

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 776

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DATE	D-PG	OFFICIAL STATUS
01/26/2023	409	Introduction and first reading Referred to Environment, Climate, and Legacy
01/27/2023	468	Author added Nelson
03/06/2023	1317a	Comm report: To pass as amended and re-refer to Commerce and Consumer Protection
03/20/2023		Comm report: To pass as amended and re-refer to Environment, Climate, and Legacy

1.1 A bill for an act

1.2 relating to environment; prohibiting the use of certain firefighting foam;

1.3 appropriating money; allowing certain exemptions; amending Minnesota Statutes

1.4 2022, section 325F.072, subdivisions 1, 3, by adding a subdivision.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2022, section 325F.072, subdivision 1, is amended to read:

1.7 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have

1.8 the meanings given.

1.9 (b) "Class B firefighting foam" means foam designed ~~for flammable liquid fires to~~

1.10 prevent or extinguish a fire in flammable liquids, combustible liquids, petroleum greases,

1.11 tars, oils, oil-based paints, solvents, lacquers, alcohols, and flammable gases.

1.12 (c) "PFAS chemicals" or "perfluoroalkyl and polyfluoroalkyl substances" means, ~~for~~

1.13 ~~the purposes of firefighting agents,~~ a class of fluorinated organic chemicals containing at

1.14 least one fully fluorinated carbon atom ~~and designed to be fully functional in class B~~

1.15 ~~firefighting foam formulations.~~

1.16 (d) "Political subdivision" means a county, city, town, or a metropolitan airports

1.17 commission organized and existing under sections 473.601 to 473.679.

1.18 (e) "State agency" means an agency as defined in section 16B.01, subdivision 2.

1.19 (f) "Testing" means calibration testing, conformance testing, and fixed system testing.

2.1 Sec. 2. Minnesota Statutes 2022, section 325F.072, subdivision 3, is amended to read:

2.2 Subd. 3. **Prohibition of testing and training.** (a) ~~Beginning July 1, 2020,~~ No person,
2.3 political subdivision, or state agency shall ~~discharge class B firefighting foam that contains~~
2.4 intentionally added manufacture or knowingly sell, offer for sale, distribute for sale, or
2.5 distribute for use in this state, and no person shall use in this state, class B firefighting foam
2.6 containing PFAS chemicals;

2.7 (1) ~~for testing purposes, unless the testing facility has implemented appropriate~~
2.8 ~~containment, treatment, and disposal measures to prevent releases of foam to the environment;~~
2.9 ~~or~~

2.10 (2) ~~for training purposes, unless otherwise required by law, and with the condition that~~
2.11 ~~the training event has implemented appropriate containment, treatment, and disposal measures~~
2.12 ~~to prevent releases of foam to the environment. For training purposes, class B foam that~~
2.13 ~~contains intentionally added PFAS chemicals shall not be used.~~

2.14 (b) ~~This section does not restrict:~~

2.15 (1) ~~the manufacture, sale, or distribution of class B firefighting foam that contains~~
2.16 ~~intentionally added PFAS chemicals; or~~

2.17 (2) ~~the discharge or other use of class B firefighting foams that contain intentionally~~
2.18 ~~added PFAS chemicals in emergency firefighting or fire prevention operations.~~

2.19 (b) This subdivision does not apply to the manufacture, sale, distribution, or use of class
2.20 B firefighting foam for which the inclusion of PFAS chemicals is required by federal law,
2.21 including but not limited to Code of Federal Regulations, title 14, section 139.317. If a
2.22 federal requirement to include PFAS chemicals in class B firefighting foam is revoked after
2.23 January 1, 2024, class B firefighting foam subject to the revoked requirements is no longer
2.24 exempt under this paragraph effective one year after the day of revocation.

2.25 (c) This subdivision does not apply to the manufacture, sale, distribution, or use of class
2.26 B firefighting foam for purposes of use at an airport, as defined under section 360.013,
2.27 subdivision 39, until the state fire marshal makes a determination that:

2.28 (1) the Federal Aviation Administration has provided policy guidance on the transition
2.29 to fluorine-free firefighting foam;

2.30 (2) a fluorine-free firefighting foam product is included in the Federal Aviation
2.31 Administration's Qualified Product Database; and

3.1 (3) firefighting foam product included in the database under clause (2) is commercially
 3.2 available in quantities sufficient to reliably meet the requirements under Code of Federal
 3.3 Regulations, title 14, section 139.

3.4 (d) Until the state fire marshal makes a determination under paragraph (c), the operator
 3.5 of an airport using class B firefighting foam containing PFAS chemicals must, on or before
 3.6 December 31 of each calendar year, submit a report to the state fire marshal regarding the
 3.7 status of the airport's conversion to class B firefighting foam products without intentionally
 3.8 added PFAS, the disposal of class B firefighting foam products with intentionally added
 3.9 PFAS, and an assessment of the factors listed in paragraph (c) as applied to the airport.

3.10 **EFFECTIVE DATE.** This section is effective January 1, 2024.

3.11 Sec. 3. Minnesota Statutes 2022, section 325F.072, is amended by adding a subdivision
 3.12 to read:

3.13 Subd. 3a. **Discharge for testing and training.** A person, political subdivision, or state
 3.14 agency exempted from the prohibitions under subdivision 3 may not discharge class B
 3.15 firefighting foam that contains intentionally added PFAS chemicals for:

3.16 (1) testing purposes, unless the testing facility has implemented appropriate containment,
 3.17 treatment, and disposal measures to prevent releases of foam to the environment; or

3.18 (2) training purposes, unless otherwise required by law, and with the condition that the
 3.19 training event has implemented appropriate containment, treatment, and disposal measures
 3.20 to prevent releases of foam to the environment.

