

SHB 1047 - S COMM AMD
By Committee on Ways & Means

ADOPTED 04/08/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** (1) The legislature finds that certain
4 chemicals used in cosmetic products are linked to harmful impacts on
5 health, such as cancer, birth defects, damage to the reproductive
6 system, organ system toxicity, and endocrine disruption. Many of
7 these chemicals have been identified by the state of Washington as
8 high priority chemicals of concern.

9 (2) In order to ensure the safety of cosmetic products and
10 protect Washington residents from toxic exposures, the legislature
11 intends to prohibit use of toxic chemicals found in cosmetic and
12 personal care products and join other jurisdictions in creating a
13 safer global standard for cosmetic products and bringing more
14 sustainable, safer ingredients to the marketplace.

15 NEW SECTION. **Sec. 2.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires
17 otherwise.

18 (1) "Cosmetic product" has the same meaning as the term
19 "cosmetic" as defined in RCW 69.04.011.

20 (2) "Department" means the department of ecology.

21 (3) "Manufacturer" has the same meaning as defined in RCW
22 70A.350.010.

23 (4) "Ortho-phthalates" means esters of ortho-phthalic acid.

24 (5) "Perfluoroalkyl and polyfluoroalkyl substances" has the same
25 meaning as defined in RCW 70A.350.010.

26 (6) "Small business" has the same meaning as defined in RCW
27 70A.500.020.

28 (7) "Vulnerable populations" has the same meaning as defined in
29 RCW 70A.02.010.

1 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (3)
2 of this section, beginning January 1, 2025, no person may
3 manufacture, knowingly sell, offer for sale, distribute for sale, or
4 distribute for use in this state any cosmetic product that contains
5 any of the following intentionally added chemicals or chemical
6 classes:

7 (a) Ortho-phthalates;

8 (b) Perfluoroalkyl and polyfluoroalkyl substances;

9 (c) Formaldehyde (CAS 50-00-0) and chemicals determined by the
10 department to release formaldehyde;

11 (d) Methylene glycol (CAS 463-57-0);

12 (e) Mercury and mercury compounds (CAS 7439-97-6);

13 (f) Triclosan (CAS 3380-34-5);

14 (g) m-phenylenediamine and its salts (CAS 108-45-2); and

15 (h) o-phenylenediamine and its salts (CAS 95-54-5).

16 (2) Except as provided in subsection (3) of this section,
17 beginning January 1, 2025, no person may manufacture, knowingly sell,
18 offer for sale, distribute for sale, or distribute for use in this
19 state any cosmetic product that contains intentionally added lead or
20 lead compounds (CAS 7439-92-1), lead or lead compounds at one part
21 per million (ppm) or above, or as otherwise determined by the
22 department through rule making.

23 (3) An in-state retailer in possession of cosmetic products on
24 the date that restrictions on the sale of the products takes effect
25 under this section may exhaust its existing stock through sales to
26 the public until January 1, 2026.

27 (4) By June 1, 2024, the department, in consultation with the
28 department of health, must use existing information to identify and
29 assess the hazards of chemicals or chemical classes that can provide
30 the same or similar function in cosmetic products as the chemicals or
31 chemical classes listed in subsection (1) of this section and that
32 can impact vulnerable populations. The department must make the
33 information publicly available.

34 (5) (a) By May 2024, the department shall implement an initiative
35 to support small businesses that manufacture cosmetic products in
36 efforts to obtain voluntary environmental health certifications for
37 cosmetics implemented by the United States environmental protection
38 agency or other programs, as determined by the department, that are
39 designed to identify cosmetic products that do not contain identified

1 hazards consistent with processes used to identify safer alternatives
2 under chapter 70A.350 RCW.

3 (b) The initiative may include, but is not limited to, providing:

4 (i) Technical assistance and support;

5 (ii) Resources for chemical hazard assessments; and

6 (iii) Resources for reformulating products.

7 (6) (a) By May 2024, the department shall implement an initiative
8 to support independent cosmetologists and small businesses that
9 provide cosmetology services, such as beauty salons, in efforts to
10 transition to using safer cosmetic products.

