

STATE OF NEW YORK

2208

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the general business law, in relation to enacting the cleaning product right to know act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "cleaning product right to know act".

3 § 2. Sections 35-0101 through 35-0109 of article 35 of the environ-
4 mental conservation law are designated title 1 and a new title heading
5 is added to read as follows:

6 CLEANSING PRODUCTS CONTAINING PHOSPHORUS

7 § 3. Article 35 of the environmental conservation law is amended by
8 adding a new title 2 to read as follows:

9 TITLE 2

10 INGREDIENT LABELING FOR CLEANSING PRODUCTS SOLD IN-STORE AND ONLINE
11 Section 35-0201. Definitions.

12 35-0203. In-store product labeling requirements.

13 35-0205. Online product labeling requirements.

14 35-0207. Protections for confidential business information.

15 35-0209. Method of labeling.

16 35-0211. Severability.

17 § 35-0201. Definitions.

18 For purposes of this section, the following terms shall have the
19 following meanings:

20 a. "Air care product" means a chemically formulated consumer product
21 labeled to indicate that the purpose of the product is to enhance or
22 condition the indoor environment by eliminating unpleasant odors or
23 freshening the air.

24 b. "Automotive product" means a chemically formulated consumer product
25 labeled to indicate that the purpose of the product is to maintain the
26 appearance of a motor vehicle including products for washing, waxing,
27 polishing, cleaning, or treating the exterior or interior surfaces of

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

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1 motor vehicles. "Automotive product" shall not include automotive paint
2 or paint repair products.

3 c. "Chemically formulated consumer product" means a product, excluding
4 home appliances, that is manufactured from chemicals to be used by
5 household, institutional, or commercial consumers without further proc-
6 essing for specific purposes. For the purposes of this paragraph,
7 dilution by the user is not considered further processing.

8 d. "Colorant" means ingredients that, alone or in combination with
9 other ingredients, are added to a product for the specific purpose of
10 imparting or altering the color of a product.

11 e. "Confidential business information" means any intentionally added
12 ingredient or combination of ingredients for which a claim has been
13 approved by the United States environmental protection agency for inclu-
14 sion on the federal Toxic Substances Control Act Confidential Inventory,
15 or for which the manufacturer or its supplier can claim as a protectable
16 trade secret or a proprietary process. Confidential business information
17 shall not include any of the following:

18 (i) An intentionally added ingredient or combination of ingredients
19 that is on a designated list, as defined in subdivision g of this
20 section.

21 (ii) A nonfunctional constituent, as defined in subdivision m of this
22 section.

23 (iii) A fragrance allergen included on Annex III of the EU Cosmetics
24 Regulation No. 1223/2009 as required to be labeled by the EU Detergents
25 Regulation No. 648/2004, or subsequent updates to those regulations,
26 when present in the product at a concentration at or above 0.01 percent
27 (100 ppm).

28 f. "Designated product" means a finished product that is an air care
29 product, automotive product, general cleaning product, or a polish or
30 floor maintenance product used primarily for janitorial, domestic, or
31 institutional cleaning purposes. "Designated product" shall not mean any
32 of the following:

33 (i) Foods, drugs, and cosmetics, including personal care items such as
34 toothpaste, shampoo, and hand soap.

35 (ii) Industrial products specifically manufactured for, and exclusive-
36 ly used in the following:

37 (A) Oil and gas production.

38 (B) Steel production.

39 (C) Heavy industry manufacturing.

40 (D) Industrial water treatment.

41 (E) Industrial textile maintenance and processing other than indus-
42 trial laundering.

43 (F) Food and beverage processing and packaging.

44 (G) Other industrial manufacturing processes.

45 (iii) A trial sample of a designated product that is not packaged for
46 individual sale, resale, or retail and includes a statement indicating
47 that the product is not for sale or resale.

48 g. "Designated list" means any of the following:

49 (i) Chemicals, as determined by the commissioner, to cause cancer or
50 reproductive toxicity.

51 (ii) Chemicals classified by the European Union as carcinogens, muta-
52 gens, or reproductive toxicants pursuant to Category 1A or 1B in Annex
53 VI to Regulation (EC) 1272/2008.

