STATE OF NEW YORK

3556--C

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. ZEBROWSKI, LEVENBERG, REYES, EACHUS, LUNSFORD, COLTON, STECK, SHIMSKY, SIMON, LEE, SIMONE, GUNTHER, PRETLOW, CLARK, SEAWRIGHT, CUNNINGHAM, KELLES, O'DONNELL, MAMDANI, BURDICK, THIELE, LUPARDO, DINOWITZ, GALLAGHER, McDONALD -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- 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 prohibiting the sale of products that contain intentionally added PFAS

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 4 to read as follows:

TITLE IV

PRODUCTS CONTAINING PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES

Section 37-0401. Definitions.
37-0403. Prohibition on sale of covered products.
37-0405. Required notification.
37-0407. Violations.

§ 37-0401. Definitions.

For purposes of this title, the following terms have the following definitions:

1. "Covered product" means textile articles, rugs, fabric treatments, cookware, ski waxes, architectural paints, children's products, cleaning products, anti-fogging sprays and wipes, dental floss, or a component thereof.

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

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2. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

3. "Regulated perfluoroalkyl and polyfluoroalkyl substances" or "regulated PFAS" means PFAS that are:

(a) an intentionally added chemical as defined in subdivision eleven of section 37-0901 of this article; or

(b) present in a product or product component at or above the practical quantitation limit, as measured in total organic fluorine.

4. "Architectural paint" means interior and exterior architectural coatings; provided, however, that "architectural paint" shall not include industrial, original equipment or specialty coatings.

5. "Children's products" means a product as defined in section 37-0901 of this article.

6. (a) "Cleaning product" means a finished product that is an air care product, automotive product, general cleaning product, or a polish or floor maintenance product used primarily for janitorial, domestic, or institutional cleaning purposes.

(i) "Air care product" means a chemically formulated consumer product labeled to indicate that the purpose of the product is to enhance or condition the indoor environment by eliminating unpleasant odors or freshening the air.

(ii) "Automotive product" means a chemically formulated consumer product labeled to indicate that the purpose of the product is to maintain the appearance of a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, including products for washing, waxing, polishing, cleaning, or treating the exterior or interior surfaces of motor vehicles. "Automotive product" does not include automotive paint or paint repair products.

(iii) "General cleaning product" means a soap, detergent, or other chemically formulated consumer product labeled to indicate that the purpose of the product is to clean, disinfect, or otherwise care for fabric, dishes, or other wares; surfaces including, but not limited to, floors, furniture, countertops, showers, and baths; or other hard surfaces, such as stovetops, microwaves, and other appliances.

(iv) "Polish or floor maintenance product" means a chemically formulated consumer product, such as polish, wax, a stripper, or a restorer, labeled to indicate that the purpose of the product is to polish, protect, buff, condition, temporarily seal, strip, or maintain furniture, floors, metal, leather, or other surfaces.

(b) "Cleaning product" shall not mean any of the following:

(i) Foods, drugs, and cosmetics, including personal care items such as toothpaste, shampoo, and hand soap.

(ii) Industrial products specifically manufactured for, and exclusively used in the following: oil and gas production; steel production; heavy industry manufacturing; industrial water treatment; industrial textile maintenance and processing other than industrial laundering; food and beverage processing and packaging; or other industrial manufacturing processes.

7. "Cookware" means durable items that are used in homes, restaurants, institutional, and commercial kitchens to prepare, dispense, or store food, foodstuffs, or beverages for indoor or outdoor use. "Cookware" includes, but is not limited to, pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, camping gear, and cooking utensils.

8. "Fabric treatment" means a substance applied to a fabric for stain, grease, or water resistance.

9. "Manufacturer" means any person that manufactures a product or whose brand name is affixed to the product. In the case of a product imported into the United States, "manufacturer" includes the importer or first domestic distributor of the product if the person that manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

10. "Rugs" means any consumer products made from natural or synthetic fabric intended to be used as a floor covering, other than carpets, and includes handmade rugs, area rugs, or mats.

11. "Ski wax" means a lubricant applied to the bottom of snow runners, including skis and snowboards, to improve their grip and glide properties.

12. "Textile" means any item made in whole or in part from a natural, man-made, or synthetic fiber, yarn, or fabric. Textile includes, but is not limited to, the following: leather, cotton, silk, jute, hemp, wool, viscose, nylon, or polyester. "Textile" does not include single-use paper hygiene products, including, but not limited to, toilet paper, paper towels or tissues, or single-use absorbent hygiene products. For the purposes of this subdivision, "single-use" means conventionally disposed of after a single use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable.

13. "Textile articles" means non-wearable textile goods, footwear, costumes and accessories. For the purposes of this title, textile articles do not include rugs or personal protective equipment.

14. "Non-wearable textile goods" means textile goods of a type customarily used in households and businesses that are not customarily worn. Textile articles include, but are not limited to, handbags, backpacks, draperies, shower curtains, furnishings, upholstery, beddings, towels, napkins, and tablecloths.

15. "Anti-fogging sprays and wipes" means any product, including a spray, cloth, wipe or other material, that is intended to prevent condensation on eyeglasses.

16. "Dental floss" means a thread, cord, string or similar material that is used for cleaning between teeth. Dental floss includes floss picks and other flossing tools.

§ 37-0403. Prohibition on sale of covered products.

1. Commencing on January first, two thousand twenty-six, no person shall distribute, sell, or offer for sale in the state any covered product that contains regulated perfluoroalkyl and polyfluoroalkyl substances.

2. The prohibition on distribution, sale or offer of sale in this title does not apply to the sale or resale of used products.

§ 37-0405. Required notification.

1. A manufacturer of a covered product sold into the state shall provide persons that offer the product for sale or distribution in the state with a certificate of compliance. The certificate of compliance shall provide assurance, at a minimum, that the product does not contain any intentionally added PFAS. Any certificate of compliance provided under this section shall be signed by an authorized official of the manufacturer.

2. If regulated perfluoroalkyl or polyfluoroalkyl or PFAS are discovered in the covered product after the issuance of the certificate of compliance, the manufacturer shall recall the covered product and reimburse the distributor or retailer for the covered product.

§ 37-0407. Violations.

1. A violation of any of the provisions of this title or any rule or regulation promulgated pursuant thereto shall be punishable in the case of a first violation, by a civil penalty not to exceed ten thousand dollars. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed twenty-five thousand dollars for each violation.

2. If the department has reason to believe that a covered product contains regulated perfluoroalkyl and polyfluoroalkyl substances and is being distributed, sold, or offered for sale in violation of this section, the department shall direct the manufacturer of the covered product to, within thirty days:

(a) provide the department with independent, third-party laboratory test results demonstrating that the covered product does not contain regulated PFAS; or

(b) notify persons who sell that covered product in this state that the sale of that covered product is prohibited in this state and provide the department with a list of the names and addresses of those notified.

3. A distributor or retailer of a product, who is not also the manufacturer of the product, shall not be held in violation of this title if it can show that he or she relied in good faith on the certificate of compliance provided for in subdivision one of section 37-0405 of this title or the retailer received a notification pursuant to subdivision two of this section.

4. The department shall make information about any citation issued pursuant to this section available to the public on its internet website.

§ 2. This act shall take effect immediately.