

# STATE OF NEW YORK

4265

2023-2024 Regular Sessions

## IN SENATE

February 7, 2023

Introduced by Sens. WEBB, RIVERA, SALAZAR, BRESLIN, BRISPORT, CLEARE, GOUNARDES, HARCKHAM, HOYLMAN-SIGAL, JACKSON, SANDERS, SERRANO -- 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 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:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "safe personal care and cosmetics act".  
3 § 2. Legislative findings and intent. Thousands of chemicals are used  
4 in cosmetics and personal care products. Some of these chemicals are  
5 associated with asthma, allergies, hormone disruption, neurodevelopmental  
6 problems, infertility, even cancer. Exposure to personal care and  
7 cosmetic products typically begins in infancy, with products such as  
8 baby shampoo, lotion, and diaper cream, and continues throughout their  
9 lifespan. According to the Environmental Working Group, "on average,  
10 women use 12 personal care products a day, exposing themselves to 168  
11 chemical ingredients. Men use six, exposing themselves to 85 unique  
12 chemicals."  
13 Further, The National Institutes of Health (NIH) conducted an eight-  
14 year study of over 46,000 women who used permanent hair dyes and  
15 straighteners. They found that women of color who regularly used dyes  
16 and straighteners had a 45 percent higher breast cancer risk. White  
17 women faced a 7 percent higher breast cancer risk.  
18 European Union countries prohibit (with few exceptions) substances  
19 classified as carcinogenic, mutagenic, or toxic for reproduction in  
20 cosmetic products. The Canadian government regularly updates a Cosmetic  
21 Ingredient Hotlist that includes hundreds of chemicals and contaminants  
22 prohibited and restricted from cosmetics, such as formaldehyde, triclo-  
23 san, and more. Furthermore, over 40 countries including Japan, Cambodia,

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

LBD07027-03-3

1 and Vietnam, have stricter restrictions on chemicals in personal care  
2 products than does the United States.

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

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

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

18 TITLE XI

19 SAFE PERSONAL CARE AND COSMETICS ACT

20 Section 37-1101. Definitions.

21 37-1103. Promulgation of lists.

22 37-1105. Sales prohibition.

23 37-1107. Penalties.

24 37-1109. Regulations.

25 § 37-1101. Definitions.

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

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

29 2. "Intentionally added ingredient" shall mean any element or compound  
30 that a manufacturer has intentionally added to a personal care product,  
31 and which has a functional or technical effect in the finished product,  
32 including, but not limited to, the components of intentionally added  
33 fragrance, flavoring and colorants, and the intentional breakdown  
34 products of an added element or compound that also has a functional or  
35 technical effect on the finished product.

36 3. "Nonfunctional byproduct" shall mean any element or compound which  
37 has no functional or technical effect in the finished product which:

38 (a) was intentionally added during the manufacturing process for a  
39 personal care product at any point in a product's, a raw material's or  
40 ingredient's supply chain; or

41 (b) was created or formed during the manufacturing process as an  
42 intentional or unintentional consequence of the manufacturing process at  
43 any point in a product's, a raw material's, or an ingredient's supply  
44 chain.

45 Nonfunctional byproduct shall include, but is not limited to, an  
46 unreacted raw material, a breakdown product of an intentionally added  
47 ingredient, or a byproduct of the manufacturing process.

48 4. "Nonfunctional contaminant" shall mean any element or compound  
49 present in a personal care product as an unintentional consequence of  
50 manufacturing which has no functional or technical effect in the  
51 finished product. Nonfunctional contaminants include, but are not limit-  
52 ed to, elements or compounds present in the environment as contaminants  
53 which were introduced into a product, a raw material, or a product  
54 ingredient as a result of the use of an environmental medium, such as a  
55 naturally occurring mineral, air, soil or water, in the manufacturing

1 process at any point in a product's, a raw material's, or an ingredi-  
2 ent's supply chain.

3 5. "Manufacturer" shall mean any person, firm, association, partner-  
4 ship, limited liability company, or corporation which produces,  
5 prepares, formulates, or compounds a personal care product, or whose  
6 brand name is affixed to such product. In the case of a personal care  
7 product imported into the United States, "manufacturer" shall mean the  
8 importer or first domestic distributor of the product if the entity that  
9 manufactures the product or whose brand name is affixed to the product  
10 does not have a presence in the United States.

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

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

16 8. "Restricted substance" shall mean the following:

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

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

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

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

27 (e) formaldehyde and formaldehyde releasers, including: formaldehyde,  
28 paraformaldehyde, quaternium-15, diazolidinyl urea, dmdm hydantoin,  
29 methylene glycol, imidazolidinyl urea, and sodium hydroxymethylglyci-  
30 nate;

31 (f) benzophenones, including: benzophenone, benzophenone-1, benzophe-  
32 none-2, benzophenone-3, 2,4-dihydroxybenzophenone, resbenzophenone, and  
33 oxybenzone;

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

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

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

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

42 (k) phenylenediamines, including m-phenylenediamine, o-phenylenedia-  
43 mine, and p-phenylenediamine;

44 (l) triclosan, triclocarban, nonylphenol; and

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

47 § 37-1103. Promulgation of lists.

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

50 § 37-1105. Sales prohibition.

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

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

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

4 § 37-1107. Penalties.

5 A manufacturer in violation of this title is subject to a civil penal-  
6 ty not to exceed five thousand dollars for each violation in the case of  
7 a first offense. Manufacturers who commit subsequent violations are  
8 subject to a civil penalty not to exceed ten thousand dollars for each  
9 additional offense.

10 § 37-1109. Regulations.

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

13 § 4. Severability. If any provision of this act, or any application of  
14 any provision of this act, is held to be invalid, or to violate or be  
15 inconsistent with any federal law or regulation, that shall not affect  
16 the validity or effectiveness of any other provision of this act, or of  
17 any other application of any provision of this act, which can be given  
18 effect without that provision or application; and to that end, the  
19 provisions and applications of this act are severable.

20 § 5. This act shall take effect one year after it shall have become a  
21 law. Effective immediately, the addition, amendment and/or repeal of any  
22 rule or regulation necessary for the implementation of this act on its  
23 effective date are authorized to be made and completed on or before such  
24 effective date.