
A BILL FOR AN ACT

To protect the people of the Commonwealth of the Northern Mariana Islands from Per and Polyfluoroalkyl Substances (PFAS) contamination.

**BE IT ENACTED BY THE TWENTY-SECOND NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Title.** This Act shall be known as the “The Commonwealth of the
2 Northern Mariana Islands Protection from PFAS Act.”

3 **Section 2. Findings and Purpose.** The Legislature finds that according to
4 extensive scientific research, certain per- and polyfluoroalkyl substances (PFAS) are
5 harmful synthetic compounds that pose significant health and environmental
6 consequences.

7 Also known as “forever chemicals,” PFAS have been used in a wide variety of
8 consumer products and industrial applications, including, but not limited to, clothing,
9 cookware, food packaging, carpets and upholstery, firefighting foam, electronics, and
10 construction materials. A common source of PFAS contamination in the Commonwealth
11 of the Northern Mariana Islands (Commonwealth) is aqueous film-forming foam (AFFF),
12 which contained concentrated PFAS and was utilized at fire training locations, Department
13 of Defense installations, airports, and other fire-response sites.

14 Scientific studies show that exposure to certain “long-chain” PFAS, including
15 perfluorooctane sulfonic acid (PFOS), perfluorooctanoic acid (PFOA), and
16 perfluorononanoic acid (PFNA), can lead to adverse human health effects, including
17 increased cholesterol levels, preeclampsia, decreased fertility among women,
18 developmental effects on infants, negative effects on the immune system, ulcerative colitis,
19 kidney and testicular cancer, and thyroid hormone disruption. PFAS contamination is
20 extremely persistent in the environment and in the human body, as these chemicals are

1 resistant to typical environmental degradation processes and bioaccumulate and persist in
2 the human body over time.

3 There is ample evidence showing that the manufacturers of long-chain PFAS and/or
4 AFFF containing long-chain PFAS have understood the risks of PFAS chemicals for
5 decades and actively sought to conceal their danger. As early as the 1960s, these
6 manufacturers were aware of the dangers posed by long-chain PFAS based on internal
7 animal and human studies, including studies of their own workers. Despite this knowledge,
8 these manufacturers hid the studies from the public at large, regulators, and their own
9 employees. These manufacturers knew of the significant harm to humans and the
10 environment caused by long-chain PFAS and failed to warn the Commonwealth and its
11 agencies, including the Commonwealth Utilities Corporation (CUC) and the
12 Commonwealth Ports Authority (CPA), their customers, and the public at large. Instead
13 of providing the required or necessary warnings, these manufacturers actively concealed
14 the dangers of long-chain PFAS and/or AFFF containing long-chain PFAS for decades.

15 The Commonwealth's water providers and agencies and private well owners have
16 been impacted by PFAS contamination through no fault of their own. The cost of
17 remediating this contamination may result in dramatically higher water and sewer rates for
18 end users. The existence of these man-made chemicals in the Commonwealth's
19 groundwater and drinking water requires a strategy to protect, preserve, and enhance the
20 water on which the Commonwealth's citizens and natural environment rely.

21 PFAS is ingested by humans, and then bioaccumulates and persists in humans,
22 through a variety of pathways, but especially through drinking water, and vulnerable
23 populations such as children, infants, and pregnant or breast-feeding women are especially
24 susceptible. In the case of pregnant or breastfeeding women, PFAS can be transferred to
25 babies through umbilical cord blood or breast milk. In 2016, the United States
26 Environmental Protection Agency (USEPA) established a health advisory level (HAL) for
27 combined PFOS and PFOA in drinking water at 70 parts per trillion (ppt), or 70 ng/L, based
28 on this concern. In June 2018, the Agency for Toxic Substances and Disease Registry
29 (ATSDR) of the U.S. Department of Health and Human Services released a draft

1 Toxicological Profile for Perfluoroalkyls. The ATSDR set minimal risk levels in drinking
2 water for: (1) PFOA at 78 ppt (adult) and 21 ppt (child); (2) PFOS at 52 ppt (adult) and 14
3 ppt (child); and (3) PFNA at 78 ppt (adult) and 21 ppt (child). Numerous states, including
4 California, Connecticut, Massachusetts, Michigan, Minnesota, New Hampshire, New
5 Jersey, New York, North Carolina, Vermont, Washington, and Wisconsin, have taken
6 aggressive action to address PFAS contamination, especially in drinking water, and have
7 set or are in the process of setting PFAS response levels, including maximum contaminant
8 levels, at or below USEPA's HAL based on an increasing number of scientific studies
9 demonstrating increased and substantial risk to human health and to the environment.

