

ASSEMBLY BILL NO. 97—ASSEMBLYMAN WATTS

FEBRUARY 8, 2021

Referred to Committee on Natural Resources

SUMMARY—Revises provisions governing toxic chemicals.
(BDR 40-141)

FISCAL NOTE: Effect on Local Government: Increases or Newly
Provides for Term of Imprisonment in County or City
Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to toxic chemicals; prohibiting, with certain exceptions, the discharge, use or release of certain Class B firefighting foams; requiring, with certain exceptions, certain entities who discharge, use or release certain Class B firefighting foam to notify the Division of Environmental Protection of the State Department of Conservation and Natural Resources; requiring the Division to establish a working group to study issues relating to certain substances; prohibiting, with certain exceptions, the manufacture, sale or distribution of certain products containing certain chemicals; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes various requirements for the regulation of hazardous waste, hazardous materials and hazardous substances. (Chapter 459 of NRS) **Section 12** of this bill prohibits, with certain exceptions, a person, political subdivision, local government or state or local agency from discharging, using or releasing, or allowing its employees or independent contractors to discharge, use or release, Class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances for testing or firefighting training purposes.

Section 13 of this bill requires any person, political subdivision, local government or state or local agency who discharges, uses or releases, or allows its employees or independent contractors to discharge, use or release, Class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances to notify the Division of Environmental Protection of



the State Department of Conservation and Natural Resources within 24 hours after the discharge, use or release.

Section 14.5 of this bill requires the Division to establish a working group to study issues relating to environmental contamination resulting from perfluoroalkyl and polyfluoroalkyl substances.

Sections 8-9 of this bill define various terms relating to the provisions of **sections 7-14.5** of this bill.

Section 10 of this bill provides an exception to the requirements and prohibitions set forth in **sections 12 and 13** to the extent that those provisions are preempted by or conflict with federal law.

Section 24 of this bill prohibits, with certain exceptions, the knowing manufacture, sale, offering for sale, distribution for sale or distribution for use of a children's product, upholstered residential furniture, residential textile, business textile or mattress containing any flame-retardant organohalogenated chemical in any product component in amounts greater than 1,000 parts per million. **Section 25** of this bill prohibits, with certain exceptions, a manufacturer from replacing such a flame-retardant organohalogenated chemical with any other chemical that is known or suspected with a high degree of probability to: (1) harm the normal development of a fetus or child; (2) cause cancer, genetic damage or reproductive harm; (3) disrupt the endocrine system; or (4) damage the nervous system, immune system or organs or cause other systemic toxicity. **Section 26** of this bill makes a person who willfully and knowingly violates **section 24 or 25** subject to a maximum civil penalty of \$1,000. **Sections 17-23** of this bill define certain terms related to these prohibitions.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. Chapter 459 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 14.5, inclusive, of this act.

Sec. 7. *As used in sections 7 to 14.5, inclusive, of this act, the words and terms defined in sections 8 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 8. *"Class B firefighting foam" means a foam designed to extinguish flammable liquid fires.*

Sec. 8.5. *"Class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances" means Class B firefighting foam containing perfluoroalkyl and polyfluoroalkyl substances that is designed to include at least one fully fluorinated carbon atom that is fully functional in the foam.*



1 **Sec. 8.7.** *“Division” means the Division of Environmental*
2 *Protection of the State Department of Conservation and Natural*
3 *Resources.*

4 **Sec. 9.** *“Perfluoroalkyl and polyfluoroalkyl substances”*
5 *means a class of fluorinated organic chemicals that contain at*
6 *least one fully fluorinated carbon atom.*

7 **Sec. 10.** *The provisions of sections 12 and 13 of this act do*
8 *not apply to the extent that those provisions are preempted by or*
9 *conflict with federal law, including, without limitation, any*
10 *provision of federal law requiring the use of Class B firefighting*
11 *foam that contains intentionally added perfluoroalkyl and*
12 *polyfluoroalkyl substances pursuant to 14 C.F.R. Part 139 or for*
13 *military purposes.*

14 **Sec. 11.** (Deleted by amendment.)

