
HOUSE BILL 2166

State of Washington 60th Legislature 2007 Regular Session

By Representatives Chase, Skinner, Hunt, O'Brien, Hudgins, Campbell, Morrell, Kirby, Hasegawa, Simpson, Haler, McCune, Kretz, Dunshee, Pettigrew, Walsh, Dickerson, Williams, Eickmeyer, Conway, Schual-Berke and Moeller

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1 AN ACT Relating to the Washington safe cosmetics act of 2007;
2 amending RCW 69.04.060 and 69.04.070; adding a new chapter to Title 69
3 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) Independent testing in the United States and the European Union
7 has determined that some cosmetic products contain substances known or
8 suspected to cause cancer and reproductive toxicity that can harm
9 mothers, fetuses, and nursing children;

10 (2) Neither federal nor state law requires premarket safety
11 testing, review, or approval of cosmetic products. According to the
12 federal food and drug administration, the regulatory requirements
13 governing the sale of cosmetics are not as stringent as those that
14 apply to other regulated products;

15 (3) Under the federal food, drug, and cosmetic act, 21 U.S.C. Sec.
16 301, cosmetics and their ingredients are not required to be approved
17 before they are sold to the public, and the federal food and drug
18 administration does not have the authority to require manufacturers to

1 file health and safety data on cosmetic ingredients or to order a
2 recall of a dangerous cosmetic product;

3 (4) Under the state's uniform Washington food, drugs, and cosmetics
4 act, no state agency has authority to identify, review, or regulate
5 ingredients in cosmetic products that may cause chronic health effects,
6 such as cancer and reproductive toxicity, unless the product is
7 considered adulterated or misbranded;

8 (5) Cosmetic products are most heavily used by women of
9 childbearing age, increasing the likelihood of exposing mothers,
10 fetuses, and nursing children to substances that can cause cancer and
11 reproductive toxicity;

12 (6) Beauty care workers, including cosmetologists and manicurists,
13 are most exposed to the potentially harmful effects of carcinogens and
14 reproductive toxins in cosmetics. Cosmetologists and manicurists are
15 dominated by women and minorities, particularly from Southeast Asia;

16 (7) Federal law exempts chemicals used as fragrances or flavoring
17 from being identified as ingredients on the labels of cosmetic
18 products. Laboratory analyses of cosmetic products sold in various
19 states have found products that contain substances known to or likely
20 to cause cancer or reproductive toxicity and not identified as an
21 ingredient on the product's label. The law also does not require any
22 ingredient labeling on cosmetic products sold for commercial use,
23 thereby denying any information on ingredients to beauty care workers;

24 (8) Alternatives to substances that cause cancer or reproductive
25 toxicity are readily available for use in cosmetic products. A number
26 of manufacturers, including both small domestic producers and large
27 multinational corporations, have eliminated substances that cause
28 cancer or reproductive toxicity from their products;

29 (9) Given the presence of substances in cosmetic products that
30 cause cancer and reproductive toxicity, the heavy use of these products
31 by women of childbearing age, the significant exposure to these
32 products in occupational settings such as nail and beauty salons, the
33 adverse impacts of these substances on human health, the inadequate
34 information about the presence of these substances in products or the
35 extent of their impacts, and the availability of alternatives to the
36 use of these substances, it is in the interest of the people of
37 Washington to take steps to ensure that cosmetic products sold and used
38 in the state can be used safely.

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

3 (1) "Chemical identified as causing cancer or reproductive
4 toxicity" means a chemical identified by the department of ecology as
5 developmental or reproductive toxicant or by the department of health
6 as any of the following:

7 (a) A substance listed as known or reasonably anticipated to be a
8 human carcinogen in a national toxicology report on carcinogens;

9 (b) A substance given an overall carcinogenicity evaluation of
10 Group 1, Group 2A, or Group 2B by the international agency for research
11 on cancer;

12 (c) A substance identified as a Group A, Group B1, or Group B2
13 carcinogen, or as a known or likely carcinogen by the United States
14 environmental protection agency; or

15 (d) A substance identified as having some or clear evidence of
16 adverse developmental, male reproductive, or female reproductive
17 toxicity effects in a report by an expert panel of the national
18 toxicology program's center for the evaluation of risks to human
19 reproduction.

20 (2) "Department" means the department of health.

