STATE OF NEW YORK

5363--B

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. GALLAGHER, FAHY, THIELE, STERN, GONZALEZ-ROJAS, JACOBSON, LEVENBERG, SIMON, SIMONE, L. ROSENTHAL, COLTON, REYES, SHIMSKY, RAGA, CLARK, SEAWRIGHT, FORREST -- 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

AN ACT to amend the environmental conservation law, in relation to prohibiting the sale and distribution of anti-fogging sprays or 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. The environmental conservation law is amended by adding a new section 37-0123 to read as follows:

§ 37-0123. Prohibitions against the sale of anti-fogging sprays or wipes containing perfluoroalkyl and polyfluoroalkyl substances.

1. For the purposes of this section, the following terms shall have the following meanings:

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

(b) "Intentionally added chemical" means a chemical in a product that serves an intended function or technical effect in the product or product component, including the PFAS within intentionally added chemicals and PFAS that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product or product component.

(c) "Manufacturer" means a person, firm, association, partnership or corporation:

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

LBD04073-12-4

(i) that makes or whose brand name is affixed to anti-fogging sprays or wipes; or

(ii) in the case of anti-fogging sprays or wipes that were imported into the United States, "manufacturer" means the importer or first domestic distributor of such anti-fogging sprays or wipes if no person who is a manufacturer within the meaning of subparagraph (i) of this paragraph has a presence in the United States.

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

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

3. No person that sells or offers for sale any anti-fogging sprays or wipes shall be held in violation of this title if they can show that they relied in good faith on the written assurance of the manufacturer of such product that such product met the requirements of this section. Such written assurance shall take the form of a certificate of compliance stating that such product is in compliance with the requirements of this section. The certificate of compliance shall be signed by an authorized official of the manufacturer.

4. In addition to any other applicable penalties, it shall be a violation of this section to provide a certificate of compliance as contemplated by subdivision three of this section when the applicable anti-fogging sprays or wipes do not satisfy the prohibitions on the presence of perfluoroalkyl and polyfluoroalkyl substances set forth in subdivision two of this section.

§ 2. Section 71-3703 of the environmental conservation law is amended by adding a new subdivision 7 to read as follows:

7. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-0123 of this chapter or any rule or regulation promulgated pursuant thereto, 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.

§ 3. This act shall take effect December 31, 2025. 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.