STATE OF NEW YORK

5418--B

2021-2022 Regular Sessions

IN ASSEMBLY

February 16, 2021

Introduced by M. of A. ENGLEBRIGHT, EPSTEIN, GRIFFIN, SIMON, GOTTFRIED, DICKENS, GALEF, OTIS, COLTON, THIELE, GONZALEZ-ROJAS, KELLES, McMAHON, PAULIN, JACKSON, ABINANTI, SILLITTI, SEAWRIGHT, PERRY, BURDICK, FAHY, RICHARDSON, GLICK, GALLAGHER, DINOWITZ, FERNANDEZ, HEVESI, FORREST, STERN, STIRPE, STECK, McDONOUGH -- Multi-Sponsored by -- M. of A. DiPIETRO -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to the regulation of chemicals in upholstered furniture, mattresses and electronic enclosures

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

Section 1. Short title. This act shall be known and may be cited as the "family and fire fighter protection act".

§ 2. Article 37 of the environmental conservation law is amended by adding a new title 10 to read as follows:

TITLE X

REGULATION OF CHEMICALS IN UPHOLSTERED FURNITURE, MATTRESSES AND ELECTRONIC ENCLOSURES

Section 37-1001. Definitions.

37-1003. Furniture and mattresses.

37-1005. Exemptions.

37-1007. Electronic display.

37-1009. Reporting.

37-1011. Severability.

37-1013. Regulations.

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

LBD06757-08-1

§ 37-1001. Definitions.

As used in this title:

1. "Consumer product" means any product that is regularly used or purchased to be used for personal, family or household purposes. Consumer product shall not mean: (a) a food or beverage or an additive to a food or beverage regulated by the United States Food and Drug Administration; or (b) a drug, biologic or medical device regulated by the United States Food and Drug Administration.

2. "Covered flame retardant chemical" means any chemical that meets both of the following criteria:

(a) A functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire; and

(b) The chemical is one of the following: a halogenated, organophosphorus, organonitrogen, or nanoscale chemical. As used in this title:

(i) "Halogenated chemical" is any chemical that contains one or more halogen elements, including fluorine, chlorine, bromine, or iodine.

(ii) "Organophosphorus chemical" is any chemical that contains one or more carbon elements and one or more phosphorus elements.

(iii) "Organonitrogen chemical" is any chemical that contains one or more carbon elements and one or more nitrogen elements.

3. "Custom upholsterer" means a person who, either by himself or herself or through employees or agents, repairs, reupholsters, recovers, restores, or renews upholstered furniture, or who makes to order and specification of the user any article of upholstered residential furniture, using either new materials or owner's materials.

4. "Electronic display" means a consumer product with a display screen and associated electronics that, as its primary function, displays visual information from wired or wireless sources and is available for purchase by individuals or households for personal use in a residential space. Electronic display shall not include: (a) any electronic display with a screen area smaller than or equal to one hundred square centimeters or fifteen and one-half square inches; (b) projectors; (c) virtual reality headsets; (d) all-in-one video conference systems; or (e) displays that are integrated with appliances and are not available for purchase as separate products by end-users.

5. "Gel foam mattress" means a mattress in which interior foam layers are composed of polyurethane foam or latex foam which has a polyurethane-based gel material either mixed with the foam or applied to the outer surface of polyurethane or latex foam, or a mattress in which the core or padding layers are composed solely of gel material.

6. "Intentionally added" shall have the same meaning as "intentionally added chemical" in subdivision eleven of section 37-0901 of this article.

7. "Mattress" means a ticking filled with a resilient material used alone or in combination with other products intended or promoted for sleeping upon.

8. "Memory foam mattress" means a mattress which contains interior layers of foam composed of viscoelastic polyurethane foam or low-resistance polyurethane foam.

9. "Organohalogen flame retardant chemical" means a chemical that contains one or more halogen elements, including fluorine, chlorine, bromine, or iodine, bonded to carbon.

10. "Reupholstered furniture" means furniture whose original fabric, padding, decking, barrier material, foam, or other resilient filling has

been replaced by a custom upholsterer, that has not been sold since the time of the replacement.

11. "Ticking" means the outermost layer of fabric or related material that encloses the core and upholstery materials of a mattress or mattress pad. A mattress ticking may consist of several layers of fabric or related materials quilted together.

12. "Upholstered furniture" means any item of furniture, that consists, in whole or in part, of leather, plastic, fabric or other material that contains cotton, wool, polyurethane or other natural or synthetic material that is placed in cushions or on the frame of the furniture.

13. "Upholstered or reupholstered furniture component" means the separate constituent parts of upholstered furniture, specifically cover fabrics, barrier materials, resilient filling materials, and decking materials.

§ 37-1003. Furniture and mattresses.

1. Beginning January first, two thousand twenty-four, no person shall sell or offer for sale in the state of New York any new, not previously owned, upholstered furniture or mattress, that contains, or a constituent component of which contains, any intentionally added covered flame retardant chemical, individually or in combination.

2. Beginning January first, two thousand twenty-three, a custom upholsterer in the state of New York shall not repair, reupholster, re-cover, restore, or renew upholstered furniture or reupholstered furniture using replacement components that contain any intentionally added covered flame retardant chemical, individually or in combination.

§ 37-1005. Exemptions.

The prohibitions in section 37-1003 of this title shall not apply to the following:

1. Electronic components of mattresses, reupholstered furniture, or upholstered furniture, or any associated casing for such electronic components.

2. Upholstered or reupholstered furniture components other than those identified in subdivision seven of section 37-1001 of this title.

3. Thread or fiber when used for stitching mattress components together.

4. The natural fibers wool, silk, and other animal fibers whether used singly or in combination with other materials.

5. Textiles made using modacrylic fiber components without antimony trioxide when used internally as a barrier material in a memory foam or gel foam mattress or aramid fibers when used in the fabric that covers the bottom (non-sleep surface) of a mattress that has a sleeping surface on only one side of the mattress. This exemption shall expire on January first, two thousand twenty-six.

§ 37-1007. Electronic display.

Beginning January first, two thousand twenty-four, no person shall sell or offer for sale in the state of New York any electronic display that contains an intentionally added organohalogen flame retardant chemical in the enclosure or stand of such electronic display.

§ 37-1009. Reporting.

1. For the purposes of this section, "manufacturer" shall mean a person who: (a) assembles or substantially assembles electronic displays for sale in the state; (b) manufactures electronic displays, under its own brand name or under any other brand name, for sale in the state; (c) sells, under its own brand name, electronic displays in the state; (d) owns a brand name that it licenses to another person for use on elec-

tronic displays sold in the state; (e) imports electronic displays for sale in the state; or (f) manufactures electronic displays for sale in the state without affixing a brand name.

2. Beginning one year after the effective date of this title, no electronic display shall be sold in the state unless the manufacturer has submitted an annual report to the department identifying all of the flame retardants used in the enclosure or stand of the electronic display in a form determined by the department.

§ 37-1011. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 37-1013. Regulations.

The department may adopt any rules and regulations it deems necessary to implement the provisions of this title.

§ 3. Section 71-3703 of the environmental conservation law is amended by adding a new subdivision 5 to read as follows:

5. Any person who violates any of the provisions of or who fails to perform any duty imposed by sections 37-1003 and 37-1007 of this chapter or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to exceed one thousand dollars for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Such person shall for a second violation be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day during which such violation continues.

§ 4. This act shall take effect immediately.