STATE OF NEW YORK

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2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sens. RIVERA, SALAZAR, BAILEY, BIAGGI, BOYLE, BRISPORT, BROOKS, BROUK, CLEARE, HARCKHAM, HINCHEY, HOYLMAN, JACKSON, KAPLAN, KRUEGER, LIU, MANNION, MARTUCCI, MYRIE, REICHLIN-MELNICK, SANDERS, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

Section 1. Short title. This act shall be known and may be cited as the "safe personal care and cosmetics act".

§ 2. 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. Moreover, regarding the safety of using personal care products, it is most concerning that cosmetics regulation in the United States has not been significantly updated since 1938. This has led state national, and international organizations to develop lists of chemicals of concern, including New York State's Toxic Chemicals in children's products and others. 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

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

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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 and other state, national or international lists.

§ 2. Article 37 of the environmental conservation law is amended by adding a new title 11 to read as follows:

TITLE XI

PERSONAL CARE AND COSMETICS

Section 37-1101. Definitions.
37-1103. Disclosure.
37-1105. Promulgation of lists.
37-1107. Sales prohibition.
37-1109. Small business exemption.
37-1111. Penalties.

§ 37-1101. Definitions.

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

1. "Chemical of concern" shall mean a chemical or class of chemicals referenced in Section 108954(a)(1) of Chapter 13 to Part 3 of Division 104 of the California Health and Safety Code as of March fifteenth, two thousand twenty-two, and asthmagens as designated by the commissioner, in consultation with the commissioner of health.

2. "Ingredient" shall mean:

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

(b) a nonfunctional byproduct or nonfunctional contaminant present in a personal care product, in any quantity, provided such element or compound is a chemical of concern.

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. "Practical quantification limit" means the lowest level that can be reliably achieved within pre-determined limits of precision and accuracy during routine laboratory operating conditions.

9. "Restricted substance" shall mean lead, lead compounds, or mercury and related compounds, formaldehyde, parafolmaldehyde, triclosan, toluene, per- and polyfluoroalkyl substances, dibutyl phthalate, di(2)exylhexyl phthalate, diethyl phthalate, butyl benzyl phthalate, isobutyl-, isopropyl-, butyl-, methyl-, propyl paraben, methylene glycol, oxybenzone, Quanternium-15, m-Phenylenediamine and its salts, and o- Phenylenediamine and its salts.

10. "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.

§ 37-1103. 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 department, in a manner prescribed by the commissioner that is readily accessible to the public, information for each personal care product, including but not limited to:

(a) a list naming each ingredient, 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; and

(b) each ingredient in the product that is a chemical of concern.

2. The information required by subdivision one of this section shall be submitted to the department on or before January thirtieth, two thousand twenty-four and annually thereafter.

3. The information provided pursuant to subdivision one of this section to the department shall be made available to the public by the department, provided however, that an ingredient that is not a chemical of concern may be withheld from public disclosure if the department determines, based on application by the manufacturer, that disclosure would reveal proprietary information. If the department makes such a determination, the manufacturer shall provide a generic name for the ingredient consistent with the confidential chemical substances identify reporting requirements of the federal Toxic Substance Control Act.

4. The department may require submission by a manufacturer of the information required by this section to the Interstate Chemicals Clearinghouse, which may make the reported information available to the public, except for proprietary information withheld under subdivision three of this section.

5. The manufacturer shall pay a fee upon submission of the information required pursuant to subdivision one of this section to cover the department's reasonable costs in the administration and enforcement of this title. Exclusive of fines and penalties, the state shall only recover its actual cost of administration and enforcement.

§ 37-1105. Promulgation of lists.

The department shall promulgate as regulations the lists of chemicals of concern and restricted substances on or before the effective date of this title, and shall periodically revise the regulations as necessary when such lists are amended.

§ 37-1107. Sales prohibition.

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

§ 37-1109. Small business exemption.

The requirements of section 37-1103 of this title shall not apply to personal care product manufacturers that employ ten persons or fewer, and are independently owned and operated.

§ 37-1111. 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 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.