

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 834

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DATE	D-PG	OFFICIAL STATUS
01/26/2023	421	Introduction and first reading Referred to Environment, Climate, and Legacy
03/06/2023	1311a	Comm report: To pass as amended and re-refer to Commerce and Consumer Protection
03/20/2023		Comm report: To pass as amended and re-refer to State and Local Government and Veterans

1.1 A bill for an act

1.2 relating to environment; prohibiting PFAS in certain products; requiring disclosure;

1.3 authorizing rulemaking; amending Minnesota Statutes 2022, section 325F.072,

1.4 subdivisions 1, 3, by adding a subdivision; proposing coding for new law in

1.5 Minnesota Statutes, chapter 116.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [116.943] PRODUCTS CONTAINING PFAS.

1.8 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have

1.9 the meanings given.

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

1.11 (c) "Air care product" means a chemically formulated consumer product labeled to

1.12 indicate that the purpose of the product is to enhance or condition the indoor environment

1.13 by eliminating odors or freshening the air.

1.14 (d) "Automotive maintenance product" means a chemically formulated consumer product

1.15 labeled to indicate that the purpose of the product is to maintain the appearance of a motor

1.16 vehicle, including products for washing, waxing, polishing, cleaning, or treating the exterior

1.17 or interior surfaces of motor vehicles. Automotive maintenance product does not include

1.18 automotive paint or paint repair products.

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

1.20 (f) "Cleaning product" means a finished product used primarily for domestic, commercial,

1.21 or institutional cleaning purposes, including but not limited to an air care product, an

2.1 automotive maintenance product, a general cleaning product, or a polish or floor maintenance
2.2 product.

2.3 (g) "Commissioner" means the commissioner of the Pollution Control Agency.

2.4 (h) "Cookware" means durable houseware items used to prepare, dispense, or store food,
2.5 foodstuffs, or beverages. Cookware includes but is not limited to pots, pans, skillets, grills,
2.6 baking sheets, baking molds, trays, bowls, and cooking utensils.

2.7 (i) "Cosmetic" means articles, excluding soap:

2.8 (1) intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise
2.9 applied to the human body or any part thereof for the purpose of cleansing, beautifying,
2.10 promoting attractiveness, or altering the appearance; and

2.11 (2) intended for use as a component of any such article.

2.12 (j) "Currently unavoidable use" means a use of PFAS that the commissioner has
2.13 determined by rule under this section to be essential for health, safety, or the functioning
2.14 of society and for which alternatives are not reasonably available.

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

2.17 (l) "Intentionally added" means PFAS deliberately added during the manufacture of a
2.18 product where the continued presence of PFAS is desired in the final product or one of the
2.19 product's components to perform a specific function.

2.20 (m) "Juvenile product" means a product designed or marketed for use by infants and
2.21 children under 12 years of age:

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

2.29 (2) not including a children's electronic product such as a personal computer, audio and
2.30 video equipment, calculator, wireless phone, game console, handheld device incorporating
2.31 a video screen, or any associated peripheral such as a mouse, keyboard, power supply unit,
2.32 or power cord; a medical device; or an adult mattress.

3.1 (n) "Manufacturer" means the person that creates or produces a product or whose brand
3.2 name is affixed to the product. In the case of a product imported into the United States,
3.3 manufacturer includes the importer or first domestic distributor of the product if the person
3.4 that manufactured or assembled the product or whose brand name is affixed to the product
3.5 does not have a presence in the United States.

3.6 (o) "Medical device" has the meaning given "device" under United States Code, title
3.7 21, section 321, subsection (h).

3.8 (p) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of
3.9 fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

3.10 (q) "Product" means an item manufactured, assembled, packaged, or otherwise prepared
3.11 for sale to consumers, including but not limited to its product components, sold or distributed
3.12 for personal, residential, commercial, or industrial use, including for use in making other
3.13 products.

3.14 (r) "Product component" means an identifiable component of a product, regardless of
3.15 whether the manufacturer of the product is the manufacturer of the component.

3.16 (s) "Ski wax" means a lubricant applied to the bottom of snow runners, including but
3.17 not limited to skis and snowboards, to improve their grip or glide properties. Ski wax includes
3.18 related tuning products.

