

Amendment No. 457

Assembly Amendment to Assembly Bill No. 97	(BDR 40-141)
Proposed by: Assembly Committee on Natural Resources	
Amendment Box: Replaces Amendment No. 161.	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from A.B. 97.

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

ERS/HAC



Date: 4/19/2021

A.B. No. 97—Revises provisions governing toxic chemicals. (BDR 40-141)



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 ~~health; requiring the State Environmental Commission to establish for certain substances water quality standards, effluent limitations and maximum permissible levels in public water systems; requiring certain persons to obtain a certificate of registration from the Division of Environmental Protection of the State Department of Conservation and Natural Resources to store or dispose of certain substances;~~ **toxic chemicals;** prohibiting, with certain exceptions, the **discharge, use** ~~use~~ ~~[, manufacture]~~ or ~~[sale]~~ **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:

~~[— Under existing law, the State Environmental Commission is required to establish standards of water quality, effluent limitations for point sources and primary drinking water standards with maximum permissible levels for contaminants in public water systems. (NRS 445A.425, 445A.520, 445A.525, 445A.855) Section 3 of this bill requires the Commission to adopt water quality criteria for perfluoroalkyl and polyfluoroalkyl substances in surface waters. Section 4 of this bill requires the Commission to establish effluent limitations for discharges of perfluoroalkyl and polyfluoroalkyl substances into the waters of the State. Section 5 of this bill requires the Commission to establish maximum permissible levels in drinking water for perfluoroalkyl and polyfluoroalkyl substance in public water systems and sets forth certain criteria for the Commission to use in establishing the maximum permissible levels. Section 1 of this bill defines the term “perfluoroalkyl and polyfluoroalkyl substances.”]~~

~~Section 11 of this bill requires a person who operates a facility or other structure that uses or stores perfluoroalkyl and polyfluoroalkyl substances, including class B firefighting foam that contains such a substance, to obtain a certificate of registration from the Division of Environmental Protection of the State Department of Conservation and Natural Resources. Section 11 also requires the Commission to adopt regulations: (1) setting forth requirements for a certificate of registration for any person who uses or stores perfluoroalkyl and polyfluoroalkyl substances; (2) establishing standards for the capture and disposal of perfluoroalkyl and polyfluoroalkyl substances; and (3) establishing a schedule of penalties for the failure to obtain a certificate of registration or comply with the standards for the capture and disposal of perfluoroalkyl and polyfluoroalkyl substances.~~

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 , ~~for otherwise~~ 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 ~~for for testing firefighting foam fire systems.~~ purposes.

Section 13 of this bill ~~prohibits the use of~~ 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 ~~at certain airports.~~

~~Section 14 of this bill prohibits a person from knowingly manufacturing, selling, offering for sale, distributing for sale or distributing for use any 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 ~~and~~ - 9 of this bill ~~, respectively, define “class B firefighting foam” and “perfluoroalkyl and polyfluoroalkyl substances.”~~ 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 ~~11-14~~ 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:

1 **Section 1.** ~~[Chapter 445A of NRS is hereby amended by adding thereto a~~
2 ~~new section to read as follows:~~

3 ~~“Perfluoroalkyl and polyfluoroalkyl substances” means a class of fluorinated~~
4 ~~organic chemicals that contain at least one fully fluorinated carbon atom.]~~
5 ~~(Deleted by amendment.)~~

6 **Sec. 2.** ~~[NRS 445A.310 is hereby amended to read as follows:~~

7 ~~445A.310. As used in NRS 445A.300 to 445A.730, inclusive, unless the~~
8 ~~context otherwise requires, the words and terms defined in NRS 445A.315 to~~
9 ~~445A.420, inclusive, and section 1 of this act have the meanings ascribed to them~~
10 ~~in those sections.] (Deleted by amendment.)~~

11 **Sec. 3.** ~~[NRS 445A.520 is hereby amended to read as follows:~~

12 ~~445A.520. 1. The Commission shall establish water quality standards at a~~
13 ~~level designed to protect and ensure a continuation of the designated beneficial use~~
14 ~~or uses which the Commission has determined to be applicable to each stream~~
15 ~~segment or other body of surface water in the State.~~

