

STATE OF NEW YORK

3556--D

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, McMAHON, FAHY, EPSTEIN, L. ROSENTHAL, SHRESTHA, BICHOTTE HERMELYN, DAVILA, MEEKS, LAVINE, HEVESI, OTIS, JACOBSON -- 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 -- 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 certain products that contain regulated perfluoroalkyl and polyfluoroalkyl substances

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

1 Section 1. The environmental conservation law is amended by adding a
2 new section 37-0123 to read as follows:

3 § 37-0123. Prohibition against the sale of perfluoroalkyl and polyfluoro-
4 alkyl substances in consumer and household products.

5 1. For purposes of this section, the following terms have the follow-
6 ing definitions:

7 (a) "Covered product" means textile articles, rugs, fabric treatments,
8 cookware, ski waxes, architectural paints, cleaning products, dental
9 floss, or a component thereof.

10 (b) "Regulated perfluoroalkyl and polyfluoroalkyl substances" or
11 "regulated PFAS" means PFAS that are any of the following:

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

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1 (i) an intentionally added chemical as defined in subdivision four of
2 section 37-0121 of this title; or

3 (ii) present in a product or product component at or above a level
4 that the department shall establish by regulation, as measured in total
5 organic fluorine, that is the lowest level that can feasibly be
6 achieved; provided, however, that the department shall review such level
7 at least every five years to determine whether it should be lowered.

8 (c) "Architectural paint" means interior and exterior architectural
9 coatings; provided, however, that "architectural paint" shall not
10 include industrial, original equipment or specialty coatings.

11 (d) "Cleaning product" means a finished product that is an air care
12 product, automotive product, general cleaning product, or a polish or
13 floor maintenance product used primarily for janitorial, domestic, or
14 institutional cleaning purposes. "Cleaning product" shall not mean any
15 of the following:

16 (i) foods, drugs, cosmetics and personal care products as defined in
17 section 37-0117 of this title; or

18 (ii) industrial products specifically manufactured for, and exclusive-
19 ly used in the following: oil and gas production; steel production;
20 heavy industry manufacturing; industrial water treatment; industrial
21 textile maintenance and processing other than industrial laundering;
22 food and beverage processing and packaging; or other industrial manufac-
23 turing processes.

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

28 (f) "Automotive product" means a chemically formulated consumer prod-
29 uct labeled to indicate that the purpose of the product is to maintain
30 the appearance of a motor vehicle, as defined in section one hundred
31 twenty-five of the vehicle and traffic law, including products for wash-
32 ing, waxing, polishing, cleaning, or treating the exterior or interior
33 surfaces of motor vehicles. "Automotive product" does not include auto-
34 motive paint or paint repair products.

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

41 (h) "Polish or floor maintenance product" means a chemically formu-
42 lated consumer product, such as polish, wax, a stripper, or a restorer,
43 labeled to indicate that the purpose of the product is to polish,
44 protect, buff, condition, temporarily seal, strip, or maintain furni-
45 ture, floors, metal, leather, or other surfaces.

46 (i) "Cookware" means durable items that are used in homes, restau-
47 rants, institutional, and commercial kitchens to prepare, dispense, or
48 store food, foodstuffs, or beverages for indoor or outdoor use such as
49 pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls,
50 camping gear, and cooking utensils.

51 (j) "Fabric treatment" means a substance applied to a fabric for
52 stain, grease, or water resistance.

53 (k) "Manufacturer" means a person, firm, association, partnership or
54 corporation:

55 (i) that produces or manufactures a covered product or whose brand
56 name is affixed to the covered product; or

1 (ii) in the case of a covered product imported into the United States,
2 "manufacturer" means the importer or first domestic distributor of the
3 product if the person that manufactured or assembled the covered product
4 or whose brand name is affixed to the product does not have a presence
5 in the United States.

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

9 (m) "Ski wax" means a lubricant applied to the bottom of snow runners,
10 including skis and snowboards, to improve their grip and glide proper-
11 ties.

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

21 (o) "Textile articles" means textile goods customarily used in house-
22 holds and businesses including, but not limited to, handbags, luggage,
23 backpacks, footwear, costumes and accessories, draperies, shower
24 curtains, furnishings, upholstery, beddings, towels, napkins, and table-
25 cloths. For the purposes of this section, textile articles do not
26 include rugs, personal protective equipment, or items covered by section
27 37-0121 of this article.

