STATE OF NEW YORK

994

2023-2024 Regular Sessions

IN ASSEMBLY

January 12, 2023

Introduced by M. of A. FAHY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to prohibiting the use of perfluoroalkyl and polyfluoroalkyl substances in apparel and outdoor apparel for severe wet conditions

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

Section 1. Section 37-0121 of the environmental conservation law, as added by a chapter of the laws of 2022, amending the environmental conservation law relating to prohibiting the use of perfluoroalkyl and polyfluoroalkyl substances in apparel, as proposed in legislative bills numbers S. 6291-A and A. 7063-A, is amended to read as follows:

§ 37-0121. Prohibition against the use of perfluoroalkyl and polyfluoroalkyl substances in apparel **and outdoor apparel for severe wet conditions**.

1. [~~No~~] **After January first, two thousand twenty-five, no person shall sell or offer for sale in this state any new, not previously used, apparel containing perfluoroalkyl and polyfluoroalkyl substances as intentionally added chemicals.**

2. In addition to the provisions of subdivision one of this section, one year after the department's adoption of the regulations required by this subdivision, but no later than January first, two thousand twenty-seven, no person shall sell or offer for sale in this state any **new, not previously used,** apparel containing perfluoroalkyl and polyfluoroalkyl substances [~~as intentionally added chemicals~~] **at or above a level that the department shall establish in regulation**.

[~~2.~~] **3. On or after January first, two thousand twenty-eight, no person shall sell or offer for sale in this state any new, not previously used, outdoor apparel for severe wet conditions containing perfluoroalkyl and polyfluoroalkyl substances: (a) at or above a level**

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

LBD04296-01-3

that the department shall establish in regulation, or (b) as intentionally added chemicals.

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

(a) "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.

(b) "Apparel" means clothing items intended for regular wear or formal occasions including, but not limited to, undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, vests, dancewear, suits, saris, scarves, tops, leggings, leisurewear, formal wear, outdoor apparel, onesies, bibs, and diapers. "Apparel" shall not include:

(i) professional uniforms [~~or outerwear intended for extreme conditions.~~] that are worn to protect the wearer from health or environmental hazards, including personal protective equipment; or

(ii) outdoor apparel for severe wet conditions.

(c) "Outdoor apparel" means clothing items intended primarily for outdoor activities, including but not limited to, hiking, camping, skiing, climbing, bicycling, and fishing.

(d) "Outdoor apparel for severe wet conditions" means outdoor apparel that are extreme and extended use products designed for outdoor sports experts for applications that provide protection against extended exposure to extreme rain conditions or against extended immersion in water or wet conditions, such as from snow, in order to protect the health and safety of the user and that are not marketed for general consumer use.

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

(i) that produces or whose brand name is affixed to apparel or outdoor apparel for severe wet conditions; or

(ii) in the case of apparel or outdoor apparel for severe wet conditions that was imported into the United States, "manufacturer" means the importer or first domestic distributor of the apparel or outdoor apparel for severe wet conditions if no person who is a manufacturer within the meaning of subparagraph (i) of this paragraph has a presence in the United States.

5. No person that sells or offers for sale any apparel or outdoor apparel for severe wet conditions shall be held in violation of this section if they can show that they relied in good faith on the written assurance of the manufacturer that such apparel or outdoor apparel for severe wet conditions meets the requirements of this section. Such written assurance shall take the form of a certificate of compliance stating that such apparel or outdoor apparel for severe wet conditions is in compliance with the requirements of this section. The certificate of compliance shall be signed by an authorized official of the manufacturer.

6. 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 five of this section when the applicable apparel or outdoor apparel for severe wet conditions does not satisfy the limitations on the presence of perfluoroalkyl and polyfluoroalkyl substances set forth in subdivisions one, two and three of this section.

§ 2. Section 71-3703 of the environmental conservation law is amended by adding a new subdivision 6 to read as follows:

6. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-0121 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.

§ 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2022 amending the environmental conservation law relating to prohibiting the use of perfluoroalkyl and polyfluoroalkyl substances in apparel, as proposed in legislative bills numbers S. 6291-A and A. 7063-A, takes effect.