

September 1, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building, Room 239
Albany, New York 12224

RE: Veto Request for: A.7063A/S.6291A (Fahy/Hoylman) - An Act to Prohibit the use of perfluoroalkyl and polyfluoroalkyl substances in apparel

Dear Governor Hochul:

On behalf of the American Apparel & Footwear Association (AAFA), I am providing these comments regarding S.6291A/A.7063A, an act to prohibit the use of perfluoroalkyl and polyfluoroalkyl substances in apparel.

AAFA fully supports the intent of the legislation but urge you to veto the bill in its present form. Unless certain changes are made, the legislation 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.

AAFA offers recommendations for chapter amendments that, if adopted, would make this legislation workable, stronger, more effective, and provide a science-based approach that will put us on a path to bring safe and more sustainable alternatives online in an orderly manner.

AAFA is the nation's leading trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands. AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management, and shareholders, its three million U.S. workers, and its contribution of more than \$350 billion in annual U.S. retail sales. Our members do business in New York, throughout the United States, and globally, providing us a comprehensive perspective on how to implement successful and effective chemical management programs for consumer goods.

We deploy our association's extensive expertise in trade, brand protection, supply chain management, and manufacturing to help our members navigate the complex regulatory environment, lower costs, and grow their sustainability and product safety efforts. With our members engaged in the production and sale of clothing and footwear, we are on the front lines of product safety. It is our members who design and execute the quality and compliance programs that stitch product safety into every garment and shoe we make. To support our

members in this effort, AAFA has taken the lead in educating our industry through alerts, webinars, and conferences on the development, interpretation, and implementation of product safety standards and regulations.

S.6291A/A.7063A would prohibit the sale of common apparel products that contain intentionally added perfluoroalkyl and polyfluoroalkyl substances by December 31, 2023. Although this bill presents an admirable goal, it lacks the details or sufficient time horizon needed to effectively implement a phaseout of per- and poly-fluoroalkyl substances (“PFAS”).

AAFA and our members are proud advocates for regulatory requirements that can effectively protect human health and the environment. Indeed, many of our members routinely exceed regulatory requirements, and many are already in the process of phasing out the use of intentionally added PFAS. But this is not an overnight process. Companies must implement new testing regimes that can be expensive to design as PFAS consumer products testing remains in its infancy. Companies must also responsibly deal with existing inventory, even in the absence of federal or state direction on what should be done with such articles. And companies must change supply chain processes to achieve compliance for the wide range of PFAS chemicals and uses and ensure that new alternatives are indeed safe. These changes take years to effectively accomplish – particularly as it is happening in multiple industries at the same time – and S.6291A/A.7063A does not provide the runway necessary to implement those changes.

S.6291A/A.7063A sets a strict effective date of December 31, 2023. Simply put, manufacturers, retailers, and others need more time to research and develop potential alternative materials; evaluate performance characteristics and consumer acceptance; ensure that any alternative material does not hurt workers, consumers, or the environment; commercialize new products; and transition existing inventories and product portfolios. We urge the adoption of December 31, 2026. Without this change, disruption to retailers and consumers would be severe.

Revisions should further include a sell-through safe harbor provision that allows retailers and manufacturers to fully process any remaining inventory. Given global supply chain constraints that have hit apparel retailers particularly hard, product availability for replacements is not assured and is likely to exacerbate economic harm on this sector. A rigid compliance deadline without appropriate sell through provisions for products produced before the date of implementation would have unintended consequences from an environmental perspective. Manufacturers and retailers will be forced to move goods through the 50-state regulatory patchwork, increasing greenhouse gas (GHG) emissions for each product. Should sale be prohibited, unsold items may wind up being disposed of in landfills, causing additional solid waste burdens. Replacement materials have generally shown shorter durability, and the replacement of durable products, with lower performing, shorter lifetime products will require consumers to replace those products more frequently, significantly increasing aggregated GHG emissions output during production of the replacements, not to mention extra consumer expense. For these reasons, we recommend clear language that allows for sell through of products produced on or before December 31, 2025.

The bill currently lacks any definition for “outerwear intended for extreme conditions.” A definition is necessary to reduce regulatory uncertainty and promote compliance. We suggest the following definition, which has been used in other regulatory frameworks to support consistent approaches: “Outerwear intended for extreme conditions includes extreme and extended use products designed for professionals and workers in applications that require maximum weather resistance, breathability, flexibility, and durability to protect the health and safety of the user. Examples of extreme and extended use applications include search and rescue, ice climbing, mountaineering, free ride skiing, wilderness hunting, offshore fishing, and offshore sailing.”

Finally, we request that the bill be amended to clarify how much PFAS would constitute “intentionally added” PFAS. AAFA recommends a 100 parts per million (ppm) testing threshold for total organic fluorine (TOF) be added to create clear and consistent guidelines as to what constitutes intentionally added PFAS; to establish a currently achievable and science-based testing method; and to also harmonize with the direction other states are taking. This is particularly important because of the background levels of PFAS that have been detected in our environment.

AAFA appreciates the opportunity to submit these comments. AAFA looks forward to continuing to work with you and the Legislature on the policies and regulation of potentially harmful substances in consumer products for the benefit of public safety and public health. In the meantime, our members will continue to design and execute the quality and compliance programs that emphasize product safety for every individual who steps into our member’s apparel and footwear products.

Thank you for your time and consideration in this matter. Please contact Nate Herman on my staff at (301) 775-7633 or nherman@aafaglobal.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Lamar". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen Lamar
President and CEO
American Apparel & Footwear Association (AAFA)