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SB-1044 Firefighting equipment and foam: PFAS chemicals. (2019-2020)

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Senate Bill No. 1044

CHAPTER 308

An act to add Sections 13029, 13061, and 13062 to the Health and Safety Code, relating to fire protection.

[Approved by Governor September 29, 2020. Filed with Secretary of State September 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1044, Allen. Firefighting equipment and foam: PFAS chemicals.

Existing law authorizes the State Fire Marshal to make such changes as may be necessary to standardize all existing fire protective equipment throughout the state and requires the State Fire Marshal to notify industrial establishments and property owners having equipment for fire protective purposes of the changes necessary to bring their equipment into conformity with standard requirements.

This bill, commencing January 1, 2022, would require any person, as defined, including a manufacturer, as defined, that sells firefighter personal protective equipment to any person to provide a written notice to the purchaser at the time of sale if the firefighter personal protective equipment contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS). The bill would require the seller and the purchaser to retain a copy of the written notice on file for at least 3 years and to furnish the notice and associated sales documentation to the Attorney General, a city attorney, a county counsel, or a district attorney within 60 days upon request, as provided. The bill would authorize the Attorney General, a city attorney, a county counsel, or a district attorney to request from a manufacturer, and the bill would require the manufacturer to provide, a certificate of compliance that certifies that the manufacturer is in compliance with these provisions. The bill would provide that a violation of these requirements is punishable by a specified civil penalty upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney.

The bill, commencing January 1, 2022, would prohibit a manufacturer of class B firefighting foam from manufacturing, or knowingly selling, offering for sale, distributing for sale, or distributing for use in this state, and would prohibit a person from using in this state, class B firefighting foam containing intentionally added PFAS chemicals. The bill would establish exemptions from this requirement, including a limited-term waiver, as prescribed. The bill would require a person that uses class B firefighting foam containing intentionally added PFAS chemicals to report use of the chemical, or report if there is a release to the environment, to the State Fire Marshal. This bill would require the State Fire Marshal to impose a fee on a person applying for the waiver or submitting the report that does not exceed the reasonable costs of administering the waiver or reporting provisions, as provided. The bill would require a manufacturer to provide a specified notice to persons that sell the manufacturer's products in the state and to recall prohibited products, as provided. The bill would provide that a violation of these provisions is punishable by a specified civil penalty, upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney. The bill, commencing January 1, 2022, would prohibit a person, as defined, from discharging or otherwise using for training purposes class B firefighting foam that contains intentionally added PFAS chemicals, and would provide that a violation of this prohibition is

punishable by a specified civil penalty, upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney.

This bill would state that its provisions are severable.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13029 is added to the Health and Safety Code, to read:

13029. (a) For purposes of this section, the following definitions apply:

- (1) "Firefighter personal protective equipment" means personal protective equipment covered by the general industry safety orders in Sections 3403 to 3411, inclusive, of Title 8 of the California Code of Regulations.
- (2) "Manufacturer" means a person that manufactures, imports, or distributes domestically firefighter personal protective equipment.
- (3) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- (4) "Person" has the same meaning as defined in Section 19 and includes a public entity.
- (5) "Public entity" has the same meaning specified in Section 13050.1.

(b) (1) Commencing January 1, 2022, any person, including a manufacturer, that sells firefighter personal protective equipment to any person shall provide a written notice to the purchaser at the time of sale if the firefighter personal protective equipment contains intentionally added PFAS chemicals. The written notice shall include a statement that the firefighter personal protective equipment contains PFAS chemicals and the reason that PFAS chemicals are added to the equipment.

(2) The person selling firefighter personal protective equipment and the purchaser of the equipment shall retain a copy of the written notice on file for at least three years from the date of the transaction. Within 60 days of a request by the Attorney General, a city attorney, a county counsel, or a district attorney, the seller or purchaser of firefighter personal protective equipment shall furnish to the requesting entity the written notice, or a copy of the written notice, and associated sales documentation.

