the collection of soil samples from throughout the State for  
20 monitoring and testing for PFAS;

21       (2) the collection of water samples from throughout the State for  
22 monitoring and testing for PFAS;

23       (3) the collection of air samples from throughout the State for  
24 monitoring and testing for PFAS;

25       (4) the collection of fish, plant, and animal samples from  
26 throughout the State for monitoring and testing for PFAS;

27       (5) the comparison of PFAS samples gathered across the State in  
28 an effort to measure levels of PFAS contamination and also  
29 determine if there are any hotspots of PFAS contamination in the  
30 State;

31       (6) research concerning the impact of PFAS on the State's air,  
32 water, and soil quality and ways to mitigate the negative impacts of  
33 PFAS;

34       (7) data collection of research findings and mitigation efforts  
35 concerning PFAS in other States and countries; and

36       (8) any other data collection and research that the department  
37 deems necessary to improve the current foundation of knowledge on  
38 the subject of PFAS.

39       c. No later than two years after the effective date of this act,  
40 and annually thereafter, the department shall provide a report to the  
41 Governor and the Legislature, pursuant to section 2 of P.L.1991,  
42 c.164 (C.52:14-19.1), summarizing their research findings and  
43 activities and providing recommendations for programs, policies,  
44 and legislation to address the presence of PFAS in the State.

45  
46       18. a. There is appropriated from the General Fund to the  
47 department the sum of \$5 million for the purposes of carrying out  
48 the source reduction program pursuant to section 16 of this act and

1 conducting PFAS-related research, monitoring, and testing pursuant  
2 to section 17 of this act.

3 b. Each year after the date of enactment of this act, the  
4 department shall submit as a part of its annual budget, a request for  
5 sufficient funds to conduct the air, water, and soil testing and  
6 PFAS-related research required pursuant section 17 of this act.

7  
8 19. a. Any proprietary information or trade secrets included in  
9 any written notification, certification, or any other record submitted  
10 to the department pursuant to this act shall not be made available to  
11 the general public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.),  
12 commonly known as the open public records act.

13 b. In order to identify the proprietary information or trade  
14 secrets to be protected from public disclosure pursuant to  
15 subsection a. of this section, a manufacturer shall file a trade secret  
16 claim to the department, in a form and manner determined by the  
17 department. No later than 90 days after receipt of a trade secret  
18 claim, the department shall make a determination on the validity of  
19 the trade secret claim. Upon making a determination on the validity  
20 of a trade secret claim, the department shall inform the  
21 manufacturer of the determination by certified mail. If the  
22 department determines that the manufacturer's trade secret claim is  
23 not valid, the manufacturer shall have 45 days from the receipt of  
24 the department's determination to file with the department a written  
25 request for an administrative hearing on the determination. If the  
26 manufacturer does not file such a request within 45 days, the  
27 department may take action to disclose the information for which  
28 the trade secret claim was made, pursuant to the provisions of this  
29 act. If an manufacturer requests an administrative hearing pursuant  
30 to the provisions of this subsection, the department shall refer the  
31 matter to the Office of Administrative Law, for a hearing thereon.  
32 At the hearing the manufacturer shall have the burden to show that  
33 the trade secret claim is valid. Within 45 days of receipt of the  
34 administrative law judge's recommendation, the department shall  
35 affirm, reject, or modify the recommendation. The department's  
36 action shall be considered the final agency action for the purposes  
37 of the "Administrative Procedure Act," P.L. 1968, c. 410 (C.  
38 52:14B-1 et seq.), and shall be subject only to judicial review as  
39 provided in the Rules of Court. The department shall inform the  
40 manufacturer of its decision on the administrative law judge's  
41 recommendation by certified mail.

42 c. The subject of any trade secret claim pending or approved  
43 shall be treated as confidential information. The department shall  
44 not disclose any confidential information to any person except an  
45 officer or employee of the State in connection with the official  
46 duties of the officer or employee under any law for the protection of  
47 public health or the environment. Any officer or employee of the  
48 State who has access to any confidential information, and who

1 willingly and knowingly discloses the confidential information to  
2 any person not authorized to receive it, shall be guilty of a crime of  
3 the third degree.

4 d. Any written notification containing information for which a  
5 trade secret claim is pending or has been approved may be made  
6 available to the public with that information concealed.

