STATE OF NEW YORK

8291

IN SENATE

February 9, 2022

Introduced by Sen. BROUK -- 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 prohibiting cosmetic products and personal care products that contain mercury

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

Section 1. Legislative findings and intent. The legislature finds that mercury salts stop the production of melanin, which is a pigment that makes skin darker and is an active ingredient in skin lightening cosmetics and products. The Minamata Convention on mercury establishes a limit of 1 mg/kg (1ppm) for skin lightening products, but many cosmetic products have higher levels to increase lightening effect. Advertisers and marketers promote and reinforce lighter skin tones as a more desirable beauty standard than darker skin tones. Images of individuals with lighter and/or 'Caucasian' skin tones saturate the media as acceptable while many darker skin and/or people of color individuals are demeaned and diminished, often called derogatory names and slurs. These images reinforce to individuals that lighter skin tones are not only more beautiful but also acceptable. Skin lightening products prey off these images to promote and increase sales. With widespread sales, the skin lightening industry has become one of the fastest growing beauty industries worldwide with an estimated increasing worth of $31.2 billion by 2024. There is growing legislation to prohibit the sale and manufacture of mercury containing products. Even with growing prohibitions, skin lightening products containing mercury is still widely available and easily obtainable, particularly through Internet sales and online promotions, often being sold through mobile apps. Skin lightening products containing mercury are available for sale through social media sites, online and brick and mortar stores. These products are manufactured abroad and often sold illegally and in high amounts in the United States in small shops and informal markets that target Latino, Asian, African, Indian, and Middle Eastern communities. Consumers may be unaware of the harmful effects of mercury in skin lightening products. A

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

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case reported in the Center for Disease Control and Prevention (CDC) journal of **Morbidity and Mortality Weekly Report** (December 20, 2019) narrated the experiences of a 47-year-old Mexican woman who consistently applied a skin-lightening cream to her face twice daily for seven years. Over the years, the woman began to experience weakness in her arms, blurred vision, slurred speech, and difficulty walking. Testing found high levels of mercury in both her blood and urine. Purchased from Mexico, the skin lightening cream contained 12,000 ppm of mercury. Even chelation therapy did not reverse her symptoms and the high levels and accumulation of mercury left her unable to talk or even take care of herself leaving her reliant on a feeding tube. Her case is the first known case of contamination of skin lightening cream with methyl mercury (or any congener, including methylmercury iodide). High levels of mercury can be absorbed in the skin and cause skin rashes, skin discolorations, kidney damage, psychosis, and peripheral neuropathy among other adverse effects. Mercury exposure is not just a problem for users of the product. Inhaling vapors from mercury products is also a source of exposure. Additionally, once users rinse the product from their skin, it becomes wastewater and enters into the environment becoming methylated potentially contaminating food and water. Prohibiting the manufacture, sale, import and export of mercury in skin lightening products can prevent users from suffering harmful effects in an attempt to achieve an unattainable and imposed beauty standard.

§ 2. The environmental conservation law is amended by adding a new section 37-0118 to read as follows:

§ 37-0118. Prohibition of cosmetic products and personal care products containing mercury.

1. For the purposes of this section the following terms shall have the following meanings:

(a) "Cosmetic product" means any article (a) intended to be rubbed, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for beautifying, promoting attractiveness, or altering the appearance, and (b) intended for use as a component of any such article. The term "cosmetic product" shall not include any personal care product for distribution or dispensation as provided in section two hundred eighty-one of the public health law or section sixty-eight hundred ten of the education law.

(b) "Internet sales" shall mean any order or sales placed by a purchaser through a website, software application, social media, or other method using the internet, computer or mobile device that does not belong to the seller. The term does not include an order placed by telephone call, regardless of whether the call is completed using voice over internet protocol.

(c) "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.

(d) "Mercury" shall mean elemental mercury Hg, mercuric iodide, mercury oxide, mercurous chloride, ethyl mercury, phenyl mercuric salts, ammoniated mercury, amide chloride of mercury, mercury sulfide or cinnabaris, mercury iodide or mercury poison.

(e) "Skin-lightening product" shall mean any product intended to be placed on the skin resulting in a lightening effect.

2. No person shall distribute or sell any cosmetics, toiletries, or fragrances containing mercury in stores or through internet sales. Skin lightening products containing hydroquinone shall be prohibited unless prescribed by a licensed dermatologist. Any person who sells or distributes cosmetics, toiletries, or fragrances containing mercury in this state shall be subject to a civil penalty not to exceed one thousand dollars for each day of the first violation, and in addition thereto, such person may be enjoined from continuing such violation. A person shall be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day of a second violation, and in addition thereto, such person may be enjoined from continuing such violation.

3. Any person in this state manufacturing cosmetics, toiletries, or fragrances containing mercury shall clearly and conspicuously disclose the level of mercury in the product. Disclosure shall be publicly displayed on a product label, the manufacturer's website, any online site who offers for retail such product, and any circular or advertisement distributed to a consumer. A manufacturer who fails to disclose the level of mercury in its cosmetics, toiletries, or fragrances is liable for negligence. The courts may issue a permanent injunction and fine for any manufacturer who violates the provisions of this subdivision.

4. The department is authorized to promulgate such rules and regulations as it shall deem necessary to implement the provisions of this section.

§ 3. This act shall take effect immediately.