STATE OF NEW YORK

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2023-2024 Regular Sessions

IN ASSEMBLY

May 9, 2023

Introduced by M. of A. GLICK, LUNSFORD, L. ROSENTHAL, COLTON, STECK, O'DONNELL, SIMONE, DICKENS, GUNTHER, SHIMSKY, SIMON, RAMOS, TAYLOR, LEE, KELLES, DINOWITZ, DURSO, GANDOLFO, NOVAKHOV, THIELE, STERN, JACOBSON, ROZIC, RAJKUMAR, McMAHON, ANDERSON, KIM, BARRETT, SANTABARBARA, EPSTEIN, CLARK, RA, FORREST, BICHOTTE HERMELYN, CARROLL, PAULIN, MAMDANI, SEAWRIGHT, SHRESTHA, LAVINE, BURGOS, SLATER, CUNNINGHAM, EACHUS, SAYEGH, GALLAGHER, OTIS, LEVENBERG, K. BROWN, REYES, WOERNER, HUNTER, SOLAGES, BENEDETTO, PRETLOW, FAHY, MEEKS, BRONSON, McDONALD, PHEFFER AMATO, MANKTELOW, JENSEN, GALLAHAN, BURDICK, ARDILA, RAGA, LUPARDO, GONZALEZ-ROJAS, WEPRIN, SIMPSON, SILLITTI, JEAN-PIERRE, BORES, BENDETT, DeSTEFANO, MCGOWAN, HEVESI -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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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.

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 12 to read as follows:

TITLE XII

SAFE PERSONAL CARE AND COSMETICS ACT

Section 37-1201. Definitions.
37-1203. Sales prohibition.
37-1205. Identification of safer alternatives.
37-1207. Regulations.

§ 37-1201. 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 or cosmetic 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. "Restricted substance" shall mean the following:

(a) the following heavy metals and any compounds containing the following heavy metals: arsenic (CAS 7440-38-2), cadmium (CAS 7440-43-9), cadmium compounds, chromium (CAS 7440-47-3), lead (CAS 7439-92-1), lead compounds, nickel (CAS 7440-02-0) and selenium (CAS 7782-49-2);

(b) butyl- (CAS 94-26-8), ethyl- (CAS 120-47-8), isobutyl- (CAS 4247-02-3), isopropyl- (CAS 4191-73-5), methyl- (CAS 99-76-3), and propyl paraben (CAS 94-13-3);

(c) ortho-phthalates and their esters;

(d) per- and polyfluoroalkyl substances, as defined in subdivision seven of section 37-0101 of this article, detected by total organic fluorine analysis;

(e) formaldehyde (CAS 50-00-0) and formaldehyde releasers such as: paraformaldehyde (CAS 30525-89-4), quaternium-15 (CAS 51229-78-8), diazolidinyl urea (CAS 78491-02-8), dmdm hydantoin (CAS 6440-58-0), methylene glycol (CAS 463-57-0), imidazolidinyl urea (CAS 39236-46-9), and sodium hydroxymethylglycinate (CAS 70161-44-3), provided that in the case of any formaldehyde releaser, treatment as a restricted substance shall be subject to subdivision three of section 37-1203 of this title;

(f) benzophenone (CAS 119-61-9), benzophenone-1 (CAS 131-56-6), benzophenone-2 (CAS 131-55-5), benzophenone-3 (CAS 131-57-7), 2,4-dihydroxybenzophenone (CAS 131-56-6), and resbenzophenone;

(g) benzene (CAS 71-43-2), carbon black (CAS 1333-86-4), coal tar (CAS 8007-45-2), ethylene oxide (CAS 75-21-8), toluene (CAS 108-88-3), naphthalene (CAS 91-20-3), nickel (metallic) (CAS 7440-02-0), styrene (CAS 100-42-5), and xylene (CAS 1330-20-7);

(h) asbestos (CAS 1332-21-4) and talc (CAS 14807-96-6);

(i) butylated hydroxytoluene (bht) (CAS 128-37-0) and butylated hydroxyanisole (bha) (CAS 121-00-6);

(j) cyclotetrasiloxane (CAS 556-67-2), cyclopentasiloxane (CAS 541-02-6), and octamethylcyclotetrasiloxane (CAS 556-67-2);

(k) m-phenylenediamine (CAS 108-45-2) and o-phenylenediamine (CAS 95-54-5);

(l) triclosan (CAS 3380-34-5), triclocarban (CAS 101-20-2), and nonylphenol (CAS 68412-54-4); and

(m) diethanolamine (CAS 111-42-2) and triethanolamine (CAS 102-71-6).