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

3.22 (u) "Textile furnishings" means textile goods of a type customarily used in households
3.23 and businesses, including but not limited to draperies, floor coverings, furnishings, bedding,
3.24 towels, and tablecloths.

3.25 (v) "Upholstered furniture" means an article of furniture that is designed to be used for
3.26 sitting, resting, or reclining and that is wholly or partly stuffed or filled with any filling
3.27 material.

3.28 Subd. 2. **Information required.** (a) On or before January 1, 2026, a manufacturer of a
3.29 product sold, offered for sale, or distributed in the state that contains intentionally added
3.30 PFAS must submit to the commissioner information that includes:

3.31 (1) a brief description of the product, including a universal product code (UPC), stock
3.32 keeping unit (SKU), or other numeric code assigned to the product;

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

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

4.7 (4) the name and address of the manufacturer and the name, address, and phone number
4.8 of a contact person for the manufacturer; and

4.9 (5) any additional information requested by the commissioner as necessary to implement
4.10 the requirements of this section.

4.11 (b) With the approval of the commissioner, a manufacturer may supply the information
4.12 required in paragraph (a) for a category or type of product rather than for each individual
4.13 product.

4.14 (c) A manufacturer must submit the information required under this subdivision whenever
4.15 a new product that contains intentionally added PFAS is sold, offered for sale, or distributed
4.16 in the state and update and revise the information whenever there is significant change in
4.17 the information or when requested to do so by the commissioner.

4.18 (d) A person may not sell, offer for sale, or distribute for sale in the state a product
4.19 containing intentionally added PFAS if the manufacturer has failed to provide the information
4.20 required under this subdivision and the person has received notification under subdivision
4.21 4.

4.22 Subd. 3. **Information requirement waivers; extensions.** (a) The commissioner may
4.23 waive all or part of the information requirement under subdivision 2 if the commissioner
4.24 determines that substantially equivalent information is already publicly available. The
4.25 commissioner may grant a waiver under this paragraph to a manufacturer or a group of
4.26 manufacturers for multiple products or a product category.

4.27 (b) The commissioner may enter into an agreement with one or more other states or
4.28 political subdivisions of a state to collect information and may accept information to a shared
4.29 system as meeting the information requirement under subdivision 2.

4.30 (c) The commissioner may extend the deadline for submission by a manufacturer of the
4.31 information required under subdivision 2 if the commissioner determines that more time is
4.32 needed by the manufacturer to comply with the submission requirement.

5.1 Subd. 4. **Testing required and certificate of compliance.** (a) If the commissioner has
5.2 reason to believe that a product contains intentionally added PFAS and the product is being
5.3 offered for sale in the state, the commissioner may direct the manufacturer of the product
5.4 to, within 30 days, provide the commissioner with testing results that demonstrate the amount
5.5 of each of the PFAS, identified by its chemical abstracts service registry number, in the
5.6 product, reported as an exact quantity determined using commercially available analytical
5.7 methods or as falling within a range approved for reporting purposes by the commissioner.

5.8 (b) If testing demonstrates that the product does not contain intentionally added PFAS,
5.9 the manufacturer must provide the commissioner a certificate attesting that the product does
5.10 not contain intentionally added PFAS, including testing results and any other relevant
5.11 information.

5.12 (c) If testing demonstrates that the product contains intentionally added PFAS, the
5.13 manufacturer must provide the commissioner with the testing results and the information
5.14 required under subdivision 2.

5.15 (d) A manufacturer must notify persons who sell or offer for sale a product prohibited
5.16 under subdivision 2 or 5 that the sale of that product is prohibited in this state and provide
5.17 the commissioner with a list of the names and addresses of those notified.

5.18 (e) The commissioner may notify persons who sell or offer for sale a product prohibited
5.19 under subdivision 2 or 5 that the sale of that product is prohibited in this state.

5.20 Subd. 5. **Prohibitions.** (a) Beginning January 1, 2025, a person may not sell, offer for
5.21 sale, or distribute for sale in this state the following products if the product contains
5.22 intentionally added PFAS:

5.23 (1) carpets or rugs;

5.24 (2) cleaning products;

5.25 (3) cookware;

5.26 (4) cosmetics;

5.27 (5) dental floss;

5.28 (6) fabric treatments;

5.29 (7) juvenile products;

5.30 (8) menstruation products;

5.31 (9) textile furnishings;

6.1 (10) ski wax; or

6.2 (11) upholstered furniture.

