

SENATE BILL REPORT

SHB 1047

As of March 13, 2023

Title: An act relating to the use of toxic chemicals in cosmetic products.

Brief Description: Concerning the use of toxic chemicals in cosmetic products.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Mena, Ryu, Berry, Simmons, Duerr, Goodman, Bateman, Reed, Fitzgibbon, Ramel, Doglio, Orwall, Macri, Gregerson, Thai, Stonier, Santos, Riccelli and Ormsby).

Brief History: Passed House: 3/1/23, 55-41.

Committee Activity: Environment, Energy & Technology: 3/14/23.

Brief Summary of Bill

- Restricts the manufacture, sale, and distribution of cosmetic products containing certain chemicals or classes of chemicals, beginning January 1, 2025.
- Directs the Department of Ecology (Ecology) to perform a hazard assessment for chemicals in cosmetic products that can serve similar functions in cosmetic products to the restricted chemicals.
- Directs Ecology to implement an initiative to support small businesses that manufacture cosmetic products to obtain voluntary environmental health certifications.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Gregory Vogel (786-7413)

Background: Safer Products for Washington. In 2019, the Legislature established an administrative process for the regulation by the Department of Ecology (Ecology) of

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priority chemicals in priority consumer products. Under this process, certain chemicals were defined as priority chemicals, including perfluoroalkyl and polyfluoroalkyl substances (PFAS), polychlorinated biphenyls—PCBs, phthalates, organohalogen flame retardants and other flame retardants identified under the Children's Safe Products Act, and phenolic compounds. Ecology is also authorized to designate additional chemicals as priority chemicals every five years if they meet qualifying criteria, consistent with a schedule established in the 2019 law.

Every five years, according to a specified schedule, Ecology must also:

- identify priority consumer products that include priority chemicals, taking into consideration specified criteria; and
- determine regulatory actions for the priority chemicals in priority consumer products.

Regulatory actions may include a determination that no action is needed; may require manufacturers to provide notice of the use of a chemical; or may restrict or prohibit the manufacture, distribution, sale, or use of a priority chemical in a consumer product.

Ecology is required to make regulatory determinations for the initial round of statutorily designated priority chemicals and their associated priority consumer products by June 1, 2022, and must adopt rules to implement those regulatory determinations by June 1, 2023.

In its 2022 report, Ecology determined reporting requirements or restrictions for the use of the following priority chemicals in priority consumer products:

- PFAS in aftermarket stain- and water-resistant treatments, carpets and rugs, and leather and textile furnishings;
- ortho-phthalates in personal care products—fragrances—and vinyl flooring;
- flame retardants in electric and electronic products and recreational polyurethane foam; and
- phenolic compounds in laundry detergent, food and drink can linings, and thermal paper.

Cosmetics Regulation. Cosmetics marketed in the United States must be in compliance with the Federal Food, Drug, and Cosmetic Act (FDCA), the Fair Packaging and Labeling Act (FPLA), and regulations published under the authority of these laws. The FDCA prohibits the distribution of cosmetics which are adulterated or misbranded. Cosmetics must also comply with labeling regulations published by the Food and Drug Administration (FDA) under the authority of the FDCA and the FPLA.

Washington State has enacted restrictions on the adulteration and misbranding of cosmetic products under the state's Intrastate Commerce in Drugs and Cosmetics code (ICDC), in a manner that conforms with the FDCA and the FPLA. Under the ICDC, cosmetics are defined as articles intended to be applied to the human body for cleansing, beautifying, promoting attractiveness, or altering appearances, and articles intended for use as a component of articles applied to the human body for such purposes. Soap is excluded from

the definition of cosmetics.

Summary of Bill: Restrictions on Chemicals in Cosmetics. Beginning January 1, 2025, no person may manufacture, sell, or distribute in this state any cosmetic product that contains any of the following intentionally added chemicals or chemical classes:

- ortho-phthalates;
- PFAS;
- formaldehyde and chemicals determined by Ecology to release formaldehyde;
- methylene glycol;
- mercury and mercury compounds;
- triclosan;
- m-phenylenediamine and its salts; and
- o-phenylenediamine and its salts.

Beginning January 1, 2025, no person may manufacture, sell, or distribute in this state any cosmetic product that contains intentionally added lead or lead compounds, lead or lead compounds at one part per million or above, or as otherwise determined by Ecology through rule making.

Cosmetic products are defined in the same manner as cosmetics regulated under the ICDC, except that prescription drugs approved by the FDA are excluded. Restricted chemicals are restricted in cosmetics regardless of whether the product also contains drug ingredients, but any ingredients regulated as drugs by the FDA are not subject to the restrictions.

In-state retailers may exhaust their existing stock of restricted products through sales to the public until January 1, 2026.

Ecology may adopt rules to implement, administer, or enforce the restrictions. Manufacturers that produce a product or distribute the product in or into Washington that violate a requirement, rule, or order are subject to civil penalties up to \$5,000 per violation for a first offense, or \$10,000 per violation for each repeat offense. Penalties and orders issued by Ecology are appealable to the Pollution Control Hearings Board. Penalties are deposited in the Model Toxics Control Operating Account.

Hazard Assessment. By June 1, 2024, Ecology, in consultation with the Department of Health, must use existing information to identify and assess the hazards of chemicals or chemical classes that can provide the same or similar function in cosmetic products as the restricted chemicals or chemical classes and that can impact vulnerable populations.

Cosmetic Product Business Initiative. By May of 2024, Ecology must implement an initiative to support small businesses to obtain voluntary environmental health certifications implemented by the United States Environmental Protection Agency or other programs determined by Ecology to be designed to identify cosmetic products without identified hazards, consistent with processes used to identify safer alternatives under the Safer

Products for Washington Program. The initiative may include technical assistance, resources for chemical hazard assessments, and resources for reformulating products.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.