54 (iii) Chemicals included in the European Union Candidate List of
55 Substances of Very High Concern in accordance with Article 59 of Regu-

1 lation (EC) 1907/2006 on the basis of Article 57(f) for endocrine
2 disrupting properties.

3 (iv) Chemicals for which a reference dose or reference concentration
4 has been developed based on neurotoxicity in the federal environmental
5 protection agency's integrated risk information system.

6 (v) Chemicals that are identified as Group A, B1, or B2 carcinogens in
7 the federal environmental protection agency's integrated risk informa-
8 tion system.

9 (vi) Chemicals included in the European Chemicals Agency Candidate
10 List of Substances of Very High Concern in accordance with Article 59 of
11 Regulation (EC) 1907/2006 on the basis of Article 57(d), Article 57(e),
12 or Article 57(f) of Regulation (EC) 1907/2006 for persistent, bioaccumu-
13 lative and toxic, or very persistent and very bioaccumulative proper-
14 ties.

15 (vii) Chemicals that are identified as persistent, bioaccumulative,
16 and inherently toxic to the environment by the Canadian Environmental
17 Protection Act Environmental Registry Domestic Substances List.

18 (viii) Chemicals classified by the European Union in Annex VI to Regu-
19 lation (EC) 1272/2008 as respiratory sensitizer category 1.

20 (ix) Group 1, 2A, or 2B carcinogens identified by the International
21 Agency for Research on Cancer.

22 (x) Neurotoxicants that are identified in the federal Agency for Toxic
23 Substances and Disease Registry's Toxic Substances Portal, Health
24 Effects of Toxic Substances and Carcinogens, Nervous System.

25 (xi) Persistent bioaccumulative and toxic priority chemicals that are
26 identified by the federal environmental protection agency National Waste
27 Minimization Program.

28 (xii) Reproductive or developmental toxicants identified in Monographs
29 on the Potential Human Reproductive and Developmental Effects published
30 by the federal National Toxicology Program, Office of Health Assessment
31 and Translation.

32 (xiii) Chemicals identified by the federal environmental protection
33 agency's Toxics Release Inventory as Persistent, Bioaccumulative and
34 Toxic Chemicals that are subject to reporting under section 313 of the
35 Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C.
36 Sec. 11001, et seq.).

37 (xiv) The Washington Department of Ecology's Persistent, Bioaccumula-
38 tive, Toxic (PBT) Chemicals identified in Chapter 173-333 of Title 173
39 of the Washington Administrative Code.

40 (xv) Chemicals that are identified as known to be, or reasonably
41 anticipated to be, human carcinogens by the 13th Report on Carcinogens
42 prepared by the federal National Toxicology Program. Subsequent
43 revisions to this list shall not be incorporated.

44 (xvi) Chemicals that are identified on Part A of the list of Chemicals
45 for Priority Action prepared by the Oslo and Paris Conventions for the
46 Protection of the Marine Environment of the North-East Atlantic.

47 h. "Electronically readable format" means that the information
48 provided is all of the following:

49 (i) Machine readable by automated systems, including, but not limited
50 to, web browsers, accessibility software to aid the disabled, automated
51 scripts, and other software programs or applications.

52 (ii) Not restricted from access by search engines.

53 (iii) Not restricted from access by a requirement for registration,
54 the provision of personally identifiable information, or the use of a
55 program or system intended to distinguish human from machine input or

1 similar challenge response test technologies, whether visual, auditory,
2 or otherwise.

3 (iv) Conforms to the most current version of the Web Content Accessi-
4 bility Guidelines adopted by the Web Content Accessibility Guidelines
5 Working Group of the World Wide Web Consortium.

6 i. "Fragrance ingredient" means any intentionally added substance or
7 complex mixture of aroma chemicals, natural essential oils, and other
8 functional ingredient or ingredients for which the sole purpose is to
9 impart an odor or scent, or to counteract an odor.

10 j. "General cleaning product" means a soap, detergent, or other chemi-
11 cally formulated consumer product labeled to indicate that the purpose
12 of the product is to clean, disinfect, or otherwise care for fabric,
13 dishes, or other wares; surfaces including, but not limited to, floors,
14 furniture, countertops, showers, and baths; or other hard surfaces, such
15 as stovetops, microwaves, and other appliances.