6.3 (b) The commissioner may by rule identify additional products by category or use that
6.4 may not be sold, offered for sale, or distributed for sale in this state if they contain
6.5 intentionally added PFAS and designate effective dates. A prohibition adopted under this
6.6 paragraph must be effective no earlier than January 1, 2025, and no later than January 1,
6.7 2032. The commissioner must prioritize the prohibition of the sale of product categories
6.8 that, in the commissioner's judgment, are most likely to contaminate or harm the state's
6.9 environment and natural resources if they contain intentionally added PFAS.

6.10 (c) Beginning January 1, 2032, a person may not sell, offer for sale, or distribute for sale
6.11 in this state any product that contains intentionally added PFAS, unless the commissioner
6.12 has determined by rule that the use of PFAS in the product is a currently unavoidable use.
6.13 The commissioner may specify specific products or product categories for which the
6.14 commissioner has determined the use of PFAS is a currently unavoidable use. The
6.15 commissioner may not determine that the use of PFAS in a product is a currently unavoidable
6.16 use if the product is listed in paragraph (a).

6.17 Subd. 6. Fees. The commissioner may establish by rule a fee payable by a manufacturer
6.18 to the commissioner upon submission of the information required under subdivision 2 to
6.19 cover the agency's reasonable costs to implement this section. Fees collected under this
6.20 subdivision must be deposited in an account in the environmental fund.

6.21 Subd. 7. Enforcement. (a) The commissioner may enforce this section under sections
6.22 115.071 and 116.072. The commissioner may coordinate with the commissioners of
6.23 commerce and health in enforcing this section.

6.24 (b) When requested by the commissioner, a person must furnish to the commissioner
6.25 any information that the person may have or may reasonably obtain that is relevant to show
6.26 compliance with this section.

6.27 Subd. 8. Exemptions. This section does not apply to:

6.28 (1) a product for which federal law governs the presence of PFAS in the product in a
6.29 manner that preempts state authority;

6.30 (2) a product regulated under section 325F.072 or 325F.075; or

6.31 (3) the sale or resale of a used product.

7.1 Subd. 9. Rules. The commissioner may adopt rules necessary to implement this section.
 7.2 Section 14.125 does not apply to the commissioner's rulemaking authority under this section.

7.3 Sec. 2. Minnesota Statutes 2022, section 325F.072, subdivision 1, is amended to read:

7.4 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have
 7.5 the meanings given.

7.6 (b) "Class B firefighting foam" means foam designed ~~for flammable liquid fires~~ to
 7.7 prevent or extinguish a fire in flammable liquids, combustible liquids, petroleum greases,
 7.8 tars, oils, oil-based paints, solvents, lacquers, alcohols, and flammable gases.

7.9 (c) "PFAS chemicals" or "perfluoroalkyl and polyfluoroalkyl substances" means, ~~for~~
 7.10 ~~the purposes of firefighting agents,~~ a class of fluorinated organic chemicals containing at
 7.11 least one fully fluorinated carbon atom ~~and designed to be fully functional in class B~~
 7.12 ~~firefighting foam formulations.~~

7.13 (d) "Political subdivision" means a county, city, town, or a metropolitan airports
 7.14 commission organized and existing under sections 473.601 to 473.679.

7.15 (e) "State agency" means an agency as defined in section 16B.01, subdivision 2.

7.16 (f) "Testing" means calibration testing, conformance testing, and fixed system testing.

7.17 Sec. 3. Minnesota Statutes 2022, section 325F.072, subdivision 3, is amended to read:

7.18 Subd. 3. **Prohibition of testing and training.** (a) ~~Beginning July 1, 2020,~~ No person,
 7.19 political subdivision, or state agency shall ~~discharge class B firefighting foam that contains~~
 7.20 ~~intentionally added~~ manufacture or knowingly sell, offer for sale, distribute for sale, or
 7.21 distribute for use in this state, and no person shall use in this state, class B firefighting foam
 7.22 containing PFAS chemicals.