§ 37-1203. Sales prohibition.

1. Effective January first, two thousand twenty-eight, no person shall sell or offer for sale in this state a personal care product or cosmetic product containing a restricted substance as an intentionally added ingredient in any amount.

2. In addition to the provisions of subdivision one of this section, two years after the department's adoption of the regulations required by section 37-1207 of this title, such product shall not contain a restricted substance present as a nonfunctional byproduct or nonfunctional contaminant in a cosmetic product or personal care product or a component thereof at or above a level that the department shall establish in regulation that is the lowest level that can feasibly be achieved; provided, however, that the department shall review such level every five years to determine whether it should be lowered.

3. (a) The department's determinations regarding chemicals that release formaldehyde, pursuant to paragraph (e) of subdivision seven of section 37-1201 of this title, shall be adopted by regulation. The department shall identify a list of chemicals used in cosmetic products and personal care products that release formaldehyde that may be deemed restricted substances and subject to the sales restrictions of subdivisions one and two of this section. In establishing such list, the department should consider: (i) estimated prevalence of use; (ii) potential to reduce disproportionate exposure; and (iii) other information deemed relevant by the department.

(b) The department may identify for restriction an initial set of no more than ten of the listed chemicals used in personal care products and cosmetic products that release formaldehyde. Any initial classification as restricted substances shall take effect one year after the department's adoption of regulations required by this subdivision and be subject to the sales restrictions of subdivisions one and two of this section.

(c) Classification as restricted substances on the remaining listed chemicals used in personal care products and cosmetic products that release formaldehyde may take effect two years after the department's adoption of regulations required by this subdivision and shall be subject to the sales restrictions of subdivisions one and two of this section.

(d) The department may conduct additional rulemaking activities to develop supplemental lists of chemicals that release formaldehyde and adopt additional restrictions necessary to protect the health and safety of product users.

4. (a) No person that sells or offers for sale any personal care product or cosmetic product shall be held in violation of this section if they can show that they relied in good faith on the written assurance of the manufacturer that such personal care product or cosmetic product meets the requirements of this title. Such written assurance shall take the form of a certificate of compliance stating that the personal care product or cosmetic product is in compliance with the requirements of this title. The certificate of compliance shall be signed by an authorized official of the manufacturer.

(b) In addition to any other applicable penalties, it shall be a violation of this section to provide a certificate of compliance as contemplated by this subdivision when the applicable personal care product or cosmetic product does not satisfy the limitations on the presence of restricted substances set forth in this title.

§ 37-1205. Identification of safer alternatives.

By January first, two thousand twenty-seven, the department, in consultation with the department of health, shall make use of existing information to identify and assess the hazards of chemicals or chemical classes that can provide the same or similar function in personal care products and cosmetic products as the chemicals or chemical classes listed in section 37-1201 of this title and that can impact vulnerable populations. In doing so they may consult with the New York state pollution prevention institute and the interstate chemicals clearinghouse. The department shall make such information publicly available.

§ 37-1207. Regulations.

Within one year of the effective date of this section, the department shall adopt rules and regulations necessary for the implementation of this title. When adopting such rules and regulations, the department shall consider:

(a) relevant research;

(b) laws and policies in other states; and

(c) whether the presence of a restricted substance as a nonfunctional byproduct or nonfunctional contaminant has been banned in another state or within the United States because of the health effects of such substance.

§ 4. Section 71-3703 of the environmental conservation law is amended by adding a new subdivision 8 to read as follows:

8. Any person who violates any of the provisions of, or who fails to perform any duty imposed by, section 37-1203 of this chapter or any rule or regulation promulgated pursuant thereto, shall be liable for a civil penalty not to exceed one thousand dollars for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Such person shall for a second violation be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day during which such violation continues.

§ 5. 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.

§ 6. 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.