7  
8 20. The department may, pursuant to the “Administrative  
9 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
10 or regulations necessary to implement the provisions of this act.

11  
12 21. This act shall take effect immediately.

13  
14  
15 STATEMENT

16  
17 This bill would prohibit the sale of certain products containing  
18 intentionally added perfluoroalkyl and polyfluoroalkyl substances  
19 (PFAS), require greater transparency in the labeling of certain  
20 products containing PFAS, establish a source reduction program  
21 concerning the proper management of PFAS, and appropriate  
22 money for PFAS-related research. As defined in the bill, “PFAS”  
23 means substances that include any member of the class of  
24 fluorinated organic chemicals containing at least one fully  
25 fluorinated carbon atom.

26 Specifically, the bill would require, beginning one year after the  
27 bill’s effective date, a manufacturer of a product for sale in the State  
28 that contains intentionally added PFAS to submit to the Department  
29 of Environmental Protection (DEP) a written notification that  
30 includes: (1) a brief description of the product; (2) the purpose for  
31 which PFAS are used in the product, including in any product  
32 components; (3) the amount of each of the PFAS, identified by its  
33 chemical abstracts service registry number, in the product, reported  
34 as an exact quantity determined using commercially available  
35 analytical methods or as falling within a range approved for  
36 reporting purposes by the DEP; (4) the name and address of the  
37 manufacturer; (5) the name, address, email address, and phone  
38 number of a contact person for the manufacturer; and (6) any  
39 additional information determined by the DEP to be necessary. A  
40 manufacturer would be able to submit the notification information  
41 to the DEP for a category of products that are substantially similar,  
42 as determined by the DEP, rather than for each individual product.  
43 Upon submission of the required notification information, a  
44 manufacturer would also be required to pay the \$1,000 fee to the  
45 DEP imposed pursuant to section 5 of the bill.

46 Beginning two years after the bill’s effective date, a  
47 manufacturer that has failed to provide the DEP with the required  
48 notification information or pay the required fee would be prohibited

1 from selling, offering for sale, or distributing for sale in the State a  
2 product containing intentionally added PFAS.

3 If the DEP has reason to believe that a product containing  
4 intentionally added PFAS is being offered for sale or distribution in  
5 the State in violation of section 6 of the bill, the DEP would be  
6 required to direct the manufacturer of the product to, within 30  
7 days: (1) certify, in writing, to the DEP that the product does not  
8 contain intentionally added PFAS; or (2) notify persons who sell  
9 that product in this State that the sale of that product is prohibited in  
10 the State and provide the DEP with a list of the names and  
11 addresses of those notified. A retailer would not be prohibited from  
12 selling a product containing intentionally added PFAS unless the  
13 retailer sells, offers for sale, or distributes for sale a product for  
14 which the retailer has received notification from the product's  
15 manufacturer or the DEP that sale of the product is prohibited.

16 The bill would also prohibit, beginning two years after the bill's  
17 effective date, the sale, offer for sale, or distribution of cosmetics,  
18 carpets, fabric treatment, and food packaging that contain  
19 intentionally added PFAS. Section 15 of the bill establishes  
20 penalties for violations of the bill's provisions, or any rules or  
21 regulations adopted pursuant thereto, and for any manufacturer who  
22 knowingly makes a false certification to the DEP pursuant to  
23 section 7 of the bill or violates the provisions of subsection d. of  
24 section 11 of the bill by making a false claim on the product label or  
25 Internet website for a cookware product.

26 The bill also includes provisions that would allow products  
27 containing a trace amount of PFAS to continue to be sold,  
28 distributed, and manufactured within the State without the product  
29 being in violation of the bill's provisions as long as the trace  
30 amount stems from impurities of natural or synthetic ingredients or  
31 the manufacturing process, storage, or migration from packaging of  
32 the product. The bill's intent is to prohibit the intentional addition  
33 of PFAS into these products.

