STATE OF NEW YORK

7660

IN SENATE

February 5, 2018

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed 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:

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

TITLE IX

TOXIC CHEMICALS IN PET PRODUCTS

Section 37-0901. Definitions.
37-0903. Priority chemicals and chemicals of high concern.
37-0905. Disclosure of information on priority chemicals.
37-0907. Sales prohibition.
37-0909. Applicability.
37-0911. Enforcement and implementation.
37-0913. Interstate chemical clearinghouse.
37-0915. Regulations.

§ 37-0901. Definitions.

As used in this title, unless the context otherwise indicates, the following terms have the following meanings.

1. "Chemical" means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation or metabolism.

2. "Chemicals of high concern" means:

(a) 1,1,2,2-Tetrachloroethane (CAS 79-34-5)

(a-1) 1,2-Dibromoethane (CAS 106-93-4)

(a-2) 1,1,3,3-Tetramethyl-4-butylphenol; 4-tert-octylphenol (CAS 140-66-9)

(a-3) (1,1,3,3 - Tetramethylbutyl) Phenol; Octylphenol (CAS 27193-28-8)

(a-4) 1,3-Butadiene (CAS 106-99-0)

(b) 1,4-Dioxane (CAS 123-91-1)

(c) 2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209 (CAS 1163-19-5)

(d) 2,4-Diaminotoluene (CAS 95-80-7)

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

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(d-1) 2,4-Dihydroxybenzophenone; resbenzophenone (CAS 131-56-6)
(e) 2-Aminotoluene (CAS 95-53-4)
(f) 2-Ethylhexanoic acid (CAS 149-57-5)
(g) 2-Ethyl-hexyl-4-methoxycinnamate (CAS 5466-77-3)
(g-1) 2-Napthylamine (CAS 91-59-8)
(h) 2-Methoxyethanol (CAS 109-86-4)
(i) 3,3'-Dimethylbenzidine and dyes metabolized to 3,3'-Dimethylbenzidine (CAS 119-93-7)
(i-1) 4-Hydroxybiphenol (CAS 92-69-3)
(j) 4-Nonylphenol; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3 (CAS 104-40-5)
(j-1) 4,4-methylenebis(2-chloroaniline) (CAS 101-14-4)
(k) 4-Tert-octylphenol; 1,1,3,3-Tetramethyl-4-butylphenol (CAS 140-66-9)
(l) Acetaldehyde (CAS 75-07-0)
(m) Acrylonitrile (CAS 107-13-1)
(n) Aniline(CAS 62-53-3)
(o) Antimony & antimony compounds (CAS 7440-36-0)
(p) Arsenic & arsenic compounds (CAS 7440-38-2) including arsenic trioxide & dimethyl arsenic (CAS 75-60-5)
(q) Asbestos (CAS 1332-21-4)
(r) Benzene (CAS 71-43-2)
(s) Benzene, pentachloro (CAS 608-93-5)
(s-1) Benzidine and its salts (CAS 92-87-5)
(t) Benzophenone-2 (BP-2); 2,2',4,4'-tetrahydroxybenzophenone (CAS 131-55-5)
(u) Bisphenol A (CAS 80-05-7)
(v) Butyl benzyl phthalate (BBP) (CAS 85-68-7)
(w) Butyl paraben (CAS 94-28-6)
(x) Butylated Hydroxyanisole; (BHA) (CAS 25013-16-5)
(y) C.I. solvent yellow 14 (CAS 842-07-9)
(z) Cadmium & cadmium compounds (CAS 7440-43-9)
(aa) Carbon disulfide (CAS 75-15-0)
(bb) Cobalt & cobalt compounds (CAS 7440-48-4)
(cc) Di-2-ethylhexyl phthalate (CAS 117-81-7)
(dd) Dibutyl phthalate (CAS 84-74-2)
(dd-1) Dicyclohexyl phthalate (DCHP) (CAS 84-61-7)
(ee) Diethyl phthalate (CAS 84-66-2)
(ff) Diisodecyl phthalate (DIDP) (CAS 26761-40-0)
(gg) Diisononyl phthalate (DINP) (CAS 28553-12-0)
(hh) Di-n-hexyl phthalate (CAS 84-75-3)
(ii) Di-n-octyl phthalate (DNOP) (CAS 117-84-0)
(ii-1) Epichlorohydrin (CAS 106-98-9)
(jj) Estragole (CAS 140-67-0)
(kk) Ethyl paraben (CAS 120-47-8)
(ll) Ethylbenzene (CAS 100-41-4)
(mm) Ethylene glycol (CAS 107-21-1)
(nn) Ethylene glycol monoethyl ester (CAS 110-80-5)
(oo) Formaldehyde (CAS 50-0-0)
(pp) Hexabromocyclododecane (HBCD) (CAS 25637-99-4)
(qq) Hexachlorobenzene (CAS 118-74-1)
(rr) Hexachlorobutadiene (CAS 87-68-3)
(ss) Lead & lead compounds (CAs 7439-92-1)
(tt) Mercury & mercury compounds (CAS 7439-97-6) including methyl mercury (CAS 22967-92-6)
(uu) Methyl ethyl ketone (CAS 78-93-3)