15 **Sec. 12.** 1. *Except as otherwise provided in this section and*
16 *section 10 of this act, a person, political subdivision, local*
17 *government or state or local agency shall not discharge, use or*
18 *release, or allow its employees or independent contractors to*
19 *discharge, use or release, any Class B firefighting foam that*
20 *contains intentionally added perfluoroalkyl and polyfluoroalkyl*
21 *substances for the purpose of:*

22 *(a) Testing the Class B firefighting foam that contains*
23 *intentionally added perfluoroalkyl and polyfluoroalkyl substances*
24 *unless the person testing the foam has ensured that any measures*
25 *necessary for the proper containment, treatment and disposal of*
26 *the foam are available at the testing location and such measures*
27 *will prevent the release of Class B firefighting foam that contains*
28 *intentionally added perfluoroalkyl and polyfluoroalkyl substances*
29 *to the surrounding environment; or*

30 *(b) Firefighting training.*

31 2. *Any person who violates the provisions of subsection 1 is*
32 *guilty of a misdemeanor.*

33 **Sec. 13.** *Except as otherwise provided in section 10 of this*
34 *act, any person, political subdivision, local government or state or*
35 *local agency who discharges, uses or releases, or allows its*
36 *employees or independent contractors to discharge, use or release,*
37 *Class B firefighting foam that contains intentionally added*
38 *perfluoroalkyl and polyfluoroalkyl substances must report the*
39 *discharge, use or release to the Division not later than 24 hours*
40 *after the discharge, use or release. The notification must include,*
41 *without limitation:*

42 1. *The time, date, location and an estimate of the amount of*
43 *the discharge, use or release of Class B firefighting foam that*
44 *contains intentionally added perfluoroalkyl and polyfluoroalkyl*
45 *substances; and*



2. *The purpose or reason for the discharge, use or release.*

Sec. 14. (Deleted by amendment.)

Sec. 14.5. 1. *The Division shall establish a working group to study issues relating to environmental contamination resulting from perfluoroalkyl and polyfluoroalkyl substances in this State which must be composed of representatives of interested state and local public agencies, labor organizations, community organizations and trade associations.*

2. *The working group established pursuant to subsection 1 shall, without limitation:*

(a) *Evaluate the potential for environmental contamination in this State resulting from perfluoroalkyl and polyfluoroalkyl substances;*

(b) *Determine the location of potentially significant discharges or releases of perfluoroalkyl and polyfluoroalkyl substances in this State;*

(c) *Determine the potential sources of exposure to perfluoroalkyl and polyfluoroalkyl substances for residents of this State;*

(d) *Compile information relating to existing federal, state and local actions to monitor, contain and clean up environmental contamination resulting from perfluoroalkyl and polyfluoroalkyl substances; and*

(e) *Develop recommendations for state and local action to monitor, contain and clean up environmental contamination resulting from perfluoroalkyl and polyfluoroalkyl substances.*

3. *The members of the working group serve without compensation.*

4. *As used in this section, “public agency” means an agency, bureau, board, commission, department or division of the State of Nevada or a political subdivision of the State of Nevada.*

Sec. 15. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 16 to 26, inclusive, of this act.

Sec. 16. *As used in sections 16 to 26, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 17 to 23, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 17. *“Business textile” means a textile designed for use in a business or commercial setting as a covering on windows or walls.*

Sec. 18. *“Child” means a person under 12 years of age.*

Sec. 19. 1. *“Children’s product” means a product primarily designed or intended by a manufacturer to be used by or for a*



child, including, without limitation, any article used as a component of such a product.