10 Between 2015 and 2016, the Commonwealth's wells in Saipan were tested for
11 PFAS during the USEPA's Third Unregulated Contaminant Monitoring Rule (UCMR3).
12 The testing conducted by CUC showed PFAS contamination in multiple tanks and wells
13 from the Isley, Koblerville, and Obyan aquifer areas.

14 Since 2016, tests of numerous reservoirs and wells in Saipan have shown
15 concentrations of PFAS chemicals above the USEPA's HAL, resulting in multiple wells
16 being removed from service and the issuance of CUC health advisories to several villages,
17 including Chalan Laulau, Iliyang, Chalan Kiya, As Terlaje, Kannat Tabla, Fina Sisu, San
18 Jose, Garapan, Gualo Rai, Susupe, As Lito, San Antonio, Chalan Kanoa, Susupe, Oleai,
19 Koblerville, and As Perdido.

20 PFAS contamination is of the utmost concern for the Commonwealth. The
21 Commonwealth's natural resources, including its land, fish, wildlife, biota, air, water,
22 groundwater, drinking water supplies, and other such resources, are invaluable and
23 precious resources to the Commonwealth, and they are held by the Commonwealth
24 government in trust for the benefit of the public. The Commonwealth and its citizens are
25 heavily dependent upon its groundwater for its drinking water supply. The protection of
26 the Commonwealth's natural resources and the sources of fresh water on the islands,
27 including groundwater, is thus of primary concern to the Commonwealth government, the
28 steward and trustee of the Commonwealth's natural resources.

29 The Legislature finds that the regulation of PFAS is necessary to protect our

community from the harmful effects of PFAS exposure and seeks to establish enforceable limits for PFAS chemicals commonly found in the Commonwealth's groundwater and drinking water. The purpose of this Act is to add provisions identifying and implementing enforceable limits for PFAS contaminants.

Section 3. Amendment. Title 2, Division 3 of the Commonwealth Code is hereby amended by adding a new Chapter 9 to read as follows:

**“Chapter 9. Restrictions on Per- and Polyfluoroalkyl Substances
(PFAS) Contamination.**

§ 3901. Definitions. As used in this Chapter, the term:

(a) “Bureau” means the Bureau of Environmental and Coastal Quality.

(b) “Commonwealth” means the government established under the Constitution which became effective on January 9, 1978, including its autonomous and non-autonomous agencies.

(c) “Maximum contaminant level” or “MCL” means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(d) “Groundwater” means water derived from the subsurface which is in the zone of saturation.

(e) “Water quality criteria” means the numeric pollutant concentrations and/or narrative requirements of adequate stringency to protect designated uses of groundwater.

§ 3902. Regulation of Maximum Contaminant Level.

(a) The maximum contaminant level shall be 0.00007 mg/L (70 ng/L; 70 parts per trillion) for the sum of the concentrations of each of the following PFAS chemicals: perfluorooctane sulfonic acid (PFOS), perfluorooctanoic acid (PFOA), and perfluorononanoic acid (PFNA).

(b) The maximum contaminant level set in § 3902(a) or in subsequent regulation applies to all community water systems and all non-transient non-community water systems.

(c) (1) The Bureau shall promulgate a maximum contaminant level that is

1 either:

2 (A) equal to the maximum contaminant level set in § 3902(a); or

3 (B) more protective than in § 3902(a) for PFOS, PFOA, and PFNA
4 combined or individually, if in any such case, accounting for an adequate
5 margin of safety to protect human health at all life stages, including, but not
6 limited to, pre-natal development, the Bureau determines the maximum
7 contaminant level in § 3902(a) needs adjustment for the protection of human
8 health.

9 (2) The Bureau may promulgate a maximum contaminant level for PFAS
10 chemicals not listed in § 3902(a) or (c)(1) if, accounting for an adequate margin of
11 safety to protect human health at all life stages, including, but not limited to, pre-
12 natal development, the Bureau determines a maximum contaminant level needs to
13 be promulgated to protect of human health.

14 (d) Once the Bureau properly promulgates a new maximum concentration level for
15 PFAS chemicals, such level shall apply and be enforceable.

