
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2019 - 2020 Regular

Bill No: AB 2762
Author: Muratsuchi, et al.
Version: 5/18/2020
Urgency: No
Consultant: Eric Walters

Hearing Date: 8/11/2020
Fiscal: Yes

SUBJECT: Cosmetics: safety

DIGEST: This bill, beginning January 1, 2025, prohibits the manufacture, sale, delivery, holding, or offering for sale in commerce of any cosmetic product intentionally containing any of 24 specified chemicals, consistent with a similar prohibition enacted by the European Union (EU).

ANALYSIS:

Existing federal law requires, pursuant to the federal Food, Drug & Cosmetic Act (FD&C Act), cosmetics produced or distributed for retail sale to consumers for their personal care to bear an ingredient declaration. (21 Code of Federal Regulations 701.3)

Existing state law:

- 1) Defines, pursuant to the Sherman Act, "cosmetic" as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance. Provides that the term "cosmetic" does not include soap. Makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any cosmetic that is adulterated. Makes it unlawful for any person to adulterate any cosmetic. Makes it unlawful for any person to receive in commerce any cosmetic that is adulterated or to deliver or proffer for delivery any such cosmetic. (Health & Safety Code (HSC) § 109900)

- 2) Requires, pursuant to the Safe Consumer Cosmetic Act (Cosmetics Act), a manufacturer of a cosmetic subject to regulation by the federal Food and Drug Administration (FDA) to submit to California Department of Public Health (CDPH) a list of its cosmetic products sold in California that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity. (HSC § 111792)

- 3) Prohibits, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), a person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. (HSC § 25249.6)
- 4) Requires the Department of Toxic Substances Control (DTSC), under the State's Green Chemistry regulations, to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered a chemical of concern. (HSC § 25252) Requires DTSC to develop and maintain a list of Candidate Chemicals that exhibit a hazard trait and/or an environmental or toxicological endpoint and is either, 1) found on one or more of the statutorily specified authoritative lists, or 2) is listed by DTSC using specified criteria. (California Code of Regulations § 69502.2 (b))

This bill:

- 1) States that it is the intent of the Legislature to prohibit the intentional addition of specified chemical ingredients to cosmetic products, consistent with a prohibition enacted by the European Union.
- 2) Prohibits, beginning January 1, 2025, the manufacture, sale, delivery, holding, or offering for sale in commerce of any cosmetic product intentionally containing the following:
 - a) Dibutyl phthalate (CAS no. 84-74-2).
 - b) Diethylhexyl phthalate (CAS no. 117-81-7).
 - c) Formaldehyde (CAS no. 50-00-0).
 - d) Paraformaldehyde (CAS no. 30525-89-4).
 - e) Methylene glycol (CAS no. 463-57-0).
 - f) Quaternium-15 (CAS no. 51229-78-8).
 - g) Mercury (CAS no. 7439-97-6).
 - h) Isobutylparaben (CAS no. 4247-02-3).
 - i) Isopropylparaben (CAS no. 4191-73-5).
 - j) m-Phenylenediamine and its salts (CAS no. 108-45-2).
 - k) o-Phenylenediamine and its salts (CAS no. 95-54-5).
 - l) The following long-chain per- and polyfluoroalkyl substances (PFAS) and their salts:
 - i) Perfluorooctane sulfonate (PFOS); heptadecafluorooctane-1-sulfonic acid (CAS no. 1763-23-1).
 - ii) Potassium perfluorooctanesulfonate; potassium heptadecafluorooctane-1-sulfonate (CAS no. 2795-39-3).
 - iii) Diethanolamine perfluorooctane sulfonate (CAS 70225-14-8).

