STATE OF NEW YORK

5363--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. GALLAGHER, FAHY, THIELE, STERN, GONZALEZ-ROJAS, JACOBSON, LEVENBERG, SIMON, SIMONE -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to prohibiting the sale and distribution of anti-fogging sprays and wipes containing perfluoroalkyl and polyfluoroalkyl substances

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 11 to read as follows:

TITLE 11

PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES IN ANTI-FOGGING PRODUCTS

Section 37-1101. Definitions.
37-1103. Applicability.
37-1105. Prohibition on the sale and distribution of anti-fogging sprays and wipes containing perfluoroalkyl and polyfluoroalkyl substances.
37-1107. Product labeling.
37-1109. Preemption.
37-1111. Rules and regulations.
37-1113. Violations.

§ 37-1101. Definitions.

As used in this title:

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

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

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2. "Distributor" means a person, firm, association, partnership or corporation, who or which imports or causes to be imported into the state, any product containing PFAS substances.

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

4. "Manufacturer" means a person, firm, association, partnership or corporation, who or which makes products containing PFAS substances.

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

6. "Person" means a natural person, corporation, company, partnership, trust or association.

§ 37-1103. Applicability.

The provisions of this title shall apply to the distribution, sale, offer for sale or offer for distribution of products containing perfluoroalkyl and polyfluoroalkyl substances on or after the effective date of this title.

§ 37-1105. Prohibition on the sale and distribution of anti-fogging sprays and wipes containing perfluoroalkyl and polyfluoroalkyl substances.

No person shall distribute, sell, offer for sale or offer for distribution in this state anti-fogging sprays and wipes containing perfluoroalkyl and polyfluoroalkyl substances as intentionally added chemicals.

§ 37-1107. Product labeling.

The commissioner may authorize product labeling of products that do not contain perfluoroalkyl and polyfluoroalkyl substances regulated pursuant to the provisions of this title. The label on such products may prominently state "perfluoroalkyl and polyfluoroalkyl-free" or "PFAS-Free" to inform consumers that the product does not contain perfluoroalkyl and polyfluoroalkyl substances.

§ 37-1109. Preemption.

To the extent not inconsistent with federal law, jurisdiction in all matters pertaining to products containing perfluoroalkyl and polyfluoroalkyl substances which are regulated pursuant to the provisions of this title shall be vested exclusively in the state.

§ 37-1111. Rules and regulations.

The commissioner shall have the power to adopt rules and regulations to provide for the effective application and enforcement of this title.

§ 37-1113. Violations.

1. A violation of any of the provisions of this title or of 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. No person shall be held in violation of this title if such person can show that, in the purchase of a product from a manufacturer or distributor, such person relied in good faith on the written assurance of the manufacturer or distributor of such product that such product met the requirements of this title. Such written assurance shall take such form as shall be prescribed by the department by regulation.

§ 2. Severability. If any clause, sentence, paragraph, subdivision or section 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.

§ 3. This act shall take effect December 31, 2024. 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 to be made and completed on or before such effective date.