34 In addition, the bill would require, beginning two years after the  
35 bill's effective date, manufacturers of cookware sold in the State  
36 that contains intentionally added PFAS in the handle of the product  
37 or in any product surface that comes into contact with food,  
38 foodstuffs, or beverages to list the presence of PFAS on the product  
39 label. The bill would require the product label to include a  
40 statement, in both English and Spanish, which reads: "This product  
41 contains PFAS," and the statement would be required to be placed  
42 on the label in a manner that is visible and legible to the consumer.  
43 The statement would be required to be included on the cookware  
44 product's product listing on the manufacturer's Internet website as  
45 well. Beginning two years after the bill's effective date, a  
46 manufacturer would be prohibited from making a claim, on the  
47 product label or Internet website for the cookware product, that the  
48 cookware is free of PFAS if PFAS was intentionally added to the

1 cookware. Certain cookware products that meet the requirements in  
2 subsection e. of section 11 of the bill would be exempt from the  
3 labeling requirements of the bill.

4 Beginning two years after the bill's effective date, the sale, offer  
5 for sale, and distribution of cookware that contains PFAS would be  
6 prohibited unless the cookware product and the manufacturer of the  
7 cookware has complied with the bill's cookware labeling  
8 requirements. A violation of this provision would be an unlawful  
9 practice pursuant to P.L.1960, c.39 (C.56:8-1 et seq.), commonly  
10 known as the State's "Consumer Fraud Act." As provided by  
11 section 1 of P.L.1966, c.39 (C.56:8-13), an unlawful practice under  
12 the Consumer Fraud Act is punishable by a monetary penalty of not  
13 more than \$10,000 for a first offense and not more than \$20,000 for  
14 any subsequent offense. In addition, a violation can result in cease  
15 and desist orders issued by the Attorney General, the assessment of  
16 punitive damages, and the awarding of treble damages and costs to  
17 the injured.

18 The bill would also require the DEP to recommend to the  
19 Legislature products, in addition to those prohibited from being  
20 sold, offered for sale, or distributed pursuant to the bill, by category  
21 or use that should not be sold, offered for sale, or distributed for  
22 sale in this State if they contain intentionally added PFAS. In  
23 determining which additional products containing PFAS should be  
24 prohibited for sale or distribution within the State, the DEP would  
25 be required to prioritize the prohibition of the sale of product  
26 categories or uses that, in the DEP's judgment, pose the greatest  
27 risk to public health or are most likely to cause contamination of the  
28 State's air, land, or water resources if they contain intentionally  
29 added PFAS.

30 Under the bill, the DEP would have the authority to audit or  
31 investigate a manufacturer to assess the manufacturer's compliance  
32 with bill's provisions. Each year, the DEP may audit, or cause to be  
33 audited, a random sample of manufacturers in order to determine  
34 compliance. Manufacturers are required to cooperate fully with any  
35 audit or investigation conducted, and the DEP may require a  
36 manufacturer to pay the costs of an audit conducted.

37 The bill would require the DEP to establish, no later than one  
38 year after the bill's effective date, a source reduction program to  
39 reduce the presence of PFAS in the State's air, water, and soil by  
40 encouraging the proper management of materials that contain PFAS  
41 and the use of safer alternatives. The program would be required to  
42 include, at a minimum: (1) informational resources targeted to  
43 industrial and commercial users of PFAS; (2) education of the  
44 general public concerning PFAS and its environmental and health  
45 impacts; (3) to the extent funds are available, grants to operators of  
46 publicly owned treatment works for the purposes of developing,  
47 expanding, or implementing pretreatment standards for PFAS and  
48 education of users on sources of PFAS and proper management; (4)

1 to the extent funds are available, grants to municipalities for the  
2 purposes of educating solid waste disposal users on sources of  
3 PFAS and its proper management; and (5) any other information  
4 and efforts that are determined by the DEP to be beneficial in  
5 reducing the presence and impact of PFAS in the State. The DEP  
6 would be required to submit a report to the Governor and the  
7 Legislature, no later than two years after the bill's effective date,  
8 and annually thereafter for 10 years, on the effectiveness of the  
9 program in reducing PFAS discharges to air, water, and soil within  
10 the State, and educating industrial and commercial users of PFAS  
11 and residents of the State on PFAS and its proper management.

