

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S

1

SENATE BILL 638

Short Title: PFAS Manufacture/Use/Sale Ban. (Public)

Sponsors: Senators Garrett, Woodard, and Mayfield (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 7, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO BAN THE MANUFACTURE, USE, AND DISTRIBUTION OF PFAS AND
3 PFAS-CONTAINING PRODUCTS WITHIN THE STATE IN ORDER TO PROTECT
4 PUBLIC HEALTH.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. BAN PFAS**

8 **SECTION 1.** Article 21A of Chapter 143 of the General Statutes is amended by
9 adding a new Part to read:

10 "Part 8. Ban Manufacture, Use, and Distribution of Certain Toxic Chemicals.

11 "**§ 143-215.104LL. Prohibition on manufacture, use, and distribution of PFAS within the**
12 **State.**

13 (a) No person may knowingly do any of the following:

14 (1) Manufacture PFAS for use within the State or manufacture PFAS for export
15 from the State.

16 (2) Use any PFAS for the production of any product within the State, or for export
17 from the State, except for products specifically authorized or required to
18 contain PFAS under federal law.

19 (3) Process or distribute in commerce any PFAS, or any product containing
20 PFAS, for use within the State or for export from the State, except for products
21 specifically authorized or required to contain PFAS under federal law.

22 (b) For purposes of this section, "PFAS" means per-fluoroalkyl and poly-fluoroalkyl
23 substances, a class of fluorinated organic chemicals containing at least one fully fluorinated
24 carbon atom.

25 "**§ 143-215.104MM. Civil penalties.**

26 (a) The Secretary may assess a civil penalty of not more than five thousand dollars
27 (\$5,000) or, if the violation involves a hazardous waste, as defined in G.S. 130A-290, of not more
28 than twenty-five thousand dollars (\$25,000) against any person who violates a requirement of
29 this Part.

30 (b) If any action or failure to act (b) for which a penalty may be assessed under subsection
31 (a) of this section is a repeat offense, the Secretary may assess a penalty not to exceed ten
32 thousand dollars (\$10,000) per occurrence. A penalty for multiple occurrences shall not exceed
33 two hundred thousand dollars (\$200,000) in any month.

34 (c) In determining the amount of the penalty, the Secretary shall consider the factors set
35 out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty
36 assessments that are presented to the Commission for final agency decision.



1 (d) The Secretary shall notify any person assessed a civil penalty for the assessment and
2 the specific reasons therefor by registered or certified mail or by any means authorized by
3 G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30
4 days of receipt of the notice of assessment.

5 (e) Requests for remission of civil penalties shall be filed with the Secretary. Remission
6 requests shall not be considered unless made within 30 days of receipt of the notice of assessment.
7 Remission requests must be accompanied by a waiver of the right to a contested case hearing
8 pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the
9 assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission
10 requests may be resolved by the Secretary and the violator. If the Secretary and the violator are
11 unable to resolve the request, the Secretary shall deliver the remission request and the
12 recommended action to the Committee on Civil Penalty Remissions of the Environmental
13 Management Commission appointed pursuant to G.S. 143B-282.1(c).

14 (f) If any civil penalty has not been paid within 30 days after notice of assessment has
15 been served on the violator, the Secretary shall request the Attorney General to institute a civil
16 action in the superior court of any county in which the violator resides or the violator's principal
17 place of business is located in order to recover the amount of the assessment, unless the violator
18 contests the assessment as provided in subsection (d) of this section or requests remission of the
19 assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty
20 has not been paid within 30 days after the final agency decision or order has been served on the
21 violator, the Secretary shall request the Attorney General to institute a civil action in the superior
22 court of any county in which the violator resides or the violator's principal place of business is
23 located to recover the amount of the assessment. A civil action must be filed within three years
24 of the date the final agency decision or court order was served on the violator."

25 **PART II. FUNDING FOR PFAS MONITORING AND ENFORCEMENT**

26 **SECTION 2.** There is appropriated from the General Fund to the Department of
27 Environmental Quality the sum of one hundred thousand dollars (\$100,000) in nonrecurring
28 funds for the 2021-2022 fiscal year to fund additional monitoring and enforcement activities to
29 address PFAS contamination in the State.
30

31 **PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

32 **SECTION 3.** If any section or provision of this act is declared unconstitutional or
33 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
34 the part so declared to be unconstitutional or invalid.
35

36 **SECTION 4.** This act is effective when it becomes law.