

# 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:

1 Section 1. Legislative findings and intent. The legislature finds that  
2 mercury salts stop the production of melanin, which is a pigment that  
3 makes skin darker and is an active ingredient in skin lightening cosmet-  
4 ics and products. The Minamata Convention on mercury establishes a limit  
5 of 1 mg/kg (1ppm) for skin lightening products, but many cosmetic  
6 products have higher levels to increase lightening effect. Advertisers  
7 and marketers promote and reinforce lighter skin tones as a more desira-  
8 ble beauty standard than darker skin tones. Images of individuals with  
9 lighter and/or 'Caucasian' skin tones saturate the media as acceptable  
10 while many darker skin and/or people of color individuals are demeaned  
11 and diminished, often called derogatory names and slurs. These images  
12 reinforce to individuals that lighter skin tones are not only more beau-  
13 tiful but also acceptable. Skin lightening products prey off these  
14 images to promote and increase sales. With widespread sales, the skin  
15 lightening industry has become one of the fastest growing beauty indus-  
16 tries worldwide with an estimated increasing worth of \$31.2 billion by  
17 2024. There is growing legislation to prohibit the sale and manufacture  
18 of mercury containing products. Even with growing prohibitions, skin  
19 lightening products containing mercury is still widely available and  
20 easily obtainable, particularly through Internet sales and online  
21 promotions, often being sold through mobile apps. Skin lightening  
22 products containing mercury are available for sale through social media  
23 sites, online and brick and mortar stores. These products are manufac-  
24 tured abroad and often sold illegally and in high amounts in the United  
25 States in small shops and informal markets that target Latino, Asian,  
26 African, Indian, and Middle Eastern communities. Consumers may be  
27 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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1 case reported in the Center for Disease Control and Prevention (CDC)  
2 journal of Morbidity and Mortality Weekly Report (December 20, 2019)  
3 narrated the experiences of a 47-year-old Mexican woman who consistently  
4 applied a skin-lightening cream to her face twice daily for seven years.  
5 Over the years, the woman began to experience weakness in her arms,  
6 blurred vision, slurred speech, and difficulty walking. Testing found  
7 high levels of mercury in both her blood and urine. Purchased from Mexi-  
8 co, the skin lightening cream contained 12,000 ppm of mercury. Even  
9 chelation therapy did not reverse her symptoms and the high levels and  
10 accumulation of mercury left her unable to talk or even take care of  
11 herself leaving her reliant on a feeding tube. Her case is the first  
12 known case of contamination of skin lightening cream with methyl mercury  
13 (or any congener, including methylmercury iodide). High levels of mercu-  
14 ry can be absorbed in the skin and cause skin rashes, skin discolora-  
15 tions, kidney damage, psychosis, and peripheral neuropathy among other  
16 adverse effects. Mercury exposure is not just a problem for users of the  
17 product. Inhaling vapors from mercury products is also a source of  
18 exposure. Additionally, once users rinse the product from their skin,  
19 it becomes wastewater and enters into the environment becoming methylat-  
20 ed potentially contaminating food and water. Prohibiting the manufac-  
21 ture, sale, import and export of mercury in skin lightening products can  
22 prevent users from suffering harmful effects in an attempt to achieve an  
23 unattainable and imposed beauty standard.

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

26 § 37-0118. Prohibition of cosmetic products and personal care products  
27 containing mercury.

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

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

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

44 (c) "Manufacturer" shall mean any person, firm, association, partner-  
45 ship, limited liability company, or corporation which produces,  
46 prepares, formulates, or compounds a personal care product, or whose  
47 brand name is affixed to such product. In the case of a personal care  
48 product imported into the United States, "manufacturer" shall mean the  
49 importer or first domestic distributor of the product if the entity that  
50 manufactures the product or whose brand name is affixed to the product  
51 does not have a presence in the United States.

52 (d) "Mercury" shall mean elemental mercury Hg, mercuric iodide, mercu-  
53 ry oxide, mercurous chloride, ethyl mercury, phenyl mercuric salts,  
54 ammoniated mercury, amide chloride of mercury, mercury sulfide or cinna-  
55 baris, mercury iodide or mercury poison.

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

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

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

24 4. The department is authorized to promulgate such rules and regu-  
25 lations as it shall deem necessary to implement the provisions of this  
26 section.

27 § 3. This act shall take effect immediately.