

2SSB 5703 - H COMM AMD

By Committee on Environment & Energy

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

21 (3) "Manufacturer" has the same meaning as defined in RCW
22 70A.350.010.

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

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

26 (6) "Vulnerable populations" has the same meaning as defined in
27 RCW 70A.02.010.

28 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (3)
29 of this section, beginning January 1, 2025, no person may

1 manufacture, knowingly sell, offer for sale, distribute for sale, or
2 distribute for use in this state any cosmetic product that contains
3 any of the following intentionally added chemicals or chemical
4 classes:

5 (a) Ortho-phthalates;

6 (b) Perfluoroalkyl and polyfluoroalkyl substances;

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

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

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

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

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

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

14 (2) Except as provided in subsection (3) of this section,
15 beginning January 1, 2025, no person may manufacture, knowingly sell,
16 offer for sale, distribute for sale, or distribute for use in this
17 state any cosmetic product that contains lead or lead compounds (CAS
18 7439-92-1) at ten parts per million (ppm) or above, or as otherwise
19 determined by the department through rule making.

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

24 (4) (a) By December 1, 2022, the department in consultation with
25 the department of health must create and adopt by rule a community
26 engagement plan to:

27 (i) (A) Test cosmetic products marketed, including through
28 internet retailers, to women of color; and

29 (B) Identify potentially harmful chemicals or chemical classes
30 contained in or added to the products identified in (a) (i) (A) of this
31 subsection;

32 (ii) Seek information through outreach regarding the use of
33 cosmetic products, prioritizing engagement with vulnerable
34 populations;

35 (iii) Provide culturally appropriate education concerning
36 identified chemicals or chemical classes contained in or added to
37 cultural and other cosmetic products, prioritizing engagement with
38 vulnerable populations; and

39 (iv) Support efforts to:

1 (A) Identify priority chemicals and priority products for the
2 department to evaluate in accordance with chapter 70A.350 RCW; and

3 (B) Determine whether additional regulation is needed to address
4 chemicals or chemical classes contained in or added to cosmetic
5 products.

6 (b) The plan must include methods for outreach and communication
7 with those who face barriers to participation, such as language or
8 otherwise.

9 (5) For the purposes of this section, cosmetic products do not
10 include prescription drugs approved by the United States food and
11 drug administration.

12 (6) Hydrofluoroolefins used as aerosol propellants are not
13 subject to the restrictions established in this section.

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

17 (2) A manufacturer violating a requirement of this chapter, a
18 rule adopted under this chapter, or an order issued under this
19 chapter, is subject to a civil penalty not to exceed \$5,000 for each
20 violation in the case of a first offense. Manufacturers who are
21 repeat violators are subject to a civil penalty not to exceed \$10,000
22 for each repeat offense.

23 (3) Any penalty provided for in this section, and any order
24 issued by the department under this chapter, may be appealed to the
25 pollution control hearings board.

26 (4) All penalties collected under this chapter shall be deposited
27 in the model toxics control operating account created in RCW
28 70A.305.180.

29 **Sec. 5.** RCW 43.21B.110 and 2021 c 316 s 41 and 2021 c 313 s 16
30 are each reenacted and amended to read as follows:

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

1 (a) Civil penalties imposed pursuant to RCW 18.104.155,
2 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
3 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
4 70A.65.200, section 3 of this act, 76.09.170, 77.55.440, 78.44.250,
5 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
6 90.64.102.

7 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
8 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
9 70A.245.020, 70A.65.200, section 3 of this act, 86.16.020, 88.46.070,
10 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

11 (c) Except as provided in RCW 90.03.210(2), the issuance,
12 modification, or termination of any permit, certificate, or license
13 by the department or any air authority in the exercise of its
14 jurisdiction, including the issuance or termination of a waste
15 disposal permit, the denial of an application for a waste disposal
16 permit, the modification of the conditions or the terms of a waste
17 disposal permit, or a decision to approve or deny an application for
18 a solid waste permit exemption under RCW 70A.205.260.

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

21 (e) Decisions of local health departments regarding the issuance
22 and enforcement of permits to use or dispose of biosolids under RCW
23 70A.226.090.

24 (f) Decisions of the department regarding waste-derived
25 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
26 decisions of the department regarding waste-derived soil amendments
27 under RCW 70A.205.145.

28 (g) Decisions of local conservation districts related to the
29 denial of approval or denial of certification of a dairy nutrient
30 management plan; conditions contained in a plan; application of any
31 dairy nutrient management practices, standards, methods, and
32 technologies to a particular dairy farm; and failure to adhere to the
33 plan review and approval timelines in RCW 90.64.026.

