

PFAS UPDATE: CHILDREN'S PRODUCTS REGULATIONS, FEBRUARY 2023

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This blog was originally published in February 2023. [Visit our up-to-date blog on PFAS in children's products: state-by-state regulations >](#)

PFAS in Children's Products has become a major focus for state regulators across the country, prompting some of the most stringent PFAS restrictions in consumer products. So far, seven states have enacted regulations concerning PFAS substances in Children's or Juvenile Products ("Children's Products"). Six other states have proposed Children's Products regulations in 2022 or 2023, and many of these are expected to continue to move through the legislative process in future months.

This Client Alert provides an overview of the state regulatory landscape for PFAS in Children's Products to help impacted businesses evaluate their compliance obligations and potential risk.

STATE REGULATIONS

While other industries have been given more time to phase out the use of PFAS in their products, the legislation that applies to Children's Products has been some of the most stringent and immediate. While the specifics of the state laws are discussed in more detail below, the following is a brief summary of the relevant compliance deadlines for the enacted laws:

- Currently in effect
 - Maine – Notification
 - Oregon - Notification
 - Vermont - Notification and possible prohibition
 - Washington - Notification

- Coming soon

- California
 - Effective date: July 1, 2023

 - Prohibition and possible reformulation

- Colorado
 - Effective date: January 1, 2024

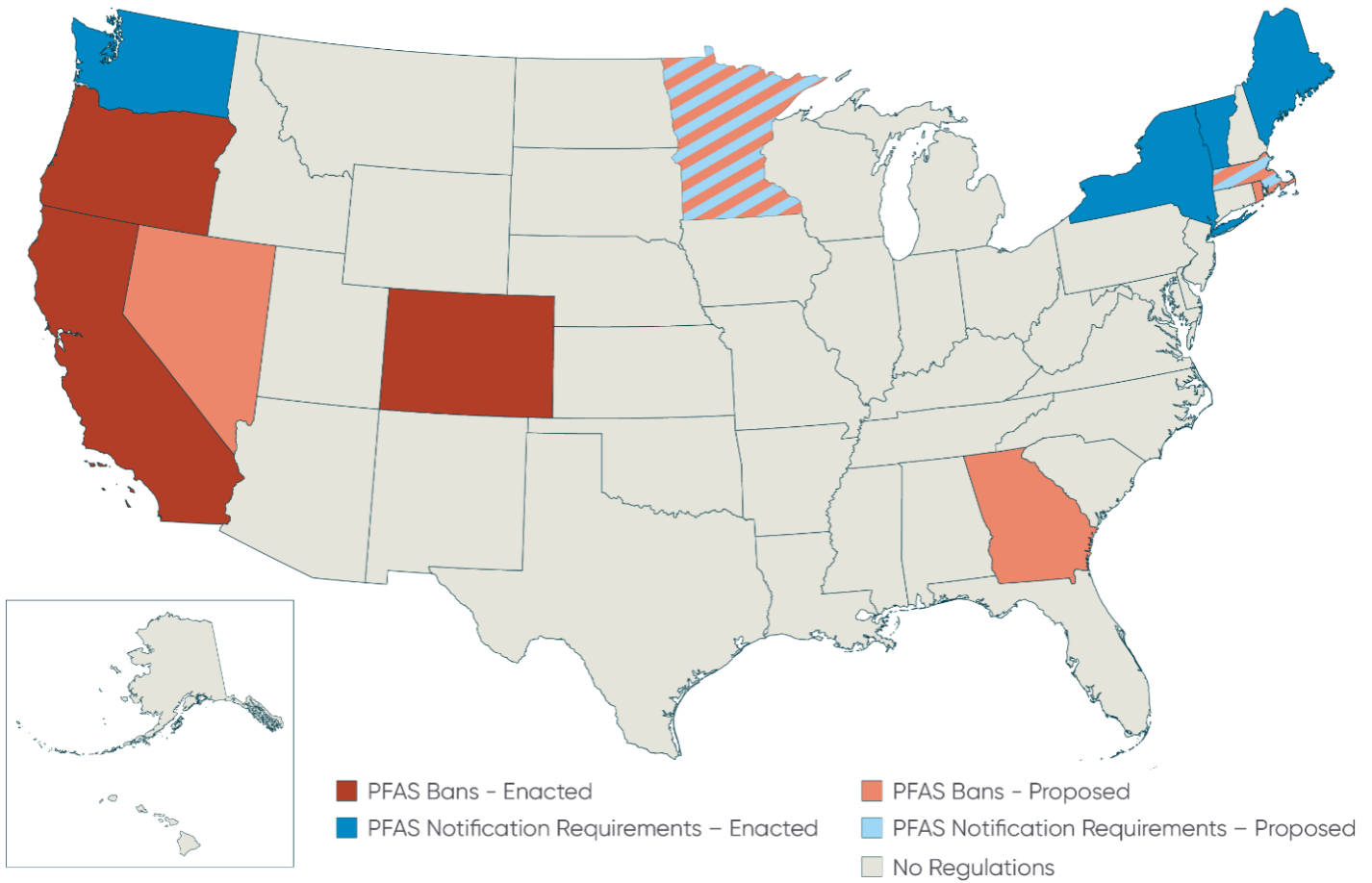
 - Prohibition

- Oregon
 - Effective date: Approximately six years from chemical listing

 - Possible prohibition

A map showing the states that have enacted or proposed regulations regarding Children's Products is below, along with a detailed chart providing more information on the specific provisions of those regulations. Because the regulation of Children's Products is developing, it is important to note that this client alert reflects the status of state legislation regarding PFAS in Children's Products as of **February 1, 2023**.

ENACTED AND PROPOSED PFAS CHILDREN'S PRODUCTS REGULATIONS



