

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-1045.01 Pierce Lively x2059

HOUSE BILL 19-1279

HOUSE SPONSORSHIP

Exum and Landgraf,

SENATE SPONSORSHIP

Lee and Hisey,

House Committees
Energy & Environment

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF PERFLUOROALKYL AND POLYFLUOROALKYL**
102 **SUBSTANCES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill prohibits the use of class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS foam) for training purposes and creates a civil penalty for doing so.

The bill also creates the "Firefighting Foams Control Act" (act) which:

! Prohibits the sale of PFAS foam in certain circumstances;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! Requires manufacturers of PFAS foam to notify sellers of the provisions of the act;
- ! Requires manufacturers to disclose whether the personal protective equipment they produce contains perfluoroalkyl and polyfluoroalkyl substances;
- ! Allows for the department of public health and environment to request a certificate of compliance from a manufacturer of class B firefighting foam or firefighting personal protective equipment to ensure that those manufacturers are complying with the limitations on the manufacture of PFAS foam as set forth in the act;
- ! Creates a civil penalty for violating the provisions of the act; and
- ! Requires the department of public health and environment to conduct a survey to determine the amount of PFAS foam currently held, used, and disposed of by fire departments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) The historic use of perfluoroalkyl and polyfluoroalkyl
5 substances, known as PFAS chemicals, in Class B firefighting foams has
6 contaminated the drinking water of nearly 100,000 Coloradans, including
7 five water systems down-gradient from Peterson Air Force Base, and
8 volunteer firefighting station wells at the Sugarloaf Fire District in
9 Boulder county. The full extent of contamination in Colorado has not yet
10 been determined.

11 (b) PFAS chemicals do not break down in the environment and
12 are toxic to people and wildlife at very low levels. Ingesting even small
13 amounts can cause cancer and other serious health problems. Exposure
14 to PFAS chemicals is linked to kidney and testicular cancer, thyroid
15 problems, pregnancy complications, high cholesterol, and immune system
16 disorders. Firefighters and first responders are exposed to these chemicals

1 at work and nearly every American has measurable amounts in their
2 bodies.

3 (c) Removing PFAS chemicals from drinking and groundwater
4 supplies is expensive and treatment must continue for decades. The
5 Widefield Aquifer in Fountain, Colorado, is permanently contaminated
6 with PFAS chemicals.

7 (d) PFAS chemicals are not necessary to put out high temperature
8 fires. Major airports like London Heathrow have successfully used
9 fluorine-free Class B firefighting foams for years, including to combat
10 active fires. Washington state will ban the sale of Class B firefighting
11 foams with intentionally added PFAS chemicals for residential fires in
12 2020.

13 (e) In addition to handling PFAS chemicals in emergencies and
14 in training, PFAS chemicals are used on firefighter personal protective
15 equipment. Both turnout gear and station ware have tested positive for
16 PFAS chemicals. Scientists and health experts have determined the
17 hazard this poses for first responders.

18 (2) Therefore, it is the intent of the general assembly to limit the
19 use of PFAS chemicals by prohibiting the sale of Class B firefighting
20 foams with intentionally added PFAS chemicals, in certain circumstances,
21 by August 2, 2021; prohibiting training with these foams; and by
22 requiring manufacturers to disclose whether the personal protective
23 equipment they sell contains PFAS chemicals.

24 **SECTION 2.** In Colorado Revised Statutes, **add 24-33.5-1233** as
25 follows:

26 **24-33.5-1233. Training restrictions with certain firefighting**
27 **foams - penalty - definitions.** (1) BEGINNING AUGUST 2, 2019, A PERSON

1 OR FIRE DEPARTMENT MAY NOT DISCHARGE, OR OTHERWISE USE FOR
2 TRAINING PURPOSES, CLASS B FIREFIGHTING FOAM THAT CONTAINS
3 INTENTIONALLY ADDED PERFLUOROALKYL AND POLYFLUOROALKYL
4 SUBSTANCES.