21 (3) "Incidental ingredient" means:

22 (a) Substances that have no technical or functional effect in the
23 cosmetic but are present by reason of having been incorporated into the
24 cosmetic as an ingredient of another cosmetic ingredient; or

25 (b) Processing aids, which are as follows:

26 (i) Substances that are added to a cosmetic during the processing
27 of such cosmetic but are removed from the cosmetic in accordance with
28 good manufacturing practices before it is packaged in its finished
29 form;

30 (ii) Substances that are added to a cosmetic during processing for
31 their technical or functional effect in the processing, are converted
32 to substances the same as constituents of declared ingredients, and do
33 not significantly increase the concentration of those constituents; or

34 (iii) Substances that are added to a cosmetic during the processing
35 of such cosmetic for their technical and functional effect in the
36 processing but are present in the finished cosmetic at insignificant
37 levels and do not have any technical or functional effect in that
38 cosmetic.

1 (4) "Ingredient" means any single chemical entity or mixture used
2 as a component in the manufacture of a cosmetic product. It does not
3 include incidental ingredients that are present in a cosmetic at
4 insignificant levels and that have no technical or functional effect in
5 the cosmetic.

6 (5) "Manufacturer" means any person or entity whose name appears on
7 the label of a cosmetic product.

8 NEW SECTION. **Sec. 3.** (1) Beginning January 1, 2009, the
9 manufacturer of any cosmetic product subject to regulation by the
10 federal food and drug administration that is sold in this state shall,
11 on a schedule and in electronic or other format, as determined by the
12 department, provide the department with a complete and accurate list of
13 its cosmetic products that, as of the date of submission, are sold in
14 the state and that contain any ingredient that is a chemical identified
15 as causing cancer or reproductive toxicity, including but not limited
16 to any chemical that:

17 (a) Is contained in the product for purposes of fragrance or
18 flavoring; or

19 (b) Is identified by the phrase "and other ingredients" and
20 determined to be a trade secret under federal law. Any ingredient
21 identified pursuant to this subsection shall be considered to be a
22 trade secret and shall be treated by the department in a manner
23 consistent with the requirements of Part 20 and Part 720, Title 21,
24 C.F.R. Any ingredients considered to be a trade secret are exempt from
25 the public disclosure required by chapter 42.56 RCW.

26 (2) Any information submitted under subsection (1) of this section
27 shall identify each chemical both by name and chemical abstract service
28 number and shall specify the product or products in which the chemical
29 is contained.

30 (3) If an ingredient identified under subsection (1) of this
31 section subsequently is removed from the product in which it was
32 contained, is removed from the list of chemicals known to cause cancer
33 or reproductive toxicity, or is no longer a chemical identified as
34 causing cancer or reproductive toxicity by the department, the
35 manufacturer of the product containing the ingredient shall submit the
36 new information to the department. Upon receipt of new information,
37 the department, after verifying the accuracy of that information, shall

1 revise the manufacturer's information on record with the department to
2 reflect the new information. The manufacturer shall not be under
3 obligation to submit subsequent information on the presence of the
4 ingredient in the product unless subsequent changes require submittal
5 of the information.

6 (4) This section does not apply to any manufacturer of cosmetic
7 products with annual aggregate sales of cosmetic products, both within
8 and outside of this state, of less than one million dollars based on
9 the manufacturer's most recent tax year filing.

10 NEW SECTION. **Sec. 4.** (1) To determine potential health effects of
11 exposure to ingredients in cosmetics sold in the state, the department
12 may conduct an investigation of one or more cosmetic products that
13 contain chemicals identified as causing cancer or reproductive toxicity
14 or other ingredients of concern to the department as follows:

15 (a) An investigation conducted under this section may include, but
16 is not limited to, a review of available health effects data and
17 studies, worksite health hazard evaluations, epidemiological studies to
18 determine the health effects of exposures to chemicals in various
19 subpopulations, and exposure assessments to determine total exposures
20 to individuals in various settings.

21 (b) If an investigation is conducted under this section, the
22 manufacturer of any product subject to the investigation may submit
23 relevant health effects data and studies to the department.

