

3585

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 27, 2015

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Introduced by M. of A. TITONE, GOTTFRIED, BORELLI, McDONOUGH, RA, GALEF  
-- Multi-Sponsored by -- M. of A. CERETTO, LUPARDO, McLAUGHLIN -- read  
once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to regulation of toxic chemicals in pet products

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

1     Section 1. Article 37 of the environmental conservation law is amended  
2     by adding a new title 9 to read as follows:

3                                   TITLE IX

4                                   TOXIC CHEMICALS IN PET PRODUCTS

5     SECTION 37-0901. DEFINITIONS.

6             37-0903. PRIORITY CHEMICALS AND CHEMICALS OF HIGH CONCERN.

7             37-0905. DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS.

8             37-0907. SALES PROHIBITION.

9             37-0909. APPLICABILITY.

10            37-0911. ENFORCEMENT AND IMPLEMENTATION.

11            37-0913. INTERSTATE CHEMICAL CLEARINGHOUSE.

12            37-0915. REGULATIONS.

13     S 37-0901. DEFINITIONS.

14     AS USED IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE INDICATES, THE  
15     FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS.

16     1. "CHEMICAL" MEANS A SUBSTANCE WITH A DISTINCT MOLECULAR COMPOSITION  
17     OR A GROUP OF STRUCTURALLY RELATED SUBSTANCES AND INCLUDES THE BREAKDOWN  
18     PRODUCTS OF THE SUBSTANCE OR SUBSTANCES THAT FORM THROUGH DECOMPOSITION,  
19     DEGRADATION OR METABOLISM.

20     2. "CHEMICALS OF HIGH CONCERN" MEANS: (A) CHEMICALS INCLUDED IN THE  
21     LIST OF "CHEMICALS OF HIGH CONCERN" PUBLISHED IN TWO THOUSAND NINE  
22     PURSUANT TO CHAPTER SIXTEEN-D OF TITLE 38 OF THE MAINE REVISED STATUTES  
23     ANNOTATED; OR (B) A CHEMICAL ADOPTED BY THE DEPARTMENT PURSUANT TO  
24     SECTION 37-0903 OF THIS TITLE.

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

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1 3. "DISTRIBUTOR" MEANS A PERSON WHO SELLS PET PRODUCTS TO RETAIL  
2 ESTABLISHMENTS ON A WHOLESALE BASIS.

3 4. "INTENTIONALLY ADDED" MEANS THE DELIBERATE USE IN THE FORMULATION  
4 OF A PRODUCT OR SUBPART WHERE ITS CONTINUED PRESENCE IS DESIRED IN THE  
5 FINAL PRODUCT OR SUBPART TO PROVIDE A SPECIFIC CHARACTERISTIC, APPEAR-  
6 ANCE OR QUALITY.

7 5. "MANUFACTURER" MEANS ANY PERSON WHO CURRENTLY MANUFACTURES PET  
8 PRODUCTS OR WHOSE BRAND NAME IS AFFIXED TO A PET PRODUCT. IN THE CASE OF  
9 PET PRODUCTS THAT WERE IMPORTED INTO THE UNITED STATES, "MANUFACTURER"  
10 INCLUDES THE IMPORTER OR FIRST DOMESTIC DISTRIBUTOR OF THE PET PRODUCTS  
11 IF THE PERSON WHO CURRENTLY MANUFACTURES OR ASSEMBLES THE PET PRODUCTS  
12 OR WHOSE BRAND NAME IS AFFIXED TO THE PET PRODUCTS DOES NOT HAVE A PRES-  
13 ENCE IN THE UNITED STATES.

14 6. "PET" MEANS ANY DOMESTICATED ANIMAL NORMALLY MAINTAINED IN OR NEAR  
15 THE HOUSEHOLD OF THE OWNER OR PERSON WHO CARES FOR SUCH DOMESTICATED  
16 ANIMAL. "PET" SHALL NOT INCLUDE A "FARM ANIMAL" AS DEFINED BY SUBDIVI-  
17 SION FOUR OF SECTION THREE HUNDRED FIFTY OF THE AGRICULTURE AND MARKETS  
18 LAW.

