

New York Governor Announces Proposed Consumer Right to Know Act



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On January 21, 2019, New York Governor Andrew M. Cuomo (D) announced as part of his Executive Budget a proposal intended to protect New Yorkers from unknown exposure to toxic chemicals. According to Governor Cuomo's [press release](#), the Consumer Right to Know Act would authorize the New York State Department of Environmental Conservation (NYSDEC), in consultation with the New York State Department of Health (NYSDOH) and the New York State Department of State (NYSDOS), to develop regulations establishing on-package labeling requirements for designated products indicating the presence of potentially hazardous chemicals, including carcinogens.

Under the proposal, the agencies would assess the feasibility of on-package labeling and develop regulations establishing a labeling requirement for designated

products, creating a list of more than 1,000 carcinogens and other chemicals that would trigger labeling, and identifying the types of consumer products that would be subject to the new regime. The press release states that the proposal would extend NYSDEC's previously established Household Cleansing Product Information Disclosure Program requirements "to cover all cleaning products sold in New York State," and it will give NYSDOH "the authority to require similar disclosure for the manufacturers of personal care products like shampoo, deodorant or baby powder." According to the press release, the proposal would require cleaning product and personal care product manufacturers to "make certain product ingredient information publicly available on their websites and on a publicly accessible database." The Household Cleansing Product Information Disclosure Program already requires manufacturers to make certain product ingredient information publicly available on their websites.

Commentary

As reported in our January 14, 2019, memorandum, NYSDEC announced on January 9, 2019, that it was delaying the enforcement of the Household Cleansing Product Information Disclosure Program for three months, from **July 1, 2019**, to **October 1, 2019**. Two trade associations, the Household & Commercial Products Association (HCPA) and the American Cleaning Institute (ACI), have challenged the Disclosure Program in court. According to a [Joint Statement](#) issued by HCPA and ACI, the suit alleges NYSDEC violated important administrative procedures and that its refusal to work with industry has created an "unworkable and impractical" policy that should be retracted so that a consistent national model for ingredient communication can be implemented instead.

Some claim that NYSDEC exceeded its regulatory authority by issuing the Household Cleansing Product Information Disclosure Program under the authority of the Environmental Conservation Law, a law enacted back in the early 1970s. Governor Cuomo's press release refers to "[t]he 'Consumer Right to Know Act,'" which would seem to indicate that he will offer legislation. At this time, such legislation is not listed on the Governor's [website](#) for the 2019-**2020** session, however.

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