

ACT 152

H.B. NO. 1644

A Bill for an Act Relating to Environmental Protection.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

packaged in material that contains PFAS 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.

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

The legislature also finds that a 2021 study conducted by the Washington state department of ecology sought to identify safer options to replace PFAS in food packaging. The study set forth certain considerations when looking for alternatives, including if the products were safer than PFAS, worked as well as or better than PFAS, were readily available for purchase to general consumers, and were cost comparable to the PFAS option. The department of ecology determined that less hazardous alternatives are available for the following four types of food packaging: wraps and liners, plates, food boats, and pizza boxes.

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

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

Accordingly, the purpose of this Act is to:

- (1) Prohibit the manufacture, sale, or distribution for sale or use of wraps and liners, plates, food boats, and pizza boxes that contain PFAS; and
- (2) Prohibit the manufacture, sale, distribution, and use of class B firefighting foams that contain PFAS, with certain exceptions.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . PERFLUOROALKYL AND POLYFLUOROALKYL
SUBSTANCES 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 beverage and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers.

“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.

“Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means all members of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

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

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

§321- Class B firefighting foam; prohibited items. (a) Beginning July 1, 2024, it shall be unlawful for any person or state or county department or agency to discharge or otherwise use for training or testing purposes class B firefighting foam that contains intentionally introduced PFAS chemicals, unless the use is necessary for effective suppression of a petroleum fire.

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

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

§321- Manufacturers of class B firefighting foam; prohibitions; certificate of compliance; penalty. (a) A manufacturer of class B firefighting foam prohibited by this part shall notify, in writing and no later than January 1, 2023, persons that sell the manufacturer’s products in the State about the requirements of this part.

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

(c) The department may request a certificate of compliance from a manufacturer of class B firefighting foam that attests that a manufacturer’s product or products meets the requirements 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:

- (1) \$5,000 for a first violation; and
- (2) \$10,000 for any subsequent violation.

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

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

(Approved June 27, 2022.)