HOUSE . . . . . No. 4818

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 2, 2022.

The committee on Public Health to whom was referred the petition (accompanied by bill, House, No. 2350) of Jack Patrick Lewis and others for legislation to further regulate PFAS chemicals in consumer products, reports recommending that the accompanying bill (House, No. 4818) ought to pass.

For the committee,

MARJORIE C. DECKER.

FILED ON: 5/27/2022

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The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act restricting toxic PFAS chemicals in consumer products to protect our health.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 111 of the General Laws is hereby amended by inserting after section 5S the following section:-

Section 5T. (a) As used in this section, the following words, unless the context clearly requires otherwise, shall have the following meanings:-

"Child passenger restraint", a child passenger restraint under section 7AA of chapter 90.

"Children's products", a consumer product, including its product components, intended, made or marketed for use by children 12 years of age or under, not including medical devices.

"Cookware", durable houseware items that are used in homes and restaurants to prepare, dispense, or store food, foodstuffs, or beverages, including, but not limited to, pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, and cooking utensils.

"Current unavoidable use", a use of PFAS that the department has determined under this section to be essential for health, safety or the functioning of society and for which alternatives are not reasonably available.

"Fabric treatment", a substance applied to fabric, carpets, rugs, shoes or textiles to impart characteristics, including, but not limited to, stain resistance or water resistance.

"Intentionally added", the addition of a chemical to a final product or product component for the purpose of providing a specific characteristic, appearance or quality or to perform a specific function in the product or product component, including PFAS substances that are intentional chemical breakdown products or derivatives of an added chemical that also have a specific function in the product or product component.

"Manufacturer", the person that manufactures a product of whose brand name is affixed to the product. In the case of a product imported into the United States, "manufacturer" includes the importer or first domestic distributer of the product if the person that manufactured or assembled or whose brand name is affixed to the product does not have a presence in the United States.

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

"Personal care products", articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance; provided, personal care products shall include products such as skin moisturizers, perfumes, lipsticks, fingernail polishes, eye and facial makeup preparations, shampoos, permanent waves, hair colors, toothpastes, sunscreen, hair spray,

shaving cream and deodorants, as well as any material intended for use as a component of a cosmetic product; and provided further that personal care products shall also include disposable menstrual products such as sanitary napkins, tampons, and underwear liners.

“Product component”, a component of a product, including the product’s ingredients or a part of the product, regardless of whether the manufacturer of the product is the manufacturer of the component.

“Rugs and carpets”, fabric used to or marketed to cover floors.

'Upholstered furniture", upholstered furniture as defined in section 270 of chapter 94.

(b) Effective January 1, 2023, no person shall offer for sale, sell, or distribute in the commonwealth any of the following products to which PFAS substances have been intentionally added or, if not intentionally added, in which PFAS substances are present and measurable by testing for total fluorine at a level greater than 1 part per million:

(1) child passenger restraints;

(2) cookware;

(3) fabric treatments;

(4) personal care products;

(5) rugs and carpets; and

(6) upholstered furniture.

(7) children’s products

(c) The prohibitions of subsection (b) shall not apply to the sale or resale of used products, and shall not apply to a retailer unless the retailer sells the product knowing that the product contains PFAS substances.

(d) The department of public health shall, in coordination with the Interstate Chemicals Clearinghouse, establish, on or before June 1, 2024, a publicly accessible reporting platform to collect information about PFAS and products or product components containing PFAS substances being sold, offered for sale, distributed, or offered for promotional purposes in, or imported into, the state.

(e) On or before June 1, 2025, and on or before June 1 of each year thereafter, a manufacturer of PFAS or a product or product component containing regulated PFAS substances that is sold, offered for sale, distributed, or offered for promotional purposes in, or imported into, the state shall register the PFAS or the product or product component containing regulated PFAS substances on the publicly accessible reporting platform created pursuant to subsection (f), along with all of the following information, as applicable:

(1) The name and type of product or product component containing regulated PFAS substances.

(2) The universal product code, or "UPC", of the product or product component containing regulated PFAS substances.

(3) How the PFAS are, or the product or product component containing regulated PFAS substances are, used by businesses or consumers.

(4) (A)The specific names of all PFAS compounds in the product or product

component containing regulated PFAS substances and the Chemical Abstracts Service Registry Number, also known as a "CAS Registry Number" or "CAS RN," of each PFAS compound.

(B) If the CAS RN is not available, the amount or weight of PFAS measured as total organic fluorine in the product or product component containing regulated PFAS per individual analyte.

(5) The amount of the product or the product component or the numbers of products or product components sold, delivered, or imported into the state.

(6) The name and address of the manufacturer, and the name, address, and phone number of the contact person for the manufacturer.

(7) Any additional information established by the department as necessary to implement the requirements of this section.

(f) With the approval of the department, a manufacturer may supply the information required in subsection (e) for a category or type of product rather than for each individual product.

(g) In a manner determined by the department, a manufacturer shall update and revise the information required under subsection (e) whenever there is a significant change in the information or when requested to do so by the department.

(h)The department may identify any additional products by category or use that may not be sold, offered for sale or distributed for sale if they contain intentionally added PFAS. The department shall prioritize the prohibition of the sale of products or product categories

that, in the department's judgment, are most likely to cause contamination of land or water resources if they contain intentionally added PFAS. Products or product categories in which the use of PFAS is a currently unavoidable use, as determined by the department, may be exempted by the department at intervals of no more than 3 years.

(i) Effective January 1, 2030, no person shall offer for sale, sell, or distribute in the commonwealth any product which PFAS substances have been intentionally added or, if not intentionally added, in which PFAS substances are present and measurable by testing for total fluorine at a level greater than 1 part per million, unless the department has determined that the use of PFAS substances in the product is currently unavoidable use.

(j) The prohibitions of subsection (i) shall not apply to the sale or resale of used products, and shall not apply to a retailer unless the retailer sells the product knowing that the product contains PFAS substances.

(k) If the department has reason to believe that a product contains intentionally added PFAS substances or, if not intentionally added, in which PFAS substances are present and measurable by testing for total fluorine at a level greater than 1 part per million and is being offered for sale in violation of this section, the department, attorney general, or other agency of the commonwealth may direct the manufacturer of the product to, within 30 days:

(1) Provide the department with a certification attesting that the product does not contain intentionally added PFAS substances and that it has tested the product for total fluorine and determined that PFAS substances are not present in the product at a level greater than 1 part per million.; or

(2) Notify persons who sell the product that the sale of the product is prohibited and provide the department with a list of names and addresses of those notified.

(l) The department may establish by regulation and assess a fee payable by a manufacturer upon submission of the notification required under subsections (e) to cover the department's reasonable costs in developing and administering this section.

(m) The department shall adopt regulations to implement this section.

(n) The attorney general shall have the authority to enforce the provisions of this section under section 4 of chapter 93A.