19 7. "PET APPAREL" MEANS ANY ITEM OF CLOTHING THAT CONSISTS OF FABRIC OR  
20 RELATED MATERIAL INTENDED OR PROMOTED FOR USE IN PET CLOTHING.

21 8. "PET PRODUCT" MEANS A PRODUCT PRIMARILY INTENDED FOR, MADE FOR OR  
22 MARKETING FOR USE BY A PET, SUCH AS TOYS, CAR SEATS, BEDDING, PERSONAL  
23 CARE PRODUCTS, A PRODUCT DESIGNED OR INTENDED BY THE MANUFACTURER TO BE  
24 CHEWED BY THE PET, AND PET APPAREL. "PET PRODUCT" DOES NOT INCLUDE A  
25 FOOD OR BEVERAGE OR AN ADDITIVE TO A FOOD OR BEVERAGE REGULATED BY THE  
26 UNITED STATES FOOD AND DRUG ADMINISTRATION.

27 9. "PRIORITY CHEMICAL" MEANS (A) THE FOLLOWING CHEMICALS:

28 CASRN13674-87-8	TRIS (1, 3 DICHLORO-2-PROPYL) PHOSPHATE
29 CASRN71-43-2	BENZENE
30 CASRN7439-92-1	LEAD AND COMPOUNDS (INORGANIC)
31 CASRN7439-97-6	MERCURY AND MERCURY COMPOUNDS, INCLUDING METHYL
32	MERCURY (CASRN 22967-92-6)
33 CASRN7439-98-7	MOLYBDENUM AND MOLYBDENUM COMPOUNDS
34 CASRN7440-36-0	ANTIMONY AND ANTIMONY COMPOUNDS
35 CASRN7440-38-2	ARSENIC AND ARSENIC COMPOUNDS INCLUDING ARSENIC
36	TRIOXIDE (CASRN 1327-53-3)
37	AND DIMETHYL ARSENIC (CASRN 75-60-5)
38 CASRN7440-43-9	CADMIUM
39 CASRN7440-48-4	COBALT AND COBALT COMPOUNDS AND

40 (B) A CHEMICAL ADOPTED BY THE DEPARTMENT PURSUANT TO SECTION 37-0903  
41 OF THIS TITLE.

42 10. "TOY" MEANS A PRODUCT DESIGNED OR INTENDED BY THE MANUFACTURER TO  
43 BE USED BY A PET AT PLAY.

44 S 37-0903. PRIORITY CHEMICALS AND CHEMICALS OF HIGH CONCERN.

45 1. PUBLISHING OF LIST. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE  
46 DATE OF THIS TITLE, THE DEPARTMENT SHALL POST LISTS OF PRIORITY CHEMI-  
47 CALS AND CHEMICALS OF HIGH CONCERN ON THE DEPARTMENT'S WEBSITE.

48 2. PERIODIC REVIEW. (A) THE DEPARTMENT, IN CONSULTATION WITH THE  
49 DEPARTMENT OF HEALTH, MAY PERIODICALLY REVIEW THE LIST OF PRIORITY CHEM-  
50 ICALS AND, THROUGH REGULATION, IDENTIFY ADDITIONAL PRIORITY CHEMICALS OR  
51 CHEMICALS OF HIGH CONCERN OR REMOVE A CHEMICAL FROM SUCH LISTS BASED ON  
52 EVIDENCE THAT THE CHEMICAL IS NOT PRESENT IN A PET PRODUCT OR OTHERWISE  
53 SHOULD NOT BE SUBJECT TO THE REQUIREMENTS OF THIS TITLE. NOTHING HEREIN  
54 SHALL PREVENT THE DEPARTMENT FROM ACTING TO ADD SUCH CHEMICALS OUTSIDE  
55 OF THE PERIODIC REVIEW PROCESS.

(B) IF A CHEMICAL IS REMOVED FROM THE LISTING OF CHEMICALS OF HIGH CONCERN, IT SHALL ALSO BE UNDESIGNATED AS A PRIORITY CHEMICAL.