2. The term does not include:

(a) Food, beverage, dietary supplement, pharmaceutical product or biologic;

(b) A children's toy that meets the requirements of the most recent version of the ASTM International Standard F963, "Standard Consumer Safety Specification for Toy Safety;"

(c) A device, as defined in the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321(h);

(d) Consumer electronics products and electronic components, including, without limitation, personal computers, audio and video equipment, calculators, digital displays, wireless phones, cameras, game consoles, printers, handheld electronic and electrical devices used to access interactive software or associated peripherals or products that comply with the provisions of Directive 2002/95/EC of the European Union, adopted by the European Parliament and Council of the European Union;

(e) Outdoor sports equipment, including, without limitation, snowmobiles, all-terrain vehicles, personal watercraft, watercraft and off-highway vehicles, and all attachments and repair parts of such equipment; or

(f) A tent or sleeping bag.

Sec. 20. "Mattress" has the meaning ascribed to it in 16 C.F.R. § 1632.1.

Sec. 21. "Organohalogenated chemical" means any chemical that contains one or more carbon elements and one or more halogen elements, including, without limitation, fluorine, chlorine, bromine or iodine.

Sec. 22. "Residential textile" means a textile designed for residential use as a covering on windows or walls.

Sec. 23. "Upholstered residential furniture" means furniture with padding, coverings and cushions intended and sold for use in a residence.

Sec. 24. 1. Except as otherwise provided in subsection 3, a manufacturer or wholesaler shall not knowingly manufacture, sell, offer for sale, distribute for sale or distribute for use in this State a children's product, upholstered residential furniture, residential textile, business textile or mattress that contains any flame-retardant organohalogenated chemical in any product component in amounts greater than 1,000 parts per million.

2. Except as otherwise provided in subsection 3, a retailer shall not sell or offer for sale or use in this State a children's product, upholstered residential furniture, residential textile, business textile or mattress that contains any flame-retardant



organohalogenated chemical in any product component in amounts greater than 1,000 parts per million.

3. The provisions of this section do not apply to:

(a) The extent preempted by federal law;

(b) Any flame-retardant organohalogenated chemical that:

(1) Is a polymeric substance in accordance with the criteria set forth in 40 C.F.R. § 723.250, or is chemically reacted to form a polymer with the materials it is intended to protect; or

(2) Has a determination of safety pursuant to 15 U.S.C. § 2604(a)(3)(C) or 15 U.S.C. § 2605(b)(4);

(c) The sale or offer for sale of any previously owned product containing a flame-retardant organohalogenated chemical;

(d) An electronic component of a children's product, mattress, upholstered residential furniture or residential textile or any associated casing;

(e) A children's product, mattress, upholstered residential furniture or residential textile for which there is a federal or national flammability standard;

(f) Thread or fiber for stitching mattress components together; or

(g) Components of an adult mattress other than foam.

Sec. 25. A manufacturer shall not replace a flame-retardant organohalogenated chemical, the use of which is prohibited pursuant to section 24 of this act, with a chemical that has been identified by a state or federal agency on the basis of credible scientific evidence as being known or suspected to have a high degree of probability to:

1. Harm the normal development of a fetus or child or cause other developmental toxicity;

2. Cause cancer, genetic damage or reproductive harm;

3. Disrupt the endocrine system; or

4. Damage the nervous system, immune system or organs or cause other systemic toxicity.

Sec. 26. A person who willfully and knowingly violates the provisions of section 24 or 25 of this act is subject to a civil penalty not to exceed \$1,000.

Sec. 27. 1. This section becomes effective upon passage and approval.

2. Sections 6 to 14.5, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of sections 6 to 14.5, inclusive, of this act; and

(b) On January 1, 2022, for all other purposes.



1 3. Sections 1 to 5, inclusive, and 15 to 26, inclusive, of this act
2 become effective:

3 (a) Upon passage and approval for the purpose of adopting any
4 regulations and performing any other preparatory administrative
5 tasks that are necessary to carry out the provisions of sections 15 to
6 26, inclusive, of this act; and

7 (b) On July 1, 2022, for all other purposes.