7.23 ~~(1) for testing purposes, unless the testing facility has implemented appropriate~~
 7.24 ~~containment, treatment, and disposal measures to prevent releases of foam to the environment;~~
 7.25 ~~or~~

7.26 ~~(2) for training purposes, unless otherwise required by law, and with the condition that~~
 7.27 ~~the training event has implemented appropriate containment, treatment, and disposal measures~~
 7.28 ~~to prevent releases of foam to the environment. For training purposes, class B foam that~~
 7.29 ~~contains intentionally added PFAS chemicals shall not be used.~~

7.30 ~~(b) This section does not restrict:~~

8.1 ~~(1) the manufacture, sale, or distribution of class B firefighting foam that contains~~
 8.2 ~~intentionally added PFAS chemicals; or~~

8.3 ~~(2) the discharge or other use of class B firefighting foams that contain intentionally~~
 8.4 ~~added PFAS chemicals in emergency firefighting or fire prevention operations.~~

8.5 (b) This subdivision does not apply to the manufacture, sale, distribution, or use of class
 8.6 B firefighting foam for which the inclusion of PFAS chemicals is required by federal law,
 8.7 including but not limited to Code of Federal Regulations, title 14, section 139.317. If a
 8.8 federal requirement to include PFAS chemicals in class B firefighting foam is revoked after
 8.9 January 1, 2024, class B firefighting foam subject to the revoked requirements is no longer
 8.10 exempt under this paragraph effective one year after the day of revocation.

8.11 (c) This subdivision does not apply to the manufacture, sale, distribution, or use of class
 8.12 B firefighting foam for purposes of use at an airport, as defined under section 360.013,
 8.13 subdivision 39, until the state fire marshal makes a determination that:

8.14 (1) the Federal Aviation Administration has provided policy guidance on the transition
 8.15 to fluorine-free firefighting foam;

8.16 (2) a fluorine-free firefighting foam product is included in the Federal Aviation
 8.17 Administration's Qualified Product Database; and

8.18 (3) a firefighting foam product included in the database under clause (2) is commercially
 8.19 available in quantities sufficient to reliably meet the requirements under Code of Federal
 8.20 Regulations, title 14, part 139.

8.21 (d) Until the state fire marshal makes a determination under paragraph (c), the operator
 8.22 of an airport using class B firefighting foam containing PFAS chemicals must, on or before
 8.23 December 31 each calendar year, submit a report to the state fire marshal regarding the
 8.24 status of the airport's conversion to class B firefighting foam products without intentionally
 8.25 added PFAS, the disposal of class B firefighting foam products with intentionally added
 8.26 PFAS, and an assessment of the factors listed in paragraph (c) as applied to the airport.

8.27 **EFFECTIVE DATE.** This section is effective January 1, 2024.

8.28 Sec. 4. Minnesota Statutes 2022, section 325F.072, is amended by adding a subdivision
 8.29 to read:

8.30 Subd. 3a. **Discharge for testing and training.** A person, political subdivision, or state
 8.31 agency exempted from the prohibitions under subdivision 3 may not discharge class B
 8.32 firefighting foam that contains intentionally added PFAS chemicals for:

9.1 (1) testing purposes, unless the testing facility has implemented appropriate containment,
 9.2 treatment, and disposal measures to prevent releases of foam to the environment; or

9.3 (2) training purposes, unless otherwise required by law, and with the condition that the
 9.4 training event has implemented appropriate containment, treatment, and disposal measures
 9.5 to prevent releases of foam to the environment.

9.6 **EFFECTIVE DATE.** This section is effective January 1, 2024.

9.7 **Sec. 5. FIREFIGHTER TURNOUT GEAR; REPORT.**

9.8 (a) The commissioner of the Pollution Control Agency, in cooperation with the
 9.9 commissioner of health, must submit a report to the chairs and ranking minority members
 9.10 of the legislative committees and divisions with jurisdiction over the environment and
 9.11 natural resources regarding perfluoroalkyl and polyfluoroalkyl substances (PFAS) in turnout
 9.12 gear by January 15, 2024. The report must include:

9.13 (1) current turnout gear requirements and options for eliminating or reducing PFAS in
 9.14 turnout gear;

9.15 (2) current turnout gear disposal methods and recommendations for future disposal to
 9.16 prevent PFAS contamination; and

9.17 (3) recommendations and protocols for PFAS biomonitoring in firefighters, including
 9.18 a process for allowing firefighters to voluntarily register for biomonitoring.

