STATE OF NEW YORK

7978--A

2019-2020 Regular Sessions

IN ASSEMBLY

May 29, 2019

Introduced by M. of A. GOTTFRIED, ENGLEBRIGHT, L. ROSENTHAL, REYES, D'URSO, THIELE, ORTIZ, GALEF, DICKENS, STECK -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to the regulation of ingredients in personal care products

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

Section 1. Legislative findings and intent. There are thousands of chemicals used in personal care, household cleaning, and other consumer products, many of which have never been fully tested for potential impacts on human health or the environment. This has led national and international organizations to develop lists of chemicals of concern, including the New York State Department of Environmental Conservation's Household Cleaning Product Ingredient Disclosure Program (HCPIDP). While federal law requires personal care product labels to list certain intentionally added ingredients, information concerning potential health effects is not widely available and certain categories of chemical ingredients are exempt from labeling requirements. Furthermore, over 40 countries, including countries in the European Union, Japan, Cambodia, and Vietnam, have stricter restrictions on chemicals in personal care products than does the United States. Therefore, the legislature finds and declares that federal disclosure requirements are inadequate to educate and protect consumers, and that it shall be the policy of the state to require the personal care product industry to more fully disclose ingredients and identify ingredients published as chemicals of concern on lists identified by the commissioner such as the HCPIDP or other national or international lists.

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

LBD11385-04-0

§ 2. Article 37 of the environmental conservation law is amended by adding a new title 10 to read as follows:

TITLE X

REGULATION OF PERSONAL CARE PRODUCTS

Section 37-1001. Definitions.
37-1003. Disclosure.
37-1005. Periodic review.
37-1007. Sales prohibition.
37-1009. Small business exemption.
37-1011. Penalties.

§ 37-1001. Definitions.

As used in this title, unless the context requires otherwise:

1. "Chemical of concern" shall mean a chemical appearing on any of the lists included in the department of environmental conservation division of materials management program policy on household cleansing product information disclosure published on June sixth, two thousand eighteen pursuant to article thirty-five of this chapter and 6 NYCRR part 659, or as designated by the commissioner, in consultation with the commissioner of health.

2. "Ingredient" shall mean all of the following:

(a) an intentionally added ingredient present in any quantity in a personal care product;

(b) a nonfunctional byproduct or nonfunctional contaminant present in a personal care product, in any quantity exceeding one part per million of the content of the product, by weight or other amount determined by the commissioner;

(c) a nonfunctional byproduct present in a personal care product in any quantity not exceeding one part per million of the content of the product by weight present at or above the practical quantification limit as determined by the commissioner, provided such element or compound has been published as a chemical of concern on one or more lists identified by the commissioner;

(d) a nonfunctional contaminant present in a personal care product in a quantity determined by the commissioner and not exceeding one part per million of the content of the product by weight present at or above the practical quantification limit, provided such element or compound has been published as a chemical of concern on one or more lists identified by the commissioner.

3. "Intentionally added ingredient" shall mean any element or compound that a manufacturer has intentionally added to a personal care product, and which has a functional or technical effect in the finished product, including, but not limited to, the components of intentionally added fragrance, flavoring and colorants, and the intentional breakdown products of an added element or compound that also has a functional or technical effect on the finished product.

4. "Nonfunctional byproduct" shall mean any element or compound which has no functional or technical effect in the finished product which:

(a) was intentionally added during the manufacturing process for a personal care product at any point in a product's, a raw material's or ingredient's supply chain; or

(b) was created or formed during the manufacturing process as an intentional or unintentional consequence of the manufacturing process at any point in a product's, a raw material's, or an ingredient's supply chain.

Nonfunctional byproduct shall include, but is not limited to, an unreacted raw material, a breakdown product of an intentionally added ingredient, or a byproduct of the manufacturing process.