(c) The Attorney General, a city attorney, a county counsel, or a district attorney may request from a manufacturer, and a manufacturer shall provide, a certificate of compliance that certifies that the manufacturer is in compliance with subdivision (b) for that manufacturer's firefighter personal protective equipment.

(d) (1) Except as provided in paragraph (2), and upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney, a person that violates subdivision (b) or (c) shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for a first violation, and not to exceed ten thousand dollars (\$10,000) for each subsequent violation.

(2) An individual firefighter shall not be personally liable for payment of the civil penalty imposed pursuant to paragraph (1).

(3) This section does not impair or impede any other rights, causes of action, claims, or defenses available under any other law. The remedies provided in this section are cumulative with any other remedies available under any other law.

SEC. 2. Section 13061 is added to the Health and Safety Code, to read:

13061. (a) For purposes of this section, the following definitions apply:

- (1) "Class B firefighting foam" means foam designed to prevent or extinguish a fire in flammable liquids, combustible liquids, petroleum greases, tars, oils, oil-based paints, solvents, lacquers, alcohols, and flammable gases.
- (2) "Fixed foam fire suppression system" means an engineered or preengineered total flooding or local application system consisting of a fixed supply of extinguishing agent permanently connected for fixed agent distribution to fixed nozzles that are arranged to discharge an extinguishing agent into an enclosure (total flooding), directly onto a hazard (local application), or a combination of both; or an automatic sprinkler system.
- (3) "Fuel-in-depth pool" means fuel pooling in an area bounded by contours of land or physical barriers that are at least six inches in height, surround a surface area greater than 500 square meters, and are designed to retain fuel.

(4) "Manufacturer" means a person that manufactures, imports, or distributes class B firefighting foam.

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

(6) "Person" has the same meaning as defined in Section 19 and includes a public entity.

(7) "Public entity" has the same meaning specified in Section 13050.1.

(8) "Terminal" means a bulk liquid storage facility exclusively engaged in the merchant wholesale distribution of petroleum products, including liquefied petroleum gas, that contains at least one storage tank containing petroleum products with a surface area of 120 square meters or greater or a facility engaged in the distribution of crude petroleum from extraction or processing facilities, that includes at least one storage tank containing crude petroleum with a surface area of 120 square meters or greater.

(b) (1) Except as provided in paragraphs (2) to (6), inclusive, commencing January 1, 2022, a manufacturer of class B firefighting foam shall not manufacture, or knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, and no person shall use in this state, class B firefighting foam containing intentionally added PFAS chemicals.

(2) This subdivision does not apply to any manufacture, sale, distribution, or use of class B firefighting foam for which the inclusion of PFAS chemicals is required by federal law, including, but not limited to, Section 139.317 of Title 14 of the Code of Federal Regulations. If a federal requirement to include PFAS chemicals in class B firefighting foam is revoked after January 1, 2021, this subdivision shall not apply for one year after the requirement is revoked.

(3) Paragraph (1) does not apply until January 1, 2024, to any part of a facility that does both of the following:

(A) Uses a fixed foam fire suppression system for class B fires.

(B) Has in place a system designed for 110 percent containment of any expected discharge volume.

(4) Paragraph (1) does not apply until January 1, 2028, to any manufacture, sale, or distribution of class B firefighting foam to, or to use by, a person at a terminal or an oil refinery, which may include the use of a fixed foam fire suppression system, for either of the following uses:

(A) For use on a storage tank for combustible or flammable liquids with a surface area of 120 square meters or greater.

(B) For use for fire suppression on a fuel-in-depth pool.

(5) The operator of a terminal or an oil refinery that meets the criteria specified in paragraph (4) shall disclose this information to the State Fire Marshal on or before January 1, 2022. If, after providing this information to the State Fire Marshal, the operator of a terminal or an oil refinery described in paragraph (4) intends to transition a facility to PFAS-free firefighting foam, the operator shall inform the State Fire Marshal no later than 90 days prior to the proposed transition date.

