STATE OF NEW YORK

3331--A

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sens. RIVERA, SALAZAR, BAILEY, BIAGGI, BOYLE, BROOKS, BROUK, CLEARE, HARCKHAM, HINCHEY, HOYLMAN, JACKSON, KAPLAN, KRUEGER, LIU, MANNION, MARTUCCI, MYRIE, REICHLIN-MELNICK, SANDERS, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to the regulation of ingredients in personal care products and cosmetics

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1.Short title. This act shall be known and may be cited as the "personal care and cosmetics act".

§ 2. Legislative findings and intent. There are thousands of chemicals used in personal care, household cleaning, and other consumer products, many of which have never been fully tested for potential impacts on human health or the environment. Moreover, regarding the safety of using personal care products, it is most concerning that cosmetics regulation in the United States has not been significantly updated since 1938. This has led state national, and international organizations to develop lists of chemicals of concern, including New York State's Toxic Chemicals in children's products and others. While federal law requires personal care product labels to list certain intentionally added ingredients, information concerning potential health effects is not widely available and certain categories of chemical ingredients are exempt from labeling requirements. Furthermore, over 40 countries, including countries in the European Union, Japan, Cambodia, and Vietnam, have stricter restrictions on chemicals in personal care products than does the United States. Therefore, the legislature finds and declares that federal disclosure requirements are inadequate to educate and protect consumers, and that it shall be the policy of the state to require the personal care product industry to more fully disclose ingredients and identify

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

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ingredients published as chemicals of concern on lists identified by the commissioner and other state, national or international lists.

§ 2. Article 37 of the environmental conservation law is amended by adding a new title 11 to read as follows:

TITLE XI

PERSONAL CARE AND COSMETICS

§ 37-1101. Definitions.

As used in this title, unless the context requires otherwise:

1. "Chemical of concern" shall mean a chemical or class of chemicals referenced in Section 108954(a)(1) of Chapter 13 to Part 3 of Division 104 of the California Health and Safety Code as of March fifteenth, two thousand twenty-two, and asthmagens as identified by the association of occupational and environmental clinics and as designated by the commissioner, in consultation with the commissioner of health.

2. "Ingredient" shall mean all of the following:

(a) an intentionally added ingredient present in any quantity in a personal care product;

(b) a nonfunctional byproduct or nonfunctional contaminant present in a personal care product, in any quantity, provided such element or compound has been published as a chemical of concern on one or more lists identified by the commissioner.

3. "Intentionally added ingredient" shall mean any element or compound that a manufacturer has intentionally added to a personal care product, and which has a functional or technical effect in the finished product, including, but not limited to, the components of intentionally added fragrance, flavoring and colorants, and the intentional breakdown products of an added element or compound that also has a functional or technical effect on the finished product.

4. "Nonfunctional byproduct" shall mean any element or compound which has no functional or technical effect in the finished product which:

(a) was intentionally added during the manufacturing process for a personal care product at any point in a product's, a raw material's or ingredient's supply chain; or

(b) was created or formed during the manufacturing process as an intentional or unintentional consequence of the manufacturing process at any point in a product's, a raw material's, or an ingredient's supply chain.

Nonfunctional byproduct shall include, but is not limited to, an unreacted raw material, a breakdown product of an intentionally added ingredient, or a byproduct of the manufacturing process.

5. "Nonfunctional contaminant" shall mean any element or compound present in a personal care product as an unintentional consequence of manufacturing which has no functional or technical effect in the finished product. Nonfunctional contaminants include, but are not limited to, elements or compounds present in the environment as contaminants which were introduced into a product, a raw material, or a product ingredient as a result of the use of an environmental medium, such as a naturally occurring mineral, air, soil or water, in the manufacturing

process at any point in a product's, a raw material's, or an ingredient's supply chain.

6. "Manufacturer" shall mean any person, firm, association, partnership, limited liability company, or corporation which produces, prepares, formulates, or compounds a personal care product, or whose brand name is affixed to such product. In the case of a personal care product imported into the United States, "manufacturer" shall mean the importer or first domestic distributor of the product if the entity that manufactures the product or whose brand name is affixed to the product does not have a presence in the United States.