28 (p) "Dental floss" means a thread, cord, string or similar material
29 that is used for cleaning between teeth. Dental floss includes floss
30 picks and other flossing tools.

31 2. (a) No person shall sell or offer for sale in the state any covered
32 product that contains regulated perfluoroalkyl and polyfluoroalkyl
33 substances pursuant to subparagraph (i) of paragraph (b) of subdivision
34 one of this section.

35 (b) Commencing on January first, two thousand twenty-seven, no person
36 shall sell or offer for sale in the state any covered product that
37 contains regulated perfluoroalkyl and polyfluoroalkyl substances pursu-
38 ant to subparagraph (ii) of paragraph (b) of subdivision one of this
39 section.

40 (c) The prohibition, sale or offer of sale under this section does not
41 apply to the sale or resale of used products.

42 3. (a) A manufacturer of a covered product sold into the state shall
43 provide persons that offer the product for sale in the state with a
44 certificate of compliance. The certificate of compliance shall provide
45 assurance, at a minimum, that the product does not contain any regulated
46 PFAS. Any certificate of compliance provided under this paragraph shall
47 be signed by an authorized official of the manufacturer.

48 (b) In addition to any other applicable penalties, it shall be a
49 violation of this section to provide a certificate of compliance under
50 paragraph (a) of this subdivision when a product is knowingly in
51 violation of the requirements of this section.

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

(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.

5. A retailer of a product, who is not also the manufacturer of the product, shall not be held in violation of this section if it can show that such retailer relied in good faith on the certificate of compliance provided for in paragraph (a) of subdivision three of this section.

§ 2. Section 71-3703 of the environmental conservation law is amended by adding a new subdivision 8 to read as follows:

8. 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, 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.

§ 3. Subparagraphs (lx), (lxi), (lxii), (lxiii), (lxiv), (lxv), (lxvi), (lxvii), (lxviii), (lxix), (lxx), (lxxi), (lxxii), (lxxiii), (lxxiv), (lxxv), (lxxvi) and (lxxvii) of paragraph (b) of subdivision 1 of section 37-0905 of the environmental conservation law, as added by section 1 of subpart AA of part XX of chapter 55 of the laws of 2020, are amended to read as follows:

(lx) ~~[Perfluorooctanoic acid (PFOA & related substances) (CAS 335-67-1)]~~ Perfluoroalkyl and polyfluoroalkyl substances as defined in section 37-0101 of this article

(lxi) ~~[Perfluorooctanyl sulphonic acid and its salts (PFOS) (CAS 1763-23-1)]~~

~~(lxii)~~ Phenol (CAS 108-95-2)

~~(lxiii)~~ (lxii) Phenol, 4-octyl- (CAS 1806-26-4)

~~(lxiv)~~ (lxiii) P-hydroxybenzoic acid (CAS 99-96-7)

~~(lxv)~~ (lxiv) Propyl paraben (CAS 94-13-3)

~~(lxvi)~~ (lxv) Styrene (CAS 100-42-5)

~~(lxvii)~~ (lxvi) Tetrabromobisphenol A (CAS 79-94-7)

~~(lxviii)~~ (lxvii) Tetrachloroethene (CAS 127-18-4)

~~(lxix)~~ (lxviii) Toluene (CAS 108-88-3)

~~(lxx)~~ (lxix) Tricresyl phosphate (TCP) (CAS 1330-78-5)

~~(lxxi)~~ (lxx) Tri-n-butyl phosphate (TNBP) (CAS 126-73-8)

~~(lxxii)~~ (lxxi) Triphenyl phosphate (TPP) (CAS 115-86-6)

~~(lxxiii)~~ (lxxii) Tris(1-chloro-2-propyl) phosphate (TCPP) (CAS 13674-84-5)

~~(lxxiv)~~ (lxxiii) Tris(2-chloroethyl) phosphate (CAS 115-96-8)

~~(lxxv)~~ (lxxiv) Tris(2,3-dibromopropylphosphate) (CAS 126-72-7)

~~(lxxvi)~~ (lxxv) Vinyl chloride (CAS 75-01-4)

~~(lxxvii)~~ (lxxvi) Organohalogen flame retardants

§ 4. Paragraph (a) of subdivision 2 of section 37-0905 of the environmental conservation law is amended by adding a new subparagraph (viii) to read as follows:

(viii) Perfluoroalkyl and polyfluoroalkyl substances

§ 5. This act shall take effect January 1, 2026. 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.