

GOV. MSG. NO. 1253

EXECUTIVE CHAMBERS HONOLULU

DAVID Y. IGE GOVERNOR

June 27, 2022

The Honorable Ronald D. Kouchi, President and Members of the Senate Thirty-First State Legislature State Capitol, Room 409 Honolulu, Hawai'i 96813 The Honorable Scott K. Saiki, Speaker and Members of the House of Representatives Thirty-First State Legislature State Capitol, Room 431 Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 27, 2022, the following bill was signed into law:

HB1644 HD1 SD1 CD1

RELATING TO ENVIRONMENTAL PROTECTION. ACT 152

Sincerely,

And M

DAVID Y. IGE Governor, State of Hawai'i

Approved by the Governor on _____JUN 2 7 2022

HOUSE OF REPRESENTATIVES THIRTY-FIRST LEGISLATURE, 2022 STATE OF HAWAII

ACT 1 5 2 H.B. NO. ¹⁶⁴⁴ ^{H.D. 1} ^{S.D. 1} ^{C.D. 1}

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that perfluoroalkyl and 2 polyfluoroalkyl substances (PFAS) are chemicals that have been 3 used in many consumer products since the 1940s. PFAS accumulate 4 in the human body, and exposure can lead to adverse health 5 outcomes in humans. The most studied PFAS chemicals are 6 perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid 7 (PFOS). Studies indicate that PFOA and PFOS can cause 8 reproductive and developmental, liver and kidney, and 9 immunological effects in laboratory animals, and both PFOA and 10 PFOS have caused tumors in animals. The most consistent 11 findings are increased cholesterol levels among exposed 12 populations, with other findings related to low infant birth 13 rates, effects on the immune system, cancer for PFOA, and 14 thyroid disruption for PFOS.

15 One common pathway for human exposure to PFAS is through
16 their use in food packaging. Individuals can be exposed to PFAS
17 by eating food that was packaged in material that contains PFAS

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or using consumer products that contain PFAS. Due to the
 pervasiveness of these chemicals, PFAS have also been detected
 in drinking water. Another pathway for exposure to PFAS is
 through drinking water contaminated by firefighting foam
 containing PFAS.

6 The legislature further finds that once PFAS enter the 7 environment, they persist for a very long time, as no natural 8 processes can break down these substances. These forever 9 chemicals can continue to cause exposures long after they are 10 phased out of consumer and other products. Furthermore, there 11 is little toxicity or safety data for most of the commonly used 12 PFAS chemicals, including those that are currently used in food 13 packaging.

The legislature also finds that a 2021 study conducted by 14 the Washington state department of ecology sought to identify 15 16 safer options to replace PFAS in food packaging. The study set 17 forth certain considerations when looking for alternatives, 18 including if the products were safer than PFAS, worked as well as or better than PFAS, were readily available for purchase to 19 20 general consumers, and were cost comparable to the PFAS option. The department of ecology determined that less hazardous 21

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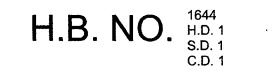
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alternatives are available for the following four types of food
 packaging: wraps and liners, plates, food boats, and pizza
 boxes.

4 The legislature additionally finds that there are two major 5 classes of firefighting foam: class A firefighting foam, which is used to extinguish certain materials such as wood, paper, and 6 7 brush; and class B firefighting foam, also called aqueous film 8 forming foam, which is used to extinguish materials such as 9 gasoline, oil, and jet fuel. Class B firefighting foams, some 10 of which contain PFAS, are widely used at firefighting training 11 facilities, airports, and military bases.

12 Although class B firefighting foam is highly effective for 13 fighting flammable liquid fires, numerous environmental, health, 14 and safety concerns have prompted federal and state agencies and 15 legislatures to consider regulating firefighting foams that 16 contain PFAS. Congress has already directed the military to phase out its use of such foams by 2024. Furthermore, nine 17 states, including California, Illinois, New York, and 18 19 Washington, have enacted laws that prohibit the sale or use of PFAS firefighting foams. The market for safer alternatives to 20 21 PFAS firefighting foam is also growing, including for airports.

