

SHB 1047 - S COMM AMD

By Committee on Environment, Energy & Technology

NOT CONSIDERED 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) The department's determinations of chemicals that release
30 formaldehyde must be adopted by rule.

31 (3) Prior to commencing rule making under this chapter, the
32 department must engage with relevant stakeholders to ensure the
33 availability of adequate expertise and input. The stakeholder process
34 should include, but is not limited to, soliciting input from
35 representatives from independent cosmetologists, small businesses
36 offering cosmetology services, such as beauty salons, and small
37 manufacturers of cosmetic products. The input received from
38 stakeholders must be considered when adopting rules.

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

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

11 (6) All penalties collected under this chapter shall be deposited
12 in the model toxics control operating account created in RCW
13 70A.305.180.

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

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

23 (a) Civil penalties imposed pursuant to RCW 18.104.155,
24 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
25 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
26 70A.65.200, 70A.455.090, section 3 of this act, 76.09.170, 77.55.440,
27 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
28 90.56.330, and 90.64.102.

29 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
30 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
31 70A.245.020, 70A.65.200, section 3 of this act, 86.16.020, 88.46.070,
32 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

33 (c) Except as provided in RCW 90.03.210(2), the issuance,
34 modification, or termination of any permit, certificate, or license
35 by the department or any air authority in the exercise of its
36 jurisdiction, including the issuance or termination of a waste
37 disposal permit, the denial of an application for a waste disposal
38 permit, the modification of the conditions or the terms of a waste

1 disposal permit, or a decision to approve or deny an application for
2 a solid waste permit exemption under RCW 70A.205.260.

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

5 (e) Decisions of local health departments regarding the issuance
6 and enforcement of permits to use or dispose of biosolids under RCW
7 70A.226.090.

8 (f) Decisions of the department regarding waste-derived
9 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
10 decisions of the department regarding waste-derived soil amendments
11 under RCW 70A.205.145.

12 (g) Decisions of local conservation districts related to the
13 denial of approval or denial of certification of a dairy nutrient
14 management plan; conditions contained in a plan; application of any
15 dairy nutrient management practices, standards, methods, and
16 technologies to a particular dairy farm; and failure to adhere to the
17 plan review and approval timelines in RCW 90.64.026.

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

21 (i) Decisions of the department of natural resources, the
22 department of fish and wildlife, and the department that are
23 reviewable under chapter 76.09 RCW, and the department of natural
24 resources' appeals of county, city, or town objections under RCW
25 76.09.050(7).

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

28 (k) Decisions of the department of fish and wildlife to issue,
29 deny, condition, or modify a hydraulic project approval permit under
30 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
31 comply, to issue a civil penalty, or to issue a notice of intent to
32 disapprove applications.

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

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

39 (n) Decisions of the department of ecology that are appealable
40 under RCW 70A.245.020 to set recycled minimum postconsumer content

1 for covered products or to temporarily exclude types of covered
2 products in plastic containers from minimum postconsumer recycled
3 content requirements.

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

5 (2) The following hearings shall not be conducted by the hearings
6 board:

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

9 (b) Hearings conducted by the department pursuant to RCW
10 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
11 70A.15.3110, and 90.44.180.

12 (c) Appeals of decisions by the department under RCW 90.03.110
13 and 90.44.220.

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

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

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

21 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
22 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050,
23 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, section 3 of this
24 act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
25 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by
26 a notice in writing, either by certified mail with return receipt
27 requested or by personal service, to the person incurring the penalty
28 from the department or the local air authority, describing the
29 violation with reasonable particularity. For penalties issued by
30 local air authorities, within 30 days after the notice is received,
31 the person incurring the penalty may apply in writing to the
32 authority for the remission or mitigation of the penalty. Upon
33 receipt of the application, the authority may remit or mitigate the
34 penalty upon whatever terms the authority in its discretion deems
35 proper. The authority may ascertain the facts regarding all such
36 applications in such reasonable manner and under such rules as it may
37 deem proper and shall remit or mitigate the penalty only upon a
38 demonstration of extraordinary circumstances such as the presence of

1 information or factors not considered in setting the original
2 penalty.

3 (2) Any penalty imposed under this section may be appealed to the
4 pollution control hearings board in accordance with this chapter if
5 the appeal is filed with the hearings board and served on the
6 department or authority 30 days after the date of receipt by the
7 person penalized of the notice imposing the penalty or 30 days after
8 the date of receipt of the notice of disposition by a local air
9 authority of the application for relief from penalty.

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

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

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

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

17 (4) If the amount of any penalty is not paid to the department
18 within 30 days after it becomes due and payable, the attorney
19 general, upon request of the department, shall bring an action in the
20 name of the state of Washington in the superior court of Thurston
21 county, or of any county in which the violator does business, to
22 recover the penalty. If the amount of the penalty is not paid to the
23 authority within 30 days after it becomes due and payable, the
24 authority may bring an action to recover the penalty in the superior
25 court of the county of the authority's main office or of any county
26 in which the violator does business. In these actions, the procedures
27 and rules of evidence shall be the same as in an ordinary civil
28 action.

29 (5) All penalties recovered shall be paid into the state treasury
30 and credited to the general fund except those penalties imposed
31 pursuant to RCW 18.104.155, which shall be credited to the
32 reclamation account as provided in RCW 18.104.155(7), RCW
33 70A.15.3160, the disposition of which shall be governed by that
34 provision, RCW 70A.245.040 and 70A.245.050, which shall be credited
35 to the recycling enhancement account created in RCW 70A.245.100, RCW
36 70A.300.090 and section 3 of this act, which shall be credited to the
37 model toxics control operating account created in RCW 70A.305.180,
38 RCW 70A.65.200, which shall be credited to the climate investment
39 account created in RCW 70A.65.250, RCW 90.56.330, which shall be
40 credited to the coastal protection fund created by RCW 90.48.390, and

1 RCW 70A.355.070, which shall be credited to the underground storage
2 tank account created by RCW 70A.355.090.

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

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

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NOT CONSIDERED 04/08/2023

7 On page 1, beginning on line 2 of the title, after "products;"
8 strike the remainder of the title and insert "amending RCW 43.21B.110
9 and 43.21B.300; adding a new chapter to Title 70A RCW; and
10 prescribing 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.

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