

FINAL BILL REPORT

SHB 1047

C 455 L 23
Synopsis as Enacted

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).

House Committee on Environment & Energy
House Committee on Appropriations
Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means

Background:

Safer Products for Washington.

Since 2019 the Department of Ecology (Ecology) has implemented an administrative process that includes the authority to regulate 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. For purposes of this process, certain chemicals were statutorily 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 specified schedule.

To implement Safer Products for Washington, Ecology must take the following actions, in sequential order:

- identify priority chemicals;
- identify priority consumer products that include priority chemicals, taking into consideration specified criteria;

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- determine regulatory actions for the priority chemicals in priority consumer products. Regulatory actions may include:
 - a determination that no action is needed;
 - requiring manufacturers to provide notice of the use of a chemical; or
 - restricting or prohibiting 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.

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. With some exceptions, penalties that are appealable to the PCHB are credited to the State General Fund.

Summary:

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. Restricted classes of chemicals are restricted in a product, but ingredients that are federally regulated as drugs are not restricted. Cosmetic products may not include the following eight categories of chemicals or chemical classes when intentionally added to the product:

- ortho-phthalates;

- perfluoroalkyl and polyfluoroalkyl 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.

Ecology's determinations of chemicals that release formaldehyde must be adopted by rule, and Ecology must engage with stakeholders prior to commencing this rulemaking. Ecology must identify an initial set of up to 10 of formaldehyde-releasing chemicals to be restricted by January 1, 2026, and may identify other listed formaldehyde-releasing chemicals to be restricted no earlier than January 1, 2027.

Lead or lead compounds are also similarly restricted in cosmetic products, both when intentionally added to a product and 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 that produce a product or distribute a product in or into Washington that violates 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 and Cosmetologist Initiatives.

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.

By May of 2024 Ecology must also implement an initiative to support independent cosmetologists and small cosmetology service businesses 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 with the use of safer products.

Votes on Final Passage:

House	55	41	
Senate	28	20	(Senate amended)
House	56	40	(House concurred)

Effective: July 23, 2023