16 ~~2. The Commission shall base its water quality standards on water quality~~
17 ~~criteria which numerically or descriptively define the conditions necessary to~~
18 ~~maintain the designated beneficial use or uses of the water. The water quality~~
19 ~~standards must reflect water quality criteria which define the conditions necessary~~
20 ~~to support, protect and allow the propagation of fish, shellfish and other wildlife~~
21 ~~and to provide for recreation in and on the water if these objectives are reasonably~~
22 ~~attainable.~~

23 ~~3. The Commission may establish water quality standards for individual~~
24 ~~segments of streams or for other bodies of surface water which vary from standards~~
25 ~~based on recognized criteria if such variations are justified by the circumstances~~
26 ~~pertaining to particular places, as determined by biological monitoring or other~~
27 ~~appropriate studies.~~

28 ~~4. The Commission shall establish water quality criteria for perfluoroalkyl~~
29 ~~and polyfluoroalkyl substances in the surface waters of this State.] (Deleted by~~
30 ~~amendment.)~~

31 **Sec. 4.** ~~[NRS 445A.525 is hereby amended to read as follows:~~

32 ~~445A.525. 1. Effluent limitations shall be established and enforced for point~~
33 ~~sources, including publicly owned treatment works, which require the application~~
34 ~~of the best practicable control economically achievable.~~

35 ~~2. In the case of a discharge into a publicly owned treatment plant in~~
36 ~~existence on July 1, 1977, or federally approved prior to June 30, 1974, effluent~~
37 ~~limitations shall be established and enforced which comply with applicable~~
38 ~~pretreatment requirements or are based upon secondary treatment as federally~~
39 ~~defined.~~

40 ~~3. Effluent limitations established pursuant to this section must prescribe~~
41 ~~limits for the discharge of perfluoroalkyl and polyfluoroalkyl substances into the~~
42 ~~waters of this State.] (Deleted by amendment.)~~

43 **Sec. 5.** ~~[NRS 445A.855 is hereby amended to read as follows:~~

44 ~~445A.855. 1. The Commission shall adopt by regulation:~~

45 ~~[1.] (a) Primary drinking water standards which prescribe the maximum~~
46 ~~permissible levels for contaminants in any public water system and provide for the~~
47 ~~monitoring and reporting of water quality. In establishing the standards, the~~
48 ~~Commission shall consider, among other things, the standards established pursuant~~
49 ~~to the Federal Act.~~

~~[2.] (b) Secondary drinking water standards which reasonably ensure that drinking water is aesthetically adequate.~~

~~2. The regulations adopted by the Commission pursuant to subsection 1 must establish the maximum permissible level for perfluoroalkyl and polyfluoroalkyl substances in any public water system. In establishing or revising the maximum permissible level, the Commission shall consider:~~

~~(a) The maximum contaminant levels for perfluoroalkyl and polyfluoroalkyl substances in public water systems that have been adopted by other states;~~

~~(b) Any studies and scientific evidence reviewed by other states which have set maximum contaminant levels for perfluoroalkyl and polyfluoroalkyl substances in public water systems;~~

~~(c) Information provided by the Agency for Toxic Substances and Disease Registry of the United States Department of Health and Human Services; and~~

~~(d) The latest peer-reviewed scientific studies and studies by independent and government agency sources.~~

~~3. The maximum permissible level for perfluoroalkyl and polyfluoroalkyl substances in a public water system established by the Commission:~~

~~(a) Must be protective of public health, including, without limitation, the health of vulnerable subpopulations such as pregnant women, nursing mothers, infants and children; and~~

~~(b) Must not be less stringent than any maximum permissible level for perfluoroalkyl and polyfluoroalkyl substances in a public water system or a health advisory promulgated by the United States Environmental Protection Agency.~~

~~4. As used in this section, "perfluoroalkyl and polyfluoroalkyl substances" has the meaning ascribed to it in section 1 of this act. (Deleted by amendment.)~~

Sec. 6. Chapter 459 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to ~~[14.]~~ 14.5, inclusive, of this act.