7. "Personal care product" shall mean articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of any such articles; except that such term shall not include soap.

8. "Practical quantification limit" means the lowest level that can be reliably achieved within pre-determined limits of precision and accuracy during routine laboratory operating conditions.

9. "Restricted substance" shall mean lead, lead compounds, or mercury and related compounds, formaldehyde, parafolmaldehyde, triclosan, toluene, per- and polyfluoroalkyl substances, dibutyl phthalate, di(2)exylhexyl phthalate, diethyl phthalate, butyl benzyl phthalate, isobutyl-, isopropyl-, butyl-, methyl-, propyl paraben, methylene glycol, oxybenzone, Quanternium-15, m-Phenylenediamine and its salts, and o- Phenylenediamine and its salts.

10. "Soap" shall mean articles comprised entirely of an alkali salt of fatty acids where the detergent properties of the article are due to the alkali-fatty acid compounds, and the article shall be labeled, sold, and represented only as a soap.

§ 37-1103. Disclosure.

1. Manufacturers of personal care products distributed, sold or offered for sale in this state, whether at retail or wholesale, for personal, professional or commercial use, or distributed for promotional purposes, shall furnish to the commissioner for public record, in a manner prescribed by the commissioner that is readily accessible to the public and machine readable, such information regarding such products pursuant to rules and regulations promulgated by the commissioner. For each personal care product, such information shall include, but shall not be limited to:

(a) a list naming each ingredient, as defined in subdivision two of section 37-1101 of this title, of the product in descending order of predominance by weight in the product, except that ingredients present at a weight below one percent (1%) may be listed following other ingredients without respect to the order of predominance by weight;

(b) such list shall include chemicals present as nonfunctional byproducts and contaminants when those elements or compounds meet the definition of a chemical of concern;

(c) such list shall disclose each ingredient that is published as a chemical of concern as identified in this title, including specification of which list or lists such chemical of concern is on; and

(d) such list shall disclose whether it is an intentionally added ingredient, a nonfunctional byproduct, or a nonfunctional contaminant. Manufacturers may provide information about the function of intentionally added ingredients.

2. Such manufacturers shall furnish information on or before January thirtieth, two thousand twenty-four and annually thereafter.

3. Such information shall be made available to the public by the commissioner, in accordance with this section, with the exception of specific ingredient names, which the commissioner determines, based on application by the manufacturer, would disclose information, including formulas and molecular structures, about the ingredient that discloses processes used in the manufacturing or processing of the ingredient. If the commissioner grants an exception, the manufacturer must provide a generic name for each ingredient, using the framework provided by the federal Environmental Protection Agency guidance for the TSCA Confidential Inventory. The commissioner shall not approve any exceptions under this subdivision with respect to any ingredient published as a chemical of concern by the commissioner.

4. The commissioner may direct submission of such information to the Interstate Chemicals Clearinghouse, which may make the reported information available to the public, subject to information to be withheld under subdivision three of this section.

5. The manufacturer shall pay a fee upon submission of a report of chemical use pursuant to subdivision one of this section or a waiver request pursuant to subdivision two of this section to cover the department's reasonable costs in the administration and enforcement of this title. Exclusive of fines and penalties, the state shall only recover its actual cost of administration and enforcement.

§ 37-1105. Publishing of lists.

The commissioner shall publish lists of chemicals of concern, and restricted substances on or before the effective date of this title, and any time such lists are amended.

§ 37-1107. Periodic review.

The commissioner, in consultation with the commissioner of health, shall periodically review no fewer than three years, the list of chemicals of concern and, may through regulation, add or remove chemicals from such list.

§ 37-1109. Sales prohibition.

Effective three years after this section takes effect, no person shall distribute, sell or offer for sale in this state a personal care product containing a restricted substance.

§ 37-1111. Small business exemption.

The requirements of section 37-1103 of this title shall not apply to personal care product manufacturers that employ ten persons or fewer, and are independently owned and operated.

§ 37-1113. Penalties.

A manufacturer in violation of this title is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who commit subsequent violations are subject to a civil penalty not to exceed ten thousand dollars for each additional offense.

§ 3. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 4. This act shall take effect one year after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any

rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.