Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Select Committee on Environmental Health

HB 2166

Brief Description: Enacting the Washington safe cosmetics act of 2007.

Sponsors: 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.

Brief Summary of Bill

- Enacts the Washington Safe Cosmetics Act of 2007.
- Requires manufacturers to disclose all cosmetic products that contain chemicals that may cause cancer or reproductive toxicity.
- Allows the Department of Health to conduct an investigation of products that contain ingredients of concern, and to refer products with potentially toxic concentrations to the Department of Labor and Industries for further review.
- Allows the Department of Health to refer certain products to the Attorney General and the United States Food and Drug Administration for possible enforcement under Washington and federal law.

Hearing Date: 2/20/07

Staff: Amy McCormick (786-7290).

Background:

The federal Food, Drug, and Cosmetic Act (FD&C) and the federal Fair Packaging and Labeling Act (FPLA) regulate cosmetics marketed in the United States. The United States Food and Drug Administration (FDA) enforces the FD&C, which prohibits the marketing of adulterated or misbranded cosmetics in interstate commerce. Violations of the FD&C that involve product

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composition, whether resulting from ingredients, contaminants, processing, packaging, or shipping and handling, cause cosmetics to be adulterated and subject to regulatory action. Improperly labeled or deceptively packaged products, such as false or misleading labeling, or incomplete label information, are considered misbranded and subject to regulatory action. In addition, under the authority of the FPLA, the FDA requires an ingredient declaration to enable consumers to make informed purchasing decisions. Cosmetics that fail to comply with the FPLA are considered misbranded under the FD&C.

With the exception of color additives, cosmetic products and ingredients are not subject to FDA pre-market approval authority. Cosmetic firms are responsible for substantiating the safety of their products and ingredients before marketing. The Cosmetic Ingredient Review Panel is a non-governmental body established and funded by the cosmetics industry to review the safety of cosmetic ingredients. If a cosmetic product is not adequately substantiated, the following warning statement must appear conspicuously on the display panel of the product's label: "WarningThe safety of this product has not been determined." A cosmetic product that is not adequately substantiated will be considered misbranded if this warning does not appear on the label.

Several ingredients are prohibited or have restricted use and require warning statements on the labels of certain types of cosmetics. In general, except for color additives and those ingredients which are prohibited or restricted from use in cosmetics by regulation, a manufacturer may use any ingredient in the formulation of a cosmetic provided that the ingredient and the finished cosmetic are safe, the product is properly labeled, and the use of the ingredient does not cause the cosmetic to be adulterated or misbranded under federal law.

The FDA may pursue enforcement action against products, firms, or individuals in violation of the law.

The state's uniform Washington Food, Drugs and Cosmetics Act mirrors the federal FD&C in regulating the sale in intrastate commerce of cosmetics that are adulterated or misbranded. State law also provides injunctive relief and criminal penalties for violations. The Washington Department of Labor and Industries (L&I) administers the Chemical Hazard Communication rule, which requires employers to inform and train employees about hazardous chemicals in the workplace. Retail cosmetics are exempt from this rule. The Department of Ecology (DOE) maintains a Hazardous Substance Information and Education Office (HSIEO) that provides the public with information about certain chemicals in the community. No state agency has authority to identify, review, or regulate ingredients in cosmetic products that may cause chronic health effects, unless the product is adulterated or misbranded under the Washington Food, Drugs and Cosmetics Act.

Summary of Bill:

This bill enacts the Washington Safe Cosmetics Act of 2007.

Manufacturer Disclosure

Manufacturers of cosmetic products must provide the Department of Health (DOH) with a list of all cosmetic products sold in the state that contain any ingredient that may cause cancer or reproductive toxicity. Manufacturers must identify each chemical used by name and chemical abstract service number and specify in which products the chemical is contained.

Investigation

The DOH may conduct an investigation of cosmetic products that contain chemicals identified as causing cancer or reproductive toxicity or other ingredients of concern. An investigation may include a review of available health effects data and studies, worksite health hazard evaluations, epidemiological studies, and exposure assessments. The department may require manufacturers of products subject to an investigation to submit to the department relevant health effects data and studies available to the manufacturer, as well as other information. If the DOH's investigation reveals that an ingredient is potentially toxic, the results of the investigation are referred to the L&I, which then must determine whether it is necessary to develop a standard to protect the health of employees with regular exposure to the hazard.

Enforcement

The DOH may refer any product containing an ingredient found unsafe by the Cosmetic Ingredient Review Panel, a non-governmental body established by the cosmetics industry to review the safety of cosmetic ingredients, to the Attorney General and the FDA for possible enforcement under Washington law and the federal FD&C.

Penalty

Any person who violates this act is guilty of a misdemeanor.

Appropriation: None.

Fiscal Note: Preliminary available.

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