

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 19-1045.01 Pierce Lively x2059

HOUSE BILL 19-1279

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A BILL FOR AN ACT

101 **CONCERNING THE USE OF PERFLUOROALKYL AND POLYFLUOROALKYL**
102 **SUBSTANCES, AND, IN CONNECTION THEREWITH, MAKING AN**
103 **APPROPRIATION.**

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:

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.

SENATE
Amended 2nd Reading
April 27, 2019

HOUSE
3rd Reading Unamended
April 18, 2019

HOUSE
Amended 2nd Reading
April 17, 2019

- ! Prohibits the sale of PFAS foam in certain circumstances;
- ! 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 OR FOR TESTING FIREFIGHTING FOAM FIRE SYSTEMS
3 CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED
4 PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES. AS USED IN THIS
5 SUBSECTION (1), "FIREFIGHTING FOAM FIRE SYSTEMS" MEANS A SYSTEM
6 DESIGNED TO PROVIDE PROTECTION FROM FIRE, OR FOR THE SUPPRESSION
7 OF FIRE, THROUGH THE USE OF FIREFIGHTING FOAM.

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

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

22 **SECTION 3.** In Colorado Revised Statutes, **add** part 13 to article
23 5 of title 25 as follows:

24 PART 13
25 FIREFIGHTING FOAMS AND
26 PERSONAL PROTECTIVE EQUIPMENT

27 **25-5-1301. Short title.** THE SHORT TITLE OF THIS PART 13 IS THE

1 "FIREFIGHTING FOAMS AND PERSONAL PROTECTIVE EQUIPMENT CONTROL
2 ACT".

3 **25-5-1302. Definitions.** AS USED IN THIS PART 13, UNLESS THE
4 CONTEXT OTHERWISE REQUIRES:

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

14 (2) "CLASS B FIREFIGHTING FOAM" MEANS FOAM DESIGNED FOR
15 FLAMMABLE LIQUID FIRES.

16 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
17 AND ENVIRONMENT.

18 (4) "FIRE DEPARTMENT" MEANS THE DULY AUTHORIZED FIRE
19 PROTECTION ORGANIZATION OF A TOWN, CITY, COUNTY, OR CITY AND
20 COUNTY, A FIRE PROTECTION DISTRICT, A METROPOLITAN DISTRICT OR
21 COUNTY IMPROVEMENT DISTRICT THAT PROVIDES FIRE PROTECTION, OR A
22 VOLUNTEER FIRE DEPARTMENT ORGANIZED UNDER SECTION
23 24-33.5-1208.5.

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

1 DUTIES.

2 (6) "MANUFACTURER" MEANS A PERSON OR ENTITY THAT
3 MANUFACTURES FIREFIGHTING AGENTS OR FIREFIGHTING EQUIPMENT AND
4 ANY AGENTS OF THAT PERSON OR ENTITY, INCLUDING AN IMPORTER, A
5 DISTRIBUTOR, AN AUTHORIZED SERVICER, A FACTORY BRANCH, AND A
6 DISTRIBUTOR BRANCH.

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

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

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

19 (a) WHERE THE INCLUSION OF PFAS CHEMICALS IS REQUIRED BY
20 OR AUTHORIZED BY FEDERAL LAW INCLUDING BUT NOT LIMITED TO 14
21 C.F.R. PART 139, OR IMPLEMENTED IN ACCORDANCE WITH FEDERAL
22 AVIATION ADMINISTRATION GUIDANCE, OR OTHERWISE REQUIRED FOR A
23 MILITARY PURPOSE;

24 (b) FOR USE AT A GASOLINE, SPECIAL FUEL, OR JET FUEL STORAGE
25 AND DISTRIBUTION FACILITY THAT IS SUPPLIED BY A PIPELINE, VESSEL, OR
26 REFINERY; A TANK FARM FROM WHICH GASOLINE, SPECIAL FUEL, OR JET
27 FUEL MAY BE REMOVED FOR DISTRIBUTION; OR A REFINERY; _____

1 (c) FOR USE AT A CHEMICAL PLANT; AND
2 (d) FOR USE AT THE EISENHOWER-JOHNSON TUNNELS, IF DEEMED
3 NECESSARY BY THE DEPARTMENT OF TRANSPORTATION. IF THE
4 DEPARTMENT OF TRANSPORTATION DEEMS THE USE OF SUCH CLASS B
5 FIREFIGHTING FOAM NECESSARY, THE DEPARTMENT OF TRANSPORTATION
6 MUST ALSO MAKE A PLAN TO CONTAIN AND SAFELY DISPOSE OF SUCH
7 CLASS B FIREFIGHTING FOAM AND ANY WATER USED IN THE CLEANUP OF
8 SUCH CLASS B FIREFIGHTING FOAM.

9 **25-5-1304. Notification requirement.** A MANUFACTURER OF
10 CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED
11 PFAS CHEMICALS MUST NOTIFY, IN WRITING, PERSONS THAT SELL THE
12 MANUFACTURER'S PRODUCTS IN THE STATE ABOUT THE PROVISIONS OF
13 THIS PART 13 NO LESS THAN ONE YEAR PRIOR TO THE EFFECTIVE DATE OF
14 SECTION 25-5-1303.

