

HOUSE BILL REPORT

SHB 1047

As Amended by the Senate

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:

Committee Activity:

Environment & Energy: 1/9/23, 1/26/23 [DPS];
Appropriations: 2/6/23, 2/9/23 [DPS(ENVI)].

Floor Activity:

Passed House: 3/1/23, 55-41.
Senate Amended.
Passed Senate: 4/8/23, 28-20.

Brief Summary of Substitute 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.

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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Doglio, Chair; Mena, Vice Chair; Berry, Duerr, Fey, Lekanoff, Ramel, Slatter and Street.

Minority Report: Without recommendation. Signed by 6 members: Representatives Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Abbarno, Barnard, Couture and Goehner.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Environment & Energy be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Hansen, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Without recommendation. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Harris, Rude, Sandlin, Schmick and Steele.

Staff: Dan Jones (786-7118).

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 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;
 - 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.

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 Substitute 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. Restricted classes of chemicals are restricted in a product, but drug ingredients that are federally

regulated 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.

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 the 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 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.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- requires the Department of Ecology (Ecology) to implement an initiative by May of 2024 to support independent cosmetologists and small cosmetology businesses to transition to using safer cosmetic products (this initiative is in addition to a parallel initiative for manufacturers of cosmetic products);
- requires Ecology to identify, by rule, any prohibited chemicals that release formaldehyde, and to engage with stakeholders prior to commencing this rulemaking; and
- authorizes Ecology to identify an initial set of up to 10 of formaldehyde-releasing chemicals to be restricted by January 1, 2026, and authorizes other listed formaldehyde-releasing chemicals to be restricted no earlier than January 1, 2027.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Environment & Energy):

(In support) The chemicals restricted in cosmetics in this bill are already restricted in many other regulatory contexts in other products, and are widely known to be harmful. The aggressive marketing of certain types of cosmetics to women of color lead to disproportionate public health burdens from the chemicals in those products. Based on recent product testing, formaldehyde in hair straighteners and lead in mascara and eyeliners are two of the most concerning chemicals in products that are used particularly extensively by women of color, including immigrant communities. PFAS chemicals are also widely used in cosmetics products. Cosmetic products can be made without harmful chemicals, and many companies already do so.

(Opposed) The bill should be enforced at the manufacturer level, rather than on retailers. The bill should exempt nonprescription drugs regulated by the FDA, in addition to prescription drugs. Cosmetic manufacturers were able to support a similar recent California law that had a few key differences from this proposal, including that it did not restrict formaldehyde releasing agents.

(Other) The Departments of Ecology and Health have a program to reduce toxic chemicals, and are in the process of restricting many of the chemicals restricted by this bill in other products. In addition to public health risks, cosmetic products with harmful chemicals are often applied daily, and washed off or otherwise end up in water bodies and the environment. Lead, which is often found in lipstick and mascara, is harmful to brain development. Formaldehyde is found in hair straightener, and can cause uterine and other cancers. This proposal would reduce disproportionate health exposures, while helping

support clear labeling requirements that will inform consumer choice of cosmetics without harmful chemicals. The agencies support the concept of this bill, but funding to implement this bill is not in the governor's budget.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill builds on Washington's leadership on preventing exposure to chemicals such as perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals, lead, and formaldehyde. The bill helps keep toxic chemicals off of faces and out of the waste stream and Puget Sound, where it affects marine life. There are costs to taxpayers due to PFAS, and we shouldn't see it in people's wells, and shouldn't have people putting it on their faces. Many products containing these chemicals are specifically marketed to women of color. Allowing toxic chemicals in cosmetics causes gender inequity. High levels of lead have been found in some cosmetics. The products containing these chemicals have short lives and get into salmon and people.

(Opposed) This policy has been under negotiation for two years, but still has work to go. Industry has compromised, and wants to keep working on the bill. The funding needed for this bill was not included in the Governor's budget, and would cause a deficit in Model Toxics Control Act funding. There are concerns about the requirements related to formaldehyde-releasing agents. The Department of Ecology already addresses some of these chemicals through the Safer Products Program.

Persons Testifying (Environment & Energy): (In support) Representative Sharlett Mena, prime sponsor; Ann Murphy, League of Women Voters of Washington; Megan Liu, Nick Federici, and Erika Schreder, Toxic-Free Future; Yuwa Vosper, We ACT for Environmental Justice; Ashley Evans, King County Hazardous Waste Management Program; and Shirlee Tann, King County Health.

(Opposed) Nora Palattao Burnes, Personal Care Products Council; Peter Godlewski, Association of Washington Business; and Carlos Gutierrez, Consumer Healthcare Products Association.

(Other) Marissa Smith, Washington State Department of Ecology; and Holly Davies, Washington State Department of Health.

Persons Testifying (Appropriations): (In support) Nick Federici, Toxic Free Future; and Ashley Evans, Hazardous Waste Management Program.

(Opposed) Nora Palattao Burnes, Personal Care Products Council; and Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.