

STATE OF NEW YORK

6077

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. RIVERA -- 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 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:

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

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

TITLE X

REGULATION OF PERSONAL CARE PRODUCTS

25 Section 37-1001. Definitions.

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

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1 37-1003. Disclosure.

2 37-1005. Periodic review.

3 37-1007. Sales prohibition.

4 37-1009. Small business exemption.

5 37-1011. Penalties.

6 § 37-1001. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

53 5. "Nonfunctional contaminant" shall mean any element or compound
54 present in a personal care product as an unintentional consequence of
55 manufacturing which has no functional or technical effect in the
56 finished product. Nonfunctional contaminants include, but are not limit-

1 ed to, elements or compounds present in the environment as contaminants
2 which were introduced into a product, a raw material, or a product
3 ingredient as a result of the use of an environmental medium, such as a
4 naturally occurring mineral, air, soil or water, in the manufacturing
5 process at any point in a product's, a raw material's, or an ingredi-
6 ent's supply chain.

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

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

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

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

29 § 37-1003. Disclosure.

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

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

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

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

50 2. Such manufacturers shall furnish information on or before July
51 first, two thousand twenty and every two years thereafter. In addition,
52 such manufacturers shall furnish such information prior to the sale of
53 any new personal care product, when the formulation of a currently
54 disclosed product is substantially or materially changed, when any list
55 of chemicals of concern identified by the commissioner pursuant to this
56 article is changed to include an ingredient present in a personal care

1 product subject to this article, or at such other times as may be
2 required by the commissioner.

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

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

15 § 37-1005. Periodic review.

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

19 § 37-1007. Sales prohibition.

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

23 § 37-1009. Small business exemption.

24 The requirements of this title shall not apply to personal care prod-
25 uct manufacturers that employ five persons or fewer, and are independ-
26 ently owned and operated.

27 § 37-1011. Penalties.

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

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

40 § 4. This act shall take effect July 1, 2020. Effective immediately,
41 the addition, amendment and/or repeal of any rule or regulation neces-
42 sary for the implementation of this act on its effective date are
43 authorized to be made and completed on or before such effective date.