As Introduced

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Representatives Troy, Rogers

Cosponsors: Representatives Brennan, Piccolantonio, Brownlee, Lett, McNally, Miller, J., Russo, Synenberg, Upchurch

To amend section 3745.015 and to enact sections 3745.81, 3745.82, 3745.83, 3745.84, 3745.85, 3745.86, and 3745.87 of the Revised Code to prohibit, with exceptions, the use of intentionally added PFAS in various products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3745.015 be amended and sections 3745.81, 3745.82, 3745.83, 3745.84, 3745.85, 3745.86, and 3745.87 of the Revised Code be enacted to read as follows:

Sec. 3745.015. There is hereby created in the state treasury the environmental protection fund consisting of money credited to the fund under division (A)(3) of section 3734.57— ~~and~~ , division (E) of section 3714.07, and section 3745.86 of the Revised Code. The environmental protection agency shall use money in the fund to pay the agency's costs associated with administering and enforcing, or otherwise conducting activities under, this chapter and Chapters 3704., 3734., 3746., 3747., 3748., 3750., 3751., 3752., 3753., 5709., 6101., 6103., 6105., 6109., 6111., 6112., 6113., 6115., 6117., and 6119. of the Revised Code, including providing compliance assistance to small

businesses.

Sec. 3745.81. As used in sections 3745.81 to 3745.87 of the Revised Code:

(A) "Carpet or rug" means a fabric marketed or intended for use as a floor covering.

(B) "Cleaning product" means a finished product used for general cleaning purposes, including any of the following:

(1) A polish or floor maintenance product;

(2) An air care product labeled for the intended use of enhancing or conditioning the indoor environment by eliminating unpleasant odors or freshening the air;

(3) An automotive maintenance product labeled for the intended use of maintaining the appearance of a motor vehicle.

"Cleaning product" does not include automotive paint or paint repair products.

(C) "Cookware" means durable houseware items intended for direct food contact and used to prepare, dispense, or store food, foodstuffs, or beverages, including pots, pans, grills, baking sheets, baking molds, trays, bowls, and cooking utensils;

(D) "Cosmetic" has the same meaning as in section 3715.01 of the Revised Code.

(E) "Currently unavoidable use" means a use of PFAS that the director of environmental protection has determined by rule to be essential for health, safety, or the functioning of society, and for which alternatives are not reasonably available.

(F) "Fabric treatment" means a substance applied to fabric

to give the fabric one or more characteristics, including for stain or water resistance.

(G) "Feminine hygiene product" means a disposable or reusable product to collect menstruation and vaginal discharge, including tampons, pads, sponges, menstruation underwear, discs, applicators, and menstruation cups.

(H) "Intentionally added" means a PFAS deliberately added during the manufacture of a product in which the continued presence of the PFAS is desired or expected in the final product or one of the product's components.

(I) "Juvenile product" means a product designed or marketed for use by children under twelve years of age, including a baby or toddler foam pillow; bassinet; bedside sleeper; booster seat; changing pad; child restraint system for use in a motor vehicle or aircraft; co-sleeper; crib mattress; highchair; highchair pad; infant bouncer; infant carrier; infant seat; infant sleep positioner; infant swing; infant travel bed; infant walker; nap cot; nursing pad; nursing pillow; play mat; playpen; play yard; polyurethane foam mat, pad, or pillow; portable foam nap mat; portable infant sleeper; portable hook-on chair; soft-sided portable crib; stroller; and toddler mattress "Juvenile product" does not include an electronic product, including:

(1) Personal computers and any associated equipment;

(2) Audio and video equipment;

(3) Calculators;

(4) Wireless phones;

(5) Gaming consoles;

(6) Handheld devices incorporating a video screen and any associated peripheral device such as a mouse, keyboard, power supply unit, or power cord.

(J) "Manufacturer" means:

(1) A person, firm, association, partnership, corporation, organization, combination, or a joint venture that creates, produces, or assembles a product or whose brand name is affixed to a product;

(2) In the case of a product imported into the United States, an importer or first domestic distributor of the product, provided that the entity or person that created, produced, or assembled the product or whose brand name is affixed to the product does not have an office or employees in the United States.