(vv) Methyl paraben (CAS 99-76-3)
(ww) Methylene chloride (CAS 75-09-2)
(ww-1) Methyl tert-butyl ether (MTBE) (CAS 1634-04-4)
(xx) Molybdenum & molybdenum compounds (CAS 7439-98-7)
(xx-1) Mono-n-butylphthalate (CAS 131-70-4)
(yy) N-methylpyrrolidone (CAS 872-50-4)
(yy-1) Nickel and nickel compounds (CAS N/A)
(zz) N-nitrosodimethylamine (CAS 62-75-9)
(aaa) N-nitrosodiphenylamine (CAS 86-30-6)
(bbb) Octamethylcyclotetrasiloxane (CAS 556-67-2)
(ccc) Para-chloroaniline (CAS 106-47-3)
(ddd) Perchloroethylene (CAS 127-18-4)
(eee) Perfluorooctanyl sulphonic acid and its salts (PFOS) (CAS 1763-23-1)
(fff) Phenol (CAS 108-95-2)
(ggg) Phenol, 4-octyl- (CAS 1806-26-4)
(hhh) Phthalic anhydride (CAS 85-44-9)
(iii) P-hydroxybenzoic acid (CAS 99-96-7)
(jjj) Propyl paraben (CAS 94-13-3)
(jjj-1) Silica, crystalline (in the form of quartz or cristabolite dust) (CAS 14808-60-7)
(kkk) Styrene (CAS 100-42-5)
(lll) Tetrabromobisphenol A (CAS 79-94-7)
(mmm) Toluene (CAS 108-88-3)
(nnn) Tris(1,3-dichloro-2-propyl) phosphate (CAS 13674-87-3)
(ooo) Tris(2-chloroethyl) phosphate (CAS 115-96-8)
(ppp) Vinyl chloride (CAS 75-01-4)

3. "Distributor" means a person who sells pet products to retail establishments on a wholesale basis.

4. "Intentionally added" means the deliberate use in the formulation of a product or subpart where its continued presence is desired in the final product or subpart to provide a specific characteristic, appearance or quality.

5. "Manufacturer" means any person who currently manufactures pet products or whose brand name is affixed to a pet product. In the case of pet products that were imported into the United States, "manufacturer" includes the importer or first domestic distributor of the pet products if the person who currently manufactures or assembles the pet products or whose brand name is affixed to the pet products does not have a presence in the United States.

6. "Pet" means any domesticated animal normally maintained in or near the household of the owner or person who cares for such domesticated animal. "Pet" shall not include a "farm animal" as defined by subdivision four of section three hundred fifty of the agriculture and markets law.

7. "Pet apparel" means any item of clothing that consists of fabric or related material intended or promoted for use in pet clothing.

8. "Pet product" means a product primarily intended for, made for or marketed for use by a pet, such as toys, car seats, bedding, personal care products, a product designed or intended by the manufacturer to be chewed by the pet, and pet apparel. "Pet product" does not include a food or beverage or an additive to a food or beverage regulated by the United States Food and Drug Administration.

9. "Priority chemical" means (a) the following chemicals:

CASRN13674-87-8	Tris (1, 3 dichloro-2-propyl) phosphate
CASRN71-43-2	Benzene

CASRN7439-92-1	lead and compounds (inorganic)
CASRN7439-97-6	Mercury and mercury compounds, including methyl mercury (CASRN 22967-92-6)
CASRN50-00-0	Formaldahyde
CASRN7440-36-0	Antimony and antimony compounds
CASRN7440-38-2	Arsenic and arsenic compounds including arsenic trioxide (CASRN 1327-53-3) and dimethyl arsenic (CASRN 75-60-5)
CASRN7440-43-9	Cadmium
CASRN7440-48-4	Cobalt and cobalt compounds and

(b) a chemical adopted by the department pursuant to section 37-0903 of this title.

10. "Toy" means a product designed or intended by the manufacturer to be used by a pet at play.

§ 37-0903. Priority chemicals and chemicals of high concern.

1. Publishing of list. Within one hundred eighty days of the effective date of this title, the department shall post lists of priority chemicals and chemicals of high concern on the department's website.

2. Periodic review. (a) The department, in consultation with the department of health, may periodically review the list of priority chemicals and, through regulation, identify additional priority chemicals or chemicals of high concern or remove a chemical from such lists based on evidence that the chemical is not present in a pet product or otherwise should not be subject to the requirements of this title. Nothing herein shall prevent the department from acting to add such chemicals outside 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.

§ 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.

§ 37-0907. Sales prohibition.

Effective January 1, 2020, 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.

§ 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.

§ 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 department or provide notice as required by section 37-0905 of this title; or

(c) attest that the manufacturer has notified persons who sell the product in this state that the sale of the pet product is prohibited.

§ 37-0913. Interstate chemical clearinghouse.

1. The department is authorized to participate in an interstate chemicals clearinghouse to assist in carrying out the requirements of this title. The department shall work in collaboration with other states and an interstate chemicals clearinghouse for the purpose of, including but not limited to:

(a) collection and dissemination of information regarding chemical hazards;

(b) collection and dissemination of information regarding the use of chemicals in pet products;

(c) assessment of alternatives to chemicals and their use in products; and

(d) public education.

2. Such clearinghouse is authorized to maintain information on behalf of the state of New York, including, but not limited to, information regarding chemicals contained in pet products disclosed pursuant to section 37-0905 of this title.

§ 37-0915. Regulations.

The department may adopt any rules and regulations it deems necessary to implement the provisions of this title.

§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the department of environmental conservation is authorized to implement rules and regulations for the timely implementation of this act on its effective date.