5 (2) A PERSON OR FIRE DEPARTMENT WHO ADMINISTERS A TRAINING
6 PROGRAM WHICH VIOLATES SUBSECTION (1) OF THIS SECTION IS SUBJECT
7 TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH
8 VIOLATION IN THE CASE OF A FIRST OFFENSE. A PERSON OR FIRE
9 DEPARTMENT WHO ADMINISTERS A TRAINING PROGRAM WHICH VIOLATES
10 SUBSECTION (1) OF THIS SECTION REPEATEDLY IS SUBJECT TO A CIVIL
11 PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS FOR EACH REPEAT
12 OFFENSE. PENALTIES COLLECTED UNDER THIS SECTION MUST BE
13 DEPOSITED IN THE LOCAL FIREFIGHTER SAFETY AND DISEASE PREVENTION
14 FUND CREATED IN SECTION 24-33.5-1231.

15 (3) FOR PURPOSES OF THIS SECTION, "CLASS B FIREFIGHTING
16 FOAM", "FIRE DEPARTMENT", AND "PERFLUOROALKYL AND
17 POLYFLUOROALKYL SUBSTANCES" HAVE THE SAME MEANING AS THEY ARE
18 DEFINED IN SECTION 25-5-1302.

19 **SECTION 3.** In Colorado Revised Statutes, **add** part 13 to article
20 5 of title 25 as follows:

21 PART 13
22 FIREFIGHTING FOAMS AND
23 PERSONAL PROTECTIVE EQUIPMENT

24 **25-5-1301. Short title.** THE SHORT TITLE OF THIS PART 13 IS THE
25 "FIREFIGHTING FOAMS AND PERSONAL PROTECTIVE EQUIPMENT CONTROL
26 ACT".

27 **25-5-1302. Definitions.** AS USED IN THIS PART 13, UNLESS THE

1 CONTEXT OTHERWISE REQUIRES:

2 (1) "CHEMICAL PLANT" MEANS A LARGE INTEGRATED PLANT OR
3 THAT PORTION OF SUCH A PLANT, OTHER THAN EITHER A PLANT IN WHICH
4 FLAMMABLE LIQUIDS ARE PRODUCED ON A COMMERCIAL SCALE FROM
5 CRUDE PETROLEUM, NATURAL GASOLINE, OR OTHER HYDROCARBON
6 SOURCES OR A PLANT OR THAT PORTION OF A PLANT WHERE FLAMMABLE
7 LIQUIDS PRODUCED BY FERMENTATION ARE CONCENTRATED AND WHERE
8 THE CONCENTRATED PRODUCTS MAY ALSO BE MIXED, STORED, OR
9 PACKAGED, WHERE FLAMMABLE LIQUIDS ARE PRODUCED BY CHEMICAL
10 REACTIONS OR USED IN CHEMICAL REACTIONS.

11 (2) "CLASS B FIREFIGHTING FOAM" MEANS FOAM DESIGNED FOR
12 FLAMMABLE LIQUID FIRES.

13 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
14 AND ENVIRONMENT.

15 (4) "FIRE DEPARTMENT" MEANS THE DULY AUTHORIZED FIRE
16 PROTECTION ORGANIZATION OF A TOWN, CITY, COUNTY, OR CITY AND
17 COUNTY, A FIRE PROTECTION DISTRICT, A METROPOLITAN DISTRICT OR
18 COUNTY IMPROVEMENT DISTRICT THAT PROVIDES FIRE PROTECTION, OR A
19 VOLUNTEER FIRE DEPARTMENT ORGANIZED UNDER SECTION
20 24-33.5-1208.5.

21 (5) "FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT" MEANS
22 ANY CLOTHING, INCLUDING JACKETS, PANTS, SHOES, GLOVES, HELMETS,
23 AND RESPIRATORY EQUIPMENT, DESIGNED, INTENDED, OR MARKETED TO
24 BE WORN BY FIREFIGHTING PERSONNEL IN THE PERFORMANCE OF THEIR
25 DUTIES.

