

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1047

Chapter 455, Laws of 2023

68th Legislature
2023 Regular Session

COSMETIC PRODUCTS—TOXIC CHEMICALS

EFFECTIVE DATE: July 23, 2023

Passed by the House April 14, 2023
Yeas 56 Nays 40

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 8, 2023
Yeas 28 Nays 20

DENNY HECK

President of the Senate

Approved May 15, 2023 2:51 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1047** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 16, 2023

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1047

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House 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)

READ FIRST TIME 01/27/23.

1 AN ACT Relating to the use of toxic chemicals in cosmetic
2 products; amending RCW 43.21B.110 and 43.21B.300; adding a new
3 chapter to Title 70A RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that certain
6 chemicals used in cosmetic products are linked to harmful impacts on
7 health, such as cancer, birth defects, damage to the reproductive
8 system, organ system toxicity, and endocrine disruption. Many of
9 these chemicals have been identified by the state of Washington as
10 high priority chemicals of concern.

11 (2) In order to ensure the safety of cosmetic products and
12 protect Washington residents from toxic exposures, the legislature
13 intends to prohibit use of toxic chemicals found in cosmetic and
14 personal care products and join other jurisdictions in creating a
15 safer global standard for cosmetic products and bringing more
16 sustainable, safer ingredients to the marketplace.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

1 (1) "Cosmetic product" has the same meaning as the term
2 "cosmetic" as defined in RCW 69.04.011.

3 (2) "Department" means the department of ecology.

4 (3) "Manufacturer" has the same meaning as defined in RCW
5 70A.350.010.

6 (4) "Ortho-phthalates" means esters of ortho-phthalic acid.

7 (5) "Perfluoroalkyl and polyfluoroalkyl substances" has the same
8 meaning as defined in RCW 70A.350.010.

9 (6) "Small business" has the same meaning as defined in RCW
10 70A.500.020.

11 (7) "Vulnerable populations" has the same meaning as defined in
12 RCW 70A.02.010.

13 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (3)
14 of this section, beginning January 1, 2025, no person may
15 manufacture, knowingly sell, offer for sale, distribute for sale, or
16 distribute for use in this state any cosmetic product that contains
17 any of the following intentionally added chemicals or chemical
18 classes:

19 (a) Ortho-phthalates;

20 (b) Perfluoroalkyl and polyfluoroalkyl substances;

21 (c) Formaldehyde (CAS 50-00-0) and chemicals determined by the
22 department to release formaldehyde;

23 (d) Methylene glycol (CAS 463-57-0);

24 (e) Mercury and mercury compounds (CAS 7439-97-6);

25 (f) Triclosan (CAS 3380-34-5);

26 (g) m-phenylenediamine and its salts (CAS 108-45-2); and

27 (h) o-phenylenediamine and its salts (CAS 95-54-5).

28 (2) Except as provided in subsection (3) of this section,
29 beginning January 1, 2025, no person may manufacture, knowingly sell,
30 offer for sale, distribute for sale, or distribute for use in this
31 state any cosmetic product that contains intentionally added lead or
32 lead compounds (CAS 7439-92-1), lead or lead compounds at one part
33 per million (ppm) or above, or as otherwise determined by the
34 department through rule making.

35 (3) An in-state retailer in possession of cosmetic products on
36 the date that restrictions on the sale of the products takes effect
37 under this section may exhaust its existing stock through sales to
38 the public until January 1, 2026.

1 (4) By June 1, 2024, the department, in consultation with the
2 department of health, must use existing information to identify and
3 assess the hazards of chemicals or chemical classes that can provide
4 the same or similar function in cosmetic products as the chemicals or
5 chemical classes listed in subsection (1) of this section and that
6 can impact vulnerable populations. The department must make the
7 information publicly available.

8 (5) (a) By May 2024, the department shall implement an initiative
9 to support small businesses that manufacture cosmetic products in
10 efforts to obtain voluntary environmental health certifications for
11 cosmetics implemented by the United States environmental protection
12 agency or other programs, as determined by the department, that are
13 designed to identify cosmetic products that do not contain identified
14 hazards consistent with processes used to identify safer alternatives
15 under chapter 70A.350 RCW.

