

HOUSE BILL REPORT

2SSB 5703

As Reported by House Committee On:
Environment & Energy

Title: An act relating to the use of toxic chemicals in cosmetic products.

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 History:

Committee Activity:

Environment & Energy: 2/22/22, 2/24/22 [DPA].

**Brief Summary of Second Substitute Bill
(As Amended By Committee)**

- 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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Abbarno, Berry, Boehnke, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Without recommendation. Signed by 3 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Goehner.

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.

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 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 Hearings 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 Amended 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, as are hydrofluoroolefins used as aerosol propellants. 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 chemicals determined by Ecology to release formaldehyde;
- 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.

Ecology may adopt rules to implement, administer, or enforce restrictions on chemicals in cosmetic products. 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 regarding the use of cosmetic products, and provide culturally appropriate education regarding chemicals in cultural or other cosmetic products, prioritizing engagement with vulnerable populations;
- support efforts to identify products and chemicals for evaluation and potential regulation under Ecology's Safer Products for Washington program, and to determine 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.

Amended Bill Compared to Second Substitute Bill:

The striking amendment:

- authorizes 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; and
- makes technical corrections, including by adding conforming amendments to the statutes establishing the jurisdiction of the PCHB and penalty imposition and penalty receipt deposit procedures for penalties appealable to the PCHB.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Banning PFAS and other harmful chemicals is an important step towards safer cosmetics. Many of these chemicals have been banned in cosmetics by other states. The departments of Ecology and Health would be required to test products for toxic content, do community outreach, and, if appropriate, consider additional regulations under the Safer Products for Washington program.

(Opposed) None.

(Other) Changes have already been made to address business community concerns, but a few further changes would make the bill better. To ensure that state laws are consistent with other laws, formaldehyde-releasing agents should have a consistent definition. Any drugs regulated by the FDA, whether over-the-counter or prescription, should not be subject to additional state restrictions on chemicals used in cosmetic products.

Persons Testifying: (In support) Erika Schreder, Toxic-Free Future.

(Other) Peter Godlewski, Association of Washington Business; and Scott Sigmon, Consumer Healthcare Products Association.

Persons Signed In To Testify But Not Testifying: None.