26 (6) "MANUFACTURER" MEANS A PERSON OR ENTITY THAT
27 MANUFACTURES FIREFIGHTING AGENTS OR FIREFIGHTING EQUIPMENT AND

1 ANY AGENTS OF THAT PERSON OR ENTITY, INCLUDING AN IMPORTER, A
2 DISTRIBUTOR, AN AUTHORIZED SERVICER, A FACTORY BRANCH, AND A
3 DISTRIBUTOR BRANCH.

4 (7) "PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES" OR
5 "PFAS CHEMICALS" MEANS A CLASS OF FLUORINATED ORGANIC
6 CHEMICALS CONTAINING AT LEAST ONE FULLY FLUORINATED CARBON
7 ATOM.

8 **25-5-1303. Restriction on sale of certain firefighting foams -**
9 **exemptions.** (1) BEGINNING AUGUST 2, 2021, A MANUFACTURER OF
10 CLASS B FIREFIGHTING FOAM MAY NOT KNOWINGLY SELL, OFFER FOR SALE,
11 DISTRIBUTE FOR SALE, OR DISTRIBUTE FOR USE IN THE STATE CLASS B
12 FIREFIGHTING FOAM TO WHICH PFAS CHEMICALS HAVE BEEN ADDED.

13 (2) THE RESTRICTIONS IN SUBSECTION (1) OF THIS SECTION DO NOT
14 APPLY TO THE MANUFACTURE, SALE, OR DISTRIBUTION OF CLASS B
15 FIREFIGHTING FOAM:

16 (a) WHERE THE INCLUSION OF PFAS CHEMICALS IS REQUIRED BY
17 FEDERAL LAW;

18 (b) FOR USE AT A FUEL STORAGE AND DISTRIBUTION FACILITY
19 THAT HAS BEEN ASSIGNED A TERMINAL CONTROL NUMBER BY THE
20 INTERNAL REVENUE SERVICE; AND

21 (c) FOR USE AT A CHEMICAL PLANT.

22 **25-5-1304. Notification requirement.** A MANUFACTURER OF
23 CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED
24 PFAS CHEMICALS MUST NOTIFY, IN WRITING, PERSONS THAT SELL THE
25 MANUFACTURER'S PRODUCTS IN THE STATE ABOUT THE PROVISIONS OF
26 THIS PART 13 NO LESS THAN ONE YEAR PRIOR TO THE EFFECTIVE DATE OF
27 SECTION 25-5-1303.

1 **25-5-1305. Notice of chemicals in personal protective**
2 **equipment.** (1) BEGINNING AUGUST 2, 2019, A MANUFACTURER OR
3 OTHER PERSON THAT SELLS FIREFIGHTING PERSONAL PROTECTIVE
4 EQUIPMENT MUST PROVIDE WRITTEN NOTICE TO THE PURCHASER AT THE
5 TIME OF SALE IF THE FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT
6 CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS. THE WRITTEN
7 NOTICE MUST INCLUDE A STATEMENT THAT THE FIREFIGHTING PERSONAL
8 PROTECTIVE EQUIPMENT BEING SOLD CONTAINS INTENTIONALLY ADDED
9 PFAS CHEMICALS AND THE REASON PFAS CHEMICALS ARE ADDED TO THE
10 EQUIPMENT.

11 (2) THE MANUFACTURER OR OTHER PERSON SELLING FIREFIGHTING
12 PERSONAL PROTECTIVE EQUIPMENT AND THE PURCHASER OF THE
13 EQUIPMENT MUST RETAIN THE NOTICE DESCRIBED IN SUBSECTION (1) OF
14 THIS SECTION ON FILE FOR AT LEAST THREE YEARS FROM THE DATE OF
15 SALE.