24 (c) To further the purposes of an investigation under this section,
25 the department may require manufacturers of products subject to an
26 investigation to submit to the department relevant health effects data
27 and studies available to the manufacturer and other available
28 information as requested by the department, including, but not limited
29 to, the concentration of the chemical in the product, the amount by
30 volume or weight of the product that comprises the average daily
31 application or use, and sales and use data necessary to determine where
32 the product is used in the occupational setting. The department shall
33 establish reasonable deadlines for the submittal of information
34 required. Failure by a manufacturer to submit the information in
35 compliance with the department's requirements constitutes a violation
36 of this section and is subject to enforcement under RCW 69.04.060 and
37 69.04.070.

1 (2)(a) If the department determines pursuant to an investigation
2 that an ingredient in a cosmetic product is potentially toxic at the
3 concentrations present in the product or under the conditions used, the
4 department shall immediately refer the results of its investigation to
5 the department of labor and industries.

6 (b) Within one hundred eighty days after referral under (a) of this
7 subsection, the department of labor and industries shall, pursuant to
8 RCW 49.17.050, develop a standard to protect the health of an employee
9 who has regular exposure to the hazard for the period of his or her
10 working life, unless the department of labor and industries
11 affirmatively determines, in a written finding made to the department
12 within ninety days after referral, that a standard is not necessary to
13 protect the health of such an employee. The finding shall identify the
14 reasons for determining the standard is not necessary and the factual
15 basis for the finding.

16 NEW SECTION. **Sec. 5.** (1) The legislature finds that:

17 (a) The cosmetic ingredient review panel is a nongovernmental body
18 established and funded by the cosmetics industry to review the safety
19 of cosmetic ingredients;

20 (b) According to a 2005 analysis by the environmental working
21 group, ninety-seven cosmetic products violate the cosmetic ingredient
22 review panel's own safe use recommendations to manufacturers by
23 containing an ingredient that the cosmetic ingredient review panel has
24 found is not safe for the specific use indicated on the product's
25 label; and

26 (c) Federal regulations require every ingredient in a cosmetic
27 product and every finished cosmetic product to be adequately
28 substantiated for safety prior to marketing, and state that any
29 ingredient or product whose safety has not been adequately
30 substantiated prior to marketing is misbranded unless it displays a
31 warning statement declaring, "The safety of this product has not been
32 determined."

33 (2) The department may, as early as feasible within existing
34 resources, determine whether the products identified in subsection
35 (1)(b) of this section have been adequately substantiated for safety
36 pursuant to Sec. 740.10, Title 21, C.F.R. For any product adequately
37 substantiated for safety, the department shall determine if the product

1 contains any ingredient that the cosmetic ingredient review panel has
2 found is not safe for the specific use indicated on the product's
3 label. If the department finds that a product has been adequately
4 substantiated for safety despite containing an ingredient that the
5 cosmetic ingredient review panel has found is not safe for the specific
6 use indicated on the product's label, the department shall refer its
7 findings to the attorney general and the federal food and drug
8 administration for possible enforcement action pursuant to RCW
9 69.04.060 and 69.040.070 and the federal food, drug, and cosmetic act,
10 21 U.S.C. Sec. 301 et seq.

11 **Sec. 6.** RCW 69.04.060 and 2003 c 53 s 314 are each amended to read
12 as follows:

13 Any person who violates any provision of RCW 69.04.040 or chapter
14 69.-- RCW (sections 1 through 5 and 8 of this act) is guilty of a
15 misdemeanor and shall on conviction thereof be subject to the following
16 penalties:

17 (1) A fine of not more than two hundred dollars; or

18 (2) If the violation is committed after a conviction of such person
19 under this section has become final, imprisonment for not more than
20 thirty days, or a fine of not more than five hundred dollars, or both
21 such imprisonment and fine.

22 **Sec. 7.** RCW 69.04.070 and 2003 c 53 s 315 are each amended to read
23 as follows:

24 Notwithstanding the provisions of RCW 69.04.060, a person who
25 violates RCW 69.04.040 or chapter 69.-- RCW (sections 1 through 5 and
26 8 of this act) with intent to defraud or mislead is guilty of a
27 misdemeanor and the penalty shall be imprisonment for not more than
28 ninety days, or a fine of not more than one thousand dollars, or both
29 such imprisonment and fine.

30 NEW SECTION. **Sec. 8.** This act may be known and cited as the
31 Washington safe cosmetics act of 2007.

32 NEW SECTION. **Sec. 9.** Sections 1 through 5 and 8 of this act

1 constitute a new chapter in Title 69 RCW.

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