15 **25-5-1305. Notice of chemicals in personal protective**
16 **equipment.** (1) BEGINNING AUGUST 2, 2019, A MANUFACTURER OR
17 OTHER PERSON THAT SELLS FIREFIGHTING PERSONAL PROTECTIVE
18 EQUIPMENT MUST PROVIDE WRITTEN NOTICE TO THE PURCHASER AT THE
19 TIME OF SALE IF THE FIREFIGHTING PERSONAL PROTECTIVE EQUIPMENT
20 CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS. THE WRITTEN
21 NOTICE MUST INCLUDE A STATEMENT THAT THE FIREFIGHTING PERSONAL
22 PROTECTIVE EQUIPMENT BEING SOLD CONTAINS INTENTIONALLY ADDED
23 PFAS CHEMICALS AND THE REASON PFAS CHEMICALS ARE ADDED TO THE
24 EQUIPMENT.

25 (2) THE MANUFACTURER OR OTHER PERSON SELLING FIREFIGHTING
26 PERSONAL PROTECTIVE EQUIPMENT AND THE PURCHASER OF THE
27 EQUIPMENT MUST RETAIN THE NOTICE DESCRIBED IN SUBSECTION (1) OF

1 THIS SECTION ON FILE FOR AT LEAST THREE YEARS FROM THE DATE OF
2 SALE.

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

7 **25-5-1306. Certificate of compliance.** THE DEPARTMENT MAY
8 REQUEST A CERTIFICATE OF COMPLIANCE FROM A MANUFACTURER OF
9 CLASS B FIREFIGHTING FOAM OR FIREFIGHTING PERSONAL PROTECTIVE
10 EQUIPMENT. A CERTIFICATE OF COMPLIANCE MUST ATTEST THAT A
11 MANUFACTURER'S PRODUCTS MEET THE REQUIREMENTS OF THIS PART 13.

12 **25-5-1307. Civil penalty.** A MANUFACTURER OR A PERSON WHO
13 VIOLATES THE PROVISIONS OF THIS PART 13 IS SUBJECT TO A CIVIL
14 PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH VIOLATION
15 IN THE CASE OF A FIRST OFFENSE. A MANUFACTURER OR A PERSON WHO
16 VIOLATES THIS PART 13 REPEATEDLY IS SUBJECT TO A CIVIL PENALTY NOT
17 TO EXCEED TEN THOUSAND DOLLARS FOR EACH REPEAT OFFENSE.
18 PENALTIES COLLECTED UNDER THIS PART 13 MUST BE DEPOSITED IN THE
19 LOCAL FIREFIGHTER SAFETY AND DISEASE PREVENTION FUND CREATED IN
20 SECTION 24-33.5-1231.

21 **25-5-1308. Survey.** (1) ONCE EVERY THREE YEARS, THE
22 DEPARTMENT SHALL CONDUCT A SURVEY OF FIRE DEPARTMENTS TO
23 DETERMINE, AS APPLICABLE:

24 (a) EACH FIRE DEPARTMENT'S NAME, FIRE DEPARTMENT
25 IDENTIFICATION NUMBER, AND ADDRESS;

26 (b) THE AMOUNT, TYPE, AND DATE OF MANUFACTURE OF ANY
27 CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED

1 PFAS CHEMICALS WHICH EACH FIRE DEPARTMENT POSSESSES;

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

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

7 (e) WHETHER THE FIRE DEPARTMENT HAS USED CLASS B
8 FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS
9 CHEMICALS IN THE LAST FIVE YEARS, WHETHER THAT USE WAS REPORTED
10 TO THE DEPARTMENT, AND IF NOT WHEN AND WHERE THE CLASS B
11 FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS
12 CHEMICALS WAS USED; AND

13 (f) HOW MUCH, IF ANY, CLASS B FIREFIGHTING FOAM THAT
14 CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS THE FIRE
15 DEPARTMENT HAS DISPOSED OF.

16 (2) ON OR BEFORE JANUARY 1, 2020, THE DEPARTMENT SHALL
17 COMPILE THE RESULTS OF THE SURVEY CONDUCTED UNDER SUBSECTION
18 (1) OF THIS SECTION AND PRESENT THE RESULTS TO THE HEALTH AND
19 INSURANCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ITS
20 SUCCESSOR COMMITTEE, AND THE HEALTH AND HUMAN SERVICES
21 COMMITTEE OF THE SENATE, OR ITS SUCCESSOR COMMITTEE.

22 **SECTION 4. Appropriation.** (1) For the 2019-20 state fiscal
23 year, \$55,278 is appropriated to the department of public health and
24 environment for use by the water quality control division. This
25 appropriation is from the general fund. To implement this act, the division
26 may use this appropriation as follows:

27 (a) \$49,910 for personal services, which amount is based on an

1 assumption that the division will require an additional 0.7 FTE; and

2 (b) \$5,368 for operating expenses.

3 **SECTION 5. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2020 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.