
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; prohibiting, with certain exceptions, the use, manufacture or sale of certain Class B firefighting foams; 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:

1 Under existing law, the State Environmental Commission is required to
2 establish standards of water quality, effluent limitations for point sources and
3 primary drinking water standards with maximum permissible levels for
4 contaminants in public water systems. (NRS 445A.425, 445A.520, 445A.525,
5 445A.855) **Section 3** of this bill requires the Commission to adopt water quality
6 criteria for perfluoroalkyl and polyfluoroalkyl substances in surface waters. **Section**
7 **4** of this bill requires the Commission to establish effluent limitations for
8 discharges of perfluoroalkyl and polyfluoroalkyl substances into the waters of the
9 State. **Section 5** of this bill requires the Commission to establish maximum
10 permissible levels in drinking water for perfluoroalkyl and polyfluoroalkyl
11 substance in public water systems and sets forth certain criteria for the Commission



12 to use in establishing the maximum permissible levels. **Section 1** of this bill defines
13 the term “perfluoroalkyl and polyfluoroalkyl substances.”

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

25 **Section 12** of this bill prohibits a person from discharging or otherwise using
26 Class B firefighting foam that contains intentionally added perfluoroalkyl and
27 polyfluoroalkyl substances for firefighting training or for testing firefighting foam
28 fire systems.

29 **Section 13** of this bill prohibits the use of Class B firefighting foam that
30 contains intentionally added perfluoroalkyl and polyfluoroalkyl substances at
31 certain airports.

32 **Section 14** of this bill prohibits a person from knowingly manufacturing,
33 selling, offering for sale, distributing for sale or distributing for use any class B
34 firefighting foam that contains intentionally added perfluoroalkyl and
35 polyfluoroalkyl substances.

36 **Sections 8 and 9** of this bill, respectively, define “class B firefighting foam”
37 and “perfluoroalkyl and polyfluoroalkyl substances.” **Section 10** of this bill
38 provides an exception to the requirements and prohibitions set forth in **sections 11-**
39 **14** to the extent those provisions are preempted by or conflict with federal law.

40 **Section 24** of this bill prohibits, with certain exceptions, the knowing
41 manufacture, sale, offering for sale, distribution for sale or distribution for use of
42 a children’s product, upholstered residential furniture, residential textile, business
43 textile or mattress containing any flame-retardant organohalogenated chemical in
44 any product component in amounts greater than 1,000 parts per million. **Section 25**
45 of this bill prohibits, with certain exceptions, a manufacturer from replacing such
46 a flame-retardant organohalogenated chemical with any other chemical that is known
47 or suspected with a high degree of probability to: (1) harm the normal development
48 of a fetus or child; (2) cause cancer, genetic damage or reproductive harm; (3)
49 disrupt the endocrine system; or (4) damage the nervous system, immune system or
50 organs or cause other systemic toxicity. **Section 26** of this bill makes a person who
51 willfully and knowingly violates **section 24 or 25** subject to a maximum civil
52 penalty of \$1,000. **Sections 17-23** of this bill define certain terms related to these
53 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
2 adding thereto a new section to read as follows:

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



1 **Sec. 2.** NRS 445A.310 is hereby amended to read as follows:
2 445A.310 As used in NRS 445A.300 to 445A.730, inclusive,
3 unless the context otherwise requires, the words and terms defined
4 in NRS 445A.315 to 445A.420, inclusive, *and section 1 of this act*
5 have the meanings ascribed to them in those sections.

6 **Sec. 3.** NRS 445A.520 is hereby amended to read as follows:
7 445A.520 1. The Commission shall establish water quality
8 standards at a level designed to protect and ensure a continuation of
9 the designated beneficial use or uses which the Commission has
10 determined to be applicable to each stream segment or other body of
11 surface water in the State.

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

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

26 4. *The Commission shall establish water quality criteria for*
27 *perfluoroalkyl and polyfluoroalkyl substances in the surface*
28 *waters of this State.*

29 **Sec. 4.** NRS 445A.525 is hereby amended to read as follows:
30 445A.525 1. Effluent limitations shall be established and
31 enforced for point sources, including publicly owned treatment
32 works, which require the application of the best practicable control
33 economically achievable.

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

39 3. *Effluent limitations established pursuant to this section*
40 *must prescribe limits for the discharge of perfluoroalkyl and*
41 *polyfluoroalkyl substances into the waters of this State.*

42 **Sec. 5.** NRS 445A.855 is hereby amended to read as follows:
43 445A.855 1. The Commission shall adopt by regulation:

44 ~~H~~ (a) Primary drinking water standards which prescribe the
45 maximum permissible levels for contaminants in any public water



1 system and provide for the monitoring and reporting of water
2 quality. In establishing the standards, the Commission shall
3 consider, among other things, the standards established pursuant to
4 the Federal Act.

