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SENATE BILL DRS45243-MH-17B*

Short Title: Ban PFAS in Fire Retardant Foam.

(Public)

Sponsors: Senators Garrett, Robinson, and deViere (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO BAN THE MANUFACTURE, SALE, OR USE OF CERTAIN FIRE
3 RETARDANT FOAM CONTAINING PFAS.

4 Whereas, firefighting foams made with PFAS chemicals are a significant and
5 widespread source of drinking water contamination; and

6 Whereas, PFAS chemicals have been linked to cancer and dysfunction of the immune,
7 reproductive, and hormonal systems of humans as well as other health problems; and

8 Whereas, less toxic alternatives to firefighting foam containing PFAS are being used
9 safely and effectively in other countries; and

10 Whereas, the FAA Reauthorization Act of 2018 requires that, by October 5, 2021, the
11 FAA no longer require the use of fluorinated chemicals to meet standards for fire retardant foams
12 used at commercial airports; Now, therefore,

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** Article 21A of Chapter 143 of the General Statutes is amended by
15 adding a new Part to read:

16 "Part 8. Reduce Use of Certain Toxic Chemicals in Firefighting Activities.

17 "§ 143-215.104LL. Definitions.

18 The following definitions apply in this Part:

- 19 (1) Chemical manufacturer. – A manufacturing facility classified in North
20 American Industry Classification System (NAICS) Codes 31 through 33
21 where chemicals are produced for use or distribution in North Carolina.
- 22 (2) Class B firefighting foam. – Any foam designed for flammable liquid fires.
- 23 (3) Firefighting personal protective equipment. – Any clothing designed,
24 intended, or marketed to be worn by firefighting personnel in the performance
25 of their duties, designed with the intent for the use in fire and rescue activities,
26 including jackets, pants, shoes, gloves, helmets, and respiratory equipment.
- 27 (4) Local governments. – A county, city, town, fire protection district, or other
28 special purpose district that provides firefighting services.
- 29 (5) Supplier. – Any person, firm, association, partnership, corporation,
30 organization, joint venture, importer, or domestic distributor of firefighting
31 agents or firefighting equipment. For the purposes of this subdivision,
32 "importer" is limited to a person who at any time is the owner of the product.
- 33 (6) Perfluoroalkyl and polyfluoroalkyl substances or PFAS chemicals. – For the
34 purposes of firefighting agents and firefighting equipment, a class of
35 fluorinated organic chemicals containing at least one fully fluorinated carbon
36 atom.



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1 (7) Terminal. – Defined in G.S. 105-449.60.

2 **"§ 143-215.104MM. Prohibition of certain firefighting foams for training.**

3 No person may discharge or otherwise use for training purposes class B firefighting foam
4 that contains intentionally added PFAS chemicals.

5 **"§ 143-215.104NN. Prohibition on manufacture, distribution, or sale of certain firefighting**
6 **foams.**

7 (a) Prohibition. – A manufacturer of class B firefighting foam may not manufacture,
8 knowingly sell, offer for sale, distribute for sale, or distribute for use in this State class B
9 firefighting foam to which PFAS chemicals have been intentionally added.

10 (b) Federally Required Exception. – The restrictions in subsection (a) of this section do
11 not apply to any manufacture, sale, or distribution of class B firefighting foam where the
12 inclusion of PFAS chemicals are required by federal law, including but not limited to the
13 requirements of 22 C.F.R. § 139.317, as that section existed as of January 1, 2018. In the event
14 that applicable federal regulations change after January 1, 2018, to allow the use of alternative
15 firefighting agents that do not contain PFAS chemicals, then the Department may adopt rules
16 that restrict PFAS chemicals for the manufacture, sale, and distribution of firefighting foam for
17 uses that are addressed by the federal regulation.

18 (c) Other Exceptions. – The restrictions in subsection (a) of this section do not apply to
19 the manufacture for sale, sale, or distribution of class B firefighting foam to a person in any of
20 the following circumstances:

21 (1) For use at a terminal operated by the person.

22 (2) For use at a chemical plant operated by the person.

23 **"§ 143-215.104OO. Required notice of PFAS content with sale of firefighting personal**
24 **protective equipment.**

25 (a) Notice. – A manufacturer or other person that sells firefighting personal protective
26 equipment to any person, local government, or State agency must provide written notice to the
27 purchaser at the time of sale if the firefighting personal protective equipment contains PFAS
28 chemicals. The written notice must include a statement that the firefighting personal protective
29 equipment contains PFAS chemicals and the reason PFAS chemicals are added to the equipment.