16 (e) Once a maximum concentration level has been set for a specific PFAS, the
17 PFAS shall be considered a toxic pollutant for purposes of the Bureau's water quality
18 standard regulations. The Bureau shall establish and adopt water quality criteria for PFAS
19 commensurate with § 3902(a)–(d) and the water quality standard regulations.

20 (f) The Bureau shall establish and adopt regulations as necessary for the
21 implementation and enforcement of the Commonwealth's maximum contaminant level and
22 water quality criteria for PFAS chemicals, including monitoring and analytical
23 requirements.

24 (g) The Bureau shall within 12 months after adoption of this Act and annually
25 thereafter review the most recent peer-reviewed studies and scientific evidence, including,
26 but not limited to, information from the United States Environmental Protection Agency
27 and the Agency for Toxic Substances and Disease Registry, independent and government
28 agency studies, and the laws of other states regarding PFAS, and shall amend or may
29 promulgate regulations if such review indicates action by the Bureau is needed for

1 protection of human health.

2 (h) If the federal government establishes a maximum concentration level or
3 equivalent standard that is more protective than the levels set herein or by the Bureau
4 through regulation, or it includes other PFAS chemicals in addition to PFOA, PFOS, and
5 PFNA in its maximum concentration level or equivalent standard, the federal maximum
6 concentration level or equivalent standard shall be the standard in the Commonwealth and
7 shall apply for purposes of § 3903.

8 **§ 3903. Cause of Action.**

9 (a) On behalf of the Commonwealth, including its autonomous and non-
10 autonomous agencies, and the citizens of the Commonwealth in *parens patriae*, the
11 Attorney General is authorized to bring claims against and recover from any person that
12 manufactured, distributed, or marketed PFAS chemicals regulated under § 3902 and/or
13 AFFF which contained PFAS chemicals regulated under § 3902 where:

14 (1) such person (A) had knowledge of any characteristics of PFAS
15 chemicals that could cause or contribute to environmental or human health risks at
16 or before the time that person sold PFAS chemicals or AFFF containing PFAS
17 chemicals, and (B) failed to fully disclose all such information and to issue
18 warnings of all such potentially adverse characteristics to both (i) any person
19 purchasing, storing, handling, or using PFAS chemicals or AFFF which contained
20 PFAS chemicals on the Commonwealth and (ii) the Commonwealth; and

21 (2) such PFAS chemicals or AFFF containing PFAS chemicals (A)
22 contaminated the Commonwealth's drinking water above the maximum
23 concentration level set forth in § 3902 or in subsequent regulations provided
24 thereunder; (B) contaminated the Commonwealth's groundwater above the
25 groundwater quality criteria; (C) contaminated the Commonwealth's natural
26 resources above their ambient (natural) condition; or (D) contaminated areas that
27 caused or contributed to contamination of the Commonwealth's drinking water,
28 groundwater, or other natural resources.

29 (b) Liability under this Chapter is strict, joint, and several.

§ 3904. Remedies.

In bringing an action under § 3903, the Attorney General is hereby authorized to recover:

(a) The costs to investigate, remediate, and restore, or to issue an order requiring that the defendant(s) investigate, remediate, and restore, the Commonwealth's PFAS-contaminated natural resources to their pre-discharge conditions;

(b) The costs to treat, filter, remove, and/or properly dispose of PFAS from groundwater and public and private drinking water wells and systems in the Commonwealth, in perpetuity, that contain PFAS above the maximum concentration level or water quality criteria set in § 3902 or in subsequent regulations provided thereunder;

(c) All compensatory, incidental, and consequential damages suffered by the Commonwealth, including its autonomous and non-autonomous agencies, in connection with contamination from PFAS regulated under § 3902 or AFFF containing PFAS regulated under § 3902, including all internalized costs of compliance and regulatory oversight for future efforts to regulate and remediate PFAS in the Commonwealth;

(d) Any equitable or additional remedies the Court finds may be awarded in the interest of justice; and

(e) The costs of litigation and reasonable attorneys' fees.

§ 3905. Availability of Remedies.

Remedies provided in § 3904 are cumulative and do not affect the availability of remedies under other federal or Commonwealth laws, including common law.

§ 3906. Retroactive Application. §§ 3901–3908 shall apply retroactively.

§ 3907. Immunity.