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

37 (i) Decisions of the department of natural resources, the
38 department of fish and wildlife, and the department that are
39 reviewable under chapter 76.09 RCW, and the department of natural

1 resources' appeals of county, city, or town objections under RCW
2 76.09.050(7).

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

5 (k) Decisions of the department of fish and wildlife to issue,
6 deny, condition, or modify a hydraulic project approval permit under
7 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
8 comply, to issue a civil penalty, or to issue a notice of intent to
9 disapprove applications.

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

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

16 (n) Decisions of the department of ecology that are appealable
17 under RCW 70A.245.020 to set recycled minimum postconsumer content
18 for covered products or to temporarily exclude types of covered
19 products in plastic containers from minimum postconsumer recycled
20 content requirements.

21 (2) The following hearings shall not be conducted by the hearings
22 board:

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

25 (b) Hearings conducted by the department pursuant to RCW
26 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
27 70A.15.3110, and 90.44.180.

28 (c) Appeals of decisions by the department under RCW 90.03.110
29 and 90.44.220.

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

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

35 **Sec. 6.** RCW 43.21B.300 and 2021 c 316 s 42 and 2021 c 313 s 17
36 are each reenacted and amended to read as follows:

37 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
38 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050,
39 70A.245.070, 70A.245.080, 70A.65.200, section 3 of this act,

1 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
2 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in
3 writing, either by certified mail with return receipt requested or by
4 personal service, to the person incurring the penalty from the
5 department or the local air authority, describing the violation with
6 reasonable particularity. For penalties issued by local air
7 authorities, within thirty days after the notice is received, the
8 person incurring the penalty may apply in writing to the authority
9 for the remission or mitigation of the penalty. Upon receipt of the
10 application, the authority may remit or mitigate the penalty upon
11 whatever terms the authority in its discretion deems proper. The
12 authority may ascertain the facts regarding all such applications in
13 such reasonable manner and under such rules as it may deem proper and
14 shall remit or mitigate the penalty only upon a demonstration of
15 extraordinary circumstances such as the presence of information or
16 factors not considered in setting the original penalty.

17 (2) Any penalty imposed under this section may be appealed to the
18 pollution control hearings board in accordance with this chapter if
19 the appeal is filed with the hearings board and served on the
20 department or authority thirty days after the date of receipt by the
21 person penalized of the notice imposing the penalty or thirty days
22 after the date of receipt of the notice of disposition by a local air
23 authority of the application for relief from penalty.

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

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

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

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

31 (4) If the amount of any penalty is not paid to the department
32 within thirty days after it becomes due and payable, the attorney
33 general, upon request of the department, shall bring an action in the
34 name of the state of Washington in the superior court of Thurston
35 county, or of any county in which the violator does business, to
36 recover the penalty. If the amount of the penalty is not paid to the
37 authority within thirty days after it becomes due and payable, the
38 authority may bring an action to recover the penalty in the superior
39 court of the county of the authority's main office or of any county
40 in which the violator does business. In these actions, the procedures

1 and rules of evidence shall be the same as in an ordinary civil
2 action.

3 (5) All penalties recovered shall be paid into the state treasury
4 and credited to the general fund except those penalties imposed
5 pursuant to RCW 18.104.155, which shall be credited to the
6 reclamation account as provided in RCW 18.104.155(7), RCW
7 70A.15.3160, the disposition of which shall be governed by that
8 provision, RCW 70A.245.040 and 70A.245.050, which shall be credited
9 to the recycling enhancement account created in RCW 70A.245.100, RCW
10 70A.300.090 and section 3 of this act, which shall be credited to the
11 model toxics control operating account created in RCW 70A.305.180,
12 RCW 70A.65.200, which shall be credited to the climate investment
13 account created in RCW 70A.65.250, RCW 90.56.330, which shall be
14 credited to the coastal protection fund created by RCW 90.48.390, and
15 RCW 70A.355.070, which shall be credited to the underground storage
16 tank account created by RCW 70A.355.090.

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

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

21 Correct the title.

EFFECT: Authorizes the Department of Ecology (Ecology) to adopt
rules to implement, administer, and enforce restrictions on cosmetic
products.

Exempts hydrofluoroolefins used as aerosol propellants from
restrictions on chemicals in cosmetic products.

Clarifies that the information sought from community outreach by
Ecology through the community engagement plan concerns the use of
cosmetic products, rather than the chemical content of cosmetic
products.

Clarifies that the community engagement plan must support efforts
to identify priority chemicals and products for evaluation under
Ecology's Safer Products for Washington program, rather than
automatically resulting in regulatory action under that program.

Makes technical corrections, including by adding conforming
amendments to the statutes establishing the jurisdiction of the
Pollution Control Hearings Board (PCHB) and penalty imposition
procedures for penalties appealable to the PCHB.

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