S T A T E O F N E W Y O R K

5059

2011-2012 Regular Sessions

I N A S S E M B L Y

February 11, 2011

Introduced by M. of A. TITUS, PHEFFER, ROBINSON, WEISENBERG -- Multi-Sponsored by -- M. of A. BOYLAND, GALEF -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to enacting the safe cosmetics act of 2011

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new article 22-A to read as follows:

ARTICLE 22-A

SAFE COSMETICS ACT OF 2011

SECTION 2250. DEFINITIONS.
2251. LISTING OF PRODUCTS.
2252. INVESTIGATION.
2253. REFERRAL OF RESULTS.

S 2250. DEFINITIONS. AS USED OR REFERRED TO IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "AUTHORITATIVE BODY" MEANS ANY AGENCY, DIVISION, BODY OR FORMALLY ORGANIZED PROGRAM OR GROUP RECOGNIZED BY THE DEPARTMENT AS BEING AUTHORITATIVE FOR THE PURPOSE OF IDENTIFYING CHEMICALS THAT MAY CAUSE CANCER OR REPRODUCTIVE TOXICITY.

2. "CHEMICAL IDENTIFIED AS CAUSING CANCER OR REPRODUCTIVE TOXICITY" MEANS A CHEMICAL IDENTIFIED BY AN AUTHORITATIVE BODY AS ANY OF THE FOLLOWING:

(A) A SUBSTANCE LISTED AS KNOWN OR REASONABLY ANTICIPATED TO BE A HUMAN CARCINOGEN IN A NATIONAL TOXICOLOGY REPORT ON CARCINOGENS;

(B) A SUBSTANCE GIVEN ON OVERALL CARCINOGENCITY EVALUATION OF GROUP 1, GROUP 2A OR GROUP 2B BY THE INTERNATIONAL AGENCY FOR RESEARCH ON CANCER;

(C) A SUBSTANCE IDENTIFIED AS A GROUP A, GROUP B1 OR GROUP B2 CARCINOGEN, OR AS A KNOWN OR LIKELY CARCINOGEN BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; OR

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

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(D) A SUBSTANCE IDENTIFIED AS HAVING SOME CLEAR EVIDENCE OF ADVERSE DEVELOPMENTAL, MALE REPRODUCTIVE OR FEMALE REPRODUCTIVE TOXICITY EFFECTS IN A REPORT BY AN EXPERT PANEL OF THE NATIONAL TOXICOLOGY PROGRAM'S CENTER FOR THE EVALUATION OF RISKS TO HUMAN REPRODUCTION.

3. "INGREDIENT" SHALL HAVE THE SAME MEANING AS THAT TERM IS DEFINED IN SUBDIVISION (E) OF 21 C.F.R. 700.3 AND DOES NOT INCLUDE ANY INCIDENTAL INGREDIENT AS DEFINED IN SUBDIVISION (1) OF 21 C.F.R. 701.3.

4. "MANUFACTURER" MEANS ANY PERSON WHOSE NAME APPEARS ON THE LABEL OF A COSMETIC PRODUCT PURSUANT TO THE REQUIREMENTS OF 21 C.F.R. 701.12.

S 2251. LISTING OF PRODUCTS. 1. COMMENCING JANUARY FIRST, TWO THOUSAND TWELVE, THE MANUFACTURER OF ANY COSMETIC PRODUCT SUBJECT TO REGULATION BY THE FEDERAL FOOD AND DRUG ADMINISTRATION THAT IS SOLD IN THIS STATE SHALL, ON A SCHEDULE AND IN ELECTRONIC OR OTHER FORMAT, AS DETERMINED BY THE DEPARTMENT, PROVIDE THE DEPARTMENT WITH A COMPLETE AND ACCURATE LIST OF ITS COSMETIC PRODUCTS THAT, AS OF THE DATE OF SUBMISSION, ARE SOLD IN THE STATE AND THAT CONTAIN ANY INGREDIENT THAT IS A CHEMICAL IDENTIFIED AS CAUSING CANCER OR REPRODUCTIVE TOXICITY, INCLUDING ANY CHEMICAL THAT MEETS EITHER OF THE FOLLOWING CONDITIONS:

(A) A CHEMICAL CONTAINED IN THE PRODUCT FOR PURPOSES OF FRAGRANCE OR FLAVORING; OR

(B) A CHEMICAL IDENTIFIED BY THE PHRASE "AND OTHER INGREDIENTS" AND DETERMINED TO BE A TRADE SECRET PURSUANT TO THE PROCEDURE ESTABLISHED IN PART 20 AND 21 C.F.R. 720.8. ANY INGREDIENT IDENTIFIED PURSUANT TO THIS PARAGRAPH SHALL BE CONSIDERED TO BE A TRADE SECRET AND SHALL BE TREATED BY THE DEPARTMENT IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF PART 20 AND PART 720 OF 21 C.F.R.

2. ANY INFORMATION SUBMITTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL IDENTIFY EACH CHEMICAL BOTH BY NAME AND CHEMICAL ABSTRACT SERVICE NUMBER AND SHALL SPECIFY THE PRODUCT OR PRODUCTS IN WHICH THE CHEMICAL IS CONTAINED.