30 (b) Retention of Notice. – The manufacturer or person selling firefighting personal
31 protective equipment and the purchaser of the equipment must retain the notice on file for at least
32 three years from the date of the transaction. Upon the request of the Department, a person,
33 manufacturer, or purchaser must furnish the notice, or written copies, and associated sales
34 documentation to the Department within 60 days.

35 **"§ 143-215.104PP. Certificate of compliance; other duties of Department.**

36 (a) The Department may request a certificate of compliance from a manufacturer of class
37 B firefighting foam or firefighting personal protective equipment. A certificate of compliance
38 attests that a manufacturer's product or products meets the requirements of this Part.

39 (b) The Department shall assist the Department of Administration, other State agencies,
40 and local governments to avoid purchasing or using class B firefighting foams to which PFAS
41 chemicals have been intentionally added. The Department shall assist the Department of
42 Administration, other State agencies, and local governments to give priority and preference to
43 the purchase of firefighting personal protective equipment that does not contain PFAS chemicals.

44 **"§ 143-215.104QQ. Civil penalties.**

45 (a) The Secretary may assess a civil penalty of not more than five thousand dollars
46 (\$5,000) or, if the violation involves a hazardous waste, as defined in G.S. 130-290, of not more
47 than twenty-five thousand dollars (\$25,000) against any person who:

48 (1) Manufactures, sells, or distributes class B firefighting foam in violation of the
49 prohibition in G.S. 143-215.104NN.

50 (2) Violates the prohibition of G.S. 143-215.104MM or the notice and retention
51 requirements of G.S. 143-215.104OO.

1 **(b)** If any action or failure to act for which a penalty may be assessed under subsection
2 (a) of this section is a repeat offense, the Secretary may assess a penalty not to exceed ten
3 thousand dollars (\$10,000) per occurrence. A penalty for multiple occurrences shall not exceed
4 two hundred thousand dollars (\$200,000) in any month.

5 **(c)** In determining the amount of the penalty, the Secretary shall consider the factors set
6 out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty
7 assessments that are presented to the Commission for final agency decision.

8 **(d)** The Secretary shall notify any person assessed a civil penalty for the assessment and
9 the specific reasons therefor by registered or certified mail or by any means authorized by
10 G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30
11 days of receipt of the notice of assessment.

12 **(e)** Requests for remission of civil penalties shall be filed with the Secretary. Remission
13 requests shall not be considered unless made within 30 days of receipt of the notice of assessment.
14 Remission requests must be accompanied by a waiver of the right to a contested case hearing
15 pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the
16 assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission
17 requests may be resolved by the Secretary and the violator. If the Secretary and the violator are
18 unable to resolve the request, the Secretary shall deliver the remission request and the
19 recommended action to the Committee on Civil Penalty Remissions of the Environmental
20 Management Commission appointed pursuant to G.S. 143B-282.1(c).

21 **(f)** If any civil penalty has not been paid within 30 days after notice of assessment has
22 been served on the violator, the Secretary shall request the Attorney General to institute a civil
23 action in the superior court of any county in which the violator resides or the violator's principal
24 place of business is located in order to recover the amount of the assessment, unless the violator
25 contests the assessment as provided in subsection (d) of this section or requests remission of the
26 assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty
27 has not been paid within 30 days after the final agency decision or order has been served on the
28 violator, the Secretary shall request the Attorney General to institute a civil action in the superior
29 court of any county in which the violator resides or the violator's principal place of business is
30 located to recover the amount of the assessment. A civil action must be filed within three years
31 of the date the final agency decision or court order was served on the violator."

32 **SECTION 2.** Transition provisions. – The definitions set forth in
33 G.S. 143-215.104LL, as enacted by Section 1 of this act, apply to this section. A manufacturer
34 of class B firefighting foam that will be restricted under G.S. 143-215.104NN must notify, in
35 writing, persons that sell the manufacturer's products in this State about the provisions of the Part
36 enacted by Section 1 of this act no later than July 1, 2021. A manufacturer that produces, sells,
37 or distributes a class B firefighting foam prohibited under G.S. 143-215.104NN shall recall the
38 product and reimburse the retailer or any other purchaser for the product. A manufacturer
39 violating this section shall be subject to the civil penalties in G.S. 143-215.104QQ, as enacted by
40 Section 1 of this act.

41 **SECTION 3.** Effective date. – G.S. 143-215.104NN, as enacted by Section 1 of this
42 act, becomes effective July 1, 2022. The remainder of Section 1 of this act becomes effective
43 July 1, 2020. The remainder of this act is effective when it becomes law.