STATE OF NEW YORK

8979

IN ASSEMBLY

January 7, 2020

Introduced by M. of A. STECK -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the general business law and the general municipal law, in relation to reducing the use of PFAS chemicals in firefighting activities; to repeal certain provisions of the executive law relating thereto; and to amend a chapter of the laws of 2019, amending the executive law relating to reducing the use of PFAS chemicals in fire-fighting activities, as proposed in legislative bills numbers S. 439-A and A. 445-A, in relation to the effectiveness thereof

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

Section 1. The general business law is amended by adding a new section 391-u to read as follows:

§ 391-u. Restrictions on the sale and use of firefighting equipment containing PFAS chemicals. 1. As used in this section, unless the context clearly requires otherwise:

(a) "Class B firefighting foam" means foams designed to prevent or extinguish ignitable liquid fires.

(b) "Ignitable liquid fire" means any fire involving a flammable or combustible liquid where blanketing and smothering for vapor suppression is needed to extinguish the fire.

(c) "Firefighting personal protective equipment" means any clothing designed, intended, or marketed to be worn by firefighting personnel in the performance of their duties, designed with the intent for the use in firefighting and rescue activities, including jackets, pants, shoes, gloves, helmets, and respiratory equipment.

(d) "Local governments" includes any county, city, town, village, fire district, fire company as defined in section two hundred four-a of the general municipal law, regional fire protection authority, or other special purpose district that provides firefighting services.

(e) "Manufacturer" includes any person, firm, association, partnership, corporation, organization, joint venture, importer or domestic distributor of firefighting agents or firefighting equipment.

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

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(f) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means, for the purposes of firefighting agents and firefighting equipment, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(g) "Person" means any individual, partnership, association, public or private corporation, limited liability company or any other type of legal or commercial entity, including their members, managers, partners, directors, or officers.

2. No person or state agency shall discharge or otherwise use for training purposes class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS chemicals).

3. (a) Commencing two years after the effective date of this section, no manufacturer of class B firefighting foam may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state class B firefighting foam to which PFAS chemicals have been intentionally added except as provided in paragraph (b) of this subdivision.

(b) The restrictions in paragraph (a) of this subdivision shall not apply to the manufacture, sale, or distribution of class B firefighting foam:

(1) For use in suppressing or preventing an ignitable liquid fire where the office of fire prevention and control, in consultation with the department of environmental conservation and the department of health, through promulgation of a rule, exempts a use of class B firefighting foam on the basis that an alternative firefighting agent to which PFAS chemicals have not been intentionally added and that is effective in suppressing or preventing an ignitable liquid fire is not available. If the office of fire prevention and control exempts a use of class B firefighting foam from the restrictions in paragraph (a) of this subdivision, it shall re-evaluate available alternative firefighting agents at least every two years as long as the exemption remains in place, and repeal such exemption upon a finding that an alternative firefighting agent to which PFAS chemicals have not been intentionally added is available that is effective in suppressing or preventing an ignitable liquid fire.

(2) Where the inclusion of PFAS chemicals are required by federal law or regulations. In the event that applicable federal laws or regulations change after the effective date of this section to allow the use of effective alternative firefighting agents that do not contain PFAS chemicals, the office of fire prevention and control may adopt rules that restrict PFAS chemicals for the manufacture, sale, and distribution of firefighting foam for uses that are addressed by the federal law or regulation.

4. (a) A manufacturer of class B firefighting foam restricted under subdivision three of this section shall notify, in writing, persons that sell the manufacturer's products in this state about the provisions of this section no less than one year prior to the implementation date of the restrictions set forth in subdivision three of this section.

(b) A manufacturer that produces, sells, or distributes a class B firefighting foam prohibited under subdivision three of this section shall recall the product, which includes collection, transport, treatment, storage and safe disposal, after the implementation date of the restrictions set forth in subdivision three of this section and reimburse the retailer or any other purchaser for the product.

5. (a) A manufacturer or other person that sells firefighting personal protective equipment to any person, local government, or state agency must provide written notice to the purchaser at the time of sale if the

firefighting personal protective equipment contains PFAS chemicals. The written notice must include a statement that the firefighting personal protective equipment contains PFAS chemicals and the reason PFAS chemicals are added to the equipment.

(b) The manufacturer or person selling firefighting personal protective equipment and the purchaser of the equipment must retain the notice on file for at least three years from the date of the transaction.

6. The office of fire prevention and control may issue guidance to state agencies, fire protection districts and local governments in avoiding the purchase or use of class B firefighting foams to which PFAS chemicals have been intentionally added and to give priority and preference to the purchase of firefighting personal protective equipment that does not contain PFAS chemicals.

7. Any manufacturer or person in violation of the provisions of this section shall be subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers or persons that are repeat violators of the provisions of this section shall be subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section shall be deposited in the hazardous waste remedial fund created by section ninety-seven-b of the state finance law.

§ 2. The general municipal law is amended by adding a new section 204-g to read as follows:

§ 204-g. Restrictions on the use of firefighting foam containing PFAS chemicals. 1. As used in this section:

(a) "Class B firefighting foam" means foams designed to extinguish ignitable liquid fires.

(b) "Ignitable liquid fire" shall have the same meaning as defined in paragraph (b) of subdivision one of section three hundred ninety-one-u of the general business law.

(c) "Local governments" includes any county, city, town, village, fire district, fire company as defined in section two hundred four-a of this article, regional fire protection authority, or other special purpose district that provides firefighting services.

(d) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" shall have the same meaning as defined in paragraph (f) of subdivision one of section three hundred ninety-one-u of the general business law.

2. No local government shall discharge or otherwise use for training purposes class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS chemicals).

§ 3. Section 159-b of the executive law, as added by a chapter of the laws of 2019, amending the executive law relating to reducing the use of PFAS chemicals in firefighting activities, as proposed in legislative bills numbers S. 439-A and A. 445-A, is REPEALED.

§ 4. Section 2 of a chapter of the laws of 2019, amending the executive law relating to reducing the use of PFAS chemicals in firefighting activities, as proposed in legislative bills numbers S. 439-A and A. 445-A, is amended to read as follows:

§ 2. This act shall take effect on the ninetieth day after it shall have become a law. 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.

§ 5. This act shall take effect immediately, provided, however, that sections one, two and three of this act shall take effect on the same

date and in the same manner as a chapter of the laws of 2019, amending the executive law relating to reducing the use of PFAS chemicals in firefighting activities, as proposed in legislative bills numbers S. 439-A and A. 445-A, takes effect.