STATE OF NEW YORK

5648--D

2023-2024 Regular Sessions

IN SENATE

March 10, 2023

Introduced by Sens. HOYLMAN-SIGAL, CLEARE, FERNANDEZ, HARCKHAM, JACKSON, KRUEGER, MAY, RIVERA, ROLISON, SERRANO, SKOUFIS, WEBB -- read twice and ordered printed, and when printed to be committed 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 Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 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:

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

§ 37-0123. Prohibition against the sale of perfluoroalkyl and polyfluoroalkyl substances in everyday consumer and household products.

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

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

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

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

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

LBD04738-08-4

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

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

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

(e) "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. "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; or

(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.

(f) "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.

(g) "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.

(h) "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.

(i) "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.

(j) "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.

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

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

(i) that makes or manufactures a product or whose brand name is affixed to the product; or

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

(m) "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.

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

(o) "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.

(p) "Textile articles" means textile goods customarily used in households and businesses including, but not limited to, handbags, luggage, backpacks, draperies, shower curtains, furnishings, upholstery, beddings, towels, napkins, and tablecloths. For the purposes of this section, "textile articles" do not include rugs, personal protective equipment, or items covered by section 37-0121 of this title.

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

(r) "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.

2. (a) 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 as defined in subparagraph (i) of paragraph (b) of subdivision one of this section.

(b) Commencing on January first, two thousand twenty-seven, no person shall distribute, sell, or offer for sale in the state any covered product that contains regulated perfluoroalkyl and polyfluoroalkyl substances as defined in subparagraph (ii) of paragraph (b) of subdivision one of this section.

(c) The prohibition on distribution, sale or offer of sale in this section does not apply to the sale or resale of used products.

3. (a) 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 regulated PFAS. Any certificate of compliance provided under this section shall be signed by an authorized official of the manufacturer.

(b) If regulated PFAS are discovered in the covered product after the issuance of the certificate of compliance, the manufacturer shall notify the distributor and/or retailer, as applicable, and take back the

covered product. The manufacturer shall reimburse the distributor or retailer, as applicable, for the covered product.

4. 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) comply with the procedures of paragraph (b) of subdivision three of this section.

5. A distributor or 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 distributor or retailer relied in good faith on the certificate of compliance provided for in paragraph (a) of subdivision three of this section or the retailer received a notification pursuant to paragraph (b) of subdivision three of this section.

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

§ 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 hereto, shall be liable for a civil penalty not to exceed ten thousand dollars, 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 twenty-five thousand dollars.

§ 3. Paragraphs (b), (c) and (d) of subdivision 4 of section 37-0121 of the environmental conservation law, paragraph (b) as amended and paragraphs (c) and (d) as added by chapter 111 of the laws of 2023, are amended to read as follows:

(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, footwear, hats, costumes, and diapers. "Apparel" shall not include:

(i) professional uniforms, including footwear, that are worn to protect the wearer from health or environmental hazards, including personal protective equipment; or

(ii) outdoor apparel, including footwear, for severe wet conditions.

(c) "Outdoor apparel" means clothing items, including footwear, 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, including footwear, 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.

§ 4. 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)~~

~~(lxi) Perfluorooctanyl sulphonic acid and its salts (PFOS) (CAS 1763-23-1)~~] **Perfluoroalkyl and polyfluoroalkyl substances as defined in section 37-0101 of this chapter**

[~~(lxii)~~] **(lxi)** 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

§ 5. 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

§ 6. This act shall take effect December 31, 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.