(K) "Medical device" has the same meaning as "device" as set forth in 21 U.S.C. 321.

(L) "Per- and polyfluoroalkyl substances" and "PFAS" means the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(M) "Product" means an item created, produced, assembled, packaged, or otherwise prepared for sale to consumers, including a product component sold or distributed for personal, residential, commercial, or industrial use, including for use in making another product.

(N) "Product component" means an identifiable part of a product, regardless of whether the manufacturer of the product is the manufacturer of the component.

(O) "Ski wax" means a lubricant applied to the bottom of a

snow runner, including a ski or snowboard, to improve grip or glide properties, and includes associated tuning products.

(P) "Textile furnishings" means a textile product made in whole or part from a natural or synthetic fiber, yarn, or fabric that is used as furniture or a decorative accessory.

(Q) "Upholstered furniture" means furniture that is wholly or partially stuffed with a filling material.

Sec. 3745.82. (A) The director of environmental protection shall adopt rules in accordance with Chapter 119. of the Revised Code that require a manufacturer to submit the following information to the director for a product that contains an intentionally added PFAS:

(1) A brief description of the product, including a universal product code, stock keeping unit, or other numeric code assigned to the product;

(2) The purpose for which the PFAS is used in the product;

(3) The amount of each PFAS in the product, identified by its chemical abstracts service registry number and reported as an exact quantity determined using commercially available analytical methods, or reported as falling within a range approved for reporting purposes by the director;

(4) The name and address of the manufacturer, and the name, address, and telephone number of a contact person for the manufacturer;

(5) Any additional information requested by the director.

(B) Not later than January 1, 2027, a manufacturer of a product for sale in this state that contains an intentionally added PFAS shall submit to the director the information required

by rules adopted under this section.

(C)(1) After January 1, 2027, a manufacturer shall submit the information required under rules adopted under this section anytime the manufacturer intends to sell, offer for sale, or distribute for sale in this state a new product that contains intentionally added PFAS. The manufacturer shall submit such information to the director within a time period specified in rules adopted under this section.

(2) A manufacturer shall submit a revision of the information required to be submitted under rules adopted under this section not later than thirty days after a significant change to the information that the manufacturer previously submitted or upon the request of the director.

(D) Upon approval from the director, a manufacturer may provide the information required by this section to the director for a category or type of product.

(E) No manufacturer shall sell, offer for sale, or distribute for sale a product that contains an intentionally added PFAS unless the manufacturer has submitted to the director the information required by rules adopted under this section by the time specified in this section and rules adopted under it.

(F) The director may waive the obligation of a manufacturer to submit all or part of the information required by rules adopted under this section if the director determines that substantially equivalent information is publicly available. The director may grant a waiver to a manufacturer or a group of manufacturers for multiple products or a product category.

(G) The director may extend any deadline for a manufacturer to submit the information required by this section

if the director determines that more time is needed by the manufacturer to comply with the submission requirements.

(H) The director may enter into an agreement with one or more states or political subdivisions of a state to collect and share information otherwise required to be submitted by this section. The director may accept such information as meeting the information submission requirements of this section.

Sec. 3745.83. (A) If the director of environmental protection has reason to believe that a product containing intentionally added PFAS is being offered for sale in this state and the manufacturer of the product has not complied with section 3745.82 of the Revised Code, the director may direct the manufacturer of the product to, within thirty days, provide testing results that demonstrate the amount, if any, of each PFAS in the product.

(B) If testing demonstrates that the product does not contain an intentionally added PFAS, the manufacturer shall provide the director with a certificate attesting that the product does not contain an intentionally added PFAS. The manufacturer also shall submit the testing results and any other relevant information requested by the director.

(C) If testing demonstrates that the product contains an intentionally added PFAS, all of the following apply:

(1) The manufacturer shall submit to the director, within thirty days, the information required for the product pursuant to section 3745.82 of the Revised Code;

(2) The manufacturer shall provide the director with the testing results;

(3) The director may issue an order prohibiting the

product from being sold, offered for sale, or distributed for sale in this state. If the director issues such an order, the manufacturer shall notify each person that sells the product in this state that the sale of the product is prohibited and provide the director with a list of the names and addresses of the persons so notified.

