STATE OF NEW YORK

8576

IN SENATE

May 10, 2018

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the use of perfluoroalkyl and polyfluoroalkyl chemicals in food packaging

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 37-0203 of the environmental conservation law, as added by chapter 286 of the laws of 1990, is amended and three new subdivisions 5, 6 and 7 are added to read as follows:

2. "Manufacturer" shall mean a person, firm, association, partnership**,** **organization, joint venture** or corporation, who or which makes containers to be used to package products.

5. "Food package" means a package or packaging component that is intended for direct food contact and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers.

6. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means, for the purposes of food packaging, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

7. "Safer alternative" means an alternative substance or chemical, demonstrated by an alternatives assessment, that meets improved hazard and exposure considerations and can be practicably and economically substituted for the original chemical.

§ 2. Sections 37-0209, 37-0211 and 37-0213 of the environmental conservation law are renumbered sections 37-0211, 37-0213 and 37-0215.

§ 3. The environmental conservation law is amended by adding a new section 37-0209 to read as follows:

§ 37-0209. Prohibition on the use of perfluoroalkyl and polyfluoroalkyl chemicals in food packaging.

1. Subject to the provisions of this section, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state food packaging to which perfluoroalkyl and poly-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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fluoroalkyl (PFAS) chemicals have been intentionally added in any amount.

2. (a) The department shall conduct a study to determine whether there are available safer alternatives to food packaging to which PFAS chemicals have been intentionally added. To determine whether safer alternatives to food packaging containing PFAS chemicals exist, the department shall conduct assessments of various available alternatives that:

(i) evaluate less toxic chemicals and nonchemical alternatives to replace the use of a PFAS chemical;

(ii) follow the guidelines for alternatives assessments issued by the Interstate Chemicals Clearinghouse; and

(iii) include, at a minimum, an evaluation of chemical hazards, exposure, performance, cost, and availability of such alternatives.

(b) In order to determine that one or more safer alternatives to the use of PFAS chemicals are available, the department must conclude that the safer alternatives to PFAS chemicals:

(1) are readily available in sufficient quantity and at a comparable cost to PFAS chemicals; and

(2) perform as well as or better than PFAS chemicals in a specific food packaging application.

(c) If the department determines that a safer alternative to the PFAS chemicals is another chemical, such chemical must have previously been approved for food contact by the United States food and drug administration, such as through the issuance of a determination that the chemical has a reasonable certainty of causing no harm.

3. By January first, two thousand twenty, the department shall publish on its website its findings on whether a safer alternative to PFAS chemicals in specific applications of food packaging are available for each assessed application and shall submit a report with the department's findings, including feedback from peer review of the department's alternatives assessment, if any, to the governor and to the legislature.

4. (a) If the department determines that a safer alternative is available for use in a particular category of food packaging, the utilization of such safer alternative by manufacturers shall be required in accordance with the provisions of subdivision one of this section no later than two years after the date of the submission of the department's report to the governor and the legislature as required by subdivision three of this section.

(b) If the department determines that a safer alternative is not available for some or all categories of food packaging applications assessed by the department, the department shall annually review alternatives for such applications in accordance with the provision of subdivision two of this section and shall report its findings to the governor and the legislature on such alternatives as required by subdivision three of this section by January first of each successive year. If the department subsequently determines that a safer alternative is available for use in a particular category of food packaging, the provisions of paragraph (a) of this subdivision shall apply to such packaging.

(c) The provisions of subdivision one of this section shall not apply to a particular category of food packaging until the department determines that a safer alternative is available for use with respect to such category and has reported its findings to the governor and the legislature in accordance with the provisions of this section.

§ 4. Subdivision 2 of section 37-0211 of the environmental conservation law, as added by chapter 286 of the laws of 1990, such section as renumbered by section two of this act, is amended to read as follows:

2. **(a)** No manufacturer or distributor of a product shall be held in violation of this title who can show that, in the purchase of a package or packaging component, he or she relied in good faith on the written assurance of the manufacturer of such packaging or packaging component that such packaging or packaging component met the requirements of this title. Such written assurance shall take the form of a certificate of compliance stating that a package or packaging component is in compliance with the requirements of this title, provided however, where compliance is achieved under an exemption provided in subdivision two or three of section 37-0207 of this title, the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing or distributing company.

(b) With respect to the prohibition on the use of perfluoroalkyl and polyfluoroalkyl chemicals in food packaging as provided in section 37-0209 of this title, a manufacturer shall develop a compliance certificate by the date of a prohibition taking effect under such section.

(c) If the manufacturer or supplier of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer shall develop an amended or new certificate of compliance for the reformulated or new package or packaging component.

§ 5. This act shall take effect immediately. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.