11 (b) The initiative may include, but is not limited to, providing:

12 (i) Technical assistance and support;

13 (ii) Resources for identifying safer cosmetic products; and

14 (iii) Resources for financial incentives to eligible participants
15 to replace cosmetic products containing toxic chemicals, disposal
16 programs, and the use of safer products.

17 (7) (a) For the purposes of this section, cosmetic products do not
18 include prescription drugs approved by the United States food and
19 drug administration.

20 (b) The chemicals in subsection (1) of this section are
21 restricted in cosmetics regardless of whether the product also
22 contains drug ingredients regulated by the United States food and
23 drug administration. For purposes of this section, ingredients
24 regulated as drugs by the United States food and drug administration
25 are not subject to the restrictions established in this section.

26 NEW SECTION. **Sec. 4.** (1) The department may adopt rules as
27 necessary for the purpose of implementing, administering, and
28 enforcing this chapter.

29 (2) (a) The department's determinations of chemicals that release
30 formaldehyde must be adopted by rule. The department must identify a
31 list of chemicals used in cosmetics that release formaldehyde that
32 may be subject to restriction under this chapter. In establishing
33 this list, the department should consider:

34 (i) Estimated prevalence of use;

35 (ii) Potential to reduce disproportionate exposure; and

36 (iii) Other information deemed relevant by the department.

37 (b) The department may identify for restriction an initial set of
38 no more than 10 of the listed chemicals used in cosmetics that

1 release formaldehyde. This restriction must take effect on or after
2 January 1, 2026.

3 (c) Restrictions on the remaining listed chemicals used in
4 cosmetics that release formaldehyde may take effect on or after
5 January 1, 2027.

6 (d) The department may, but is not required to, conduct
7 additional rule-making activities after January 1, 2027, including
8 developing supplemental lists of chemicals that release formaldehyde
9 and adopting additional restrictions.

10 (3) Prior to commencing rule making under this chapter, the
11 department must engage with relevant stakeholders to ensure the
12 availability of adequate expertise and input. The stakeholder process
13 should include, but is not limited to, soliciting input from
14 representatives from independent cosmetologists, small businesses
15 offering cosmetology services, such as beauty salons, and small
16 manufacturers of cosmetic products. The input received from
17 stakeholders must be considered when adopting rules.

18 (4) A manufacturer that produces a product or imports or
19 domestically distributes a product in or into Washington in violation
20 of a requirement of this chapter, a rule adopted under this chapter,
21 or an order issued under this chapter, is subject to a civil penalty
22 not to exceed \$5,000 for each violation in the case of a first
23 offense. Manufacturers who are repeat violators are subject to a
24 civil penalty not to exceed \$10,000 for each repeat offense.

25 (5) Any penalty provided for in this section, and any order
26 issued by the department under this chapter, may be appealed to the
27 pollution control hearings board.

28 (6) All penalties collected under this chapter shall be deposited
29 in the model toxics control operating account created in RCW
30 70A.305.180.

31 **Sec. 5.** RCW 43.21B.110 and 2022 c 180 s 812 are each amended to
32 read as follows:

33 (1) The hearings board shall only have jurisdiction to hear and
34 decide appeals from the following decisions of the department, the
35 director, local conservation districts, the air pollution control
36 boards or authorities as established pursuant to chapter 70A.15 RCW,
37 local health departments, the department of natural resources, the
38 department of fish and wildlife, the parks and recreation commission,
39 and authorized public entities described in chapter 79.100 RCW:

1 (a) Civil penalties imposed pursuant to RCW 18.104.155,
2 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
3 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
4 70A.65.200, 70A.455.090, section 3 of this act, 76.09.170, 77.55.440,
5 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
6 90.56.330, and 90.64.102.

