

PFAS UPDATE: NEW YORK PROHIBITS PFAS IN APPAREL

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SUMMARY

Kathy Hochul, New York's governor, recently signed a [bill](#) which prohibits the sale of apparel that contains "intentionally added" perfluoroalkyl and polyfluoroalkyl chemicals ("PFAS") starting on December 31, 2023. New York joins [California](#) in banning the sale of apparel containing intentionally added PFAS substances.

There has been an ongoing debate about the potential need for certain industries to reformulate to remove PFAS from their products and manufacturing process. For distributors of apparel in the New York market, this bill resolves that debate and mandates reformulation.

I. Provisions and Background

New York's relatively short [bill](#) states that "no person shall sell or offer for sale in this state any apparel containing perfluoroalkyl and polyfluoroalkyl substances as intentionally added chemicals." PFAS substances are defined in the bill as "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom."

There are two key definitions that businesses need to understand in order to determine whether their products are impacted by the law:

- **Intentionally Added.** An intentionally added chemical means "a chemical in a product that serves an intended function in the product component." The "intentionally added" language appears in a number of similar state laws prohibiting the presence of PFAS substances, including New York's [prohibition](#) on PFAS in [food packaging](#). How this definition is meant to be interpreted is something that regulatory agencies are still evaluating, and until they provide definitive guidance, it will likely be an issue that is resolved through litigation.
- **Apparel.** 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, onesies, bibs,

and diapers. Apparel shall not include professional uniforms or outerwear intended for extreme conditions.”

Various trade associations have raised [objections](#) to this legislation during the past few months, asking for extensions and/or revisions as the original bill “will have many unintended consequences which will cause market disruption, economic loss, and harm to businesses, the workers they employ, and the consumers they serve.” In response, Hochul’s December 30, 2022, [letter](#) announcing her approval of the bill explained that she had made amendments to clarify the definitions, the enforcing agency, and to provide businesses with more time to comply.

II. Impacts to Businesses

Businesses should be aware of the prevalence of these actions to restrict PFAS in apparel. Importantly, other states have enacted prohibitions on similar products or are expected to do so soon:

- [California](#). Effective January 1, 2025, California has banned the use of intentionally added PFAS in apparel, and has also banned the unintentional use of PFAS if the aggregate concentration of total organic fluorine exceeds certain levels. For additional information, please refer to [BCLP’s Client Alert](#).
- [Maine](#). Beginning January 1, 2030, a person shall not sell, offer, or distribute any product that contains intentionally added PFAS substances unless the Maine Department of Environmental Protection has determined that the use of PFAS in the product is a currently unavoidable use. Beginning January 1, 2023, this law requires entities to notify the state of all products sold in Maine that contain intentionally added PFAS.
- [Washington](#). The Washington Department of Ecology may consider any product identified in the 2021 PFAS Chemical Action Plan for designation as a priority consumer product. The [2021 PFAS Chemical Action Plan](#) specifically discusses apparel, so regulatory action in this space is likely.

Additionally, several states have proposed bills to prohibit PFAS substances in certain consumer products, including apparel: [Minnesota](#), [New Hampshire](#), [New York Bill I](#), [New York Bill II](#), [Rhode Island](#), [Vermont Bill I](#), and [Vermont Bill II](#).

III. Conclusion

Industry’s understanding of the use of PFAS in apparel products is still evolving, but companies that sell apparel in New York will now need to ramp up their analysis in order to meet the December 31, 2023, compliance deadline.

For more information on PFAS chemicals, and the regulatory and litigation risks that they pose, visit our [PFAS webpage](#). If you believe that you may be impacted by a regulation involving apparel,

please contact Tom Lee, John Kindschuh, Emma Cormier, or any other member of our PFAS team at Bryan Cave Leighton Paisner LLP.

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