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

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

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

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

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

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

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

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

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

33 **4. As used in this section, “perfluoroalkyl and polyfluoroalkyl**
34 **substances” has the meaning ascribed to it in section 1 of this act.**

35 **Sec. 6.** Chapter 459 of NRS is hereby amended by adding
36 thereto the provisions set forth as sections 7 to 14, inclusive, of this
37 act.

38 **Sec. 7.** **As used in sections 7 to 14, inclusive, of this act, the**
39 **words and terms defined in sections 8 and 9 of this act have the**
40 **meanings ascribed to them in those sections.**

41 **Sec. 8.** **“Class B firefighting foam” means a foam designed**
42 **to extinguish flammable liquid fires.**

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



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

8 **Sec. 11.** *1. Except as otherwise provided in section 10 of*
9 *this act, any person who owns or operates a facility or other*
10 *structure that uses or stores perfluoroalkyl and polyfluoroalkyl*
11 *substances, including, without limitation, Class B firefighting*
12 *foam that contains intentionally added perfluoroalkyl and*
13 *polyfluoroalkyl substances, must obtain a certificate of*
14 *registration from the Division of Environmental Protection of the*
15 *State Department of Conservation and Natural Resources by*
16 *submitting an application to the Division that demonstrates that*
17 *the applicant follows the standards for the capture and disposal of*
18 *perfluoroalkyl and polyfluoroalkyl substances established by the*
19 *State Environmental Commission pursuant to subsection 2.*

20 **2.** *The State Environmental Commission shall adopt*
21 *regulations establishing:*

22 *(a) Standards for the capture and disposal of perfluoroalkyl*
23 *and polyfluoroalkyl substances;*

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

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

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

38 **4.** *As used in this section, “uses or stores perfluoroalkyl and*
39 *polyfluoroalkyl substances” means the actual and intentional*
40 *ownership or control of perfluoroalkyl and polyfluoroalkyl*
41 *substances. The term does not include the interception or*
42 *accumulation of perfluoroalkyl and polyfluoroalkyl substances in*
43 *water treatment facilities and domestic wastewater facilities.*

44 **Sec. 12.** *1. Except as otherwise provided in section 10 of*
45 *this act, a person shall not discharge or otherwise use for*



1 *firefighting training purposes or for testing firefighting foam fire*
2 *systems any Class B firefighting foam that contains intentionally*
3 *added perfluoroalkyl and polyfluoroalkyl substances.*

4 2. *A violation of the provisions of subsection 1 shall be a*
5 *misdemeanor.*

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

9 **Sec. 13.** 1. *Except as otherwise provided in section 10 of*
10 *this act, the use of Class B firefighting foam that contains*
11 *intentionally added perfluoroalkyl and polyfluoroalkyl substances*
12 *is prohibited at any airport in this State that has been designated*
13 *by the Federal Aviation Administration as a public-use airport.*

14 2. *A violation of the provisions of subsection 1 shall be a*
15 *misdemeanor.*

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

21 2. *A violation of the provisions of subsection 1 shall be a*
22 *misdemeanor.*

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

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

30 **Sec. 17.** *"Business textile" means a textile designed for use*
31 *in a business or commercial setting as a covering on windows or*
32 *walls.*

33 **Sec. 18.** *"Child" means a person under 12 years of age.*

34 **Sec. 19.** 1. *"Children's product" means a product primarily*
35 *designed or intended by a manufacturer to be used by or for a*
36 *child, including, without limitation, any article used as a*
37 *component of such a product.*

38 2. *The term does not include:*

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

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

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



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

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

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

14 **Sec. 20.** *“Mattress” has the meaning ascribed to it in 16*
15 *C.F.R. § 1632.1.*

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

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

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

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

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

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

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

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

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

44 (2) *Has a determination of safety pursuant to 15 U.S.C. §*
45 *2604(a)(3)(C) or 15 U.S.C. § 2605(b)(4);*



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

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

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

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

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

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

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

20 2. *Cause cancer, genetic damage or reproductive harm;*

21 3. *Disrupt the endocrine system; or*

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

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

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

29 2. Sections 1 to 26, inclusive, of this act become effective:

30 (a) Upon passage and approval for the purpose of adopting any
31 regulations and performing any other preparatory administrative
32 tasks that are necessary to carry out the provisions of this act; and

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

