

SENATE BILL REPORT

SHB 1047

As Reported by Senate Committee On:
Environment, Energy & Technology, March 21, 2023
Ways & Means, April 4, 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, 3/21/23 [DPA-WM, DNP].

Ways & Means: 3/28/23, 4/04/23 [DPA, DNP, w/oRec].

Brief Summary of Amended 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 initiatives to support small businesses that manufacture cosmetic products to obtain voluntary environmental health certifications and to support independent cosmetologists and small businesses that provide cosmetology services in efforts to transition to using safer cosmetic products.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; Lovick, Trudeau and Wellman.

Minority Report: Do not pass.
Signed by Senators MacEwen, Ranking Member; Boehnke and Short.

Staff: Gregory Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.
Signed by Senators Wilson, L., Ranking Member, Operating; Schoesler, Ranking Member, Capital; Boehnke, Torres and Wagoner.

Minority Report: That it be referred without recommendation.
Signed by Senators Gildon, Assistant Ranking Member, Operating; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Braun and Muzzall.

Staff: Wendy Brown (786-7359)

Background: Safer Products for Washington. In 2019, the Legislature established an administrative process for the regulation by the Department of Ecology (Ecology) of 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 Amended 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. Ecology's determinations of chemicals that release formaldehyde must be adopted by rule, and a phased approach to rule making is provided. Prior to commencing rule making under the act, Ecology must engage with relevant stakeholders to ensure the availability of adequate expertise and input. The stakeholder process should include soliciting input from representatives from independent cosmetologists, small businesses offering cosmetology services, and small manufacturers of cosmetic products. The input received from stakeholders must be considered when adopting rules.

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 Initiatives. 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.

By May of 2024, Ecology must implement an initiative to support independent cosmetologists and small businesses that provide cosmetology services in efforts to

transition to using safer cosmetic products. The initiative may include technical assistance, resources for identifying safer cosmetic products, and resources for financial incentives to eligible participants to replace cosmetic products containing toxic chemicals, disposal programs, and the use of safer products.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Requires Ecology to identify a list of chemicals used in cosmetics that release formaldehyde that may be subject to restriction.
- Sets forth factors for Ecology to consider in establishing the list.
- Authorizes Ecology to identify for restriction an initial set of no more than ten 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.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Directs 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 rule making, directs Ecology to engage with relevant stakeholders to ensure the availability of adequate expertise and input.

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.

Staff Summary of Public Testimony on Substitute House Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: The chemicals we're talking about are things we know are bad and have been studied, including the negative health impacts from these products. We know there are safe alternatives on the market already. Some of the worst products are those that are marketed to people of color. A lot of companies are already doing this proactively and affordable

alternatives are already on the market.

The bill is an important public health measure to prevent the use of unnecessary toxic chemicals in cosmetic products associated with harmful health effects. Studies show women of color are disproportionately impacted by chemicals in cosmetic products. We are particularly concerned about formaldehyde releasing agents. Lead is also found in cosmetics, and there is no safe level for this chemical. It is possible to have cosmetics without toxics. We need the Legislature to act to make products safer.

PFAS contamination is an equity issue. Both state and federal governments can do more to help overburdened communities. Women of color are more vulnerable and have more exposure to these persistent and toxic chemicals, and are further impacted by cumulative effects in the environment.

We should be able to purchase and use products with great confidence and be assured that we are not using products with toxic agents. As a consumer, we would never knowingly purchase these products. Passing this bill lets communities know that the Legislature recognizes the danger in these chemicals. It is unconscionable that product manufacturers not required to disclose ingredients and not held to higher safety standards.

We put the onus on the consumer and they're not able to know what they're exposed to because the ingredients are not labeled.

Toxics in cosmetics creates gender equities and disproportionate cultural impacts. Eyeliners used by immigrant and refugee populations cause disproportionate exposure to lead. Products are also washed off, but treatment plants are not able to filter these chemicals that end up in the environment. Costs are borne by the public, when it should be on the producers. Chemicals should be removed before people are exposed and the public is forced to bear the costs.

CON: We applaud efforts on cosmetics modernization to increase federal regulatory oversight. The law was passed late in 2022 and we ask that you pause on passing this until implementation begins. This bill does not follow best available science or practices in the EU. We oppose inclusion of formaldehyde releasing agents used to preserve the safety and integrity of products. FRAs are considered widely safe and effective against contamination from biological contaminants. If products are not preserved, they can become moldy with odors.