As of February 1, 2023

Enacted Laws and Regulations				
	State	Children's Products Description	Regulatory Status	Details
	California	<p>After July 1, 2023, a person, including a manufacturer, shall not sell or distribute any new juvenile product that contains regulated PFAS chemicals. A manufacturer shall use the least toxic alternative when replacing PFAS chemicals in a juvenile product.</p> <p>“Regulated PFAS” means either of the following:</p>	<p>Enacted: Beginning on July 1, 2023</p>	<p>AB 652</p>

		<p>(1) PFAS that has been intentionally added to a product that creates either a functional or technical effect.</p> <p>(2) The presence of PFAS in a product is at or above 100 ppm, as measured in total organic fluorine.</p> <p>“Juvenile product” means a product designed for use by infants or children under 12 years of age, including, but not limited to, a baby or toddler foam pillow, bassinet, bedside sleeper, booster seat, changing pad, child restraint system for use in motor vehicles and aircraft, co-sleeper, crib mattress, floor play mat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant sleep positioner, infant swing, infant travel bed, infant walker, nap cot, nursing pad, nursing pillow, play mat, playpen, play yard, polyurethane foam mat, pad, or pillow, portable foam nap mat, portable infant sleeper, portable hook-on chair, soft-sided portable crib, stroller, and toddler mattress.</p>		
	<p>Colorado</p>	<p>After January 1, 2024, a person shall not sell or distribute any juvenile product with intentionally added PFAS chemicals.</p> <p>“Intentionally added” means PFAS chemicals that a manufacturer has added to a product that has created either a functional or technical effect on that product.</p> <p>“Juvenile product” means a product designed for use by infants or children under 12 years of age, including bassinets and other bedside sleepers; booster seats, car seats, and other child restraint devices; changing pads; co-sleepers; crib or toddler mattresses; floor play mats; highchairs and highchair pads; infant bouncers; infant carriers; infant or toddler foam pillows; infant seats; infant sleep positioners; infant swings;</p>	<p>Enacted: Beginning on January 1, 2024</p>	<p>HB22-1345</p>

