

1 HOUSE BILL NO. 290

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7 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE SALE AND USE OF CERTAIN PRODUCTS
8 CONTAINING PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES; PROHIBITING THE SALE
9 OF COSMETICS, JUVENILE PRODUCTS, AND MENSTRUAL PRODUCTS CONTAINING
10 PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES; REGULATING THE SALE OF
11 FIREFIGHTING FOAM AND TURNOUT GEAR CONTAINING PERFLUOROALKYL AND
12 POLYFLUOROALKYL SUBSTANCES; AND PROVIDING DEFINITIONS."

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 **NEW SECTION. Section 1. Prohibition on sale of certain products containing perfluoroalkyl**
17 **and polyfluoroalkyl substances -- definitions.** (1) Except as provided in subsection (5), on or after January
18 1, 2028, a person may not manufacture, sell, or offer for sale in the state any covered product that contains
19 intentionally added PFAS.

20 (2) A manufacturer of a covered product shall provide persons that offer the product for sale in the
21 state with a certificate of compliance stating that the covered product is in compliance with the requirements of
22 this section and does not contain any intentionally added PFAS. A certificate of compliance provided pursuant
23 to this subsection must be signed by an authorized official of the manufacturer. The certificate of compliance
24 may be provided electronically.

25 (3) A distributor or retailer of a covered product, if they are not also the manufacturer of the
26 product, may not be held in violation of this chapter if they rely in good faith on the certificate of compliance
27 provided by the manufacturer pursuant to subsection (2).

28 (4) This section may not apply to the sale or resale of used products.

1 (5) As used in this section, the following definitions apply:

2 (a) (i) "Cosmetics" means:

3 (A) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise
4 applied to the human body or any part of the human body for cleansing, beautifying, promoting attractiveness,
5 or altering the appearance; or

6 (B) articles intended for use as a component of any of the articles described in subsection
7 (5)(a)(i)(A).

8 (ii) The term does not include soap.

9 (b) "Covered product" means a product subject to the requirements of this section or a component
10 of a product subject to the requirements of this section. Covered products are:

11 (i) cosmetics;

12 (ii) juvenile products; and

13 (iii) menstrual products.

14 (c) "Intentionally added PFAS" means any of the following:

15 (i) PFAS added to a product or one of its product components that have a functional or technical
16 effect in the product, including the PFAS components of intentionally added chemicals and PFAS that are
17 intentional products of an added chemical; or

18 (ii) PFAS used or produced during the manufacture or processing of a product that are introduced
19 into or onto the product. This includes any source of PFAS that is reasonably known to be present, including
20 the use of processing agents, mold release agents, or fluorination.

21 (d) (i) "Juvenile product" means a product designed for use by infants and children under 12 years
22 of age, including but not limited to a baby or toddler foam pillow, bassinet, bedside sleeper, booster seat,
23 changing pad, child restraint system for use in motor vehicles and aircraft, co-sleeper, crib mattress, floor
24 playmat, high chair, high chair pad, infant bouncer, infant carrier, infant seat, infant sleep positioner, infant
25 swing, infant travel bed, infant walker, nap cot, nursing pad, nursing pillow, playmat, playpen, play yard,
26 polyurethane foam mat, pad, or pillow, portable foam nap mat, portable infant sleeper, portable hook-on chair,
27 soft-sided portable crib, stroller, and toddler mattress.

28 (ii) The term does not include the following:

(A) a children's electronic product, including but not limited to a personal computer, audio and video equipment, calculator, wireless phone, game console, handheld device incorporating a video screen, or any associated peripheral, such as a mouse, keyboard, power supply unit, or power cord;

(B) a medical device; or

(C) an adult mattress.

(e) "Manufacturer" means the person that manufactures a product or whose brand name is affixed to the product. In the case of a product imported into the United States, the term includes the importer or first domestic distributor of the product if the person that manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

(f) "Medical device" means "device" as defined in 21 U.S.C. 321(h).

(g) "Menstrual product" means a product used to collect menstruation and vaginal discharge, including but not limited to tampons, pads, sponges, menstruation underwear, disks, and menstrual cups, whether disposable or reusable.

(h) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(i) "Product" means an item manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including its product components, sold, or distributed for personal, residential, commercial, or industrial use, including for use in making other products.

(ii) The term does not include used products offered for sale or resale.

(j) "Product component" means an identifiable component of a product, regardless of whether the manufacturer of the product is the manufacturer of the component.

NEW SECTION. Section 2. Perfluoroalkyl and polyfluoroalkyl substances in firefighting foam and turnout gear. (1) Beginning January 1, 2028, a person, local government, or state agency may not discharge or otherwise use for training purposes class B firefighting foam that contains intentionally added PFAS.

(2) Beginning January 1, 2028, a manufacturer of class B firefighting foam may not manufacture, knowingly sell, offer for sale, distribute for sale, distribute for use, or use in this state class B firefighting foam to

1 which PFAS have been intentionally added unless the purchaser has filed a notice with the state fire marshal
2 pursuant to subsection (3).