9.19 (b) For the purposes of this section, "turnout gear" is the personal protective equipment
 9.20 (PPE) used by firefighters.

9.21 **Sec. 6. TEMPORARY EXEMPTION FOR TERMINALS AND OIL REFINERIES.**

9.22 Subdivision 1. **Temporary exemption.** Minnesota Statutes, section 325F.072, subdivision
 9.23 3, does not apply to the manufacture, sale, distribution, or use of class B firefighting foam
 9.24 for the purposes of use at a terminal or oil refinery until January 1, 2026.

9.25 Subd. 2. **Extension; waiver.** (a) A person who operates a terminal or oil refinery may
 9.26 apply to the state fire marshal for a waiver to extend the exemption under subdivision 1
 9.27 beyond January 1, 2026, as provided in this subdivision.

9.28 (b) The state fire marshal may grant a waiver to extend the exemption under subdivision
 9.29 1 for a specific use if the applicant provides all of the following:

10.1 (1) clear and convincing evidence that there is no commercially available replacement
10.2 that does not contain intentionally added PFAS chemicals and that is capable of suppressing
10.3 fire for that specific use;

10.4 (2) information on the amount of firefighting foam containing intentionally added PFAS
10.5 chemicals stored, used, or released on-site on an annual basis;

10.6 (3) a detailed plan, with timelines, for the operator of the terminal or oil refinery to
10.7 transition to firefighting foam that does not contain intentionally added PFAS chemicals
10.8 for that specific use; and

10.9 (4) a plan for meeting the requirements under subdivision 3.

10.10 (c) The state fire marshal must ensure there is an opportunity for public comment during
10.11 the waiver process. The state fire marshal must consider both information provided by the
10.12 applicant and information provided through public comment when making a decision on
10.13 whether to grant a waiver. The term of a waiver must not exceed two years. The state fire
10.14 marshal must not grant a waiver for a specific use if any other terminal or oil refinery is
10.15 known to have transitioned to commercially available class B firefighting foam that does
10.16 not contain intentionally added PFAS chemicals for that specific use. All waivers must
10.17 expire by January 1, 2028. A person that anticipates applying for a waiver for a terminal or
10.18 oil refinery must submit a notice of intent to the state fire marshal by January 1, 2025, in
10.19 order to be considered for a waiver beyond January 1, 2026. The state fire marshal must
10.20 notify the waiver applicant of a decision within six months of the waiver submission date.

10.21 (d) The state fire marshal must provide an applicant for a waiver under this subdivision
10.22 an opportunity to:

10.23 (1) correct deficiencies when applying for a waiver; and

10.24 (2) provide evidence to dispute a determination that another terminal or oil refinery is
10.25 known to have transitioned to commercially available class B firefighting foam that does
10.26 not contain intentionally added PFAS chemicals for that specific use, including evidence
10.27 that the specific use is different.

10.28 Subd. 3. Use requirements. (a) A person that uses class B firefighting foam containing
10.29 intentionally added PFAS chemicals under this section must:

10.30 (1) implement tactics that have been demonstrated to prevent release directly to the
10.31 environment, such as to unsealed ground, soakage pits, waterways, or uncontrolled drains;

10.32 (2) attempt to fully contain all firefighting foams with PFAS on-site using demonstrated
10.33 practices designed to contain all PFAS releases;

11.1 (3) implement containment measures such as bunds and ponds that are controlled, are
11.2 impervious to PFAS chemicals, and do not allow fire water, wastewater, runoff, and other
11.3 wastes to be released to the environment, such as to soils, groundwater, waterways, or
11.4 stormwater; and

11.5 (4) dispose of all fire water, wastewater, runoff, impacted soils, and other wastes in a
11.6 way that prevents releases to the environment.

11.7 (b) A terminal or oil refinery that has received a waiver under this section may provide
11.8 and use class B firefighting foam containing intentionally added PFAS chemicals in the
11.9 form of mutual aid to another terminal or oil refinery at the request of authorities only if
11.10 the other terminal or oil refinery also has a waiver.

11.11 **EFFECTIVE DATE.** This section is effective January 1, 2024.