
Environment & Energy Committee

HB 1047

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

Sponsors: Representatives Mena, Ryu, Berry, Simmons, Duerr, Goodman, Bateman, Reed, Fitzgibbon, Ramel, Doglio, Orwall, Macri, Gregerson, Thai, Stonier, Santos, Riccelli and Ormsby.

Brief Summary of Bill

- Restricts the manufacture, sale, and distribution of cosmetic products containing nine 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.

Hearing Date: 1/9/23

Staff: Jacob Lipson (786-7196).

Background:

Safer Products for Washington.

As a result of legislation enacted in 2019, the Department of Ecology (Ecology) implements an administrative process that can result in the regulation of priority chemicals in priority consumer products. The program that Ecology implements in consultation with the Department of Health (DOH) to carry out this process is known as the Safer Products for Washington Program. Under

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.

this process, certain chemicals were defined as priority chemicals, including perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals, polychlorinated biphenyls, phthalates, organ halogen 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 the chemicals meet qualifying criteria, consistent with a schedule established in the 2019 law.

Under the schedule for Ecology's regulatory activities to implement Safer Products for Washington, Ecology must:

- identify priority consumer products that include priority chemicals, taking into consideration specified criteria;
- determine regulatory actions for the priority chemicals in priority consumer products. Regulatory actions may include: a determination that no action is needed; require manufacturers to provide notice of the use of a chemical; or restrict or prohibit the manufacture, distribution, sale, or use of a priority chemical in a consumer product; and
- adopt rules to implement regulatory determinations.

Cosmetics Regulation.

Cosmetics marketed in the United States must be in compliance with the provisions of 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.

The State of Washington 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.

Pollution Control Hearings Board.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review. Penalties appealable to the PCHB must generally be imposed following standard general protocols, including that the penalty must be accompanied by a notice in writing describing the violation, and specifying when the penalty must be appealed or else becomes due and payable. With some exceptions, penalties that are appealable to the PCHB are credited to the State General Fund.

Summary of Bill:

Restrictions on Chemicals in Cosmetics.

Beginning January 1, 2025, the manufacture, distribution, and sale of cosmetic products with nine types of chemicals or chemical classes are prohibited. Cosmetic products are defined in the same manner as cosmetics regulated under the ICDC, except that prescription drugs approved by the FDA are excluded from the regulated cosmetic products. Cosmetic products may not include the following eight categories of chemicals or chemical classes when intentionally added to the product:

- ortho-phthalates;
- PFAS substances;
- 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.

Lead or lead compounds are also similarly restricted in cosmetic products, at a level of one part per million unless Ecology determines otherwise through rulemaking.

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 restrictions on chemicals in cosmetic products. Manufacturers violating a requirement, rule, or order are subject to civil penalties of 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 PCHB. Penalties are deposited in the Model Toxics Control Operating Account.

Hazard Assessment.

Ecology must use existing information to identify and assess the hazards of chemicals or chemical classes that can provide a similar function in cosmetic products to the nine chemical classes that are prohibited in cosmetic products and that can impact vulnerable populations. The hazard identification and assessment must be performed in consultation with the DOH, and be completed and made publicly available by June 1, 2024.

Cosmetic Product Business Initiative.

By May of 2024, Ecology must implement an initiative to support small businesses with 50 or fewer employees to obtain voluntary environmental health certifications. The certifications targeted by the program are certifications for cosmetics that are either implemented by the United States Environmental Protection Agency or other programs that are determined by Ecology to be designed to identify cosmetic products without identified hazards, in a manner consistent with the safer alternative identification process used in the Safer Products for Washington program. The initiative may include technical assistance, resources for hazard assessments, and resources for reformulating products.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.