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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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The failure to provide notification of a discharge to state waters of class B firefighting foam under this section is subject to the penalties provided in RCW 90.48.144 and injunctive relief under RCW 90.48.037. The department may bring action for injunctive relief against a person that the department has reasonable suspicion to believe is in recurrent or ongoing violation of the requirements of this section. An injunctive relief action brought under this section may include action to require a person to comply with the requirements of RCW 70.75A.010 or an entity, including an entity specified in RCW 70.75A.020 (2), (3), or (4), to cease use of class B firefighting foam containing intentionally added PFAS chemicals. No officer, agent, or employee of a government entity shall be personally liable for any civil penalty arising from the performance of official duties, for which the person is not otherwise liable. In any enforcement action for a violation of the requirements of this section, it is an affirmative defense, if established by a person by a preponderance of the evidence, that the person had no knowledge that class B firefighting foam used or discharged by the person contained intentionally added PFAS chemicals.

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

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

A manufacturer of class B firefighting foam in violation of RCW 70.75A.020 or 70.75A.040 or a person in violation of RCW 70.75A.010 ((~~or~~)), 70.75A.030, or section 1 of this act is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers, local governments, or persons that are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.l05D.070.

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

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