3 (3) A person operating a terminal after January 1, 2028, who seeks to purchase class B firefighting
4 foam containing intentionally added PFAS for the purpose of fighting emergency class B fires shall file an
5 annual notice with the state fire marshal of the intent to purchase class B firefighting foam for use at a terminal.
6 The notice must be signed and certified under the penalty of perjury that the contents of the notice are true and
7 accurate. The notice must contain the following:

8 (a) clear and convincing evidence that there is not a commercially available alternative that:

9 (i) does not contain intentionally added PFAS; and

10 (ii) is capable of suppressing a large atmospheric tank fire or emergency class B fire at the
11 terminal;

12 (b) information on the amount of class B firefighting foam containing intentionally added PFAS that
13 is annually stored, used, or released at the terminal;

14 (c) a report on the progress being made by the applicant to transition at the terminal to class B
15 firefighting foam that does not contain intentionally added PFAS; and

16 (d) an explanation of how:

17 (i) all releases of class B firefighting foam containing intentionally added PFAS must be fully
18 contained at the terminal; and

19 (ii) existing containment measures prevent firewater, wastewater, runoff, and other wastes from
20 being released into the environment, including into soil, groundwater, waterways, and stormwater.

21 (4) (a) A person that uses class B firefighting foam containing PFAS pursuant to subsection (3)
22 shall report the use of the foam to the state fire marshal within 5 business days of use, including the identity of
23 the foam, the quantity used, the total PFAS concentration, the application for which the foam was used, and the
24 duration of the fire.

25 (b) A person that uses class B firefighting foam containing PFAS pursuant to subsection (3) shall
26 do the following:

27 (i) allow no release directly into the environment, such as to unsealed ground, soakage pits,
28 waterways, or uncontrolled drains;

1 (ii) fully contain all releases onsite;

2 (iii) implement containment measures, such as bunds and ponds that are controlled, impervious to
3 PFAS, and do not allow firewater, wastewater, runoff, and other wastes to be released into the environment,
4 including into soil, groundwater, waterways, and stormwater;

5 (iv) dispose of all firewater, wastewater, runoff, and other wastes in a way that prevents release
6 into the environment;

7 (v) if there is a release into the environment, report the identity of the foam, the quantity used, the
8 total PFAS concentration, and the form of any waste that contains PFAS that is released into the environment
9 to the state fire marshal within 5 business days of the release; and

10 (vi) document the measures undertaken pursuant to this subsection (4).

11 (5) Nothing in this section may prohibit a terminal from providing class B firefighting foam in the
12 form of aid to another terminal in the event of a class B fire.

13 (6) A manufacturer of class B firefighting foam restricted under subsection (2) shall notify, in
14 writing, persons that sell the manufacturer's products in this state about the provisions of this chapter no less
15 than 1 year prior to the effective date of the restrictions.

16 (7) Except if a purchaser has filed the required notice under subsection (3), a manufacturer that
17 produces, sells, or distributes a class B firefighting foam prohibited under subsection (2) shall recall the product
18 and reimburse the retailer or any other purchaser for the product by March 1, 2028, and shall reimburse the
19 retailer or any other purchaser for the product. A recall of the product must include safe transport and storage
20 and documentation of the amount and storage location of the PFAS-containing firefighting foam unless the
21 department chooses to formally identify a safe disposal technology.

22 (8) A manufacturer of class B firefighting foam or firefighting personal protective equipment sold in
23 this state shall produce and maintain a record of a certificate of compliance that attests that a manufacturer's
24 product meets the requirements of this section.

25 (9) Beginning January 1, 2028, a manufacturer or other person that sells firefighting personal
26 protective equipment to any person, local government, or state agency shall provide written notice to the
27 purchaser at the time of sale if the firefighting personal protective equipment contains any PFAS.

28 (a) The written notice must include a statement that the firefighting personal protective equipment

1 contains PFAS and the reason PFAS are added to the equipment.

2 (b) The manufacturer or person selling firefighting personal protective equipment and the
3 purchaser of the equipment shall retain the notice on file for at least 3 years from the date of the transaction.

4 (10) A person who violates this section:

5 (a) for a first offense, is subject to a civil penalty not to exceed \$5,000; and

6 (b) for a second or subsequent offense, is subject to a civil penalty not to exceed \$10,000.

7 (11) As used in this section, the following definitions apply:

8 (a) "Class B firefighting foam" means foams designed for flammable liquid fires.

9 (b) "Department" means the department of environmental quality established in 2-15-3501.

10 (c) "Firefighting personal protective equipment" means any clothing designed, intended, or
11 marketed to be worn by firefighting personnel in the performance of their duties that is designed with the intent
12 for use in fire and rescue activities. The term includes jackets, pants, shoes, gloves, helmets, and respiratory
13 equipment.

14 (d) "Local governments" means any county, city, town, or volunteer fire department, volunteer fire
15 company, or fire district created pursuant to Title 7, chapter 33, part 21.

16 (e) (i) "Manufacturer" means any person, firm, association, partnership, corporation, organization,
17 joint venture, importer, or domestic distributor of firefighting agents or firefighting equipment.

18 (ii) For the purposes of this subsection (11)(e), "importer" means the owner of the product.

19 (f) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means substances that include any
20 member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

21 (g) "Terminal" means an establishment primarily engaged in the wholesale distribution of crude
22 petroleum and petroleum products, including liquefied petroleum gas from bulk liquid storage facilities.

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24 NEW SECTION. **Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified
25 as a new chapter in Title 50, and the provisions of Title 50 apply to [sections 1 and 2].

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