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**SUBSTITUTE HOUSE BILL 1143**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Reeves, Gregerson, Appleton, Fitzgibbon, Ormsby, and Stanford)

READ FIRST TIME 02/15/19.

1 AN ACT Relating to requiring notification of the discharge or use  
2 of firefighting foam containing certain chemicals; amending RCW  
3 70.75A.060; adding a new section to chapter 70.75A RCW; adding a new  
4 section to chapter 90.48 RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.75A  
7 RCW to read as follows:

8 (1) A person discharging or using class B firefighting foam  
9 containing intentionally added PFAS chemicals for any purpose must:

10 (a) Notify the department within twenty-four hours; and

11 (b) Immediately notify the division of emergency management  
12 within the state military department, using the division of emergency  
13 management's twenty-four hour statewide toll-free number established  
14 for reporting emergencies.

15 (2) The notification to the department under subsection (1) of  
16 this section must include the time, date, location, and estimated  
17 amount of class B firefighting foam used or discharged.

18 (3) Nothing in this section authorizes the manufacture, sale,  
19 distribution, discharge, or use of class B firefighting foam that is  
20 restricted under RCW 70.75A.010 or 70.75A.020.

1 (4) The failure to provide notification of a discharge or use of  
2 class B firefighting foam under this section is subject to the  
3 penalties provided in RCW 70.75A.060, unless the discharge or use is  
4 covered by section 2 of this act, in which case the penalties of RCW  
5 90.48.144 apply. In any enforcement action for a violation of the  
6 requirements of this section, it is an affirmative defense, if  
7 established by a person by a preponderance of the evidence, that the  
8 person had no knowledge that class B firefighting foam used or  
9 discharged by the person contained intentionally added PFAS  
10 chemicals.

11 (5) Any person not subject to the requirements of this section,  
12 if any such person exists, is nevertheless encouraged to provide  
13 notification to the department that is consistent with subsections  
14 (1) and (2) of this section.

15 (6) No officer, agent, or employee of a government entity shall  
16 be personally liable for any civil penalty arising from the  
17 performance of official duties for which the person is not otherwise  
18 liable.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48  
20 RCW to read as follows:

21 (1) A person discharging any class B firefighting foam containing  
22 intentionally added PFAS chemicals for any purpose to state waters,  
23 or in a location where a rain event would lead to a discharge of  
24 unrecovered foam to state waters, must:

25 (a) Notify the department within twenty-four hours; and

26 (b) Immediately notify the division of emergency management  
27 within the state military department, using the division's twenty-  
28 four hour statewide toll-free number established for reporting  
29 emergencies.

30 (2) The notification to the department under subsection (1) of  
31 this section must include the time, date, location, and estimated  
32 amount of class B firefighting foam used or discharged.

33 (3) The failure to provide notification of a discharge to state  
34 waters of class B firefighting foam under this section is subject to  
35 the penalties provided in RCW 90.48.144 and injunctive relief under  
36 RCW 90.48.037. The department may bring action for injunctive relief  
37 against a person that the department has reasonable suspicion to  
38 believe is in recurrent or ongoing violation of the requirements of  
39 this section. An injunctive relief action brought under this section

1 may include action to require a person to comply with the  
2 requirements of RCW 70.75A.010 or an entity, including an entity  
3 specified in RCW 70.75A.020 (2), (3), or (4), to cease use of class B  
4 firefighting foam containing intentionally added PFAS chemicals. No  
5 officer, agent, or employee of a government entity shall be  
6 personally liable for any civil penalty arising from the performance  
7 of official duties, for which the person is not otherwise liable. In  
8 any enforcement action for a violation of the requirements of this  
9 section, it is an affirmative defense, if established by a person by  
10 a preponderance of the evidence, that the person had no knowledge  
11 that class B firefighting foam used or discharged by the person  
12 contained intentionally added PFAS chemicals.

13 (4) For purposes of this section, "class B firefighting foam" and  
14 "PFAS chemicals" have the same meaning as in RCW 70.75A.005.

15 **Sec. 3.** RCW 70.75A.060 and 2018 c 286 s 7 are each amended to  
16 read as follows:

17 A manufacturer of class B firefighting foam in violation of RCW  
18 70.75A.020 or 70.75A.040 or a person in violation of RCW 70.75A.010  
19 (~~(e)~~), 70.75A.030, or section 1 of this act is subject to a civil  
20 penalty not to exceed five thousand dollars for each violation in the  
21 case of a first offense. Manufacturers, local governments, or persons  
22 that are repeat violators are subject to a civil penalty not to  
23 exceed ten thousand dollars for each repeat offense. Penalties  
24 collected under this section must be deposited in the state toxics  
25 control account created in RCW 70.105D.070.

26 NEW SECTION. **Sec. 4.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

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