		<p>infant travel beds; infant walkers; nap cots; nursing pads and pillows; play mats; playpens; play yards; polyurethane foam mats, pads, or pillows; portable foam nap mats; portable infant sleepers and hook-on chairs; soft-sided portable cribs; and strollers. This definition is subject to some exceptions.</p>		
<p>Maine</p>	<p>Effective currently, manufacturers or distributors of the following children’s products that contain intentionally added amounts of PFOS or its salts must submit information to the Maine Department of Environmental Protection: child care articles; clothing; footwear; sleepwear; toys; cookware, tableware, reusable food and beverage containers; cosmetics and personal care products; craft supplies; electronic devices; and household furniture and furnishings.</p> <p>PFOS and its salts appear on the list of chemicals of high concern.</p> <p>“Intentionally-added” means a chemical that was added during the manufacture of a product to provide a specific characteristic, appearance or quality, or to perform a specific function.</p>	<p>Currently Enacted</p>	<p>06-096, Ch. 890 and Related information</p>	
<p>New York</p>	<p>Effective currently, every manufacturer who offers a children’s product for sale or distribution that contains a chemical of concern shall report to the New York Department of Environmental Conservation. This reporting does not apply to used products that are sold or distributed in numerous venues.</p> <p>Chemicals of Concern includes PFOA and related substances and PFOS and its salts.</p> <p>“Children’s Product” means a product intended for children, such as baby products, toys, car seats, school supplies, personal care products, a product designed or intended by the</p>	<p>Currently Enacted</p>	<p>A6296A and Related information</p>	

		<p>manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, children’s novelty products, children’s jewelry, children’s bedding, furniture, furnishings, and apparel. This definition is subject to some exceptions.</p>		
Oregon	<p>Effective currently, a manufacturer of a children’s product sold or offered for sale that contains a chemical included on the list in an amount above a de minimis level shall provide a notice to the Oregon Health Authority.</p> <p>Additionally, effective currently, before the time when a manufacturer of a children’s product submits the third biennial notice (e.g. approximately six years after chemical listing), the manufacturer must remove or make a substitution if the chemical is present in a children’s product that is mouthable; a children’s cosmetic; or marketed to children under three years of age. Certain manufacturers are subject to exemptions.</p> <p>PFOS and its salts are included as Chemicals of High Concern to children under the statute.</p> <p>“Children’s product” is any of the following products that are made for children under 12 years of age: a product designed or intended by the manufacturer to facilitate sucking, teething, sleep, relaxation, feeding or drinking; children’s clothing and footwear; car seats; children’s cosmetics; children’s jewelry; and toys. This definition is subject to some exceptions.</p> <p>“De minimis level” is a chemical that is an intentionally added chemical, the practical quantification limit; or for a chemical that is a contaminant, a concentration of 100 ppm.</p>	Currently Enacted	<p>431A.250 et seq.</p> <p>and</p> <p>Related information</p>	
Vermont	<p>Effective currently, a manufacturer of a children’s</p>	Currently	18 Ch. 38A	

		<p>product shall submit a notice for each chemical of high concern to the Vermont Department of Health if the chemical is: (1) intentionally added to a children’s product; or (2) present as a contaminant at a concentration of 100 ppm or greater.</p> <p>Additionally, effective currently, state organizations may adopt a rule to regulate the sale or distribution of a children’s product containing a chemical of high concern if exposure to the chemical may cause or contribute to an adverse health impact.</p> <p>Chemicals of High Concern: PFOS and its salts, PFHxS, PFHpA, and PFNA.</p> <p>“Children’s product” means any consumer product marketed or distributed to children including: toys; children’s cosmetics; a product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or child car seats. This definition is subject to some exceptions.</p> <p>“Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.</p>	Enacted	<p>VSA §1771 et seq.</p> <p>and</p> <p>Related information</p>
Washington		<p>The manufacturer of a children's product sold or offered for sale that contains a chemical of high concern to children in an amount above a de minimus level must report information to the Washington Department of Health.</p> <p>Chemicals of High Concern to Children: PFOA and its salts and PFOS and its salts.</p> <p>"Children's product" includes any of the following: toys; children's cosmetics; children's jewelry; a product designed or intended by the</p>	Currently Enacted	<p>WAC 173-334 et seq.</p> <p>and</p> <p>Related information</p>

