STATE OF NEW YORK

6969

2023-2024 Regular Sessions

IN ASSEMBLY

May 9, 2023

Introduced by M. of A. GLICK -- read once and referred 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 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. Thousands of chemicals are used in cosmetics and personal care products. Some of these chemicals are associated with asthma, allergies, hormone disruption, neurodevelopmental problems, infertility, even cancer. Exposure to personal care and cosmetic products typically begins in infancy, with products such as baby shampoo, lotion, and diaper cream, and continues throughout their lifespan. According to the Environmental Working Group, "on average, women use 12 personal care products a day, exposing themselves to 168 chemical ingredients. Men use six, exposing themselves to 85 unique chemicals."

Further, The National Institutes of Health (NIH) conducted an eight-year study of over 46,000 women who used permanent hair dyes and straighteners. They found that women of color who regularly used dyes and straighteners had a 45 percent higher breast cancer risk. White women faced a 7 percent higher breast cancer risk.

European Union countries prohibit (with few exceptions) substances classified as carcinogenic, mutagenic, or toxic for reproduction in cosmetic products. The Canadian government regularly updates a Cosmetic Ingredient Hotlist that includes hundreds of chemicals and contaminants prohibited and restricted from cosmetics, such as formaldehyde, triclosan, and more. Furthermore, over 40 countries including Japan, Cambodia, and Vietnam, have stricter restrictions on chemicals in personal care products than does the United States.

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

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Moreover, regarding the safety of using personal care products, the federal Modernization of Cosmetics Regulation Act of 2022 is the first federal law to significantly update the Food, Drug, and Cosmetic Act. However, the Act fails to meaningfully restrict the use of harmful chemicals in personal care/cosmetic products, and explicitly grants states the ability to enact such restrictions. For example, it failed to ban coal tar, a well known carcinogen.

Therefore, the legislature finds and declares that federal restrictions of harmful chemicals in personal care and cosmetic products are inadequate to educate and protect consumers and salon workers, and that it shall be the policy of the state to restrict chemicals that may harm the health of New Yorkers during production, use, or disposal of personal care products and cosmetic products.

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

TITLE XI

SAFE PERSONAL CARE AND COSMETICS ACT

Section 37-1101. Definitions.
37-1103. Promulgation of lists.
37-1105. Sales prohibition.
37-1107. Penalties.
37-1109. Regulations.

§ 37-1101. Definitions.

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

1. "Cosmetic product" shall mean a cosmetic product as defined in section 37-0117 of this article.

2. "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.

3. "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.

4. "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.

5. "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.

6. "Personal care product" shall mean a personal care product as defined in section 37-0117 of this article.

7. "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.

8. "Restricted substance" shall mean the following:

(a) heavy metals and heavy metal-containing compounds including: arsenic, cadmium, cadmium compounds, chromium, lead, lead compounds, nickel and selenium;

(b) parabens, including: butyl-, ethyl-, isobutyl-, isopropyl-, methyl-, and propyl paraben;

(c) ortho-phthalates and their esters, including: dibutyl-, dicyclohexyl-, diisobutyl-, diisodecyl-, diisononyl-, diisooctyl-, di(2)ethylhexyl-, diethyl-, and benzyl butyl phthalate;

(d) per- and polyfluoroalkyl substances, as detected by total organic fluorine analysis;

(e) formaldehyde and formaldehyde releasers, including: formaldehyde, paraformaldehyde, quaternium-15, diazolidinyl urea, dmdm hydantoin, methylene glycol, imidazolidinyl urea, and sodium hydroxymethylglycinate;

(f) benzophenones, including: benzophenone, benzophenone-1, benzophenone-2, benzophenone-3, 2,4-dihydroxybenzophenone, resbenzophenone, and oxybenzone;

(g) known carcinogens, including benzene, carbon black, coal tar, ethylene oxide, toluene, naphthalene, nickel (metallic), styrene, and xylene;

(h) asbestos and asbestos containing compounds: asbestos, talc;

(i) butylated compounds, including: butylated hydroxytoluene (bht) and butylated hydroxyanisole (bha);

(j) siloxanes, including cyclotetrasiloxane, cyclopentasiloxane, octamethylcyclotetrasiloxane, and cyclosiloxanes;

(k) phenylenediamines, including m-phenylenediamine, o-phenylenediamine, and p-phenylenediamine;

(l) triclosan, triclocarban, nonylphenol; and

(m) nitrosamine and nitrosamine releasers, including diethanolamine and triethanolamine.

§ 37-1103. Promulgation of lists.

The department shall promulgate as regulations the list of restricted substances on or before the effective date of this title.

§ 37-1105. Sales prohibition.

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

1. The product shall not contain a restricted substance present as an intentionally added ingredient in any amount.

2. The product shall not contain a restricted substance present as a nonfunctional byproduct or nonfunctional contaminant above the practical quantitation limit.

§ 37-1107. 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.

§ 37-1109. Regulations.

The department may adopt any rules and regulations it deems necessary to implement the provisions of this title.

§ 4. 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.

§ 5. 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.