
Environment & Energy Committee

2SSB 5703

Brief Description: Concerning the use of toxic chemicals in cosmetic products.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Das, Cleveland, Kuderer, Lovelett, Nobles, Randall, Robinson, Rolfes, Saldaña, Stanford, Trudeau, Wellman and Wilson, C.).

Brief Summary of Second Substitute Bill

- Restricts the manufacture, sale, and distribution of cosmetic products containing nine chemicals or classes of chemicals, beginning January 1, 2025.
- Requires the Department of Ecology, in consultation with the Department of Health, to create and adopt a cosmetics community engagement plan by December 1, 2022.

Hearing Date: 2/22/22

Staff: Jacob Lipson (786-7196).

Background:

Safer Products for Washington.

In 2019, legislation was enacted (Safer Products for Washington) that established an administrative process for the regulation by the Department of Ecology (Ecology) of priority chemicals in priority consumer products, in consultation with the Department of Health. 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

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.

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, may require manufacturers to provide notice of the use of a chemical, or may restrict or prohibit 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, in a manner that conforms with the FDCA and the FPLA. Under the Interstate Commerce in Drugs and Cosmetics code, 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 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 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 Interstate Commerce in Drugs and Cosmetics

code, except that prescription drugs approved by the FDA are excluded from the regulated cosmetic products. 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 (PFAS) substances;
- formaldehyde and formaldehyde releasing agents;
- 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, at a level of 10 parts 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.

Manufacturers violating 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.

Community Engagement Plan.

By December 1, 2022, Ecology must create and adopt a community engagement plan, in consultation with the Department of Health. The plan must:

- test cosmetic products marketed to women of color and identify potentially harmful chemicals in the products;
- seek information through outreach and provide culturally appropriate education regarding chemicals in cultural or other cosmetic products, prioritizing engagement with vulnerable populations;
- determine products and chemicals to be regulated under Ecology's Safer Products for Washington program, and whether additional regulation is needed to address cosmetic products; and
- include methods for outreach and communication with those who face barriers to participation, such as language.

Appropriation: None.

Fiscal Note: Requested on February 15, 2022.

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