12 The bill would also require the DEP to conduct PFAS-related  
13 research and comprehensive monitoring and testing of the presence  
14 and impact of PFAS on the environmental media within the State,  
15 including air, water, biota, and soil. The purpose of the DEP's  
16 research would be to gain knowledge surrounding the subject of  
17 PFAS, provide insight into the proper management and mitigation  
18 of PFAS within the State, and to protect the environment from the  
19 adverse impacts of PFAS. The DEP's research would be required  
20 to include, at a minimum: (1) the collection of soil samples from  
21 throughout the State for monitoring and testing for PFAS; (2) the  
22 collection of water samples from throughout the State for  
23 monitoring and testing for PFAS; (3) the collection of air samples  
24 from throughout the State for monitoring and testing for PFAS; (4)  
25 the collection of fish, plant, and animal samples from throughout  
26 the State for monitoring and testing for PFAS; (5) the comparison  
27 of PFAS samples gathered across the State in an effort to measure  
28 levels of PFAS contamination and also determine if there are any  
29 hotspots of PFAS contamination in the State; (6) research  
30 concerning the impact of PFAS on the State's air, water, and soil  
31 quality and ways to mitigate the negative impacts of PFAS; (7) data  
32 collection of research findings and mitigation efforts concerning  
33 PFAS in other States and countries; and (8) any other data  
34 collection and research that the department deems necessary to  
35 improve the current foundation of knowledge on the subject of  
36 PFAS. No later than two years after the bill's effective date, and  
37 annually thereafter, the DEP would be required to submit a report to  
38 the Governor and the Legislature summarizing their research  
39 findings and activities and providing recommendations for  
40 programs, policies, and legislation to address the presence of PFAS  
41 in the State.

42 The bill would appropriate from the General Fund to the DEP the  
43 sum of \$5 million for the purposes of implementing the source  
44 reduction program, conducting PFAS-related research, and  
45 monitoring and testing environmental media, such as air, water, and  
46 soil, for PFAS pursuant to the bill.

47 Any proprietary information or trade secrets included in any  
48 written notification, certification, or any other record submitted to

1 the DEP pursuant to this bill is required to be kept confidential from  
2 the general public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.),  
3 commonly known as the open public records act. Finally, the bill  
4 authorizes the DEP to adopt rules or regulations necessary to  
5 implement the provisions of the bill.

6 PFAS are man-made chemical compounds that have multiple  
7 fluorine atoms bonded to a chain of carbon atoms. Since the 1930s,  
8 PFAS have been widely used in countless consumer products  
9 because they repel oil, water, and grease. There are over 12,000  
10 different types of PFAS, and new types are invented on a nearly  
11 daily basis. PFAS are commonly found in products such as  
12 polishes, waxes, paints, cleaning products, cookware, cosmetics,  
13 carpet treatments, fire extinguishing foam, dental floss, shampoos,  
14 waterproof clothing, food packaging, and even microwave popcorn.  
15 As a result, the presence of PFAS in the environment is widespread,  
16 and further exacerbated by multiple sources. The carbon-fluorine  
17 bond that forms PFAS is one of the strongest chemical bonds found  
18 in nature and does not break down under typical environmental  
19 conditions. As a result, PFAS are nicknamed “forever chemicals”  
20 because they accumulate, rather than break down, over time.

21 PFAS may enter the environment in the following ways: (1) the  
22 disposal of products containing PFAS in landfills, thereby  
23 contaminating the surrounding soil, groundwater, and source water;  
24 (2) the utilization of PFAS by manufacturing sites, which may  
25 result in contamination of the surrounding ground and surface  
26 waters; (3) the utilization of sludge byproducts containing PFAS on  
27 agricultural land, thereby leading to water and soil contamination;  
28 (4) the discharge of PFAS by wastewater treatment plants into  
29 source waters that service public drinking water systems; and (5)  
30 the contamination of private wells by groundwater containing  
31 PFAS. The widespread presence of PFAS in the water, soil, and  
32 air, results in the contamination not only of public drinking water  
33 systems and wells, but also of the food products humans and  
34 animals ingest. Plants, fish, and livestock, are commonly exposed  
35 to PFAS-contaminated water or food and are consumed daily by  
36 most Americans. Studies have indicated that exposure to PFAS,  
37 and the resulting buildup of PFAS in the human body, may be  
38 linked to certain harmful health effects in both humans and animals.

39 It is crucial to begin prohibiting the sale and distribution of  
40 products containing intentionally added PFAS within the State and  
41 to increase transparency with consumers of products that contain  
42 PFAS. In addition, there is a need for greater education  
43 surrounding PFAS and its impact on the environment and the health  
44 of the State’s citizens.