		<p>manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or portable infant or child safety seat designed to attach to an automobile seat. This definition is subject to some exceptions.</p> <p>"De minimis level" means for a chemical that is an intentionally added chemical, a concentration below the practical quantification limit; or for a chemical that is a contaminant, a concentration below 100 ppm.</p> <p>"Intentionally added chemical" means a chemical in a product that serves an intended function in the product component.</p>		
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Proposed bills				
	State	Children's Products Description	Regulatory Status	Details
	Georgia	<p>No person, including a manufacturer, shall distribute or sell any new juvenile product that contains regulated PFAS. A manufacturer shall use the least toxic alternative when replacing regulated PFAS in a juvenile product.</p> <p>"Regulated PFAS" means either: (1) PFAS that a manufacturer has intentionally added to a product that has created either a functional or technical effect; or (2) the presence of PFAS in a product at or above 100 ppm, as measured in total organic fluorine.</p> <p>"Juvenile product" means a product designed for use by infants and children under 12 years of age, including, but not limited to, a baby or toddler foam pillow, bassinet, bedside sleeper, booster seat, changing pad, child restraint</p>	Proposed Ban	HB 1629

		<p>system for use in motor vehicles and aircraft, co-sleeper, crib mattress, floor play mat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant sleep positioner, infant swing, infant travel bed, infant walker, nap cot, nursing pad, nursing pillow, play mat, playpen, play yard, polyurethane foam mat, pad, or pillow, portable foam nap mat, portable infant sleeper, portable hook-on chair, soft-sided portable crib, stroller, and toddler mattress. This definition is subject to some exceptions.</p>		
Massachusetts	<p>A manufacturer of a children’s toy that contains a chemical included on the current chemicals of concern list shall notify the Massachusetts Department of Environmental Protection on a biennial basis.</p> <p>“Children’s toy” is a product designed or intended by the manufacturer to be used by a child at play.</p>	Proposed Bill No. I – Notification Requirement	S2676	
Massachusetts	<p>No manufacturer, wholesaler or retailer shall sell or distribute for use a children’s product or product component containing regulated PFAS.</p> <p>“Children’s product”, consumer products intended, made or marketed for use by children 12 years of age or under , including: (i) toys; (ii) children’s clothing; (iii) children's cosmetics and personal care products; (iv) children's jewelry and novelty products; (v) children’s school supplies; (vi) children’s arts and crafts supplies, including model making supplies (vii) children’s bedding, furniture, and furnishings; (viii) child car seats; (ix) products to help a child with sucking or teething, or to facilitate sleep, relaxation, or the feeding of a child; (x) artificial turf fields installed on school properties, publicly owned properties, or intended for use</p>	Proposed Bill No. II – Ban	SD1473	

		by children under the age of 18. This definition is subject to some exceptions.		
Minnesota		<p>A person must not manufacture, sell, or distribute any new juvenile product that contains PFAS substances.</p> <p>"Juvenile product" means a product designed or marketed for use by infants and children under 12 years of age, including but not limited to, a baby or toddler foam pillow; bassinet; bedside sleeper; booster seat; changing pad; child restraint system for use in motor vehicles and aircraft; co-sleeper; crib mattress; highchair; highchair pad; infant bouncer; infant carrier; infant seat; infant sleep positioner; infant swing; infant travel bed; infant walker; nap cot; nursing pad; nursing pillow; play mat; playpen; play yard; polyurethane foam mat, pad, or pillow; portable foam nap mat; portable infant sleeper; portable hook-on chair; soft-sided portable crib; stroller; and toddler mattress. This definition is subject to some exceptions.</p>	Proposed Bill No. I – Ban	HF552
Minnesota		<p>A manufacturer of a product for sale that contains intentionally added PFAS must submit a written notification to the Minnesota Pollution Control Agency. Also, beginning on January 1, 2025, a person may not sell, or distribute a juvenile product if it contains intentionally added PFAS.</p> <p>"Juvenile product" means a product designed or marketed for use by infants and children under 12 years of age: including but not limited to a baby or toddler foam pillow; bassinet; bedside sleeper; booster seat; changing pad; child restraint system for use in motor vehicles and aircraft; co-sleeper; crib mattress; highchair; highchair pad; infant bouncer; infant carrier; infant seat; infant sleep positioner; infant swing;</p>	Proposed Bill No. II – Notification Requirement	SF834

