

117TH CONGRESS
1ST SESSION

S. 1334

To amend the Toxic Substances Control Act to codify a Federal cause of action and a type of remedy available for individuals significantly exposed to per- and polyfluoroalkyl substances, to encourage research and accountability for irresponsible discharge of those substances, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 2021

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Toxic Substances Control Act to codify a Federal cause of action and a type of remedy available for individuals significantly exposed to per- and polyfluoroalkyl substances, to encourage research and accountability for irresponsible discharge of those substances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “PFAS Accountability
5 Act of 2021”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the Centers for Disease Control and Preven-
4 tion has detected numerous perfluoroalkyl and
5 polyfluoroalkyl substances (referred to in this Act as
6 “PFAS”) in the blood serum of individuals in the
7 United States, all of which come from manufac-
8 turing and use of PFAS by humans, as there is no
9 natural source of PFAS in human blood;

10 (2) peer-reviewed studies by other organizations
11 have detected PFAS in the drinking water of at
12 least 200,000,000 individuals in the United States;

13 (3) PFAS are introduced into the market every
14 year, and little research is conducted to ensure the
15 safety of PFAS for individuals;

16 (4) as of the day before the date of enactment
17 of this Act, a Federal statutory cause of action does
18 not exist for individuals harmed by the long-term ef-
19 fects of PFAS exposure; and

20 (5) PFAS exposure, even at low levels, has been
21 linked to chronic diseases, including cancer, repro-
22 ductive and developmental harms, and harms to the
23 immune system.

24 **SEC. 3. PURPOSES.**

25 The purposes of this Act are—

1 (1) to encourage PFAS research and provide
2 accountability for irresponsible PFAS manufacturing
3 and irresponsible use of PFAS in manufacturing by
4 codifying—

5 (A) a Federal cause of action for individ-
6 uals significantly exposed to PFAS; and

7 (B) a medical monitoring remedy for those
8 individuals;

9 (2) to help address harm to individuals signifi-
10 cantly exposed to PFAS by—

11 (A) codifying that harm as an injury at
12 law and equity; and

13 (B) shifting the costs of medical moni-
14 toring from those individuals to the parties re-
15 sponsible for the exposure; and

16 (3) to provide incentives for industry to fund
17 PFAS safety research.

18 **SEC. 4. CAUSE OF ACTION AND REMEDIES.**

19 (a) IN GENERAL.—The Toxic Substances Control Act
20 is amended by inserting after section 24 (15 U.S.C. 2623)
21 the following:

1 **“SEC. 25. INDIVIDUALS EXPOSED TO PERFLUOROALKYL**
 2 **AND POLYFLUOROALKYL SUBSTANCES.**

3 “(a) DEFINITION OF PFAS.—In this section, the
 4 term ‘PFAS’ means a perfluoroalkyl or polyfluoroalkyl
 5 substance with at least 1 fully fluorinated carbon atom.

6 “(b) CAUSE OF ACTION.—An individual who is sig-
 7 nificantly exposed to PFAS or has reasonable grounds to
 8 suspect that the individual was significantly exposed to
 9 PFAS may bring a claim, individually or on behalf of a
 10 class of similarly situated individuals, in any district court
 11 of the United States for appropriate legal and equitable
 12 relief against any person that—

13 “(1) engaged in any portion of a manufacturing
 14 process that created the PFAS to which the indi-
 15 vidual was significantly exposed, including any
 16 telomer, fluorosurfactant, or toll manufacturing
 17 process leading to the creation of the PFAS to
 18 which the individual was significantly exposed; and

19 “(2) foresaw or reasonably should have foreseen
 20 that the creation or use of PFAS would result in
 21 human exposure to PFAS.

22 “(c) MEDICAL MONITORING.—

23 “(1) IN GENERAL.—A court may award medical
 24 monitoring to an individual or class of individuals
 25 bringing a claim under subsection (b) if—

1 “(A) the individual or class has been sig-
2 nificantly exposed to PFAS;

3 “(B) as a result of that exposure, the indi-
4 vidual or class has suffered an increased risk of
5 developing a disease associated with exposure to
6 PFAS;

7 “(C) as a result of that increased risk,
8 there is a reasonable basis for the individual or
9 class to undergo periodic diagnostic medical ex-
10 aminations of a nature or frequency that is dif-
11 ferent from or additional to what would be pre-
12 scribed in the absence of the exposure; and

13 “(D) those medical examinations are effec-
14 tive in detecting a disease associated with expo-
15 sure to PFAS.

