

SENATE BILL REPORT

SB 5703

As Reported by Senate Committee On:
Environment, Energy & Technology, February 2, 2022
Ways & Means, February 7, 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. [
Revised for 2nd Substitute:]

Sponsors: Senators Das, Cleveland, Kuderer, Lovelett, Nobles, Randall, Robinson, Rolfes, Saldaña, Stanford, Trudeau, Wellman and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/12/22, 2/02/22 [DPS-WM, DNP].

Ways & Means: 2/05/22, 2/07/22 [DP2S, DNP, w/oRec].

Brief Summary of Second Substitute 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 intentionally added 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 chemicals or chemical classes, and provide education and outreach concerning harmful chemicals or chemical classes, by December 1, 2022.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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.

Majority Report: That Substitute Senate Bill No. 5703 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Liias, Lovick, Nguyen, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators Fortunato and Sheldon.

Staff: Gregory Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5703 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Billig, Carlyle, Conway, Dhingra, Hasegawa, Hunt, Keiser, Mullet, Pedersen, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Schoesler, Assistant Ranking Member, Capital; Braun, Rivers and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Ranking Minority Member, Capital; Gildon, Muzzall and Warnick.

Staff: Corban Nemeth (786-7736)

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.

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: The bill as referred to committee not considered.

Summary of Bill (Second Substitute): 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 intentionally added chemicals or chemical classes:

- ortho-phthalates;
- PFAS;
- formaldehyde and formaldehyde releasing agents;
- methylene glycol;
- mercury and mercury compounds;
- triclosan;
- m-phenylenediamine and its salts; and
- o-phenylenediamine and its salts.

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 lead or lead compounds at ten parts per million or above, or as otherwise determined by Ecology through rule making.

Retailers may exhaust their existing stock through sales to the public until January 1, 2026.

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, except for soap.

Cosmetic products do not include prescription drugs approved by the United States Food and Drug Administration.

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, including internet sales, to women of color and identify potentially harmful chemicals or chemical classes contained in or added to the product;
- seek information through outreach and provide culturally appropriate education concerning identified chemicals or chemical classes contained in or added to cultural and other cosmetic products, prioritizing engagement with vulnerable populations; and
- determine priority products and priority chemicals to be regulated under the Safer Products for Washington Program and whether additional regulation is needed to address chemicals or chemical classes contained in or added to cosmetics.

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."

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Establishes that retailers may exhaust their existing stock through sales to the public until January 1, 2026.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Removes the following chemicals and chemical classes from the prohibited list:
 - phenolic compounds;
 - arsenic and arsenic compounds;
 - ethylene glycol;
 - styrene;
 - 1, 4-dioxane;
 - cadmium and cadmium compounds;
 - octamethylcyclotetrasiloxane;
 - decamethylcyclopentasiloxane;
 - toluene;
 - parabens;
 - asbestos;
 - hydroquinone;
 - 2-ethylhexylacrylate;

- ethyl acrylate;
- aluminum salts;
- sodium laurel sulfate;
- sodium laureth sulfate;
- benzalkonium chloride;
- coal tar compounds;
- methylisothiazolinone;
- methylchloroisothiazolinone; and
- undisclosed synthetic fragrances;
- Specifies that cosmetic products with intentionally added chemicals or chemicals classes are prohibited;
- Provides that cosmetic products for purposes of the prohibition do not include prescription drugs approved by the U.S. Food and Drug Administration;
- Defines cosmetic product as cosmetic is defined in the Intrastate Commerce in Drugs and Cosmetics chapter;
- Prohibits a person from manufacturing, selling, or distributing any cosmetic product that contains lead or lead compounds at 5 ppm or above, or otherwise determined by the Department of Ecology through rulemaking, beginning January 1, 2025;
- Directs the Departments of Ecology and Health to include internet sales when testing cosmetic products marketed to women of color and to identify potentially harmful chemicals or chemical classes contained in or added to the product; identify chemicals or chemical classes contained in or added to products for purposes of outreach and education; and determine priority products and priority chemicals to be regulated in accordance with Safer Products for Washington and whether additional regulation is needed; and
- Removes the website disclosure requirements.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: This act is for everyone who uses cosmetics or knows someone who does. The purpose of it is to protect our communities from extremely harmful toxic products. Certain chemicals used in cosmetic products are linked to harmful impacts on health, including cancer, birth defects, damage to our reproductive system, organ system toxicity, and endocrine disruption. When people are bathing or washing hands, these harmful chemicals are also passed through to our soils and waterways.

Many of these chemicals have already been identified by our state as high priority chemicals of concern. One particular company, Beauty Counter, utilizes a never list, which is a list of 1800 harmful chemicals that are never used in ingredients in their products. Women of color are especially vulnerable to exposure of these chemicals, which are in products marketed to them. A similar bill has already passed in California and Maryland.

Included in the ban is a ban on PFAS, which the state has already banned in food packaging and firefighting foam. Recent research found in PFAS in foundation, lip care products, and mascara. Under a study conducted by Toxic-Free Future, University of Washington, and University of Indiana, PFAS was found in every one of the breast milk samples from study participants. Many major companies and retailers have already taken steps to remove toxics from their products.

CON: Grocers are not getting into the issues around the chemical components of this, or the public health concerns, what we are worried about is a Washington State specific law that is regulating products that are readily distributed among all of the northwest states. Having material that is regulated only for our state, and not in a methodology that aligns with other states, makes that distribution network very difficult to manage.

OTHER: The council is willing to move forward with a phaseout of PFAS in cosmetics and embraces the language around impacts to women of color in our marketplace. Other states have and continue to deal with this issue, and Washington is leading the way in addressing the impacts to vulnerable consumers. We are supportive of amendments to align the bill with the approach of California and other jurisdictions.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Mona Das, Prime Sponsor; Erika Schreder, Toxic-Free Future; Lindsay Dahl, Beauty Counter; Ami Zota; Yuwa Vosper, WE ACT for Environmental Justice ; Katrina Lassiter, Department of Ecology; Marissa Smith, Department of Ecology (available for questions); Kimberly Goetz, Department of Ecology (available for questions); Holly Davies, Department of Health; Heather Trim, Zero Waste Washington; Steve Gilbert, INND.

CON: Holly Chisa, NW Grocery Association.

OTHER: Nora Palattao Burnes, Personal Care Products Council.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony on Proposed Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This bill bans some of the most harmful chemicals in cosmetics. PFAS can be found in cosmetics that are advertised as waterproof. This bill keeps harmful chemicals out of waterways where it is hard to clean up. Studies have found PFAS in breast milk, which is impossible to clean up and more cost effective to prevent from occurring in the first place.

CON: The personal care product industry follows laws and regulations. We are open to the conversation around this bill. This bill would require Ecology to enforce the ban against retailers selling products available for sale, not just the manufacturers. This policy needs to be enforced at the manufacturer level. The fiscal note does not capture the true costs of enforcement that will result from this program. The fiscal note is silent on how Ecology will find products in violation of this act. This bill should be amended to align with California's laws, which would reduce costs and benefit the implementation of the program.

Persons Testifying (Ways & Means): PRO: Laurie Valeriano, Toxic Free Future.

CON: Nora Burnes, Personal Care Products Council; Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.