Sec. 3745.84. (A) Beginning January 1, 2028, no manufacturer shall sell, offer for sale, or distribute for sale in this state any of the following products if that product contains an intentionally added PFAS:

(1) Carpets or rugs;

(2) Cleaning products;

(3) Cookware;

(4) Cosmetics;

(5) Dental floss;

(6) Fabric treatments;

(7) Juvenile products;

(8) Feminine hygiene products;

(9) Textile furnishings;

(10) Ski wax;

(11) Upholstered furniture.

(B) Beginning January 1, 2033, no manufacturer shall sell, offer for sale, or distribute for sale a product containing an intentionally added PFAS unless the product is exempt under section 3745.85 of the Revised Code or the director of environmental protection has adopted a rule under section

3745.86 of the Revised Code providing that the use of PFAS in that product is a currently unavoidable use.

(C) Until January 1, 2033, the director may adopt rules in accordance with Chapter 119. of the Revised Code to prohibit a manufacturer from selling a product not listed in division (A) of this section that contains an intentionally added PFAS. In adopting rules under this division, the director shall do both of the following:

(1) Establish an effective date for each such prohibition. No such effective date shall be earlier than January 1, 2028.

(2) Prioritize prohibitions of products containing intentionally added PFAS that are most likely to harm humans or contaminate the environment.

(D) The director may notify a person that sells a product prohibited under sections 3745.82 to 3745.84 of the Revised Code that the product is prohibited in this state.

Sec. 3745.85. (A) Sections 3745.82 to 3745.84 of the Revised Code do not apply to any of the following:

(1) A product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority;

(2) Used products offered for sale or resale;

(3) Firefighting foam authorized for use in this state under section 3737.52 of the Revised;

(4) A pesticide regulated by or under the jurisdiction of the "Federal Insecticide, Fungicide, and Rodenticide Act," 7 U.S.C. 136, et seq.

(B) Section 3745.83 and 3745.84 do not apply to medical devices or drugs that are regulated by the United States food and drug administration, including prosthetic and orthotic devices.

Sec. 3745.86. (A) The director of environmental protection shall adopt rules in accordance with Chapter 119. of the Revised Code to do all of the following:

(1) Exempt from the reporting requirements established under section 3745.82 of the Revised Code any product that contains an intentionally added PFAS that is exempt under section 3745.85 of the Revised Code or that has been designated as having a currently unavoidable use by the director under this section;

(2) Create a series of ranges for the amount of a PFAS in a product that contains an intentionally added PFAS for reporting purposes;

(3) Identify currently unavoidable uses of PFAS that are essential for health, safety, or the functioning of society and for which alternatives are not reasonably available.

(B) The director may adopt rules in accordance with Chapter 119. of the Revised Code to carry out sections 3745.81 to 3745.87 of the Revised Code, including rules that do the following:

(1) Prohibit products that contain an intentionally added PFAS by category or use;

(2) Establish a fee payable by a manufacturer to the director upon submission of the information required under rules adopted in section 3745.82 of the Revised Code. Proceeds from the fee shall be deposited in the environmental protection fund

created under section 3745.015 of the Revised Code.

(C) Prior to adopting a rule under division (B)(1) of this section regarding a pesticide that is not exempt under section 3745.85 of the Revised Code or any fertilizer, agricultural liming material, or plant or soil amendment that contains an intentionally added PFAS, the director shall consult with the director of agriculture.

Sec. 3745.87. Any manufacturer that violates sections 3745.81 to 3745.86 of the Revised Code or a rule adopted or order issued under those sections shall pay a civil penalty of not more than fifteen thousand dollars for each violation, to be paid into the state treasury to the credit of the general revenue fund. Each day that a violation continues constitutes a separate offense. The attorney general, upon written request by the director of environmental protection, shall bring an action for such a penalty against any manufacturer that violates sections 3745.81 to 3745.86 of the Revised Code. Such an action is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions.

Any civil penalties imposed under this section do not limit a manufacturer's liability in other causes of action.

Section 2. That existing section 3745.015 of the Revised Code is hereby repealed.