

# STATE OF NEW YORK

4265--A

Cal. No. 961

2023-2024 Regular Sessions

## IN SENATE

February 7, 2023

Introduced by Sens. WEBB, RIVERA, SALAZAR, ADDABBO, BRESLIN, BRISPORT, BROUK, CHU, CLEARE, FERNANDEZ, GIANARIS, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KAVANAGH, KRUEGER, LIU, MANNION, MAY, MAYER, PERSAUD, RYAN, SANDERS, SEPULVEDA, SERRANO, SKOUFIS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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.

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

LBD07027-10-4

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

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

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

22 § 3. Article 37 of the environmental conservation law is amended by  
23 adding a new title 12 to read as follows:

24 TITLE XII

25 SAFE PERSONAL CARE AND COSMETICS ACT

26 Section 37-1201. Definitions.

27 37-1203. Sales prohibition.

28 37-1205. Identification of safer alternatives.

29 37-1207. Regulations.

30 § 37-1201. Definitions.

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

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

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

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

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

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

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

53 4. "Nonfunctional contaminant" shall mean any element or compound  
54 present in a personal care product as an unintentional consequence of  
55 manufacturing which has no functional or technical effect in the  
56 finished product. Nonfunctional contaminants include, but are not limit-

1 ed to, elements or compounds present in the environment as contaminants  
2 which were introduced into a product, a raw material, or a product  
3 ingredient as a result of the use of an environmental medium, such as a  
4 naturally occurring mineral, air, soil or water, in the manufacturing  
5 process at any point in a product's, a raw material's, or an ingredi-  
6 ent's supply chain.

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

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

17 7. "Restricted substance" shall mean the following:

18 (a) the following heavy metals and any compounds containing the  
19 following heavy metals: arsenic (CAS 7440-38-2), cadmium (CAS  
20 7440-43-9), cadmium compounds, chromium (CAS 7440-47-3), lead (CAS  
21 7439-92-1), lead compounds, nickel (CAS 7440-02-0) and selenium (CAS  
22 7782-49-2);

23 (b) butyl- (CAS 94-26-8), ethyl- (CAS 120-47-8), isobutyl- (CAS 4247-  
24 02-3), isopropyl- (CAS 4191-73-5), methyl- (CAS 99-76-3), and propyl  
25 paraben (CAS 94-13-3);

26 (c) ortho-phthalates and their esters;

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

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

37 (f) benzophenone (CAS 119-61-9), benzophenone-1 (CAS 131-56-6), benzo-  
38 phenone-2 (CAS 131-55-5), benzophenone-3 (CAS 131-57-7),  
39 2,4-dihydroxybenzophenone (CAS 131-56-6), and resbenzophenone;

40 (g) benzene (CAS 71-43-2), carbon black (CAS 1333-86-4), coal tar (CAS  
41 8007-45-2), ethylene oxide (CAS 75-21-8), toluene (CAS 108-88-3),  
42 naphthalene (CAS 91-20-3), nickel (metallic) (CAS 7440-02-0), styrene  
43 (CAS 100-42-5), and xylene (CAS 1330-20-7);

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

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

47 (j) cyclotetrasiloxane (CAS 556-67-2), cyclopentasiloxane (CAS  
48 541-02-6), and octamethylcyclotetrasiloxane (CAS 556-67-2);

49 (k) m-phenylenediamine (CAS 108-45-2) and o-phenylenediamine (CAS  
50 95-54-5);

51 (l) triclosan (CAS 3380-34-5), triclocarban (CAS 101-20-2), and nonyl-  
52 phenol (CAS 68412-54-4); and

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

54 § 37-1203. Sales prohibition.

55 1. Effective January first, two thousand twenty-eight, no person shall  
56 sell or offer for sale in this state a personal care product or cosmetic

1 product containing a restricted substance as an intentionally added  
2 ingredient in any amount.

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

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

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

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

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

39 4. (a) No person that sells or offers for sale any personal care prod-  
40 uct or cosmetic product shall be held in violation of this section if  
41 they can show that they relied in good faith on the written assurance of  
42 the manufacturer that such personal care product or cosmetic product  
43 meets the requirements of this title. Such written assurance shall take  
44 the form of a certificate of compliance stating that the personal care  
45 product or cosmetic product is in compliance with the requirements of  
46 this title. The certificate of compliance shall be signed by an author-  
47 ized official of the manufacturer.

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

53 § 37-1205. Identification of safer alternatives.

54 By January first, two thousand twenty-seven, the department, in  
55 consultation with the department of health, shall make use of existing  
56 information to identify and assess the hazards of chemicals or chemical

1 classes that can provide the same or similar function in personal care  
2 products and cosmetic products as the chemicals or chemical classes  
3 listed in section 37-1201 of this title and that can impact vulnerable  
4 populations. In doing so they may consult with the New York state  
5 pollution prevention institute and the interstate chemicals clearing-  
6 house. The department shall make such information publicly available.

7 § 37-1207. Regulations.

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

12 (a) relevant research;

13 (b) laws and policies in other states; and

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

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

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

29 § 5. Severability. If any provision of this act, or any application of  
30 any provision of this act, is held to be invalid, or to violate or be  
31 inconsistent with any federal law or regulation, that shall not affect  
32 the validity or effectiveness of any other provision of this act, or of  
33 any other application of any provision of this act, which can be given  
34 effect without that provision or application; and to that end, the  
35 provisions and applications of this act are severable.

36 § 6. This act shall take effect one year after it shall have become a  
37 law. Effective immediately, the addition, amendment and/or repeal of any  
38 rule or regulation necessary for the implementation of this act on its  
39 effective date are authorized to be made and completed on or before such  
40 effective date.