

# STATE OF NEW YORK

5418--A

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 -- 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

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. 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.

##### § 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

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

LBD06757-06-1

1 food or beverage regulated by the United States Food and Drug Adminis-  
2 tration; or (b) a drug, biologic or medical device regulated by the  
3 United States Food and Drug Administration.

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

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

9 (b) The chemical is one of the following: a halogenated, organophos-  
10 phorus, organonitrogen, or nanoscale chemical. As used in this title:

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

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

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

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

22 4. "Electronic display" means a consumer product with a display screen  
23 and associated electronics that, as its primary function, displays visu-  
24 al information from wired or wireless sources and is available for  
25 purchase by individuals or households for personal use in a residential  
26 space. Electronic display shall not include: (a) any electronic display  
27 with a screen area smaller than or equal to one hundred square centime-  
28 ters or fifteen and one-half square inches; (b) projectors; (c) virtual  
29 reality headsets; or (d) all-in-one video conference systems.

30 5. "Intentionally added" shall have the same meaning as "intentionally  
31 added chemical" in subdivision eleven of section 37-0901 of this arti-  
32 cle.

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

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

39 8. "Reupholstered furniture" means furniture whose original fabric,  
40 padding, decking, barrier material, foam, or other resilient filling has  
41 been replaced by a custom upholsterer, that has not been sold since the  
42 time of the replacement.

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

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

52 11. "Upholstered or reupholstered furniture component" means the sepa-  
53 rate constituent parts of upholstered furniture, specifically cover  
54 fabrics, barrier materials, resilient filling materials, and decking  
55 materials.

56 § 37-1003. Furniture and mattresses.

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

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

11 § 37-1005. Exemptions.

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

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

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

19 3. Thread or fiber when used for stitching mattress components togeth-  
20 er.

21 § 37-1007. Electronic display.

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

26 § 37-1009. Reporting.

27 1. For the purposes of this section, "manufacturer" shall mean a  
28 person who: (a) assembles or substantially assembles electronic displays  
29 for sale in the state; (b) manufactures electronic displays, under its  
30 own brand name or under any other brand name, for sale in the state; (c)  
31 sells, under its own brand name, electronic displays in the state; (d)  
32 owns a brand name that it licenses to another person for use on elec-  
33 tronic displays sold in the state; (e) imports electronic displays for  
34 sale in the state; or (f) manufactures electronic displays for sale in  
35 the state without affixing a brand name.

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

41 § 37-1011. Severability.

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

51 § 37-1013. Regulations.

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

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

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

10     § 3. This act shall take effect immediately.