16 k. "Intentionally added ingredient" means a chemical that a manufac-
17 turer has intentionally added to a designated product and that has a
18 functional or technical effect in the designated product, including, but
19 not limited to, the components of intentionally added fragrance ingredi-
20 ents and colorants and intentional breakdown products of an added chemi-
21 cal that also have a functional or technical effect in the designated
22 product.

23 l. "Manufacturer" means either of the following:

24 (i) A person or entity who manufactures the designated product and
25 whose name appears on the product label.

26 (ii) A person or entity whom the product is manufactured for or
27 distributed by, as identified on the product label pursuant to the
28 federal fair packaging and labeling act.

29 m. "Nonfunctional constituent" means one of the following substances,
30 that is an incidental component of an intentionally added ingredient, a
31 breakdown product of an intentionally added ingredient, or a byproduct
32 of the manufacturing process that has no functional or technical effect
33 on the designated product:

34 (i) 1,4 dioxane.

35 (ii) 1,1 dichloroethane.

36 (iii) Acrylic acid.

37 (iv) Benzene.

38 (v) Benzidine.

39 (vi) 1,3 butadiene.

40 (vii) Carbon tetrachloride.

41 (viii) Chloroform.

42 (ix) Ethylene oxide.

43 (x) Nitilotriacetic acid.

44 (xi) Butyl benzyl phthalate.

45 (xii) Butyl decyl phthalate.

46 (xiii) Di(2-ethylhexyl) phthalate.

47 (xiv) Diethyl phthalate.

48 (xv) Diisobutyl phthalate.

49 (xvi) Di(n-octyl) phthalate.

50 (xvii) Diisononyl phthalate.

51 (xviii) Dioctyl phthalate.

52 (xix) Butylparaben.

53 (xx) Ethylparaben.

54 (xxi) Isobutylparaben.

55 (xxii) Methylparaben.

56 (xxiii) Propylparaben.

- (xxiv) Formaldehyde.
- (xxv) 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride.
- (xxvi) DMDM hydantoin.
- (xxvii) Diazolidinyl urea.
- (xxviii) Glyoxal.
- (xxix) Imidazolidinyl urea.
- (xxx) Polyoxymethylene urea.
- (xxxi) Sodium hydroxymethylglycinate.
- (xxxii) 2-Bromo-2-nitropropane-1,3-diol.
- (xxxiii) N-Nitrosodimethylamine.
- (xxxiv) N-Nitrosodiethylamine.

n. "Polish or floor maintenance product" means a chemically formulated consumer product, such as polish, wax, or a restorer, labeled to indicate that the purpose of the product is to polish, protect, buff, condition, temporarily seal, or maintain furniture, floors, metal, leather, or other surfaces.

o. "Product label" means a display of written, printed, or graphic material that is affixed to a product or its immediate container or wrapper.

§ 35-0203. In-store product labeling requirements.

A manufacturer of a designated product sold in the state shall disclose on the product label the information specified by either subdivision a or b of this section:

a. (i) A list of each intentionally added ingredient contained in the product that is included on a designated list.

(ii) A list of each fragrance allergen included on Annex III of the EU Cosmetics Regulation No. 1223/2009 as required to be labeled by the EU Detergents Regulation No. 648/2004, when present in the product at a concentration at or above 0.01 percent (100 ppm). The manufacturer shall determine the total concentration of each fragrance allergen by adding contributions of the fragrance allergen from all fragrance ingredients and other ingredients in the designated product, including its presence in essential oils.

b. (i) A list of all intentionally added ingredients contained in the designated product, unless it is confidential business information.

(ii) A statement that reads "Contains fragrance allergen(s)" shall be included on the product label when a fragrance allergen included on Annex III of the EU Cosmetics Regulation No. 1223/2009 as required to be labeled by the EU Detergents Regulation No. 648/2004, or subsequent updates to those regulations, is present in the product at a concentration at or above 0.01 percent (100 ppm). The manufacturer shall determine the total concentration of each fragrance allergen by adding contributions of the fragrance allergen from all fragrance ingredients and other ingredients in the designated product, including its presence in essential oils.

(iii) Notwithstanding paragraph (i) of this subdivision, fragrance ingredients or colorants may be listed on the product label as "fragrances" or "colorants," respectively.

c. (i) A manufacturer of a designated product sold in the state shall disclose the manufacturer's toll-free telephone number and website address on the designated product label.

