

STATE OF NEW YORK

5648

2023-2024 Regular Sessions

IN SENATE

March 10, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to prohibiting the sale of products that contain intentionally added PFAS

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 4 to read as follows:

TITLE IV

PRODUCTS CONTAINING PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES

Section 37-0401. Definitions.

37-0403. Prohibition on sale of covered products.

37-0405. Required notification.

37-0407. Violations.

§ 37-0401. Definitions.

For purposes of this title, the following terms have the following definitions:

1. "Covered product" means textile articles, rugs, fabric treatments, cookware, ski waxes, architectural paints, or cleaning products, or a component thereof.

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

3. "Regulated perfluoroalkyl and polyfluoroalkyl substances" or "regulated PFAS" means PFAS that are:

(a) an intentionally added chemical as defined in subdivision eleven of section 37-0901 of this article; or

(b) present in a product or product component at or above the practical quantitation limit, as measured in total organic fluorine.

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

LBD04738-01-3

1 4. "Architectural paint" means interior and exterior architectural
2 coatings; provided, however, that "architectural paint" shall not
3 include industrial, original equipment or specialty coatings.

4 5. (a) "Cleaning product" means a finished product that is an air care
5 product, automotive product, general cleaning product, or a polish or
6 floor maintenance product used primarily for janitorial, domestic, or
7 institutional cleaning purposes.

8 (i) "Air care product" means a chemically formulated consumer product
9 labeled to indicate that the purpose of the product is to enhance or
10 condition the indoor environment by eliminating unpleasant odors or
11 freshening the air.

12 (ii) "Automotive product" means a chemically formulated consumer prod-
13 uct labeled to indicate that the purpose of the product is to maintain
14 the appearance of a motor vehicle, as defined in section one hundred
15 twenty-five of the vehicle and traffic law, including products for wash-
16 ing, waxing, polishing, cleaning, or treating the exterior or interior
17 surfaces of motor vehicles. "Automotive product" does not include auto-
18 motive paint or paint repair products.

19 (iii) "General cleaning product" means a soap, detergent, or other
20 chemically formulated consumer product labeled to indicate that the
21 purpose of the product is to clean, disinfect, or otherwise care for
22 fabric, dishes, or other wares; surfaces including, but not limited to,
23 floors, furniture, countertops, showers, and baths; or other hard
24 surfaces, such as stovetops, microwaves, and other appliances.

25 (iv) "Polish or floor maintenance product" means a chemically formu-
26 lated consumer product, such as polish, wax, a stripper, or a restorer,
27 labeled to indicate that the purpose of the product is to polish,
28 protect, buff, condition, temporarily seal, strip, or maintain furni-
29 ture, floors, metal, leather, or other surfaces.

30 (b) "Cleaning product" shall not mean any of the following:

31 (i) Foods, drugs, and cosmetics, including personal care items such as
32 toothpaste, shampoo, and hand soap.

33 (ii) Industrial products specifically manufactured for, and exclusive-
34 ly used in the following: oil and gas production; steel production;
35 heavy industry manufacturing; industrial water treatment; industrial
36 textile maintenance and processing other than industrial laundering;
37 food and beverage processing and packaging; or other industrial manufac-
38 turing processes.

39 6. "Cookware" means durable items that are used in homes, restaurants,
40 institutional, and commercial kitchens to prepare, dispense, or store
41 food, foodstuffs, or beverages for indoor or outdoor use. "Cookware"
42 includes, but is not limited to, pots, pans, skillets, grills, baking
43 sheets, baking molds, trays, bowls, camping gear, and cooking utensils.

44 7. "Fabric treatment" means a substance applied to a fabric for stain,
45 grease, or water resistance.

46 8. "Manufacturer" means any person that manufactures a product or
47 whose brand name is affixed to the product. In the case of a product
48 imported into the United States, "manufacturer" includes the importer or
49 first domestic distributor of the product if the person that manufac-
50 tured or assembled the product or whose brand name is affixed to the
51 product does not have a presence in the United States.

52 9. "Rugs" means any consumer products made from natural or synthetic
53 fabric intended to be used as a floor covering, other than carpets, and
54 includes handmade rugs, area rugs, or mats.

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

11. "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.

12. "Textile articles" means non-wearable textile goods, outdoor apparel, footwear, costumes and accessories.

(a) "Non-wearable textile goods" means textile goods of a type customarily used in households and businesses that are not customarily worn. Textile articles include, but are not limited to, handbags, backpacks, draperies, shower curtains, furnishings, upholstery, beddings, towels, napkins, and tablecloths. For the purposes of this title, textile articles do not include rugs or personal protective equipment.

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

(c) "Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses that may result from contact with chemical, radiological, physical, electrical, mechanical, or other workplace hazards.

§ 37-0403. Prohibition on sale of covered products.

1. Commencing on January first, two thousand twenty-five, no person shall distribute, sell, or offer for sale in the state any covered product that contains regulated perfluoroalkyl and polyfluoroalkyl substances.

2. The prohibition on distribution, sale or offer of sale in this title does not apply to the sale or resale of used products.

§ 37-0405. Required notification.

1. A manufacturer of a covered product sold into the state that contains regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS 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 intentionally added PFAS. Any certificate of compliance provided under this section shall be signed by an authorized official of the manufacturer.

2. If regulated perfluoroalkyl or polyfluoroalkyl or PFAS are discovered in the covered product after the issuance of the certificate of compliance, the manufacturer shall recall the covered product and reimburse the distributor or retailer for the covered product.

§ 37-0407. Violations.

1. A violation of any of the provisions of this title or 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. 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:

1 (a) provide the department with independent, third-party laboratory
2 test results demonstrating that the covered product does not contain
3 regulated PFAS; or

4 (b) notify persons who sell that covered product in this state that
5 the sale of that covered product is prohibited in this state and provide
6 the department with a list of the names and addresses of those notified.

7 3. A distributor or retailer of a product, who is not also the
8 manufacturer of the product, shall not be held in violation of this
9 title if it can show that he or she relied in good faith on the certif-
10 icate of compliance provided for in subdivision one of section 37-0405
11 of this title or the retailer received a notification pursuant to subdivi-
12 vision two of this section.

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

16 § 2. This act shall take effect immediately.