(C) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH SHALL IDENTIFY A CHEMICAL AS A CHEMICAL OF HIGH CONCERN IF, UPON REVIEW, IT DETERMINES THAT THE CHEMICAL HAS BEEN IDENTIFIED BY A STATE, FEDERAL OR INTERNATIONAL GOVERNMENTAL ENTITY ON THE BASIS OF CREDIBLE SCIENTIFIC EVIDENCE AS:

(I) A CARCINOGEN, A REPRODUCTIVE OR DEVELOPMENTAL TOXICANT OR AN ENDOCRINE DISRUPTOR;

(II) PERSISTENT, BIOACCUMULATIVE AND TOXIC; OR

(III) VERY PERSISTENT AND VERY BIOACCUMULATIVE.

(D) IN MAKING SUCH DETERMINATION, THE DEPARTMENT MAY CONSIDER BUT IS NOT LIMITED TO CONSIDERING:

(I) CHEMICALS IDENTIFIED AS "GROUP 1 CARCINOGENS" OR "GROUP 2A CARCINOGENS" BY THE WORLD HEALTH ORGANIZATION, INTERNATIONAL AGENCY FOR RESEARCH ON CANCER;

(II) CHEMICALS IDENTIFIED AS "GROUP A CARCINOGENS" OR "GROUP B CARCINOGENS" BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY;

(III) PERSISTENT, BIOACCUMULATIVE AND TOXIC CHEMICALS IDENTIFIED BY OTHER STATES OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; AND

(IV) A VERY PERSISTENT, VERY BIOACCUMULATIVE CHEMICAL LISTED IN ANNEX XIV, LIST OF SUBSTANCES SUBJECT TO AUTHORISATION, REGULATION (EC) NO 1907/2006 OF THE EUROPEAN PARLIAMENT CONCERNING THE REGISTRATION, EVALUATION, AUTHORISATION AND RESTRICTION OF CHEMICALS.

S 37-0905. DISCLOSURE OF INFORMATION ON PRIORITY CHEMICALS.

1. REPORTING OF CHEMICAL USE. NO LATER THAN TWELVE MONTHS AFTER A PRIORITY CHEMICAL IS LISTED ON THE LIST PUBLISHED PURSUANT TO SECTION 37-0903 OF THIS TITLE, EVERY MANUFACTURER WHO OFFERS A PET PRODUCT FOR SALE OR DISTRIBUTION IN THIS STATE THAT CONTAINS AN INTENTIONALLY ADDED PRIORITY CHEMICAL SHALL REPORT SUCH CHEMICAL USE TO THE DEPARTMENT. THE DEPARTMENT MAY COLLABORATE WITH OTHER STATES AND AN INTERSTATE CHEMICALS CLEARINGHOUSE IN DEVELOPING SUCH FORM.

(A) THIS REPORT MUST AT A MINIMUM IDENTIFY THE PET PRODUCT, THE PRIORITY CHEMICAL OR CHEMICALS CONTAINED IN THE PET PRODUCT, AND THE INTENDED PURPOSE OF THE CHEMICALS IN THE PET PRODUCT. THE DEPARTMENT MAY ALSO REQUIRE REPORTING OF THE FOLLOWING INFORMATION:

(I) THE POTENTIAL FOR HARM TO ANIMAL HEALTH AND THE ENVIRONMENT FROM SPECIFIC USES OF THE PRIORITY CHEMICAL;

(II) THE AMOUNT OF SUCH CHEMICAL IN EACH UNIT OF THE PET PRODUCT, EXPRESSED IN A RANGE;

(III) INFORMATION ON THE LIKELIHOOD THAT THE CHEMICAL WILL BE RELEASED FROM THE PET PRODUCT TO THE ENVIRONMENT DURING THE PRODUCT'S LIFE CYCLE AND THE EXTENT TO WHICH USERS OF THE PRODUCT ARE LIKELY TO BE EXPOSED TO THE CHEMICAL; OR

(IV) INFORMATION ON THE EXTENT TO WHICH THE CHEMICAL IS PRESENT IN THE ENVIRONMENT OR ANIMAL BODY.

(B) THE DEPARTMENT IS AUTHORIZED TO DIRECT SUBMISSION OF A COPY OF SUCH REPORT TO THE INTERSTATE CHEMICALS CLEARINGHOUSE.