(ii) If a designated product label does not include a full list of intentionally added ingredients, it shall include all of the following:

(A) A statement that reads: "For more ingredient information visit _____"

1 (B) A website address that provides all of the information required by
2 section 35-0205 of this title.

3 (C) A toll-free phone number.

4 d. This section shall not apply to a product that is a pesticide as
5 defined in subdivision 35 of section 33-0101 of this chapter.

6 e. This section shall not be construed to preclude a manufacturer from
7 using technologies, such as electronic or digital link, in addition to
8 the disclosures required to be printed on a designated product label, to
9 communicate the information required by this section.

10 § 35-0205. Online product labeling requirements.

11 a. The manufacturer of a designated product sold in the state shall
12 post on its website address, in an electronically readable format, the
13 following information related to the designated product:

14 (i) (A) A list of each intentionally added ingredient contained in the
15 product, except for the following:

16 (1) Fragrance ingredients subject to subdivision b of this section.

17 (2) Intentionally added ingredients that are confidential business
18 information.

19 (B) Intentionally added ingredients listed pursuant to this paragraph
20 shall be listed in descending order of predominance by weight in the
21 product, except that ingredients present at a weight below one percent
22 may be listed following the other ingredients without respect to the
23 order of predominance by weight.

24 (ii) (A) A list of all nonfunctional constituents present in the
25 designated product at a concentration at or above 0.01 percent (100
26 ppm).

27 (B) Notwithstanding subparagraph (A) of this paragraph, 1, 4 dioxane
28 shall be listed if it is present in the finished designated product at a
29 concentration at or above 0.001 percent (10 ppm).

30 (iii) The Chemical Abstracts Service (CAS) number for any inten-
31 tionally added ingredient or nonfunctional constituent listed pursuant
32 to this section shall be listed with the name of the intentionally added
33 ingredient or nonfunctional constituent. If a CAS number is not avail-
34 able or if the intentionally added ingredient is confidential business
35 information, the phrase "not available" or "withheld," respectively,
36 shall be used in place of the CAS number.

37 (iv) The functional purpose served by each intentionally added ingre-
38 dient listed pursuant to this section. For fragrance ingredients or
39 colorants, the manufacturer may list the function as a "fragrance ingre-
40 dient" or "colorant."

41 (v) Electronic links for designated lists shall be grouped together in
42 a single location for any intentionally added ingredient or nonfunc-
43 tional constituent that is included on a designated list and any
44 fragrance allergen included on Annex III of the EU Cosmetics Regulation
45 No. 1223/2009 as required to be labeled by the EU Detergents Regulation
46 No. 648/2004, or subsequent updates to those regulations.

47 (vi) A website address to the hazard communication safety data sheet
48 for the designated product.

49 (vii) If a product is required to include a website address pursuant
50 to paragraph (i) of subdivision c of section 35-0203 of this title, the
51 information required to be provided by this section shall be posted no
52 more than five clicks from the Uniform Resource Locator (URL) printed on
53 the designated product label and no more than four clicks from a
54 product-specific website address. If a URL is not required to be
55 included on the designated product label, as provided in subdivision d
56 of this section, the information required by this section shall be post-

1 ed no more than five clicks from the manufacturer's website address and
2 no more than four clicks from a product-specific website address.

3 b. In addition to the information required by subdivision a of this
4 section, the manufacturer of a designated product sold in the state
5 shall post on its website, in an electronically readable format, all of
6 the following information related to fragrance ingredients or allergens
7 contained in the designated product:

8 (i) A list of all fragrance ingredients that are included on a desig-
9 nated list.

10 (ii) A list of all fragrance allergens included on Annex III of the EU
11 Cosmetics Regulation No. 1223/2009 as required to be labeled by the EU
12 Detergents Regulation No. 648/2004, or subsequent updates to those regu-
13 lations, when present in the product at a concentration at or above 0.01
14 percent (100 ppm). The manufacturer shall determine the total concen-
15 tration of each fragrance allergen by adding contributions of the
16 fragrance allergen from all fragrance ingredients and other ingredients
17 in the designated product, including its presence in essential oils.

