

SENATE BILL REPORT

SB 5703

As of January 10, 2022

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

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

Sponsors: Senators Das and Cleveland.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/12/22.

Brief Summary of Bill

- Prohibits the manufacture, sale, offer for sale, distribution for sale, or distribution for use in the state of any cosmetic product that contains certain chemicals or chemical classes, beginning January 1, 2025.
- Requires the Department of Ecology, in consultation with the Department of Health, to create a community engagement plan to test cosmetic products marketed to women of color, identify potentially harmful ingredients, and provide education and outreach concerning harmful ingredients, by December 1, 2022.
- Establishes certain disclosure requirements for a manufacturer of a cosmetic product that is manufactured on or after January 1, 2023.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Gregory Vogel (786-7413)

Background: 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.

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.

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 FDCA and FPLA.

Washington complies with FDCA and FPLA under the state's Intrastate Commerce in Drugs and Cosmetics code, which outlines the regulations governing the sale of cosmetics.

Restrictions on Toxic Materials in Consumer Products. Several federal policies restrict the use of certain substances with toxic properties in consumer products or manufacturing processes:

- the Consumer Product Safety Commission administers laws regulating the inclusion of toxic compounds in consumer products;
- FDA's regulatory responsibilities include the safety of biological products and prescription and nonprescription drugs; and
- the Environmental Protection Agency administers the Federal Insecticide, Fungicide, and Rodenticide Act, which regulates the sale, distribution, use, and labeling of pesticides, as well as the Toxic Substances Control Act, which includes notification and testing requirements for many chemicals in commercial use and restricts the use of certain chemicals.

State law also:

- regulates the use of substances with toxic properties under:
 - the Children's Safe Products Act (CSPA) to identify high-priority chemicals of concern to children; and
 - Safer Products for Washington, which establishes an administrative process for the regulation by the Department of Ecology (Ecology) of priority chemicals in priority consumer products; and
- restricts the use of several substances in various consumer products, including:
 - bisphenol A in sports bottles and other containers;
 - lead in vehicle wheel weights;
 - copper in boat paint;
 - polybrominated diphenyl ethers, a class of flame retardants, in a variety of consumer products;
 - five flame retardants (TDCPP, TCEP, decabromodiphenyl ether, HBCD, and additive TBBPA) in children's products and residential upholstered furniture;
 - cadmium, phthalates, and lead in children's products;
 - lead, mercury, hexavalent chromium, and cadmium in product packaging;
 - perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals in firefighting foam and certain types of food packaging, contingent upon the identification of suitable alternatives; and
 - mercury, in several categories of consumer products.

In 2006, Ecology adopted a rule under state hazardous waste laws outlining the processes it

follows for efforts to reduce and phase out the uses, releases, and exposures to persistent, bioaccumulative toxins (PBTs). PBTs are substances with toxic or harmful effects on people or animals that have a lengthy decomposition time in the environment and accumulate up the food chain in the bodies of organisms, including people.

Children's Safe Products Act. CSPA directs Ecology, working with the Department of Health (DOH), to use fetal and childhood exposure potential to identify high-priority chemicals of concern to children (CHCC). Under CSPA, Ecology identifies high-priority chemicals based on evidence that the chemical causes specified types of harm to human health or the environment.

CSPA requires manufacturers of children's products containing these identified CHCCs to annually report information about the use of the chemicals to Ecology. The annual notice must include:

- the chemical number of the CHCC used;
- a description of the product or component containing the substance;
- a description of the chemical's function in the product; and
- the amount of the chemical used in each unit of the product.

Safer Products for Washington. In 2019, legislation was enacted that established an administrative process for the regulation by Ecology of priority chemicals in priority consumer products, known as the Safer Products for Washington program. Under the 2019 law, certain chemicals were defined as priority chemicals, including PFAS chemicals, polychlorinated biphenyls (PCBs), phthalates, organohalogen flame retardants (OFRs) and other flame retardants identified under CSPA, and phenolic compounds. Ecology is also authorized to designate additional chemicals as priority chemicals every five years if they meet qualifying criteria, consistent with a schedule established in the legislation.

Every five years, according to a specified schedule, Ecology must also:

- identify priority consumer products that include priority chemicals, taking into consideration specified criteria; and
- 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.