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1	Accordingly, the purpose of this Act is to:
2	(1) Prohibit the manufacture, sale, or distribution for
3	sale or use of wraps and liners, plates, food boats,
4	and pizza boxes that contain PFAS; and
5	(2) Prohibit the manufacture, sale, distribution, and use
6	of class B firefighting foams that contain PFAS, with
7	certain exceptions.
8	SECTION 2. Chapter 321, Hawaii Revised Statutes, is
9	amended by adding a new part to be appropriately designated and
10	to read as follows:
11	"PART . PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES
11 12	"PART . PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES PROHIBITED
12	PROHIBITED
12 13	PROHIBITED §321- Definitions. For the purposes of this part:
12 13 14	<pre>PROHIBITED \$321- Definitions. For the purposes of this part: "Class B firefighting foam" means foams designed to</pre>
12 13 14 15	PROHIBITED \$321- Definitions. For the purposes of this part: "Class B firefighting foam" means foams designed to suppress flammable liquid fires.
12 13 14 15 16	PROHIBITED \$321- Definitions. For the purposes of this part: "Class B firefighting foam" means foams designed to suppress flammable liquid fires. "Food packaging" means a package or packaging component
12 13 14 15 16 17	PROHIBITED \$321- Definitions. For the purposes of this part: "Class B firefighting foam" means foams designed to suppress flammable liquid fires. "Food packaging" means a package or packaging component that is applied to or in direct contact with any food or

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"Intentionally introduced" means deliberately utilized PFAS
 in the formulation of a package or packaging component where the
 continued presence of the PFAS is desired in the final package
 or packaging component to provide a specific characteristic,
 appearance, or quality.

6 "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS"
7 means all members of the class of fluorinated organic chemicals
8 containing at least one fully fluorinated carbon atom.

9 §321- Food packaging; prohibited items. (a) Beginning
10 December 31, 2024, it shall be unlawful to manufacture, sell,
11 offer for sale, distribute for sale, or distribute for use in
12 the State any food packaging specified in subsection (b) to
13 which PFAS chemicals have been intentionally introduced in any
14 amount.

15 (b) The prohibition under this section shall apply to16 wraps and liners, plates, food boats, and pizza boxes.

17 §321- Class B firefighting foam; prohibited items. (a)
18 Beginning July 1, 2024, it shall be unlawful for any person or
19 state or county department or agency to discharge or otherwise
20 use for training or testing purposes class B firefighting foam
21 that contains intentionally introduced PFAS chemicals, unless

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the use is necessary for effective suppression of a petroleum
 fire.

3 (b) Beginning July 1, 2024, it shall be unlawful to
4 manufacture, sell, offer for sale, distribute for sale, or
5 distribute for training or testing purposes in the State any
6 class B firefighting foam that contains intentionally introduced
7 PFAS chemicals.

8 This section shall not apply to the manufacture, sale, (c) or distribution of class B firefighting foam where the inclusion 9 10 of PFAS chemicals is required by federal law or regulations; 11 provided that if applicable federal law or regulations are 12 amended after the effective date of this Act to allow the use of alternative firefighting agents that do not contain PFAS 13 14 chemicals, the department may adopt rules that restrict PFAS chemicals for the manufacture, sale, and distribution of 15 16 firefighting foam for uses that are addressed by the federal law 17 or regulation.

18 §321- Manufacturers of class B firefighting foam;
19 prohibitions; certificate of compliance; penalty. (a) A
20 manufacturer of class B firefighting foam prohibited by this
21 part shall notify, in writing and no later than January 1, 2023,

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persons that sell the manufacturer's products in the State about
 the requirements of this part.

3 (b) A manufacturer that produces, sells, or distributes a
4 class B firefighting foam prohibited by this part shall recall
5 the product and reimburse the retailer or any other purchaser
6 for the product.

7 (c) The department may request a certificate of compliance
8 from a manufacturer of class B firefighting foam that attests
9 that a manufacturer's product or products meets the requirements
10 of this part.

(d) Any manufacturer of class B firefighting foam
violating this part or any rule adopted pursuant to this part
shall be subject to an administrative fine not to exceed:

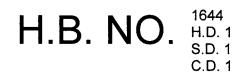
14 (1) \$5,000 for a first violation; and

15 (2) \$10,000 for any subsequent violation.

16 §321- Rules. The department may adopt rules pursuant
17 to chapter 91 necessary to implement this part."

18 SECTION 3. This Act shall take effect on July 1, 2022.

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APPROVED this 27th day of June , 2022

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GOVERNOR OF THE STATE OF HAWAII

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 03, 2022 Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.

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Scott K. Saiki Speaker House of Representatives

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Brian L. Takeshita Chief Clerk House of Representatives

H.B. No. 1644, H.D. 1, S.D. 1, C.D. 1

THE SENATE OF THE STATE OF HAWAI'I

Date: May 3, 2022 Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate

of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.

President of the Senate

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Clerk of the Senate