LFC Requester:	Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/11/2025

Bill Number: HB 212

Check all that apply:

Original ___ Correction ___

Amendment ___ Substitute X

Sponsor: Rep. Joanne J. Ferrary; Rep. Dayan Hochman-Vigil; Rep. Debra M. Sariñana; Rep. Kathleen Cates & Sen. Jeff Steinborn.

Agency Name and Code Number: 305 – New Mexico Department of Justice

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Short Title: Per- & Poly-Fluoroalkyl Protection Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis

HB 212 seeks to prohibit the sale and distribution of products with intentionally added (IA) per- and poly-fluoroalkyl substances (PFAS) in the State of New Mexico, subject to several exemptions.

Section 1: states that the bill's short title is the "Per- and Poly-Fluoroalkyl Substances Protection Act."

Section 2: gives twenty-four definitions of words and terms within the Act; it defines "manufacturer" to include importers or first domestic distributors of foreign products. It also defines "medical device" to be, *inter alia*, "a product regulated as a drug or medical device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act."

Section 3:

- Subsection (A) provides exemptions to the Act's general prohibition on IA PFAS products for: products regulated by federal law; used products; medical devices or drugs regulated by the U.S. Food and Drug Administration (FDA); certain cooling and heating equipment acceptable under EPA regulations; veterinary products; public health and environmental monitoring products; motor vehicle equipment regulated under federal standards; watercraft and seaplanes; semi-conductors; non-consumer electronics and laboratory equipment; manufacturing and development equipment for exempt products; product determined by the environmental improvement board (EIB) to have currently unavoidable use of IA PFAS; and consumer products that may be approved for sale by the EIB pursuant to a PFAS stewardship program.
- Subsection (B) prohibits the State or a person acting on behalf of the state from purchasing a product that contains IA PFAS, beginning January 1, 2027.
- Subsection (C) prohibits manufacturers from selling or distributing products that contain IA PFAS in a certain set of categories, including firefighting foam, effective January 1, 2027.
- Subsection (D) extends that prohibition to a broader set of categories with an effective date of January 1, 2028.

- Subsection (E) authorizes the EIB to promulgate rules to prohibit consumer products that contain IA PFAS, "upon a finding that a prohibition on the product is necessary to protect human health or the environment."
- Subsection (F) prohibits manufacturers from selling or distributing any products containing IA PFAS, effective January 1, 2029, unless the EIB designates the use of IA PFAS in such products as "a currently unavoidable use." It prohibits the product categories in subsections (C) and (D) from being exempted under subsection (F).
- Subsection (G) provides that the New Mexico Environment Department (NMED) will consult with the New Mexico Department of Agriculture before petitioning the EIB to prohibit agricultural products such as fertilizer and pesticides under the Act.

Section 4:

- Subsection (A) authorizes the EIB to adopt rules to create ranges for measuring the amount of IA PFAS in non-exempt products for reporting purposes; adopt rules to identify "currently unavoidable uses" of IA PFAS in non-exempt products that are "essential for health, safety or the functioning of society and for which alternatives are not reasonably available"; and as to firefighting foam, require a "periodic inventory of firefighting foam quantities stored or used in New Mexico," require the foam be used for emergencies only, and require any cleanup of such foam under New Mexico's Hazardous Waste Act.
- Subsection (B) gives the EIB the authority to promulgate any "other rules the board deems necessary" to carry out the Act, and to consider other states' determinations about what are currently unavoidable uses for products containing IA PFAS.

Section 5:

- Subsection (A) authorizes the EIB to adopt rules that "enumerate the information required of a manufacturer" and that are necessary for NMED to implement the Act, and lists five types of information, such as product description and the purpose for which PFAS is used in the product.
- Subsection (B) requires manufacturers selling or distributing products in the state to submit to NMED the information required in Subsection (A) by January 1, 2027.
- Subsection (C) prohibits the sale and distribution of products that NMED has discovered though testing contain IA PFAS and for which the manufacturers have not provided the information required in Subsection (A).
- Subsection (D) prohibits manufacturers from selling or distributing products with IA PFAS unless the manufacturer has submitted the information required in (A).
- Subsection (E) requires manufacturers to submit revised product information within 30 days of a significant change or upon NMED's request.
- Subsection (F) provides that a manufacturer may provide information "for a category or type of product or product component," if NMED approves.
- Subsection (G) provides that NMED may waive a manufacturer's information submission requirement if "substantially equivalent information is already publicly available," and this waiver may be granted to a group of manufacturers or a product category.
- Subsection (H) allows NMED to enter into agreements with other states or political subdivisions to share information.
- Subsection (I) allows NMED to extend the deadline for information submission if NMED determines an extension is merited.
- Subsection (J) provides that NMED will notify the manufacturer either that sufficient

information has been received or that additional information is required.