Ecology is required to make regulatory determinations for the initial round of statutorily-designated priority chemicals and their associated priority consumer products by June 1, 2022, and must adopt rules to implement those regulatory determinations by June 1, 2023. As of November 2021, Ecology has issued for public comment a draft report on regulatory determinations in which the following 11 combinations of priority chemicals in priority consumer products are proposed for regulatory determinations:

- flame retardants in electric and electronic enclosures;

- flame retardants in polyurethane foam;
- PFAS chemicals in aftermarket stain-and water-resistance treatments;
- PFAS chemicals in carpets and rugs;
- PFAS chemicals in leather and textile furnishings;
- PCBs in paints and printing inks;
- phenolic compounds in laundry detergent;
- phenolic compounds in thermal paper;
- phenolic compounds in food and drink can linings;
- phthalates in personal care and beauty products and fragrances; and
- phthalates in vinyl flooring.

Ecology must submit a report to the appropriate committees of the Legislature when identifying priority chemicals, identifying priority consumer products, or determining regulatory actions. Identification of priority chemicals, identification of priority consumer products, and regulatory determinations by Ecology do not take effect until the adjournment of the regular legislative session immediately following the Ecology action. Ecology may begin to evaluate priority consumer products before the designation of priority chemicals take effect, may consider regulatory determinations before the designation of priority products take effect, and may initiate rulemaking before regulatory determinations take effect.

When identifying priority chemicals and priority consumer products, Ecology must notify the public of the selection and publish a draft schedule for making determinations.

Summary of Bill: Beginning January 1, 2025, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in the state any cosmetic product that contains any of the following chemicals or chemical classes above the practical quantitation limit:

- ortho-phthalates;
- PFAS;
- phenolic compounds;
- formaldehyde and formaldehyde releasing agents;
- arsenic and arsenic compounds;
- ethylene glycol;
- methylene glycol;
- mercury and mercury compounds;
- styrene;
- 1, 4-dioxane;
- cadmium and cadmium compounds;
- octamethylcyclotetrasiloxane;
- decamethylcyclopentasiloxane;
- toluene;
- parabens;
- lead and lead compounds;

- asbestos;
- hydroquinone;
- 2-Ethylhexyl acrylate;
- ethyl acrylate;
- aluminum salts;
- sodium laurel sulfate;
- sodium laureth sulfate;
- benzalkonium chloride;
- coal tar compounds;
- triclosan;
- methylisothiazolinone;
- methylchloroisothiazolinone;
- m-phenylenediamine and its salts;
- o-phenylenediamine and its salts;
- p-phenylenediamine and its salts; and
- any undisclosed synthetic fragrances not listed.

Cosmetic products include articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering appearance, and articles intended for use as a component of such an article. Cosmetic products also includes cosmetics marketed to professionals.

Soap, dietary supplements, or food and drugs approved by the FDA are excluded.

The practical quantitation limit is the minimum concentration of an analyte that can be measured with a high degree of confidence that the analyte is present at the reported concentration.

By December 1, 2022, Ecology, in consultation with DOH, must create and adopt a community engagement plan to:

- test cosmetic products marketed to women of color and identify potentially harmful ingredients;
- seek information through outreach and provide culturally appropriate education concerning identified harmful ingredients used in cultural and other cosmetic products, prioritizing engagement with vulnerable populations; and
- obtain recommendations for priority chemicals or products to be regulated under the Safer Products for Washington Program.

A manufacturer of a cosmetic product that is manufactured on or after January 1, 2023, is required to have the following information on its website for each cosmetic product sold in the state:

- information that satisfies all of the labeling requirements under the FDCA and FPLA;
- and

- a list of chemicals or chemical classes intentionally added to the product if the chemicals are identified by Ecology as a high priority chemical of high concern for children under CSPA; or high priority chemical under Safer Products for Washington.

A manufacturer violating the prohibitions on chemical ingredient use or ingredient disclosure requirements is subject to a civil penalty not to exceed \$5,000 for each violation in the case of a first offense, and \$10,000 for a repeat offense.

The chapter may be known and cited as the "Toxic-Free Cosmetics Act."

Appropriation: None.

Fiscal Note: Requested on January 6, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.