7 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
8 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
9 70A.245.020, 70A.65.200, section 3 of this act, 86.16.020, 88.46.070,
10 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

11 (c) Except as provided in RCW 90.03.210(2), the issuance,
12 modification, or termination of any permit, certificate, or license
13 by the department or any air authority in the exercise of its
14 jurisdiction, including the issuance or termination of a waste
15 disposal permit, the denial of an application for a waste disposal
16 permit, the modification of the conditions or the terms of a waste
17 disposal permit, or a decision to approve or deny an application for
18 a solid waste permit exemption under RCW 70A.205.260.

19 (d) Decisions of local health departments regarding the grant or
20 denial of solid waste permits pursuant to chapter 70A.205 RCW.

21 (e) Decisions of local health departments regarding the issuance
22 and enforcement of permits to use or dispose of biosolids under RCW
23 70A.226.090.

24 (f) Decisions of the department regarding waste-derived
25 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
26 decisions of the department regarding waste-derived soil amendments
27 under RCW 70A.205.145.

28 (g) Decisions of local conservation districts related to the
29 denial of approval or denial of certification of a dairy nutrient
30 management plan; conditions contained in a plan; application of any
31 dairy nutrient management practices, standards, methods, and
32 technologies to a particular dairy farm; and failure to adhere to the
33 plan review and approval timelines in RCW 90.64.026.

34 (h) Any other decision by the department or an air authority
35 which pursuant to law must be decided as an adjudicative proceeding
36 under chapter 34.05 RCW.

37 (i) Decisions of the department of natural resources, the
38 department of fish and wildlife, and the department that are
39 reviewable under chapter 76.09 RCW, and the department of natural

1 resources' appeals of county, city, or town objections under RCW
2 76.09.050(7).

3 (j) Forest health hazard orders issued by the commissioner of
4 public lands under RCW 76.06.180.

5 (k) Decisions of the department of fish and wildlife to issue,
6 deny, condition, or modify a hydraulic project approval permit under
7 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
8 comply, to issue a civil penalty, or to issue a notice of intent to
9 disapprove applications.

10 (l) Decisions of the department of natural resources that are
11 reviewable under RCW 78.44.270.

12 (m) Decisions of an authorized public entity under RCW 79.100.010
13 to take temporary possession or custody of a vessel or to contest the
14 amount of reimbursement owed that are reviewable by the hearings
15 board under RCW 79.100.120.

16 (n) Decisions of the department of ecology that are appealable
17 under RCW 70A.245.020 to set recycled minimum postconsumer content
18 for covered products or to temporarily exclude types of covered
19 products in plastic containers from minimum postconsumer recycled
20 content requirements.

21 (o) Orders by the department of ecology under RCW 70A.455.080.

22 (2) The following hearings shall not be conducted by the hearings
23 board:

24 (a) Hearings required by law to be conducted by the shorelines
25 hearings board pursuant to chapter 90.58 RCW.

26 (b) Hearings conducted by the department pursuant to RCW
27 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
28 70A.15.3110, and 90.44.180.

29 (c) Appeals of decisions by the department under RCW 90.03.110
30 and 90.44.220.

31 (d) Hearings conducted by the department to adopt, modify, or
32 repeal rules.

33 (3) Review of rules and regulations adopted by the hearings board
34 shall be subject to review in accordance with the provisions of the
35 administrative procedure act, chapter 34.05 RCW.

36 **Sec. 6.** RCW 43.21B.300 and 2022 c 180 s 813 are each amended to
37 read as follows:

38 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
39 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050,

1 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, section 3 of this
2 act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
3 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by
4 a notice in writing, either by certified mail with return receipt
5 requested or by personal service, to the person incurring the penalty
6 from the department or the local air authority, describing the
7 violation with reasonable particularity. For penalties issued by
8 local air authorities, within 30 days after the notice is received,
9 the person incurring the penalty may apply in writing to the
10 authority for the remission or mitigation of the penalty. Upon
11 receipt of the application, the authority may remit or mitigate the
12 penalty upon whatever terms the authority in its discretion deems
13 proper. The authority may ascertain the facts regarding all such
14 applications in such reasonable manner and under such rules as it may
15 deem proper and shall remit or mitigate the penalty only upon a
16 demonstration of extraordinary circumstances such as the presence of
17 information or factors not considered in setting the original
18 penalty.