Sec. 7. As used in sections 7 to ~~[14.]~~ 14.5, inclusive, of this act, the words and terms defined in sections 8 ~~and~~ 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.

Sec. 8.7. "Division" means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

Sec. 9. "Perfluoroalkyl and polyfluoroalkyl substances" means a class of fluorinated organic chemicals that contain at least one fully fluorinated carbon atom.

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

Sec. 11. ~~[1. Except as otherwise provided in section 10 of this act, any person who owns or operates a facility or other structure that uses or stores perfluoroalkyl and polyfluoroalkyl substances, including, without limitation, Class B firefighting foam that contains intentionally added perfluoroalkyl and~~

~~polyfluoroalkyl substances, must obtain a certificate of registration from the Division of Environmental Protection of the State Department of Conservation and Natural Resources by submitting an application to the Division that demonstrates that the applicant follows the standards for the capture and disposal of perfluoroalkyl and polyfluoroalkyl substances established by the State Environmental Commission pursuant to subsection 2.~~

~~2. The State Environmental Commission shall adopt regulations establishing:~~

~~(a) Standards for the capture and disposal of perfluoroalkyl and polyfluoroalkyl substances;~~

~~(b) Requirements for obtaining a certificate of registration for a person who uses and stores perfluoroalkyl and polyfluoroalkyl substances, including, without limitation, establishing a fee to obtain a certificate; and~~

~~(c) A schedule of penalties for the failure to obtain a certificate of registration or comply with the standards adopted by the Commission for the capture and disposal of perfluoroalkyl and polyfluoroalkyl substances.~~

~~3. In adopting regulations for perfluoroalkyl and polyfluoroalkyl substances pursuant to this section, the State Environmental Commission shall consider the costs, technological feasibility and the possibility of emergency firefighting situations or fire prevention scenarios that may require the use of perfluoroalkyl and polyfluoroalkyl substances.~~

~~4. As used in this section, "uses or stores perfluoroalkyl and polyfluoroalkyl substances" means the actual and intentional ownership or control of perfluoroalkyl and polyfluoroalkyl substances. The term does not include the interception or accumulation of perfluoroalkyl and polyfluoroalkyl substances in water treatment facilities and domestic wastewater facilities.} (Deleted by amendment.)~~

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

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

(b) Firefighting training. [purposes or for testing firefighting foam fire systems any Class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances.]

2. [A violation of] Any person who violates the provisions of subsection 1 [shall be] is guilty of a misdemeanor.

[3. As used in this section, "firefighting foam fire systems" means a system designed to provide protection from fire, or for the suppression of fire, through the use of firefighting foam.]

Sec. 13. [1.] Except as otherwise provided in section 10 of this act, [the use of] 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 [is prohibited

~~at any airport in this State that has been designated by the Federal Aviation Administration as a public use airport.~~

~~2. A violation of the provisions of subsection 1 shall be a misdemeanor, must report the discharge, use or release to the Division not later than 24 hours after the discharge, use or release. The notification must include, without limitation:~~

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

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

~~Sec. 14. [1. Except as otherwise provided in section 10 of this act, a person shall not knowingly manufacture, sell, offer for sale, distribute for sale or distribute for use in this State, any class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances.~~

~~2. A violation of the provisions of subsection 1 shall be a misdemeanor.]~~
~~(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;

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

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

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

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

16 (f) *A tent or sleeping bag.*

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

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

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

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

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

31 2. *Except as otherwise provided in subsection 3, a retailer shall not sell or*
32 *offer for sale or use in this State, a children's product, upholstered residential*
33 *furniture, residential textile, business textile or mattress that contains any flame-*
34 *retardant organohalogenated chemical in any product component in amounts*
35 *greater than 1,000 parts per million.*

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

37 (a) *The extent preempted by federal law;*

38 (b) *Any flame-retardant organohalogenated chemical that:*

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

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

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

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

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

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

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

52 Sec. 25. *A manufacturer shall not replace a flame-retardant*
53 *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~~ or federal ~~or~~
~~international~~ 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.

3. Sections 1 to 5, inclusive, and 15 to 26, 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 15 to 26, inclusive, of this act; and

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