

AMENDED IN ASSEMBLY MAY 16, 2024
AMENDED IN ASSEMBLY MARCH 21, 2024

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 2408

Introduced by Assembly Member Haney

February 12, 2024

An act to amend Section 13029 of the Health and Safety Code, and to amend Section 147.4 of the Labor Code, relating to occupational safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2408, as amended, Haney. Firefighter personal protective equipment: perfluoroalkyl and polyfluoroalkyl substances.

Existing law requires any person that sells firefighter personal protective equipment to provide written notice to the purchaser if the equipment contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS). Existing law requires the seller to retain a copy of the written notice and provide the notice to specified law enforcement entities, including the Attorney General, upon request. Existing law makes a violation of those provisions subject to a penalty of up to \$5,000 for a first violation and up to \$10,000 for a subsequent violation.

This bill, commencing July 1, 2026, would prohibit a person from manufacturing, knowingly selling, offering for sale, distributing for sale, distributing for use, or ~~using~~ *purchasing or accepting for future use* in this state firefighter personal protective equipment containing ~~PFAS~~ *intentionally added PFAS chemicals*. The bill would make a violation of this provision subject to the civil penalty provisions described above. The bill would specify that an individual firefighter shall not be personally liable for payment of the civil penalty.

Existing law requires the Occupational Safety and Health Standards Board, in consultation with the Department of Industrial Relations, every 5 years, as specified, to review all revisions to National Fire Protection Association (NFPA) standards pertaining to personal protective equipment covered by specified safety orders. If the review finds the revisions provide a greater degree of personal protection than the safety orders, existing law requires the board to consider modifying existing safety orders and to render a decision regarding changing safety orders or other standards and regulations to maintain alignment of the safety orders with the NFPA standards no later than July 1 of the subsequent year.

This bill would require the board, in consultation with the department, within one year of the NFPA updating a specified standard on protective ensemble for structural firefighting and proximity firefighting to include PFAS-free turnout gear, to update the applicable safety orders, or other standards or regulations, to maintain

alignment with the NFPA standard.

The bill would state related findings and declarations of the Legislature.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Decades of scientific research have demonstrated the toxic and carcinogenic nature of perfluoroalkyl and polyfluoroalkyl substances, known as PFAS, which are a family of synthetic chemicals known as “forever chemicals” due to their persistent nature in both the environment and the human body.

(b) Research has linked exposure to and accumulation of PFAS to development of tumors in the liver, reproductive organs, and pancreas.

(c) In November 2023, the International Agency for Research on Cancer declared perfluorooctanoic acid, which was been found in firefighter turnout gear, to be a Group 1 known human carcinogen.

(d) In addition to other industrial and commercial uses, PFAS is utilized in the personal protective equipment (PPE) of firefighters, specifically within the inner moisture barrier layer of the three-layer fabric, in order to pass a stringent light-resistance test to meet Section 8.62 of the National Fire Protection Association Standard 1971.

(e) Firefighting is an inherently dangerous profession that brings repeated exposures to numerous toxic substances, including benzene, asbestos, and hexavalent chromium. These exposures lead to a higher rate of cancer among firefighters than among the general population.

(f) The cancer risk for firefighters is so high that the International Agency for Research on Cancer has declared the profession of firefighting itself to be a Group 1 carcinogen that is known to cause cancer and be harmful to the health of humans.

(g) Fire agencies throughout the country have worked to reduce levels of occupational exposure to harmful substances, including PFAS, through policies related to, among other things, clean cabs, strict gear cleaning, the use of self-contained breathing apparatuses during overhaul, and eliminating the use of aqueous film forming foam (AFFF) that contains PFAS.

(h) California restricted the use of AFFF, also known as Class B firefighting foam, containing PFAS through the enactment of Chapter 308 of the Statutes of 2020 (Allen), which phases out their usage in both municipal and industrial firefighting settings in favor of non-PFAS alternatives.

SEC. 2. Section 13029 of the Health and Safety Code is amended to read:

13029. (a) For purposes of this section, the following definitions apply:

- (1) “Firefighter personal protective equipment” means personal protective equipment covered by the general industry safety orders in Sections 3403 to 3411, inclusive, of Title 8 of the California Code of Regulations.
- (2) “Manufacturer” means a person that manufactures, imports, or distributes domestically firefighter personal protective equipment.
- (3) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- (4) “Person” has the same meaning as defined in Section 19 and includes a public entity.
- (5) “Public entity” has the same meaning specified in Section 13050.1.