16 (b) The initiative may include, but is not limited to, providing:

- 17 (i) Technical assistance and support;
- 18 (ii) Resources for chemical hazard assessments; and
- 19 (iii) Resources for reformulating products.

20 (6) (a) By May 2024, the department shall implement an initiative
21 to support independent cosmetologists and small businesses that
22 provide cosmetology services, such as beauty salons, in efforts to
23 transition to using safer cosmetic products.

24 (b) The initiative may include, but is not limited to, providing:

- 25 (i) Technical assistance and support;
- 26 (ii) Resources for identifying safer cosmetic products; and
- 27 (iii) Resources for financial incentives to eligible participants
28 to replace cosmetic products containing toxic chemicals, disposal
29 programs, and the use of safer products.

30 (7) (a) For the purposes of this section, cosmetic products do not
31 include prescription drugs approved by the United States food and
32 drug administration.

33 (b) The chemicals in subsection (1) of this section are
34 restricted in cosmetics regardless of whether the product also
35 contains drug ingredients regulated by the United States food and
36 drug administration. For purposes of this section, ingredients
37 regulated as drugs by the United States food and drug administration
38 are not subject to the restrictions established in this section.

1 NEW SECTION. **Sec. 4.** (1) The department may adopt rules as
2 necessary for the purpose of implementing, administering, and
3 enforcing this chapter.

4 (2) (a) The department's determinations of chemicals that release
5 formaldehyde must be adopted by rule. The department must identify a
6 list of chemicals used in cosmetics that release formaldehyde that
7 may be subject to restriction under this chapter. In establishing
8 this list, the department should consider:

- 9 (i) Estimated prevalence of use;
10 (ii) Potential to reduce disproportionate exposure; and
11 (iii) Other information deemed relevant by the department.

12 (b) The department may identify for restriction an initial set of
13 no more than 10 of the listed chemicals used in cosmetics that
14 release formaldehyde. This restriction must take effect on or after
15 January 1, 2026.

16 (c) Restrictions on the remaining listed chemicals used in
17 cosmetics that release formaldehyde may take effect on or after
18 January 1, 2027.

19 (d) The department may, but is not required to, conduct
20 additional rule-making activities after January 1, 2027, including
21 developing supplemental lists of chemicals that release formaldehyde
22 and adopting additional restrictions.

23 (3) Prior to commencing rule making under this chapter, the
24 department must engage with relevant stakeholders to ensure the
25 availability of adequate expertise and input. The stakeholder process
26 should include, but is not limited to, soliciting input from
27 representatives from independent cosmetologists, small businesses
28 offering cosmetology services, such as beauty salons, and small
29 manufacturers of cosmetic products. The input received from
30 stakeholders must be considered when adopting rules.

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

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

1 (6) All penalties collected under this chapter shall be deposited
2 in the model toxics control operating account created in RCW
3 70A.305.180.

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

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

13 (a) Civil penalties imposed pursuant to RCW 18.104.155,
14 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
15 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
16 70A.65.200, 70A.455.090, section 3 of this act, 76.09.170, 77.55.440,
17 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
18 90.56.330, and 90.64.102.

19 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
20 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
21 70A.245.020, 70A.65.200, section 3 of this act, 86.16.020, 88.46.070,
22 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

23 (c) Except as provided in RCW 90.03.210(2), the issuance,
24 modification, or termination of any permit, certificate, or license
25 by the department or any air authority in the exercise of its
26 jurisdiction, including the issuance or termination of a waste
27 disposal permit, the denial of an application for a waste disposal
28 permit, the modification of the conditions or the terms of a waste
29 disposal permit, or a decision to approve or deny an application for
30 a solid waste permit exemption under RCW 70A.205.260.

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

33 (e) Decisions of local health departments regarding the issuance
34 and enforcement of permits to use or dispose of biosolids under RCW
35 70A.226.090.

