87R11173 JG-D

By:  Menéndez S.B. No. 2073

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain hazardous substances used in firefighting products; providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subtitle D, Title 6, Health and Safety Code, is amended by adding Chapter 501A to read as follows:

CHAPTER 501A. REGULATION OF CERTAIN HAZARDOUS SUBSTANCES USED IN FIREFIGHTING PRODUCTS

Sec. 501A.001.  DEFINITIONS. In this chapter:

(1)  "Department" means the Department of State Health Services.

(2)  "Perfluoroalkyl and polyfluoroalkyl chemicals" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

Sec. 501A.002.  DISCHARGE OR USE OF CERTAIN FIREFIGHTING FOAMS PROHIBITED. A person may not discharge or otherwise use a firefighting foam designed to extinguish flammable liquid fires that contains intentionally added perfluoroalkyl and polyfluoroalkyl chemicals, including the discharge or use of a firefighting foam described by this section during or for the training of firefighters.

Sec. 501A.003.  MANUFACTURE, SALE, AND DISTRIBUTION OF CERTAIN FIREFIGHTING FOAMS PROHIBITED. Unless otherwise required by federal law, a manufacturer of firefighting foams may not manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a firefighting foam designed to extinguish flammable liquid fires that contains intentionally added perfluoroalkyl and polyfluoroalkyl chemicals.

Sec. 501A.0035.  RECALL OF CERTAIN FIREFIGHTING FOAMS. (a) Not later than March 1, 2023, a manufacturer of a firefighting foam described by Section 501A.003 shall provide to each person who sells the firefighting foam in this state written notice of the prohibition described by that section.

(b)  Not later than March 1, 2024, a manufacturer of a firefighting foam described by Section 501A.003 shall recall the firefighting foam sold or distributed throughout this state and provide reimbursement to each retailer or other person subject to the recall. In recalling a firefighting foam under this subsection, the manufacturer shall:

(1)  ensure the safe transport and storage of the firefighting foam; and

(2)  maintain documentation on the locations at which the manufacturer stores recalled firefighting foam and the total amount stored at each location.

(c)  A manufacturer shall store recalled firefighting foam in accordance with Subsection (b)(1), at the cost of the manufacturer, for the time as necessary for the department to determine a safe method for disposal of the firefighting foam.

(d)  On request of the attorney general or a district attorney, a manufacturer shall provide to the attorney general or district attorney the documentation maintained by the manufacturer under Subsection (b)(2).

(e)  This section expires September 1, 2027.

Sec. 501A.004.  NOTICE REQUIREMENTS FOR SALE OF CERTAIN PERSONAL PROTECTIVE EQUIPMENT. (a) A manufacturer or other person who sells to a person in this state firefighting personal protective equipment that contains perfluoroalkyl and polyfluoroalkyl chemicals shall provide to the person, at the time of the sale, written notice that:

(1)  includes a statement warning the equipment contains perfluoroalkyl and polyfluoroalkyl chemicals; and

(2)  lists the reasons the perfluoroalkyl and polyfluoroalkyl chemicals were added to the equipment.

(b)  A manufacturer or other person who sells firefighting personal protective equipment that contains perfluoroalkyl and polyfluoroalkyl chemicals shall maintain copies of each written notice provided by the manufacturer or person under Subsection (a) until at least the third anniversary of the date the equipment was sold. The manufacturer or other person shall provide to the department on request not later than the 60th day after the date the request is received a copy of the written notice and any associated sales records.

Sec. 501A.005.  VERIFICATION OF COMPLIANCE. Not later than the 30th day after the date a manufacturer of firefighting foams or firefighting personal protective equipment receives a request from the department, the manufacturer shall prepare and submit to the department, in the form and manner prescribed by the department, a written verification of the manufacturer's compliance with this chapter.

Sec. 501A.006.  ASSISTANCE IN PURCHASE OF FIREFIGHTING PRODUCTS. The department shall develop and implement a process to provide purchasing assistance to governmental entities to ensure the entities:

(1)  avoid purchasing firefighting foam designed to extinguish flammable liquid fires that contains intentionally added perfluoroalkyl and polyfluoroalkyl chemicals; and

(2)  are encouraged to purchase firefighting personal protective equipment that does not contain perfluoroalkyl and polyfluoroalkyl chemicals.

Sec. 501A.007.  CIVIL PENALTY. (a) A manufacturer or other person who violates this chapter is subject to a civil penalty in an amount of:

(1)  for a first violation, $5,000; and

(2)  for a second and each subsequent violation, $10,000.

(b)  Each day a violation occurs or continues to occur is a separate violation for purposes of assessing a penalty under this section.

(c)  On request of the department, the attorney general may bring an action in a district court to collect a civil penalty under this section. The attorney general and the department may recover reasonable expenses incurred in obtaining relief under this section, including court costs, attorney's fees, investigation costs, witness fees, and deposition expenses.

(d)  A civil penalty collected under this section shall be deposited to the credit of the clean air account in the general revenue fund.

SECTION 2.  (a) Notwithstanding 501A.002, Health and Safety Code, as added by this Act, a person who uses a firefighting foam designed to extinguish flammable liquid fires that contains intentionally added perfluoroalkyl and polyfluoroalkyl chemicals during or for the training of firefighters is not required to comply with that section until January 1, 2022.

(b)  Notwithstanding Section 501A.003, Health and Safety Code, as added by this Act, a manufacturer of a firefighting foam designed to extinguish flammable liquid fires that contains intentionally added perfluoroalkyl and polyfluoroalkyl chemicals is not required to comply with that section until January 1, 2022.

(c)  Notwithstanding Section 501A.004, Health and Safety Code, as added by this Act, a manufacturer or other person who sells firefighting personal protective equipment is not required to comply with that section until January 1, 2022.

SECTION 3.  This Act takes effect September 1, 2021.