Section 6:

- Subsection (A) authorizes NMED to order a manufacturer to provide it with test results showing which PFAS substances are in its product, and in what exact quantities, within thirty days.
- Subsection (B) provides that, if no IA PFAS are detected in that testing, a manufacturer may provide NMED with a certificate of compliance.
- Subsection (C) provides that if testing shows that a product contains IA PFAS, the manufacturer must provide NMED with the information required under the Act, notify persons that sell or distribute the product that the product is prohibited, and provide NMED with a list of and contact information for the retailers and distributors for that product.
- Subsection (D) allows NMED to notify a seller that a product is prohibited in this state.
- Subsection (E) exempts FDA-regulated medical devices and drugs from this section.

Section 7:

- Subsection (A) provides that a person who violates the Act will incur a civil penalty up to $15,000, and a daily fee covering administrative costs.
- Subsection (B) provides that failure to comply with an administrative order will incur a civil penalty up to $25,000 "for each day of noncompliance."
- Subsection (C) provides that these penalties are "independent of any damages, remediation or cleanup costs," and any nonmonetary remedies that may be imposed.
- Subsection (D) relates to enforcement actions and states that NMED will be represented by the attorney general or NMED, that municipalities may be represented by the attorney general or the municipality, and counties will be represented by their district attorneys.
- Subsection (E) directs that penalties collected under this section will go to "recycling and illegal dumping fund."

FISCAL IMPLICATIONS

The proposed legislation creates new duties for the New Mexico Department of Justice (NMDOJ) to enforce the Act's provisions, in conjunction with NMED and municipalities under section 7(D). This additional enforcement duty may have fiscal implications for the NMDOJ, as additional resources will be required to meet its obligations. It is unclear how many, if any, additional Full-Time Equivalent personnel may be necessary to provide adequate representation to NMED and municipalities under Section 7(D).

Section 7(E) specifies that the civil penalties collected through enforcement actions will go to the "recycling and illegal dumping fund," so HB 212 does not provide for the NMDOJ to use penalties to cover enforcement and oversight costs.

SIGNIFICANT ISSUES

Question whether the Legislature intends that the Section 6 requirements apply to other exempt products in Section 3, not just the medical devices or drugs referred to in Section 6(E)?

Section 3(A)(6) exempting products "developed or manufactured for the purpose of public

health" might be read quite broadly. A more specific description of what that exemption does might provide more clarity for industries and manufacturers.

PERFORMANCE IMPLICATIONS

As drafted, HB 212 would add enforcement responsibilities to the NMDOJ.

ADMINISTRATIVE IMPLICATIONS

As drafted, HB 212 would add enforcement responsibilities to the NMDOJ.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None detected.

TECHNICAL ISSUES

Section 2 and Section 4(A)(3): a definition may be needed for "fire suppression systems" to clarify what is not covered under the "emergency purposes" exemption for firefighting foam.

Section 3(A)(4): this exemption reads: "acceptable subject to use conditions or acceptable to narrowed use limited by the United States environmental protection agency pursuant to the significant new alternatives policy program, 40 Code of Federal Regulations, Part 82, Subpart G." As written, it is unclear what the "use conditions" are, and if these are related to the EPA program referenced here or if they are something that the EIB or another entity decides. Are "acceptable subject to use conditions" and "acceptable pursuant to the significant new alternatives policy program" two different ways in which this category of products with IA PFAS can be exempted? If so, perhaps adding romanettes might make the alternatives clearer, e.g.:

> cooling, heating, ventilation, air conditioning or refrigeration equipment that contains intentionally added per- or poly-fluoroalkyl substances or refrigerants listed as:
>
> **(i)** acceptable subject to use conditions **[say more about what these are/where they come from]**; or
> **(ii)** acceptable to narrowed use limits by the United States environmental protection agency pursuant to the significant new alternatives policy program, 40 Code of Federal Regulations, Part 82, Subpart G
>
> and sold, offered for sale or distributed for sale for the use for which the refrigerant is listed pursuant to that program;

Section 4(A) was difficult to follow because of the tagged-on references to the exemptions in Section A(3). If the intended meaning is the same consider the following:

> A. Except for products exempted in Subsection A of Section 3 of the Per- and Poly-Fluoroalkyl Substances Protection Act, the board shall adopt rules to:
> (1) create a series of ranges for the amount …for reporting purposes;
> (2) identify current unavoidable uses of a per- or poly-fluoroalkyl substance that are essential for health, . . . are not reasonably available; and
> (3) as pertaining to firefighting foam . . . . fire suppression systems.

Section 5(C) and (D): These subsections state that they are effective "***Prior** to* January 1, 2028."

Section 6 and Section 2(R): There's a disparity between the definition of "medical device" in Section 2(R) and the exemption in Section 6(E) for medical devices. Section 2(R) defines "medical device" to be, *inter alia*, "a product regulated as a drug or medical device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act." But the Section 6(E) exemption exempts medical devices regulated by the FDA, irrespective of which federal statute the FDA uses to regulate them. So, the Section 2 definition is narrower than the Section 6(E) exemption.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A