19 (2) Any penalty imposed under this section may be appealed to the
20 pollution control hearings board in accordance with this chapter if
21 the appeal is filed with the hearings board and served on the
22 department or authority 30 days after the date of receipt by the
23 person penalized of the notice imposing the penalty or 30 days after
24 the date of receipt of the notice of disposition by a local air
25 authority of the application for relief from penalty.

26 (3) A penalty shall become due and payable on the later of:

27 (a) Thirty days after receipt of the notice imposing the penalty;

28 (b) Thirty days after receipt of the notice of disposition by a
29 local air authority on application for relief from penalty, if such
30 an application is made; or

31 (c) Thirty days after receipt of the notice of decision of the
32 hearings board if the penalty is appealed.

33 (4) If the amount of any penalty is not paid to the department
34 within 30 days after it becomes due and payable, the attorney
35 general, upon request of the department, shall bring an action in the
36 name of the state of Washington in the superior court of Thurston
37 county, or of any county in which the violator does business, to
38 recover the penalty. If the amount of the penalty is not paid to the
39 authority within 30 days after it becomes due and payable, the
40 authority may bring an action to recover the penalty in the superior

1 court of the county of the authority's main office or of any county
2 in which the violator does business. In these actions, the procedures
3 and rules of evidence shall be the same as in an ordinary civil
4 action.

5 (5) All penalties recovered shall be paid into the state treasury
6 and credited to the general fund except those penalties imposed
7 pursuant to RCW 18.104.155, which shall be credited to the
8 reclamation account as provided in RCW 18.104.155(7), RCW
9 70A.15.3160, the disposition of which shall be governed by that
10 provision, RCW 70A.245.040 and 70A.245.050, which shall be credited
11 to the recycling enhancement account created in RCW 70A.245.100, RCW
12 70A.300.090 and section 3 of this act, which shall be credited to the
13 model toxics control operating account created in RCW 70A.305.180,
14 RCW 70A.65.200, which shall be credited to the climate investment
15 account created in RCW 70A.65.250, RCW 90.56.330, which shall be
16 credited to the coastal protection fund created by RCW 90.48.390, and
17 RCW 70A.355.070, which shall be credited to the underground storage
18 tank account created by RCW 70A.355.090.

19 NEW SECTION. **Sec. 7.** This chapter may be known and cited as the
20 toxic-free cosmetics act.

21 NEW SECTION. **Sec. 8.** Sections 1 through 4 and 7 of this act
22 constitute a new chapter in Title 70A RCW."

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By Committee on Ways & Means

ADOPTED 04/08/2023

23 On page 1, line 2 of the title, after "products;" strike the
24 remainder of the title and insert "amending RCW 43.21B.110 and
25 43.21B.300; adding a new chapter to Title 70A RCW; and prescribing
26 penalties."

EFFECT: Directs the department of ecology (ecology), by May 2024,
to implement an initiative to support independent cosmetologists and
small businesses that provide cosmetology services in efforts to
transition to using safer cosmetic products. Requires ecology's
determinations of chemicals that release formaldehyde to be adopted
by rule. Prior to commencing the rule making, directs ecology to
engage with relevant stakeholders to ensure the availability of
adequate expertise and input.

Requires the department of ecology (ecology) to identify a list of chemicals used in cosmetics that release formaldehyde that may be subject to restriction under the act. Sets forth factors for ecology to consider in establishing the list. Authorizes ecology to identify for restriction under the act an initial set of no more than 10 of the listed chemicals used in cosmetics that release formaldehyde and directs that the restriction take effect on or after January 1, 2026. Authorizes restrictions on the remaining listed chemicals that release formaldehyde to take effect on or after January 1, 2027. Authorizes ecology to conduct additional rule making after January 1, 2027, including developing supplemental lists of chemicals that release formaldehyde and adopting additional restrictions.

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