16 (3) UPON THE REQUEST OF THE DEPARTMENT, A PERSON,
17 MANUFACTURER, OR PURCHASER MUST FURNISH THE NOTICE, OR WRITTEN
18 COPIES, AND ASSOCIATED SALES DOCUMENTATION TO THE DEPARTMENT
19 WITHIN SIXTY DAYS AFTER THE REQUEST.

20 **25-5-1306. Certificate of compliance.** THE DEPARTMENT MAY
21 REQUEST A CERTIFICATE OF COMPLIANCE FROM A MANUFACTURER OF
22 CLASS B FIREFIGHTING FOAM OR FIREFIGHTING PERSONAL PROTECTIVE
23 EQUIPMENT. A CERTIFICATE OF COMPLIANCE MUST ATTEST THAT A
24 MANUFACTURER'S PRODUCTS MEET THE REQUIREMENTS OF THIS PART 13.

25 **25-5-1307. Civil penalty.** A MANUFACTURER OR A PERSON WHO
26 VIOLATES THE PROVISIONS OF THIS PART 13 IS SUBJECT TO A CIVIL
27 PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH VIOLATION

1 IN THE CASE OF A FIRST OFFENSE. A MANUFACTURER OR A PERSON WHO
2 VIOLATES THIS PART 13 REPEATEDLY IS SUBJECT TO A CIVIL PENALTY NOT
3 TO EXCEED TEN THOUSAND DOLLARS FOR EACH REPEAT OFFENSE.
4 PENALTIES COLLECTED UNDER THIS PART 13 MUST BE DEPOSITED IN THE
5 LOCAL FIREFIGHTER SAFETY AND DISEASE PREVENTION FUND CREATED IN
6 SECTION 24-33.5-1231.

7 **25-5-1308. Survey.** (1) ONCE EVERY THREE YEARS, THE
8 DEPARTMENT SHALL CONDUCT A SURVEY OF FIRE DEPARTMENTS TO
9 DETERMINE, AS APPLICABLE:

10 (a) EACH FIRE DEPARTMENT'S NAME, FIRE DEPARTMENT
11 IDENTIFICATION NUMBER, ADDRESS, AND FIRE CHIEF'S NAME AND
12 ADDRESS;

13 (b) THE AMOUNT, TYPE, AND DATE OF MANUFACTURE OF ANY
14 CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED
15 PFAS CHEMICALS WHICH EACH FIRE DEPARTMENT POSSESSES;

16 (c) HOW, WHERE, AND WHEN THE FIRE DEPARTMENT HAS USED
17 CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED
18 PFAS CHEMICALS FOR FIREFIGHTER TRAINING;

19 (d) WHETHER THE FIRE DEPARTMENT'S STATIONS ARE SERVED BY
20 A WELL OR PUBLIC DRINKING WATER SOURCE;

21 (e) WHETHER THE FIRE DEPARTMENT HAS USED CLASS B
22 FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS
23 CHEMICALS IN THE LAST FIVE YEARS, WHETHER THAT USE WAS REPORTED
24 TO THE DEPARTMENT, AND IF NOT WHEN AND WHERE THE CLASS B
25 FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS
26 CHEMICALS WAS USED; AND

27 (f) HOW MUCH, IF ANY, CLASS B FIREFIGHTING FOAM THAT

1 CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS THE FIRE
2 DEPARTMENT HAS DISPOSED OF.

3 (2) ON OR BEFORE JANUARY 1, 2020, THE DEPARTMENT SHALL
4 COMPILE THE RESULTS OF THE SURVEY CONDUCTED UNDER SUBSECTION
5 (1) OF THIS SECTION AND PRESENT THE RESULTS TO THE HEALTH AND
6 INSURANCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ITS
7 SUCCESSOR COMMITTEE, AND THE HEALTH AND HUMAN SERVICES
8 COMMITTEE OF THE SENATE, OR ITS SUCCESSOR COMMITTEE.

9 **SECTION 4. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2020 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.