3.21 **EFFECTIVE DATE.** This section is effective January 1, 2024.

3.22 Sec. 4. **FIREFIGHTER TURNOUT GEAR; REPORT.**

3.23 (a) The commissioner of the Pollution Control Agency, in cooperation with the
 3.24 commissioner of health, must submit a report to the chairs and ranking minority members
 3.25 of the legislative committees and divisions with jurisdiction over the environment and
 3.26 natural resources regarding perfluoroalkyl and polyfluoroalkyl substances (PFAS) in turnout
 3.27 gear by January 15, 2024. The report must include:

3.28 (1) current turnout gear requirements and options for eliminating or reducing PFAS in
 3.29 turnout gear;

3.30 (2) current turnout gear disposal methods and recommendations for future disposal to
 3.31 prevent PFAS contamination; and

4.1 (3) recommendations and protocols for PFAS biomonitoring in firefighters, including
4.2 a process for allowing firefighters to voluntarily register for biomonitoring.

4.3 (b) For the purposes of this section, "turnout gear" is the personal protective equipment
4.4 (PPE) used by firefighters.

4.5 **Sec. 5. TEMPORARY EXEMPTION FOR TERMINALS AND OIL REFINERIES.**

4.6 Subdivision 1. **Temporary exemption.** Minnesota Statutes, section 325F.072, subdivision
4.7 3, does not apply to the manufacture, sale, distribution, or use of class B firefighting foam
4.8 for the purposes of use at a terminal or oil refinery until January 1, 2026.

4.9 Subd. 2. **Extension; waiver.** (a) A person who operates a terminal or oil refinery may
4.10 apply to the state fire marshal for a waiver to extend the exemption under subdivision 1,
4.11 beyond January 1, 2026, as provided in this subdivision.

4.12 (b) The state fire marshal may grant a waiver to extend the exemption under subdivision
4.13 1, for a specific use if the applicant provides all of the following:

4.14 (1) clear and convincing evidence that there is no commercially available replacement
4.15 that does not contain intentionally added PFAS chemicals and that is capable of suppressing
4.16 fire for that specific use;

4.17 (2) information on the amount of firefighting foam containing intentionally added PFAS
4.18 chemicals stored, used, or released on-site on an annual basis;

4.19 (3) a detailed plan, with timelines, for the operator of the terminal or oil refinery to
4.20 transition to firefighting foam that does not contain intentionally added PFAS chemicals
4.21 for that specific use; and

4.22 (4) a plan for meeting the requirements under subdivision 3.

4.23 (c) The state fire marshal must ensure there is an opportunity for public comment during
4.24 the waiver process. The state fire marshal must consider both information provided by the
4.25 applicant and information provided through public comment when making a decision on
4.26 whether to grant a waiver. The term of a waiver must not exceed two years. The state fire
4.27 marshal must not grant a waiver for a specific use if any other terminal or oil refinery is
4.28 known to have transitioned to commercially available class B firefighting foam that does
4.29 not contain intentionally added PFAS chemicals for that specific use. All waivers must
4.30 expire by January 1, 2028. A person that anticipates applying for a waiver for a terminal or
4.31 oil refinery must submit a notice of intent to the state fire marshal by January 1, 2025, in

5.1 order to be considered for a waiver beyond January 1, 2026. The state fire marshal must
 5.2 notify the waiver applicant of a decision within six months of the waiver submission date.

5.3 (d) The state fire marshal must provide an applicant for a waiver under this subdivision
 5.4 an opportunity to:

5.5 (1) correct deficiencies when applying for a waiver; and

5.6 (2) provide evidence to dispute a determination that another terminal or oil refinery is
 5.7 known to have transitioned to commercially available class B firefighting foam that does
 5.8 not contain intentionally added PFAS chemicals for that specific use, including evidence
 5.9 that the specific use is different.

5.10 Subd. 3. Use requirements. (a) A person that uses class B firefighting foam containing
 5.11 intentionally added PFAS chemicals under this section must:

5.12 (1) implement tactics that have been demonstrated to prevent release directly to the
 5.13 environment, such as to unsealed ground, soakage pits, waterways, or uncontrolled drains;

5.14 (2) attempt to fully contain all fire foams with PFAS on-site using demonstrated practices
 5.15 designed to contain all PFAS releases;

5.16 (3) implement containment measures such as bunds and ponds that are controlled,
 5.17 impervious to PFAS chemicals, and do not allow firewater, wastewater, runoff, and other
 5.18 wastes to be released to the environment, such as to soils, groundwater, waterways, or
 5.19 stormwater; and

5.20 (4) dispose of all firewater, wastewater, runoff, impacted soils, and other wastes in a
 5.21 way that prevents releases to the environment.

5.22 (b) A terminal or oil refinery that has received a waiver under this section may provide
 5.23 and use class B firefighting foam containing intentionally added PFAS chemicals in the
 5.24 form of mutual aid to another terminal or oil refinery at the request of authorities only if
 5.25 the other terminal or oil refinery also has a waiver.

5.26 **EFFECTIVE DATE.** This section is effective January 1, 2024.

5.27 Sec. 6. **APPROPRIATION; BIOMONITORING.**

5.28 \$500,000 in fiscal year 2024 is appropriated from the general fund to the commissioner
 5.29 of the Pollution Control Agency for developing and implementing firefighter biomonitoring
 5.30 protocols under section 3. Of this amount, up to \$250,000 may be transferred to the
 5.31 commissioner of health for biomonitoring of firefighters. This is a onetime appropriation
 5.32 and is available until June 30, 2025.