3. IF ANY INGREDIENT IDENTIFIED PURSUANT TO THIS SECTION SUBSEQUENTLY IS REMOVED FROM THE PRODUCT IN WHICH IT WAS CONTAINED, OR IS REMOVED FROM THE LIST OF CHEMICALS KNOWN TO CAUSE CANCER OR REPRODUCTIVE TOXICITY, OR IS NO LONGER A CHEMICAL IDENTIFIED AS CAUSING CANCER OR REPRODUCTIVE TOXICITY BY AN AUTHORITATIVE BODY, THE MANUFACTURER OF THE PRODUCT CONTAINING THE INGREDIENT SHALL SUBMIT THE NEW INFORMATION TO THE DEPARTMENT. UPON RECEIPT OF NEW INFORMATION, THE DEPARTMENT, AFTER VERIFYING THE ACCURACY OF THAT INFORMATION, SHALL REVISE THE MANUFACTURER'S INFORMATION ON RECORD WITH THE DEPARTMENT TO REFLECT THE NEW INFORMATION. THE MANUFACTURER SHALL NOT BE UNDER OBLIGATION TO SUBMIT SUBSEQUENT INFORMATION ON THE PRESENCE OF THE INGREDIENT IN THE PRODUCT UNLESS SUBSEQUENT CHANGES REQUIRE SUBMITTAL OF THE INFORMATION.

4. THIS SECTION SHALL NOT APPLY TO ANY MANUFACTURER OF COSMETIC PRODUCTS WITH ANNUAL AGGREGATE SALES OF COSMETIC PRODUCTS, BOTH WITHIN AND OUTSIDE OF THE STATE, OF LESS THAN ONE MILLION DOLLARS, BASED ON THE MANUFACTURER'S MOST RECENT TAX YEAR.

S 2252. INVESTIGATION. 1. IN ORDER TO DETERMINE POTENTIAL HEALTH EFFECTS OF EXPOSURE TO INGREDIENTS IN COSMETICS IN THE STATE, THE DEPARTMENT MAY CONDUCT AN INVESTIGATION OF ONE OR MORE COSMETIC PRODUCTS THAT CONTAIN CHEMICALS IDENTIFIED AS CAUSING CANCER OR REPRODUCTIVE TOXICITY OR OTHER INGREDIENTS OF CONCERN TO THE DEPARTMENT.

2. AN INVESTIGATION CONDUCTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION MAY INCLUDE, BUT NOT BE LIMITED TO, A REVIEW OF AVAILABLE HEALTH EFFECTS, DATA AND STUDIES, WORKSITE HEALTH HAZARD EVALUATIONS, EPIDEMIOLOGICAL STUDIES TO DETERMINE THE HEALTH EFFECTS OF EXPOSURES TO CHEMI-

CALS IN VARIOUS SUBPOPULATIONS, AND EXPOSURE ASSESSMENTS TO DETERMINE TOTAL EXPOSURES TO INDIVIDUALS IN VARIOUS SETTINGS.

3. IF AN INVESTIGATION IS CONDUCTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE MANUFACTURER OF ANY PRODUCT SUBJECT TO THE INVESTIGATION MAY SUBMIT RELEVANT HEALTH EFFECTS DATA AND STUDIES TO THE DEPARTMENT.

4. IN ORDER TO FURTHER THE PURPOSES OF AN INVESTIGATION, THE DEPARTMENT MAY REQUIRE MANUFACTURERS OF PRODUCTS SUBJECT TO THE INVESTIGATION TO SUBMIT TO THE DEPARTMENT RELEVANT HEALTH EFFECTS DATA AND STUDIES AVAILABLE TO THE MANUFACTURER AND OTHER AVAILABLE INFORMATION AS REQUESTED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, THE CONCENTRATION OF THE CHEMICAL IN THE PRODUCT, THE AMOUNT BY VOLUME OR WEIGHT OF THE PRODUCT THAT COMPRISES THE AVERAGE DAILY APPLICATION OR USE, AND SALES AND USE DATA NECESSARY TO DETERMINE WHERE THE PRODUCT IS USED IN THE OCCUPATIONAL SETTING.

5. THE DEPARTMENT SHALL ESTABLISH REASONABLE DEADLINES FOR THE SUBMITTAL OF INFORMATION REQUIRED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION. FAILURE BY A MANUFACTURER TO SUBMIT THE INFORMATION IN COMPLIANCE WITH THE REQUIREMENTS OF THE DEPARTMENT SHALL CONSTITUTE A VIOLATION OF THIS ARTICLE.

S 2253. REFERRAL OF RESULTS. 1. IF THE DEPARTMENT DETERMINES PURSUANT TO AN INVESTIGATION THAT AN INGREDIENT IN A COSMETIC PRODUCT IS POTENTIALLY TOXIC AT THE CONCENTRATION PRESENT IN THE PRODUCT OR UNDER THE CONDITIONS USED, THE DEPARTMENT SHALL IMMEDIATELY REFER THE RESULTS OF ITS INVESTIGATION TO THE OCCUPATIONAL SAFETY AND HEALTH HAZARD ABATEMENT BOARD.

2. WITHIN ONE HUNDRED EIGHTY DAYS AFTER IT RECEIVES THE RESULTS OF AN INVESTIGATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE OCCUPATIONAL SAFETY AND HEALTH HAZARD ABATEMENT BOARD SHALL DEVELOP AND PRESENT ONE OR MORE PROPOSED OCCUPATIONAL HEALTH STANDARDS TO THE DEPARTMENT OF LABOR, UNLESS THE OCCUPATIONAL SAFETY AND HEALTH HAZARD ABATEMENT BOARD AFFIRMATIVELY DETERMINES, IN A WRITTEN FINDING WITHIN NINETY DAYS, THAT A STANDARD IS NOT NECESSARY TO PROTECT THE HEALTH OF AN EMPLOYEE OR HAS REGULAR EXPOSURE TO THE HAZARD FOR THE PERIOD OF HIS OR HER WORKING LIFE. THE WRITTEN FINDING SHALL IDENTIFY THE REASONS FOR DETERMINING THE STANDARD IS NOT NECESSARY AND THE FACTUAL BASIS FOR THE FINDING.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.