16 “(2) PRESUMPTION OF SIGNIFICANT EXPO-
17 SURE.—

18 “(A) INDIVIDUALS.—An individual plain-
19 tiff shall be presumed to have been significantly
20 exposed to PFAS under paragraph (1)(A) if the
21 individual—

22 “(i) demonstrates that—

23 “(I) the defendant engaged in
24 any portion of a manufacturing proc-
25 ess that created the PFAS to which

1 the individual was significantly ex-
2 posed, including any telomer, fluoro-
3 surfactant, or toll manufacturing pro-
4 cess leading to the creation of the
5 PFAS to which the individual was sig-
6 nificantly exposed; and

7 “(II) the PFAS described in sub-
8 clause (I) were released into 1 or
9 more areas where the individual would
10 have been exposed for a cumulative
11 period of not less than 1 year; or

12 “(ii) offers testing results that dem-
13 onstrate that PFAS or metabolites of
14 PFAS have been or are currently detected
15 in the body or blood serum of the indi-
16 vidual.

17 “(B) CLASS ACTIONS.—In a class action, a
18 presumption of significant exposure to PFAS
19 under paragraph (1)(A) shall be established for
20 the class by—

21 “(i) demonstrating that—

22 “(I) the defendant engaged in
23 any portion of a manufacturing proc-
24 ess that created the PFAS to which
25 the class members were significantly

1 exposed, including any telomer, fluoro-
2 surfactant, or toll manufacturing pro-
3 cess leading to the creation of the
4 PFAS to which the class members
5 were significantly exposed; and

6 “(II) the PFAS described in sub-
7 clause (I) were released into 1 or
8 more areas where a representative
9 portion of the class members would
10 have been exposed for a cumulative
11 period of not less than 1 year; or

12 “(ii) offering testing results that dem-
13 onstrate that PFAS or metabolites of
14 PFAS have been or are currently detected
15 in the bodies of a representative portion of
16 class members that share sufficient com-
17 mon exposure characteristics with the
18 class.

19 “(3) REBUTTING THE PRESUMPTION.—

20 “(A) IN GENERAL.—A defendant may
21 rebut a presumption of significant exposure
22 with respect to an individual plaintiff or class
23 member for which testing results are not of-
24 fered under subparagraph (A)(ii) or (B)(ii) of

paragraph (2) by offering results for that individual or class member of testing that—

“(i) uses a generally accepted method for detecting the particular PFAS or metabolites of PFAS at issue;

“(ii) is performed by an independent provider agreed on by both parties; and

“(iii) confirms that the relevant PFAS or metabolites of PFAS likely were not present in the body of the individual or class member at the relevant time in a sufficient quantity to qualify as significant exposure under paragraph (1)(A).

“(B) COSTS.—A defendant shall be responsible for the costs of testing under subparagraph (A).

“(C) INDEPENDENT PROVIDER.—If both parties cannot agree on an independent provider under subparagraph (A)(ii), the court shall appoint an independent provider.

“(4) INCREASED RISK OF DEVELOPING DISEASE.—

“(A) IN GENERAL.—If there is insufficient toxicological data to reasonably determine whether an individual or class has suffered an

1 increased risk of developing a disease associated
 2 with exposure to any individual PFAS or group
 3 of PFAS under paragraph (1)(B), a court may
 4 lower the standard for scientific proof with re-
 5 gard to the increased risk of developing that
 6 disease until independent and reliable toxicological data is available with respect to that
 7 individual PFAS or group of PFAS.

9 “(B) ORDERING STUDIES.—To make avail-
 10 able independent and reliable toxicological data
 11 described in subparagraph (A) with respect to
 12 an individual PFAS or group of PFAS, a court
 13 may order new or additional epidemiological,
 14 toxicological, or other studies or investigations
 15 of that individual PFAS or group of PFAS as
 16 part of a medical monitoring remedy awarded
 17 under paragraph (1).

18 “(d) SENSE OF CONGRESS.—It is the sense of Con-
 19 gress that courts should encourage more reliable and inde-
 20 pendent research into the latent health effects of PFAS.

21 “(e) EFFECT ON STATE LAW CLAIMS AND REM-
 22 EDIES.—Nothing in this section—

23 “(1) preempts, alters, bars, or precludes any
 24 State law claims or remedies, including any State

1 law claims or remedies for an injury addressed by
2 this section; or

3 “(2) provides an exclusive claim or remedy.”.

4 (b) CLERICAL AMENDMENT.—The table of contents
5 for the Toxic Substances Control Act (Public Law 94–
6 469; 90 Stat. 2003) is amended by inserting after the item
7 relating to section 24 the following:

“Sec. 25. Individuals exposed to perfluoroalkyl and polyfluoroalkyl sub-
stances.”.