Businesses are concerned about the inclusion of FRAs, and the safety issues needed to keep these in products as preservatives. We are also concerned about the broad inclusion of the aerosol propellant in the bill.

Given the broad definition of PFAS, hydrofluoroolefins would be banned. Unlike other PFAS chemistries, these have been thoroughly reviewed by EPA as safe, with low global

warming potential. We would like to see these excluded if approved by EPA, with the exclusion set to expire if they ever lose EPA approval.

OTHER: Cosmetics require extra scrutiny because they are put directly on bodies and when washed off go into the environment. In a recent study, chemicals were found in many of the products tested. The presence of lead was particularly concerning in products. Formaldehyde was present as either intentionally added or from a chemical that releases it over time. When the releasers are used, people are exposed to formaldehyde from the product. The bill furthers equity and environmental justice and toxic reduction work.

The Department of Health supports the concept of this bill. The bill is not just about makeup. Cosmetics include personal care products that we all use. They can contain harmful chemicals and we can be exposed through skin, ingestion, and breathing in the chemicals. By banning the chemicals, it ensures safer products in Washington and reduces exposure to users. There is no reason for lead to be present in cosmetics. We are also concerned about exposure to formaldehyde. This is an opportunity to address the environmental justice issue of disproportionate exposure in products marketed to women of color.

We are supportive of underlying goal. Cosmetologists recognize the need to balance public health with the needs of commerce. We support banning the majority of the chemicals listed, but there is not enough research to support banning FRAs, which has not yet been done in the EU or in California. There needs to be more research done on FRAs. We would like more study on the impacts to the global supply chain and small businesses.

Persons Testifying (Environment, Energy & Technology): PRO: Representative Sharlett Mena, Prime Sponsor; Megan Liu, Toxic-Free Future; Yuwa Vosper, WE ACT for Environmental Justice; Brandi Hyatt; Ami Zota; Merideth Pedack; Jen Lee, Beautycounter; Ashley Evans, Hazardous Waste Management Program in King County; Marissa Doherty.

CON: Kelsey Johnson, Personal Care Products Council; Peter Godlewski, Association of Washington Business; Grant Nelson, American Chemistry Council.

OTHER: D'Arcy Harrison, COSMETOLOGISTS OF WASHINGTON UNITED; Holly Davies, Washington State Department of Health; Marissa Smith, Washington State Department of Ecology; Sheela Sathyanarayana, University of Washington/Seattle Children's Research Institute.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony on Bill as Amended by Environment, Energy & Technology (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: The bill builds on Washington State's leadership in preventing toxic chemical exposures by restricting harmful chemicals in cosmetics and other types of

personal care products. A very similar bill passed the Senate last year, but this bill includes a more protective lead limit, some important incentives for small businesses, and technical assistance for cosmetologists and others to be able to use safer products. Women of color are disproportionately affected by harmful chemicals in cosmetics and personal care products, and it is critical that we adopt measures that protect the more vulnerable populations. This bill is an important investment in prevention.

From the perspective of a municipally-owned utility, the chemicals addressed in the bill have very short lives as products, and many are washed off after one day going down the drain. Wastewater treatment facilities do not have the ability to remove many of these chemicals so they are discharged into our environment, negatively impacting our waterbodies and wildlife. As a public, rate-payer utility, we are put in a difficult and expensive position of dealing with wastewater contamination that is originating in essentially every home. This is why an upstream solution is so important.

CON: We are appreciative of an upcoming amendment that will clarify the rule-making process around an important preservative and give our industry the certainty it needs to comply with this policy's goal. We hope to see in section 4(1) more definitive language that the prescribed rule-making shall be adopted by Ecology to help our industry participate in the process and comply accordingly. Regarding our concern with the lead, we are discussing including 'intentionally added' language because lead, mercury, and formaldehyde are never intentionally added to our products. We are hoping this language will strengthen that fact. We also request that the implementation date be moved from January 1, 2025, to January 1, 2027.

We appreciate the work that has been done on the amendment coming forward. However, we have concerns with one part of the amendment that creates a separate rule making process for managing the products within the bill. We think those would be better suited within the Safer Products for Washington process. That program already exists in Washington, and we just finished the first 5-year process. Ecology is starting up the second phase of that process, and it is timely to insert new chemicals in.

Persons Testifying (Ways & Means): PRO: Nick Federici, Toxic Free Future; Maggie Yuse, Seattle Public Utilities.

CON: Nora Palattao Burnes, Personal Care Products Council; Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.