

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

1 manufacture, knowingly sell, offer for sale, distribute for sale,
2 or distribute for use in this state a firefighting foam designed to
3 extinguish flammable liquid fires that contains intentionally
4 added perfluoroalkyl and polyfluoroalkyl chemicals.

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

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

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

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

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

25 (d) On request of the attorney general or a district
26 attorney, a manufacturer shall provide to the attorney general or
27 district attorney the documentation maintained by the manufacturer

1 under Subsection (b)(2).

2 (e) This section expires September 1, 2027.

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

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

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

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

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

1 chapter.

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

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

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

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

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

16 (2) for a second and each subsequent violation,
17 \$10,000.

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

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

27 (d) A civil penalty collected under this section shall be

1 deposited to the credit of the clean air account in the general
2 revenue fund.

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

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

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

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