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**HOUSE BILL 1047**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representative Mena

Prefiled 12/16/22.

1 AN ACT Relating to the use of toxic chemicals in cosmetic  
2 products; amending RCW 43.21B.110 and 43.21B.300; adding a new  
3 chapter to Title 70A RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

4 (3) "Manufacturer" has the same meaning as defined in RCW  
5 70A.350.010.

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

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

9 (6) "Small business" has the same meaning as defined in RCW  
10 70A.500.020.

11 (7) "Vulnerable populations" has the same meaning as defined in  
12 RCW 70A.02.010.

13 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (3)  
14 of this section, beginning January 1, 2025, no person may  
15 manufacture, knowingly sell, offer for sale, distribute for sale, or  
16 distribute for use in this state any cosmetic product that contains  
17 any of the following intentionally added chemicals or chemical  
18 classes:

19 (a) Ortho-phthalates;

20 (b) Perfluoroalkyl and polyfluoroalkyl substances;

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

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

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

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

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

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

28 (2) Except as provided in subsection (3) of this section,  
29 beginning January 1, 2025, no person may manufacture, knowingly sell,  
30 offer for sale, distribute for sale, or distribute for use in this  
31 state any cosmetic product that contains lead or lead compounds (CAS  
32 7439-92-1) at one part per million (ppm) or above, or as otherwise  
33 determined by the department through rule making.

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

38 (4) By June 1, 2024, the department, in consultation with the  
39 department of health, must use existing information to identify and

1 assess the hazards of chemicals or chemical classes that can provide  
2 the same or similar function in cosmetic products as the chemicals or  
3 chemical classes listed in subsection (1) of this section and that  
4 can impact vulnerable populations. The department must make the  
5 information publicly available.

6 (5) (a) By May 2024, the department shall implement an initiative  
7 to support small businesses that manufacture cosmetic products in  
8 efforts to obtain voluntary environmental health certifications for  
9 cosmetics implemented by the United States environmental protection  
10 agency or other programs, as determined by the department, that are  
11 designed to identify cosmetic products that do not contain identified  
12 hazards consistent with processes used to identify safer alternatives  
13 under chapter 70A.350 RCW.

14 (b) The program may include, but is not limited to, providing:

15 (i) Technical assistance and support;

16 (ii) Resources for chemical hazard assessments; and

17 (iii) Resources for reformulating products.

18 (6) For the purposes of this section, cosmetic products do not  
19 include prescription drugs approved by the United States food and  
20 drug administration.

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

24 (2) A manufacturer violating a requirement of this chapter, a  
25 rule adopted under this chapter, or an order issued under this  
26 chapter, is subject to a civil penalty not to exceed \$5,000 for each  
27 violation in the case of a first offense. Manufacturers who are  
28 repeat violators are subject to a civil penalty not to exceed \$10,000  
29 for each repeat offense.

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

33 (4) All penalties collected under this chapter shall be deposited  
34 in the model toxics control operating account created in RCW  
35 70A.305.180.

36 **Sec. 5.** RCW 43.21B.110 and 2022 c 180 s 812 are each amended to  
37 read as follows:

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

8 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
9 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,  
10 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,  
11 70A.65.200, 70A.455.090, section 3 of this act, 76.09.170, 77.55.440,  
12 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,  
13 90.56.330, and 90.64.102.

14 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
15 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,  
16 70A.245.020, 70A.65.200, section 3 of this act, 86.16.020, 88.46.070,  
17 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

18 (c) Except as provided in RCW 90.03.210(2), the issuance,  
19 modification, or termination of any permit, certificate, or license  
20 by the department or any air authority in the exercise of its  
21 jurisdiction, including the issuance or termination of a waste  
22 disposal permit, the denial of an application for a waste disposal  
23 permit, the modification of the conditions or the terms of a waste  
24 disposal permit, or a decision to approve or deny an application for  
25 a solid waste permit exemption under RCW 70A.205.260.

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

28 (e) Decisions of local health departments regarding the issuance  
29 and enforcement of permits to use or dispose of biosolids under RCW  
30 70A.226.090.

31 (f) Decisions of the department regarding waste-derived  
32 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
33 decisions of the department regarding waste-derived soil amendments  
34 under RCW 70A.205.145.