2. WAIVER OF REPORTING. UPON APPLICATION BY A MANUFACTURER, THE COMMISSIONER MAY WAIVE ALL OR PART OF THE REPORTING REQUIREMENTS UNDER SUBDIVISION ONE OF THIS SECTION FOR ONE OR MORE SPECIFIED USES OF A PRIORITY CHEMICAL. IN MAKING SUCH DETERMINATION, THE COMMISSIONER MAY CONSIDER: (A) IF SUBSTANTIALLY EQUIVALENT INFORMATION IS ALREADY PUBLICLY AVAILABLE OR THAT THE INFORMATION IS NOT NEEDED FOR THE PURPOSES OF THIS CHAPTER, (B) SIMILAR WAIVERS GRANTED BY OTHER STATES, AND (C) WHETHER THE SPECIFIED USE OR USES ARE MINOR IN VOLUME.

3. NOTICE TO RETAILERS. A MANUFACTURER OF A PET PRODUCT CONTAINING A PRIORITY CHEMICAL SHALL NOTIFY PERSONS THAT OFFER THE PET PRODUCTS FOR SALE OR DISTRIBUTION IN THE STATE, IN A FORM PRESCRIBED BY THE DEPARTMENT, OF THE PRESENCE OF SUCH PRIORITY CHEMICAL, AND PROVIDE SUCH PERSONS WITH INFORMATION REGARDING THE TOXICITY OF SUCH CHEMICAL.

4. FEES. 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 AMOUNT OF SIX HUNDRED DOLLARS PER CHEMICAL.

S 37-0907. SALES PROHIBITION.

EFFECTIVE JANUARY 1, 2019, NO PERSON SHALL DISTRIBUTE, SELL OR OFFER FOR SALE IN THIS STATE PET PRODUCTS CONTAINING A PRIORITY CHEMICAL THAT HAS BEEN LISTED FOR AT LEAST ONE YEAR.

S 37-0909. APPLICABILITY.

1. NEW PET PRODUCTS. THE PROVISIONS OF THIS TITLE SHALL APPLY TO CHEMICALS IN PET PRODUCTS SOLD OR DISTRIBUTED AS NEW AND DOES NOT APPLY TO USED PET PRODUCTS THAT ARE SOLD OR DISTRIBUTED FOR FREE AT SECONDHAND STORES, YARD SALES, ON THE INTERNET OR DONATED TO CHARITIES.

2. INDUSTRY. THE REQUIREMENTS OF THIS TITLE SHALL NOT APPLY TO PRIORITY CHEMICALS USED IN OR FOR INDUSTRY OR MANUFACTURING, INCLUDING CHEMICALS PROCESSED OR OTHERWISE USED IN OR FOR INDUSTRIAL OR MANUFACTURING PROCESSES AND NOT INCLUDED IN THE FINAL PRODUCT.

3. TRANSPORTATION. THE REQUIREMENTS OF THIS TITLE SHALL NOT APPLY TO MOTOR VEHICLES OR THEIR COMPONENT PARTS, WATERCRAFT OR THEIR COMPONENT PARTS, ALL TERRAIN VEHICLES OR THEIR COMPONENT PARTS, OR OFF-HIGHWAY MOTORCYCLES OR THEIR COMPONENT PARTS, EXCEPT THAT THE USE OF PRIORITY CHEMICALS IN DETACHABLE CAR SEATS FOR PETS IS NOT EXEMPT.

4. COMBUSTION. THE REQUIREMENTS OF THIS TITLE SHALL NOT APPLY TO PRIORITY CHEMICALS GENERATED SOLELY AS COMBUSTION BY-PRODUCTS OR THAT ARE PRESENT IN COMBUSTIBLE FUELS.

5. RETAILERS. A RETAILER IS EXEMPT FROM THE REQUIREMENTS OF THIS TITLE UNLESS THAT RETAILER KNOWINGLY SELLS A PET PRODUCT CONTAINING A PRIORITY CHEMICAL AFTER THE EFFECTIVE DATE OF ITS PROHIBITION FOR WHICH THAT RETAILER HAS RECEIVED NOTIFICATION PURSUANT TO SUBDIVISION THREE OF SECTION 37-0905 OF THIS TITLE.

S 37-0911. ENFORCEMENT AND IMPLEMENTATION.