5. "Nonfunctional contaminant" shall mean any element or compound present in a personal care product as an unintentional consequence of manufacturing which has no functional or technical effect in the finished product. Nonfunctional contaminants include, but are not limited to, elements or compounds present in the environment as contaminants which were introduced into a product, a raw material, or a product ingredient as a result of the use of an environmental medium, such as a naturally occurring mineral, air, soil or water, in the manufacturing process at any point in a product's, a raw material's, or an ingredient's supply chain.

6. "Manufacturer" shall mean any person, firm, association, partnership, limited liability company, or corporation which produces, prepares, formulates, or compounds a personal care product, or whose brand name is affixed to such product. In the case of a personal care product imported into the United States, "manufacturer" shall mean the importer or first domestic distributor of the product if the entity that manufactures the product or whose brand name is affixed to the product does not have a presence in the United States.

7. "Personal care product" shall mean articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of any such articles; except that such term shall not include soap.

8. "Restricted substance" shall mean lead, mercury and related compounds, formaldehyde, triclosan, toluene, per- and polyfluoroalkyl substances, dibutyl phthalate, di(2)exylhexyl phthalate, and isobutyl-, isopropyl-, butyl-, and propyl paraben.

9. "Soap" shall mean articles comprised entirely of an alkali salt of fatty acids where the detergent properties of the article are due to the alkali-fatty acid compounds, and the article shall be labeled, sold, and represented only as a soap.

§ 37-1003. Disclosure.

1. Manufacturers of personal care products distributed, sold or offered for sale in this state, whether at retail or wholesale, for personal, professional or commercial use, or distributed for promotional purposes, shall furnish to the commissioner for public record, in a manner prescribed by the commissioner that is readily accessible to the public and machine readable, such information regarding such products pursuant to rules and regulations promulgated by the commissioner. For each personal care product, such information shall include, but shall not be limited to:

(a) (i) a list naming each ingredient, as defined in subdivision two of section 37-1001 of this title, of the product in descending order of predominance by weight in the product, except that ingredients present at a weight below one percent (1%) may be listed following other ingredients without respect to the order of predominance by weight;

(ii) such list shall disclose that the ingredient is published as a chemical of concern as identified in this title, including specification of which list or lists such chemical of concern is on; and

(b) the nature and extent of investigations and research performed by or for the manufacturer concerning the effects on human health and the environment of such product or such ingredients.

2. Such manufacturers shall furnish information on or before July first, two thousand twenty-one and every two years thereafter. In addition, such manufacturers shall furnish such information prior to the sale of any new personal care product, when the formulation of a currently disclosed product is substantially or materially changed, when any list of chemicals of concern identified by the commissioner pursuant to this article is changed to include an ingredient present in a personal care product subject to this article, or at such other times as may be required by the commissioner.

3. Such information shall be made available to the public by the commissioner, in accordance with this section, with the exception of those portions which the manufacturer determines, subject to the approval of the commissioner, is related to a proprietary process the disclosure of which would compromise the manufacturer's competitive position. The commissioner shall not approve any exceptions under this subdivision with respect to any ingredient published as a chemical of concern on one or more lists identified by the commissioner.

4. The commissioner may direct submission of such information to the Interstate Chemicals Clearinghouse, which may make the reported information available to the public, subject to information to be withheld under subdivision three of this section.

§ 37-1005. Periodic review.

The commissioner, in consultation with the commissioner of health, shall periodically review the list of chemicals of concern and, may through regulation, add or remove chemicals from such list.

§ 37-1007. Sales prohibition.

Effective three years after this section takes effect, no person shall distribute, sell or offer for sale in this state a personal care product containing a restricted substance.

§ 37-1009. Small business exemption.

The requirements of this title shall not apply to personal care product manufacturers that employ five persons or fewer, and are independently owned and operated.

§ 37-1011. Penalties.

A manufacturer in violation of this title is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who commit subsequent violations are subject to a civil penalty not to exceed ten thousand dollars for each additional offense.

§ 3. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 4. This act shall take effect on the one hundred eightieth day 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.