Notwithstanding any other provision of law, the liability of the Commonwealth, including its autonomous and non-autonomous agencies, and any employee thereof, for any personal injury, bodily injury, or property damage caused by or resulting from PFAS contamination, shall only be based upon a showing by clear and convincing evidence that the acts or omissions of the Commonwealth, including its autonomous and non-autonomous agencies, or employees were manifestly unreasonable. The acts or omissions

1 of the Commonwealth, including its autonomous and non-autonomous agencies, or
2 employees shall be conclusively presumed to be reasonable if they are in accord with the
3 generally prevailing state of the art, scientific knowledge, or technology available at the
4 time the acts or omissions were undertaken or made, or in accordance with the instructions
5 provided by the manufacturer of the product.

6 **§ 3908. Savings Clause and Severability.**

7 Sections 3901–3907 are supplementary to any other federal or Commonwealth law,
8 including common law, enacted before, on, or after the Effective Date of this Act and are
9 not intended to modify any existing cause of action. If any section between §§ 3901 and
10 3907 or its application to any person or circumstance is found to be invalid or contrary to
11 law, such invalidity shall not affect other provisions or applications of said section that can
12 be given effect without the invalid provision or application, and to this end the provisions
13 of said section are severable.

14 **Section 4. Amendment.** Title 7, Division 2, Chapter 5 of the Commonwealth Code
15 is hereby amended by adding § 2515 to read as follows:

16 **“§ 2515. Limitations applicable to the Commonwealth.**

17 (a) An action brought by the Commonwealth for the following shall not be subject
18 to statutes of limitation and may be asserted at any time:

19 (1) for the restoration of, or for the recovery of damages to, the
20 Commonwealth’s natural resources, including, but not limited to, surface waters,
21 groundwater, and drinking water supplies. This Section shall be applied
22 retroactively, including to those matters pending on the Effective Date of this Act.
23 Any such claim which has been barred by virtue of the expiration of any civil statute
24 of limitations shall be permitted to proceed or be filed in any court of competent
25 jurisdiction; and

26 (2) for the recovery of past or future costs of investigation, treatment, and/or
27 remediation of the Commonwealth’s natural resources, including, but not limited
28 to, surface waters, groundwater, and drinking water supplies. This Section shall be
29 applied retroactively, including to those matters pending on the Effective Date of

1 this Act. Any such claim which has been barred by virtue of the expiration of any
2 civil statute of limitations shall be permitted to proceed or be filed in any court of
3 competent jurisdiction.

4 (b) An action brought by the Commonwealth for the recovery of damages to the
5 Commonwealth or the property of the Commonwealth due to per- and polyfluoroalkyl
6 substances, hazardous substances, or other chemical contamination shall be commenced
7 within 10 years after the cause of action accrues. This Section shall be applied retroactively,
8 including to those matters pending on the Effective Date of this Act. Any such claim which
9 has been barred by virtue of the expiration of any civil statute of limitations shall be
10 permitted to proceed or be filed in any court of competent jurisdiction.”

11 **Section 5. Severability.** If any provision of this Act or the application of any such
12 provision to any person or circumstance should be held invalid by a court of competent
13 jurisdiction, the remainder of this Act or the application of its provisions to persons or
14 circumstances other than those to which it is held invalid shall not be affected thereby.

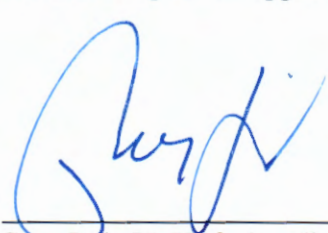
15 **Section 6. Savings Clause.** This Act and any repealer contained herein shall not
16 be construed as affecting any existing right acquired under contract or acquired under
17 statutes repealed or under any rule, regulation, or order adopted under the statutes.
18 Repealers contained in this Act shall not affect any proceeding instituted under or pursuant
19 to prior law. The enactment of the Act shall not have the effect of terminating, or in any
20 way modifying, any liability, civil or criminal, which shall already be in existence on the
21 date this Act becomes effective.

22 **Section 7. Effective Date.** This Act shall take effect upon its approval by the
23 Governor or becoming law without such approval.

Prefiled:

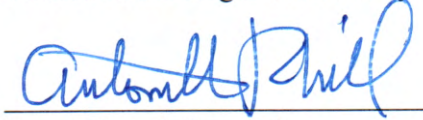
Date: 3/23/2021

Introduced By:


Sen. Jude U. Hofschneider


Sen. Vinnie F. Sablan

Reviewed for Legal Sufficiency by:

A handwritten signature in blue ink, appearing to read "Anthony J. Phil", written over a horizontal line.

Senate Legal Counsel