

5117

2017-2018 Regular Sessions

I N A S S E M B L Y

February 6, 2017

Introduced by M. of A. TITUS -- Multi-Sponsored by -- M. of A. 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 2017

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

1 Section 1. The public health law is amended by adding a new article
2 22-A to read as follows:

3 ARTICLE 22-A

4 SAFE COSMETICS ACT OF 2017

5 SECTION 2250. DEFINITIONS.

6 2251. LISTING OF PRODUCTS.

7 2252. INVESTIGATION.

8 2253. REFERRAL OF RESULTS.

9 § 2250. DEFINITIONS. AS USED OR REFERRED TO IN THIS ARTICLE THE
10 FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

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

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

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

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

22 (C) A SUBSTANCE IDENTIFIED AS A GROUP A, GROUP B1 OR GROUP B2 CARCINO-
23 GEN, OR AS A KNOWN OR LIKELY CARCINOGEN BY THE UNITED STATES ENVIRON-
24 MENTAL PROTECTION AGENCY; OR

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

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

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

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

10 § 2251. LISTING OF PRODUCTS. 1. COMMENCING JANUARY FIRST, TWO THOUSAND
11 EIGHTEEN, THE MANUFACTURER OF ANY COSMETIC PRODUCT SUBJECT TO REGULATION
12 BY THE FEDERAL FOOD AND DRUG ADMINISTRATION THAT IS SOLD IN THIS STATE
13 SHALL, ON A SCHEDULE AND IN ELECTRONIC OR OTHER FORMAT, AS DETERMINED BY
14 THE DEPARTMENT, PROVIDE THE DEPARTMENT WITH A COMPLETE AND ACCURATE LIST
15 OF ITS COSMETIC PRODUCTS THAT, AS OF THE DATE OF SUBMISSION, ARE SOLD IN
16 THE STATE AND THAT CONTAIN ANY INGREDIENT THAT IS A CHEMICAL IDENTIFIED
17 AS CAUSING CANCER OR REPRODUCTIVE TOXICITY, INCLUDING ANY CHEMICAL THAT
18 MEETS EITHER OF THE FOLLOWING CONDITIONS:

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

21 (B) A CHEMICAL IDENTIFIED BY THE PHRASE "AND OTHER INGREDIENTS" AND
22 DETERMINED TO BE A TRADE SECRET PURSUANT TO THE PROCEDURE ESTABLISHED IN
23 PART 20 AND 21 C.F.R. 720.8. ANY INGREDIENT IDENTIFIED PURSUANT TO THIS
24 PARAGRAPH SHALL BE CONSIDERED TO BE A TRADE SECRET AND SHALL BE TREATED
25 BY THE DEPARTMENT IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF PART
26 20 AND PART 720 OF 21 C.F.R.

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

31 3. IF ANY INGREDIENT IDENTIFIED PURSUANT TO THIS SECTION SUBSEQUENTLY
32 IS REMOVED FROM THE PRODUCT IN WHICH IT WAS CONTAINED, OR IS REMOVED
33 FROM THE LIST OF CHEMICALS KNOWN TO CAUSE CANCER OR REPRODUCTIVE TOXICI-
34 TY, OR IS NO LONGER A CHEMICAL IDENTIFIED AS CAUSING CANCER OR REPRODUC-
35 TIVE TOXICITY BY AN AUTHORITATIVE BODY, THE MANUFACTURER OF THE PRODUCT
36 CONTAINING THE INGREDIENT SHALL SUBMIT THE NEW INFORMATION TO THE
37 DEPARTMENT. UPON RECEIPT OF NEW INFORMATION, THE DEPARTMENT, AFTER VERI-
38 FYING THE ACCURACY OF THAT INFORMATION, SHALL REVISE THE MANUFACTURER'S
39 INFORMATION ON RECORD WITH THE DEPARTMENT TO REFLECT THE NEW INFORMA-
40 TION. THE MANUFACTURER SHALL NOT BE UNDER OBLIGATION TO SUBMIT SUBSE-
41 QUENT INFORMATION ON THE PRESENCE OF THE INGREDIENT IN THE PRODUCT
42 UNLESS SUBSEQUENT CHANGES REQUIRE SUBMITTAL OF THE INFORMATION.

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

47 § 2252. INVESTIGATION. 1. IN ORDER TO DETERMINE POTENTIAL HEALTH
48 EFFECTS OF EXPOSURE TO INGREDIENTS IN COSMETICS IN THE STATE, THE
49 DEPARTMENT MAY CONDUCT AN INVESTIGATION OF ONE OR MORE COSMETIC PRODUCTS
50 THAT CONTAIN CHEMICALS IDENTIFIED AS CAUSING CANCER OR REPRODUCTIVE
51 TOXICITY OR OTHER INGREDIENTS OF CONCERN TO THE DEPARTMENT.

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

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

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

7 4. IN ORDER TO FURTHER THE PURPOSES OF AN INVESTIGATION, THE DEPART-
8 MENT MAY REQUIRE MANUFACTURERS OF PRODUCTS SUBJECT TO THE INVESTIGATION
9 TO SUBMIT TO THE DEPARTMENT RELEVANT HEALTH EFFECTS DATA AND STUDIES
10 AVAILABLE TO THE MANUFACTURER AND OTHER AVAILABLE INFORMATION AS
11 REQUESTED BY THE DEPARTMENT, INCLUDING, BUT NOT LIMITED TO, THE CONCEN-
12 TRATION OF THE CHEMICAL IN THE PRODUCT, THE AMOUNT BY VOLUME OR WEIGHT
13 OF THE PRODUCT THAT COMPRISES THE AVERAGE DAILY APPLICATION OR USE, AND
14 SALES AND USE DATA NECESSARY TO DETERMINE WHERE THE PRODUCT IS USED IN
15 THE OCCUPATIONAL SETTING.

16 5. THE DEPARTMENT SHALL ESTABLISH REASONABLE DEADLINES FOR THE SUBMIT-
17 TAL OF INFORMATION REQUIRED PURSUANT TO SUBDIVISION FOUR OF THIS
18 SECTION. FAILURE BY A MANUFACTURER TO SUBMIT THE INFORMATION IN COMPLI-
19 ANCE WITH THE REQUIREMENTS OF THE DEPARTMENT SHALL CONSTITUTE A
20 VIOLATION OF THIS ARTICLE.

21 § 2253. REFERRAL OF RESULTS. 1. IF THE DEPARTMENT DETERMINES PURSUANT
22 TO AN INVESTIGATION THAT AN INGREDIENT IN A COSMETIC PRODUCT IS POTEN-
23 Tially TOXIC AT THE CONCENTRATION PRESENT IN THE PRODUCT OR UNDER THE
24 CONDITIONS USED, THE DEPARTMENT SHALL IMMEDIATELY REFER THE RESULTS OF
25 ITS INVESTIGATION TO THE OCCUPATIONAL SAFETY AND HEALTH HAZARD ABATEMENT
26 BOARD.

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

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