36 (f) Decisions of the department regarding waste-derived
37 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
38 decisions of the department regarding waste-derived soil amendments
39 under RCW 70A.205.145.

1 (g) Decisions of local conservation districts related to the
2 denial of approval or denial of certification of a dairy nutrient
3 management plan; conditions contained in a plan; application of any
4 dairy nutrient management practices, standards, methods, and
5 technologies to a particular dairy farm; and failure to adhere to the
6 plan review and approval timelines in RCW 90.64.026.

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

10 (i) Decisions of the department of natural resources, the
11 department of fish and wildlife, and the department that are
12 reviewable under chapter 76.09 RCW, and the department of natural
13 resources' appeals of county, city, or town objections under RCW
14 76.09.050(7).

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

17 (k) Decisions of the department of fish and wildlife to issue,
18 deny, condition, or modify a hydraulic project approval permit under
19 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
20 comply, to issue a civil penalty, or to issue a notice of intent to
21 disapprove applications.

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

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

28 (n) Decisions of the department of ecology that are appealable
29 under RCW 70A.245.020 to set recycled minimum postconsumer content
30 for covered products or to temporarily exclude types of covered
31 products in plastic containers from minimum postconsumer recycled
32 content requirements.

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

34 (2) The following hearings shall not be conducted by the hearings
35 board:

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

38 (b) Hearings conducted by the department pursuant to RCW
39 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
40 70A.15.3110, and 90.44.180.

1 (c) Appeals of decisions by the department under RCW 90.03.110
2 and 90.44.220.

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

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

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

10 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
11 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050,
12 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, section 3 of this
13 act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
14 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by
15 a notice in writing, either by certified mail with return receipt
16 requested or by personal service, to the person incurring the penalty
17 from the department or the local air authority, describing the
18 violation with reasonable particularity. For penalties issued by
19 local air authorities, within 30 days after the notice is received,
20 the person incurring the penalty may apply in writing to the
21 authority for the remission or mitigation of the penalty. Upon
22 receipt of the application, the authority may remit or mitigate the
23 penalty upon whatever terms the authority in its discretion deems
24 proper. The authority may ascertain the facts regarding all such
25 applications in such reasonable manner and under such rules as it may
26 deem proper and shall remit or mitigate the penalty only upon a
27 demonstration of extraordinary circumstances such as the presence of
28 information or factors not considered in setting the original
29 penalty.

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

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

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

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

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

6 (4) If the amount of any penalty is not paid to the department
7 within 30 days after it becomes due and payable, the attorney
8 general, upon request of the department, shall bring an action in the
9 name of the state of Washington in the superior court of Thurston
10 county, or of any county in which the violator does business, to
11 recover the penalty. If the amount of the penalty is not paid to the
12 authority within 30 days after it becomes due and payable, the
13 authority may bring an action to recover the penalty in the superior
14 court of the county of the authority's main office or of any county
15 in which the violator does business. In these actions, the procedures
16 and rules of evidence shall be the same as in an ordinary civil
17 action.

18 (5) All penalties recovered shall be paid into the state treasury
19 and credited to the general fund except those penalties imposed
20 pursuant to RCW 18.104.155, which shall be credited to the
21 reclamation account as provided in RCW 18.104.155(7), RCW
22 70A.15.3160, the disposition of which shall be governed by that
23 provision, RCW 70A.245.040 and 70A.245.050, which shall be credited
24 to the recycling enhancement account created in RCW 70A.245.100, RCW
25 70A.300.090 and section 3 of this act, which shall be credited to the
26 model toxics control operating account created in RCW 70A.305.180,
27 RCW 70A.65.200, which shall be credited to the climate investment
28 account created in RCW 70A.65.250, RCW 90.56.330, which shall be
29 credited to the coastal protection fund created by RCW 90.48.390, and
30 RCW 70A.355.070, which shall be credited to the underground storage
31 tank account created by RCW 70A.355.090.

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

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

Passed by the House April 14, 2023.
Passed by the Senate April 8, 2023.
Approved by the Governor May 15, 2023.

Filed in Office of Secretary of State May 16, 2023.

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