1. FAILURE TO PROVIDE NOTICE. A PET PRODUCT CONTAINING A PRIORITY CHEMICAL MAY NOT BE SOLD, OFFERED FOR SALE OR DISTRIBUTED FOR SALE IN THIS STATE UNLESS THE MANUFACTURER HAS PROVIDED THE NOTIFICATION REQUIRED UNDER SECTION 37-0905 OF THIS TITLE BY THE DATE REQUIRED IN SUCH SECTION. THE COMMISSIONER MAY EXEMPT A PET PRODUCT FROM THIS PROHIBITION IF, IN THE COMMISSIONER'S JUDGMENT, THE LACK OF AVAILABILITY OF THE PET PRODUCT COULD POSE AN UNREASONABLE RISK TO PUBLIC HEALTH, SAFETY OR WELFARE.

2. STATEMENT OF COMPLIANCE. IF THERE ARE GROUNDS TO SUSPECT THAT A PET PRODUCT IS BEING OFFERED FOR SALE IN VIOLATION OF THIS TITLE, THE DEPARTMENT MAY REQUEST THE MANUFACTURER OF THE PET PRODUCT TO PROVIDE A STATEMENT OF COMPLIANCE ON A FORM PROVIDED BY THE DEPARTMENT, WITHIN TEN DAYS OF RECEIPT OF A REQUEST FROM THE DEPARTMENT. THE STATEMENT OF COMPLIANCE SHALL:

(A) ATTEST THAT THE PET PRODUCT DOES NOT CONTAIN THE PRIORITY CHEMICAL; OR

(B) ATTEST AND PROVIDE THE DEPARTMENT WITH DOCUMENTATION THAT NOTIFICATION OF THE PRESENCE OF THE PRIORITY CHEMICAL HAS BEEN PROVIDED TO THE

1 DEPARTMENT OR PROVIDE NOTICE AS REQUIRED BY SECTION 37-0905 OF THIS  
2 TITLE; OR

3 (C) ATTEST THAT THE MANUFACTURER HAS NOTIFIED PERSONS WHO SELL THE  
4 PRODUCT IN THIS STATE THAT THE SALE OF THE PET PRODUCT IS PROHIBITED.  
5 S 37-0913. INTERSTATE CHEMICAL CLEARINGHOUSE.

6 1. THE DEPARTMENT IS AUTHORIZED TO PARTICIPATE IN AN INTERSTATE CHEMI-  
7 CALS CLEARINGHOUSE TO ASSIST IN CARRYING OUT THE REQUIREMENTS OF THIS  
8 TITLE. THE DEPARTMENT SHALL WORK IN COLLABORATION WITH OTHER STATES AND  
9 AN INTERSTATE CHEMICALS CLEARINGHOUSE FOR THE PURPOSE OF, INCLUDING BUT  
10 NOT LIMITED TO:

11 (A) COLLECTION AND DISSEMINATION OF INFORMATION REGARDING CHEMICAL  
12 HAZARDS;

13 (B) COLLECTION AND DISSEMINATION OF INFORMATION REGARDING THE USE OF  
14 CHEMICALS IN PET PRODUCTS;

15 (C) ASSESSMENT OF ALTERNATIVES TO CHEMICALS AND THEIR USE IN PRODUCTS;  
16 AND

17 (D) PUBLIC EDUCATION.

18 2. SUCH CLEARINGHOUSE IS AUTHORIZED TO MAINTAIN INFORMATION ON BEHALF  
19 OF THE STATE OF NEW YORK, INCLUDING, BUT NOT LIMITED TO, INFORMATION  
20 REGARDING CHEMICALS CONTAINED IN PET PRODUCTS DISCLOSED PURSUANT TO  
21 SECTION 37-0905 OF THIS TITLE.

22 S 37-0915. REGULATIONS.

23 THE DEPARTMENT MAY ADOPT ANY RULES AND REGULATIONS IT DEEMS NECESSARY  
24 TO IMPLEMENT THE PROVISIONS OF THIS TITLE.

25 S 2. This act shall take effect on the one hundred twentieth day after  
26 it shall have become a law. Effective immediately, the department of  
27 environmental conservation is authorized to implement rules and regu-  
28 lations for the timely implementation of this act on its effective date.