35 (g) Decisions of local conservation districts related to the  
36 denial of approval or denial of certification of a dairy nutrient  
37 management plan; conditions contained in a plan; application of any  
38 dairy nutrient management practices, standards, methods, and  
39 technologies to a particular dairy farm; and failure to adhere to the  
40 plan review and approval timelines in RCW 90.64.026.

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

4 (i) Decisions of the department of natural resources, the  
5 department of fish and wildlife, and the department that are  
6 reviewable under chapter 76.09 RCW, and the department of natural  
7 resources' appeals of county, city, or town objections under RCW  
8 76.09.050(7).

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

11 (k) Decisions of the department of fish and wildlife to issue,  
12 deny, condition, or modify a hydraulic project approval permit under  
13 chapter 77.55 RCW, to issue a stop work order, to issue a notice to  
14 comply, to issue a civil penalty, or to issue a notice of intent to  
15 disapprove applications.

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

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

22 (n) Decisions of the department of ecology that are appealable  
23 under RCW 70A.245.020 to set recycled minimum postconsumer content  
24 for covered products or to temporarily exclude types of covered  
25 products in plastic containers from minimum postconsumer recycled  
26 content requirements.

27 (o) Orders by the department of ecology under RCW 70A.455.080.

28 (2) The following hearings shall not be conducted by the hearings  
29 board:

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

32 (b) Hearings conducted by the department pursuant to RCW  
33 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
34 70A.15.3110, and 90.44.180.

35 (c) Appeals of decisions by the department under RCW 90.03.110  
36 and 90.44.220.

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

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

4 **Sec. 6.** RCW 43.21B.300 and 2022 c 180 s 813 are each amended to  
5 read as follows:

6 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,  
7 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050,  
8 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, section 3 of this  
9 act, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,  
10 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by  
11 a notice in writing, either by certified mail with return receipt  
12 requested or by personal service, to the person incurring the penalty  
13 from the department or the local air authority, describing the  
14 violation with reasonable particularity. For penalties issued by  
15 local air authorities, within 30 days after the notice is received,  
16 the person incurring the penalty may apply in writing to the  
17 authority for the remission or mitigation of the penalty. Upon  
18 receipt of the application, the authority may remit or mitigate the  
19 penalty upon whatever terms the authority in its discretion deems  
20 proper. The authority may ascertain the facts regarding all such  
21 applications in such reasonable manner and under such rules as it may  
22 deem proper and shall remit or mitigate the penalty only upon a  
23 demonstration of extraordinary circumstances such as the presence of  
24 information or factors not considered in setting the original  
25 penalty.

26 (2) Any penalty imposed under this section may be appealed to the  
27 pollution control hearings board in accordance with this chapter if  
28 the appeal is filed with the hearings board and served on the  
29 department or authority 30 days after the date of receipt by the  
30 person penalized of the notice imposing the penalty or 30 days after  
31 the date of receipt of the notice of disposition by a local air  
32 authority of the application for relief from penalty.

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

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

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

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

1 (4) If the amount of any penalty is not paid to the department  
2 within 30 days after it becomes due and payable, the attorney  
3 general, upon request of the department, shall bring an action in the  
4 name of the state of Washington in the superior court of Thurston  
5 county, or of any county in which the violator does business, to  
6 recover the penalty. If the amount of the penalty is not paid to the  
7 authority within 30 days after it becomes due and payable, the  
8 authority may bring an action to recover the penalty in the superior  
9 court of the county of the authority's main office or of any county  
10 in which the violator does business. In these actions, the procedures  
11 and rules of evidence shall be the same as in an ordinary civil  
12 action.

13 (5) All penalties recovered shall be paid into the state treasury  
14 and credited to the general fund except those penalties imposed  
15 pursuant to RCW 18.104.155, which shall be credited to the  
16 reclamation account as provided in RCW 18.104.155(7), RCW  
17 70A.15.3160, the disposition of which shall be governed by that  
18 provision, RCW 70A.245.040 and 70A.245.050, which shall be credited  
19 to the recycling enhancement account created in RCW 70A.245.100, RCW  
20 70A.300.090 and section 3 of this act, which shall be credited to the  
21 model toxics control operating account created in RCW 70A.305.180,  
22 RCW 70A.65.200, which shall be credited to the climate investment  
23 account created in RCW 70A.65.250, RCW 90.56.330, which shall be  
24 credited to the coastal protection fund created by RCW 90.48.390, and  
25 RCW 70A.355.070, which shall be credited to the underground storage  
26 tank account created by RCW 70A.355.090.

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

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

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