(b) (1) Commencing January 1, 2022, any person, including a manufacturer, that sells firefighter personal protective equipment to any person shall provide a written notice to the purchaser at the time of sale if the firefighter personal protective equipment contains intentionally added PFAS chemicals. The written notice shall include a statement that the firefighter personal protective equipment contains PFAS chemicals and the reason that PFAS chemicals are added to the equipment.

(2) The person selling firefighter personal protective equipment and the purchaser of the equipment shall retain a copy of the written notice on file for at least three years from the date of the transaction. Within 60 days of a request by the Attorney General, a city attorney, a county counsel, or a district attorney, the seller or purchaser of firefighter personal protective equipment shall furnish to the requesting entity the written notice, or a copy of the written notice, and associated sales documentation.

(c) The Attorney General, a city attorney, a county counsel, or a district attorney may request from a manufacturer, and a manufacturer shall provide, a certificate of compliance that certifies that the manufacturer is in compliance with subdivision (b) for that manufacturer’s firefighter personal protective equipment.

(d) Commencing July 1, 2026, any person, including a manufacturer, shall not manufacture or knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, and no person shall ~~use~~ *purchase or accept for future use* in this state, firefighter personal protective equipment containing intentionally added PFAS chemicals.

(e) (1) Except as provided in paragraph (2), and upon an action brought by the Attorney General, a city attorney, a county counsel, or a district attorney, a person that violates subdivision (b), (c), or (d) shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for a first violation, and not to exceed ten thousand dollars (\$10,000) for each subsequent violation.

(2) An individual firefighter shall not be personally liable for payment of the civil penalty imposed pursuant to paragraph (1).

(3) This section does not impair or impede any other rights, causes of action, claims, or defenses available under any other law. The remedies provided in this section are cumulative with any other remedies available under any other law.

SEC. 3. Section 147.4 of the Labor Code is amended to read:

147.4. (a) By January 1, 2016, the department shall convene an advisory committee to evaluate whether changes are needed to align the general industry safety orders in Sections 3403 to 3411, inclusive, of Article 10.1 (commencing with Section 3401) of Group 2 of Subchapter 7 of Chapter 4 of Article 8 of Division 1 of Title 8 of the California Code of Regulations with the applicable and most recently adopted standards of the National Fire Protection Association. The committee shall be composed of parties in both management and labor, represent a cross section of the fire protection industry and community, and be competent and knowledgeable regarding personal protective clothing and equipment for firefighters and firefighting practices generally.

(b) By July 1, 2016, the advisory committee shall present its findings and recommendations for consideration by the board. No later than July 1, 2017, the board shall render a decision regarding the adoption of changes to the general industry safety orders in Sections 3403 to 3411, inclusive, of Article 10.1 (commencing with Section 3401) of Group 2 of Subchapter 7 of Chapter 4 of Article 8 of Division 1 of Title 8 of the California Code of Regulations, or other applicable standards and regulations, in order to maintain alignment with the applicable National Fire Protection Association standards.

(c) Beginning July 1, 2018, and every five years thereafter, the board, in consultation with the department, shall complete a comprehensive review of all revisions to National Fire Protection Association standards pertaining to personal protective equipment covered by the general industry safety orders in Sections 3403 to 3411, inclusive, of Article 10.1 (commencing with Section 3401) of Group 2 of Subchapter 7 of Chapter 4 of Article 8 of Division 1 of Title 8 of the California Code of Regulations. If the review finds that the revisions to applicable National Fire Protection Association standards provide a greater degree of personal protection than the safety orders, the board shall consider modifying existing safety orders and shall render a decision regarding the adoption of necessary changes to safety orders, or other applicable standards and regulations, no later than July 1 of the subsequent year, in order to maintain alignment of the safety orders with the applicable National Fire Protection Association standards.

(d) (1) Notwithstanding subdivision (c), within one year of the National Fire Protection Association updating the NFPA 1971 Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting to include PFAS-free turnout gear, the board, in consultation with the department, shall update the applicable safety orders, or other applicable standards and regulations, to maintain alignment of the safety orders with the National Fire Protection Association standard.

(2) For purposes of this section, "PFAS" means perfluoroalkyl and polyfluoroalkyl substances.