(6) (A) A person who operates a terminal or oil refinery may apply to the State Fire Marshal for a waiver to extend the exemption in paragraph (4) beyond January 1, 2028.

(B) (i) The State Fire Marshal may grant a waiver under subparagraph (A) for a specific use if the applicant provides all of the following:

(I) Clear and convincing evidence that there is no commercially available replacement that does not contain intentionally added PFAS chemicals and that is capable of suppressing fire for that specific use.

(II) Information on the amount of firefighting foam containing intentionally added PFAS chemicals stored, used, or released onsite on an annual basis.

(III) A detailed plan, with timelines, for the operator of the terminal or oil refinery to transition to firefighting foam that does not contain intentionally added PFAS chemicals for that specific use.

(IV) A plan for meeting the requirements of paragraph (8).

(ii) The State Fire Marshal shall provide an applicant an opportunity to correct deficiencies in the initial submission in relation to subclauses (II) to (IV), inclusive, of clause (i).

(C) The State Fire Marshal shall not grant a waiver under this paragraph for a specific use if any other oil refinery or terminal is known to have transitioned to commercially available class B firefighting foam that does not contain intentionally added PFAS chemicals for that specific use. The applicant may provide evidence as to why this subparagraph is inapplicable,

including evidence that the specific use is different. In making a decision on a waiver, the State Fire Marshal shall consider both information provided by the applicant and information provided through public comment.

(D) The term of a waiver under this paragraph shall not exceed two years. A waiver may be extended for one additional consecutive term. All waivers shall expire by January 1, 2032.

(E) The State Fire Marshal shall ensure there is an opportunity for public comment during the waiver process.

(F) An oil refinery or terminal that has received a waiver may provide and use class B firefighting foam containing intentionally added PFAS chemicals in the form of mutual aid to another oil refinery or terminal at the request of authorities only if the other oil refinery or terminal also has a waiver.

(G) A person that anticipates applying for a waiver for an oil refinery or terminal shall submit a notice of intent to the State Fire Marshal by July 1, 2025, in order to be considered for a waiver beyond January 1, 2028.

(H) The State Fire Marshal shall notify the waiver applicant of a decision within one year of the waiver submission date.

(7) A person that uses class B firefighting foam containing intentionally added PFAS chemicals pursuant to paragraph (4) or (6) shall report the use of the foam to the State Fire Marshal within five business days of the use, including the identity of the foam, the quantity used, the total PFAS concentration, the application for which the foam was used, and the duration of the fire.

(8) (A) A person that uses class B firefighting foam containing intentionally added PFAS chemicals pursuant to paragraph (4) or (6) shall do all of the following:

(i) Allow no release directly to the environment, such as to unsealed ground, soakage pits, waterways, or uncontrolled drains.

(ii) Fully contain all releases onsite.

(iii) Implement containment measures such as bunds and ponds that are controlled, impervious to PFAS chemicals, and do not allow firewater, wastewater, runoff, and other wastes to be released to the environment, such as to soils, groundwater, waterways, or stormwater.

(iv) Dispose of all firewater, wastewater, runoff, and other wastes in a way that prevents releases to the environment.

(v) If there is a release to the environment, report the identity of the foam, the quantity used, the total PFAS concentration, and the form of any waste that contains PFAS chemicals that is released into the environment to the State Fire Marshal within five business days of the release.

(vi) Document the measures undertaken pursuant to this subparagraph. In investigating compliance with this subparagraph, the Attorney General, a city attorney, a county counsel, or a district attorney may request the documentation. A person that operates an oil refinery or terminal shall provide the documents upon this request.

(B) A failure to meet the requirements of subparagraph (A) shall not preclude the use of class B firefighting foam containing intentionally added PFAS chemicals if the failure was a result of factors beyond the control of the person. Such a violation shall be subject to civil penalties pursuant to subdivision (i).

(9) The State Fire Marshal shall impose a fee on a person who requests a waiver or waiver extension pursuant to paragraph (6), not to exceed the reasonable costs of administering the waiver or waiver extension provisions. The State Fire Marshal shall impose a fee on a person who submits a report required pursuant to paragraph (7), or clause (v) of subparagraph (A) of paragraph (8), not to exceed the reasonable costs of administering the reporting requirement.