18 (iii) A list of all fragrance ingredients, other than those described
19 in paragraphs (i) and (ii) of this subdivision, inclusive, that are
20 present in the designated product at a concentration at or above 0.01
21 percent (100 ppm), unless it is confidential business information.

22 c. A manufacturer of a designated product regulated under the federal
23 Occupational Safety and Health Act of 1970 shall make the information
24 described in this section available in an easily printable format. A
25 manufacturer may satisfy this requirement by including this information
26 on the product safety data sheet or in a separate printable list.

27 d. A manufacturer of a product regulated as a pesticide pursuant to
28 section 33-0101 of this chapter is not required to include a reference
29 to a website address on the designated product label.

30 § 35-0207. Protections for confidential business information.

31 a. To protect confidential business information, this title shall not
32 be construed to require a manufacturer to disclose the weight or amount
33 of an intentionally added ingredient, including a fragrance ingredient,
34 or nonfunctional constituent or to disclose how a product is manufac-
35 tured, and shall not be construed to require intentionally added ingre-
36 dients or nonfunctional constituents present in a designated product at
37 a concentration below one percent to be listed in any particular order.

38 b. (i) A manufacturer may protect and is not required to disclose any
39 intentionally added ingredient, including any fragrance ingredient, or
40 combination of intentionally added ingredients that meet the definition
41 of confidential business information as specified in subdivision e of
42 section 35-0201 of this title.

43 (ii) (A) A manufacturer that protects an intentionally added ingredi-
44 ent, including a fragrance ingredient, or combination of intentionally
45 added ingredients as confidential business information by declining to
46 disclose the specific name of the chemical or chemicals being protected
47 shall use the generic name for the intentionally added ingredient or
48 combination of intentionally added ingredients as provided in the feder-
49 al Toxic Substances Control Act (hereinafter "TSCA") Confidential Inven-
50 tory.

51 (B) If the intentionally added ingredient or combination of inten-
52 tionally added ingredients is not included in the TSCA Confidential
53 Inventory, but the manufacturer claims protection for those ingredients
54 or combination of ingredients as confidential business information as a
55 protectable trade secret or proprietary process, the manufacturer shall
56 use a name for the intentionally added ingredient or combination of

intentionally added ingredients that is only as generic as necessary to protect the confidential identity of the intentionally added ingredient or combination of intentionally added ingredients. In developing the generic name, the manufacturer shall use the generic name framework provided by the federal environmental protection agency guidance for the TSCA Confidential Inventory, the European Chemicals Agency guidance for alternative chemical names, the New Jersey Trade Secret Registry Number system, or the Canadian Hazardous Materials Information Review Act Registry Number system, if applicable.

c. A manufacturer that protects an intentionally added ingredient, including a fragrance ingredient, or combination of intentionally added ingredients as a protectable trade secret or proprietary process shall maintain justification for protecting confidential business information consistent with the requirements of this title and provide that justification on request for audit by the attorney general.

d. A supplier to a manufacturer that protects an intentionally added ingredient, including a fragrance ingredient, or combination of intentionally added ingredients as confidential business information shall follow the guidelines specified in subdivisions b and c of this section and the manufacturer shall use the generic name provided by the supplier.

§ 35-0209. Method of labeling.

An intentionally added ingredient, fragrance ingredient, or nonfunctional constituent listed or posted pursuant to this title, other than an ingredient for which use of a generic name is permitted by section 35-0207 of this title, shall be listed or posted pursuant to the following nomenclature systems, in the order in which they are listed. If a name is available in either of the first listed systems, that name shall be used. If a name is not available in those systems, then a name from the next listed system shall be used, and so forth:

a. Consumer Specialty Products Association Consumer Product Ingredients Dictionary or International Nomenclature of Cosmetic Ingredients.

b. International Union of Pure and Applied Chemistry nomenclature.

c. Chemical Abstracts Index name.

d. Common Chemical Name.

§ 35-0211. Severability.

The provisions of this title shall be severable, and if any clause, sentence, paragraph, subdivision or section of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or section thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 4. The general business law is amended by adding a new section 399-ggg to read as follows:

§ 399-ggg. Labeling of cleaning products. No person, firm, or corporation shall sell or offer for sale any household cleansing product in violation of title two of article thirty-five of the environmental conservation law.

§ 5. 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.