		<p>infant travel bed; infant walker; nap cot; nursing pad; nursing pillow; play mat; playpen; play yard; polyurethane foam mat, pad, or pillow; portable foam nap mat; portable infant sleeper; portable hook-on chair; soft-sided portable crib; stroller; and toddler mattress. This definition is subject to some exceptions.</p> <p>"Intentionally added" means PFAS deliberately added during the manufacture of a product where the continued presence of PFAS is desired in the final product or one of the product's components to perform a specific function.</p>		
Nevada	<p>A manufacturer shall not sell or distribute any children's product if it contains intentionally added PFAS substances.</p> <p>"Children's product" means a product designed by a manufacturer for use by an infant or child less than 12 years of age, including, without limitation, a bassinet, child restraint system for use in motor vehicles, changing pad, toddler mattress, crib mattress or other sleep product for infants, high chair, infant carrier, infant seat, polyurethane foam mat, pad or pillow, nap cot, play mat, playpen or stroller. This definition is subject to some exceptions.</p> <p>"Intentionally added" means PFAS substances that a manufacturer has intentionally added to a product and that have a functional or technical effect on the product. The term includes PFAS substances that are intentional breakdown products of an added chemical.</p>	Proposed Ban	SB76	
Rhode Island	<p>A person, including a manufacturer, shall not sell or distribute any new juvenile product that contains PFAS. There are also notification and reporting requirements.</p>	Proposed Ban	SB16	

		<p>"Juvenile product" means a product designed for use by infants and children under twelve years of age, including, but not limited to, a baby or toddler foam pillow, bassinet, bedside sleeper, booster seat, changing pad, child restraint system for use in motor vehicles and aircraft, co-sleeper, crib mattress, floor play mat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant sleep positioner, infant swing, infant travel bed, infant walker, nap cot, nursing pad, nursing pillow, play mat, playpen, play yard, polyurethane foam mat, pad, or pillow, portable foam nap mat, portable infant sleeper, portable hook-on chair, soft-sided portable crib, stroller, and toddler mattress. This definition is subject to some exceptions.</p>		
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No PFAS Children’s Product Regulations (as of the date of publication)

Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

COMPLIANCE STEPS AND RISK MITIGATION FOR BUSINESSES

The following are some initial steps that you can take to evaluate and mitigate your potential regulatory risk based on your manufacturing, distribution, or sale of Children’s Products that contains PFAS compounds.

The obvious first step is to determine if your business manufactures, distributes, or sells any Children’s Products containing PFAS materials. However, that question can be more difficult to answer than it initially appears, so here are a few fundamental questions that can guide your investigation:

- If you manufacture Children’s Products, do you intentionally add or introduce PFAS substances in any amount?
- Answering this question may require discussions with raw materials vendors, and an examination of your manufacturing process and process equipment, including potential

PFAS contamination of process water, if any is used as part of your operations.

- Does your business sell, distribute, offer for sale, or use materials to which PFAS substances have been intentionally added?
 - Once again, the answer to this question will likely rely on discussions with your suppliers and vendors.
 - Companies should also review their purchase agreements and contracts with suppliers and customers to understand who is liable in the event that there is a sale of non-compliant products.
 - Note that some states have additional requirements. For example, in California, an additional threshold is whether your Children's Product contains more than 100 ppm of total organic fluorine.

The evaluation of product inventory is a complicated and time-consuming process, so companies should start their investigation well in advance of regulatory deadlines, especially in light of potential lead times to develop and manufacture replacement products.

CONCLUSION

As of the date of this publication, seven states have enacted various laws regulating PFAS in Children's Products and six states have proposed similar legislation. We expect this trend to continue, so members of the Children's Products industry should evaluate their current use of the chemistry, and develop a compliance strategy.

For more information on PFAS chemicals, and the regulatory and liability risks that they pose, please visit our [PFAS webpage](#). If you have a question Children's Products regulations in any jurisdiction, contact Tom Lee, John Kindschuh, Emma Cormier, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

MEET THE TEAM



Thomas S. Lee

San Francisco

tom.lee@bcplaw.com

[+1 415 675 3447](tel:+14156753447)



Emma R. Cormier

St. Louis

emma.cormier@bcplaw.com

[+1 314 259 2160](tel:+13142592160)



John R. Kindschuh

St. Louis

john.kindschuh@bcplaw.com

[+1 314 259 2313](tel:+13142592313)

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