(c) On or before July 1, 2021, a manufacturer of class B firefighting foam containing intentionally added PFAS chemicals shall notify, in writing, persons that sell the manufacturer's products in the state about the provisions of this section. For products sold after July 1, 2021, a manufacturer shall provide that notification on or before December 31, 2021, if the manufacturer has not already provided the notification.

(d) A manufacturer that manufactures, sells, or distributes class B firefighting foam containing intentionally added PFAS chemicals subject to paragraph (1) of subdivision (b) after January 1, 2021, shall recall the product by March 1, 2022, and shall reimburse the retailer or any other purchaser for the product. A recall of the product shall include safe transport and storage and documentation of the amount and storage location of the PFAS-containing firefighting foam, until the California Environmental Protection Agency formally identifies a safe disposal technology. The manufacturer shall provide this documentation to the Attorney General, a city attorney, a county counsel, or a district attorney upon request.

(e) A manufacturer that manufactures, sells, or distributes class B firefighting foam containing intentionally added PFAS chemicals pursuant to paragraph (3) of subdivision (b) shall recall the product by March 1, 2024. A recall of the product shall include safe transport and storage and documentation of the amount and storage location of the PFAS-containing firefighting foam, until the California Environmental Protection Agency formally identifies a safe disposal technology. The manufacturer shall provide this documentation to the Attorney General, a city attorney, a county counsel, or a district attorney upon request.

(f) After the expiration of any applicable exemption or waiver pursuant to paragraph (4) or (6) of subdivision (b), a person that operates a terminal or oil refinery shall safely store any remaining class B firefighting foam containing intentionally added PFAS chemicals until the California Environmental Protection Agency formally identifies a safe disposal technology. Safe storage includes safe transport and documentation of the amount and storage location of the class B firefighting foam containing intentionally added PFAS chemicals. The person shall provide this documentation to the Attorney General, a city attorney, a county counsel, or a district attorney upon request.

(g) The Attorney General, a city attorney, a county counsel, or a district attorney may request from a manufacturer, and a manufacturer shall provide, a certificate of compliance that certifies that the manufacturer is in compliance with this section for that manufacturer's class B firefighting foam containing intentionally added PFAS chemicals.

(h) (1) Except as provided in paragraph (2), and upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney, a person that violates subdivision (b), (c), (d), (e), (f), or (g) shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for a first violation, and not to exceed ten thousand dollars (\$10,000) for each subsequent violation.

(2) An individual firefighter shall not be personally liable for payment of the civil penalty imposed pursuant to paragraph (1).

(3) This section does not impair or impede any other rights, causes of action, claims, or defenses available under any other law. The remedies provided in this section are cumulative with any other remedies available under any other law.

(i) The California Environmental Protection Agency's formal identification of a safe disposal technology for PFAS-containing firefighting foam, pursuant to subdivisions (d), (e), and (f), is contingent upon an appropriation by the Legislature in the annual Budget Act or another statute for this purpose.

SEC. 3. Section 13062 is added to the Health and Safety Code, to read:

13062. (a) Commencing January 1, 2022, a person shall not discharge or otherwise use for training purposes class B firefighting foam that contains intentionally added PFAS chemicals.

(b) (1) Except as provided in paragraph (2), and upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney, a person that violates subdivision (a) shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for a first violation, and not to exceed ten thousand dollars (\$10,000) for each subsequent violation.

(2) An individual firefighter shall not be personally liable for payment of the civil penalty imposed pursuant to paragraph (1).

(c) For purposes of this section, "person" has the same meaning specified in Section 19 and includes a public entity.

(d) For purposes of this section, "public entity" has the same meaning specified in Section 13050.1.

(e) This section does not impair or impede any other rights, causes of action, claims, or defenses available under any other law. The remedies provided in this section are cumulative with any other remedies available under any other law.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.