- iv) Ammonium perfluorooctane sulfonate; ammonium heptadecafluorooctanesulfonate (CAS 29081-56-9).
 - v) Lithium perfluorooctane sulfonate; lithium heptadecafluorooctanesulfonate (CAS 29457-72-5).
 - vi) Perfluorooctanoic acid (PFOA)(CAS no. 335-67-1).
 - vii) Ammonium pentadecafluorooctanoate (CAS no. 3825-26-1).
 - viii) Nonadecafluorodecanoic acid (CAS no. 355-76-2).
 - ix) Ammonium nonadecafluorodecanoate (CAS no. 3108-42-7).
 - x) Sodium nonadecafluorodecanoate (CAS no. 3830-45-3).
 - xi) Perfluorononanoic acid (PFNA)(CAS no. 375-95-1).
 - xii) Sodium heptadecafluorononanoate (CAS no. 21049-39-8).
 - xiii) Ammonium perfluorononanoate (CAS no. 4149-60-4).
- 3) States that, should a cosmetic product contain a technically unavoidable trace quantity of any of the above chemicals due to specified sources, that product shall not be in violation of this act.

Background

- 1) *Cosmetic regulations affecting California today.* California has two laws governing the safety of cosmetics. The first is the Sherman Act, which is administered by CDPH to regulate cosmetics. It broadly defines a cosmetic as any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to, the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance.

The other law is the California's Cosmetics Act, established by SB 484 (Migden, Chapter 729, Statutes of 2005). It requires that for all cosmetic products sold in California, the manufacturer, packer, and/or distributor named on the product label shall provide CDPH a list of all cosmetic products that contain any ingredients known or suspected to cause cancer, birth defects, or other reproductive harm. CDPH maintains an active, searchable database with all of the data collected from manufacturers under the Cosmetics Act. To date, 613 companies have reported 75,279 products to CDPH. CDPH does not have any enforcement authority or penalty authority over the manufacturers that are covered, so not all manufacturers are currently complying and submitting their products' information. There is no way to compel these manufacturers to comply.

Federally, under the FD&C Act, cosmetics and their ingredients are not required to be approved before they are sold to the public, and the Food and

Drug Administration (FDA) does not have the authority to require manufacturers to file health and safety data on cosmetic ingredients or to order a recall of a dangerous cosmetic product.

- 2) *European Union Cosmetics Directive*. The EU, which includes 28 member countries mostly across Europe, develops policies to ensure the free movement of people, goods, services, and capital within the internal market, and enacts legislation to maintain common policies to have cohesion amongst the 28 members on things from trade to agriculture.

The EU Cosmetics Directive (Directive) was adopted in 1976 and formed on the basis of commonly agreed to safety standards relative to cosmetics. This Directive was reevaluated in 2009 and an EU-wide Cosmetics Products Regulation was enacted in July 2013.

EU regulation No 1223/2009 on cosmetics establishes rules to be complied with by any cosmetic product made available on the market, in order to ensure the functioning of the internal market and a high level of protection of human health. The regulation defines "cosmetic product" as "any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odors." The scope of products covered under the EU's definition of cosmetics is broader than the scope of products covered under California's definition of cosmetics.

Annex II of regulation No 1223/2009 lists the substances prohibited in cosmetic products. The intent of this bill is to be consistent with the approach of the EU's cosmetic regulation. All of the chemicals listed in AB 2762 have been fully banned in the EU under Annex II.

Comments

- 1) *Purpose of Bill*. According to the author, "No one knowingly wants to use face powder, lipstick, or baby shampoo contaminated with harmful ingredients. AB 2762 would clarify in statute that cosmetics containing some of the most well-known carcinogens, reproductive toxicants, and endocrine disruptors cannot be sold in the state, protecting Californians against harmful chemicals in cosmetic products they use every day."

- 2) *Mutually agreeable path forward.* As introduced, AB 2762 originally contained additional provisions which (1) rather than prohibiting the intentional inclusion of specified ingredients, would deem products containing them to be “adulterated”, even when said chemicals were added after manufacture, (2) required implementation by 2022 (as opposed to 2025), and (3) created additional violations of the Sherman Act, which were deemed unnecessary given existing CDPH enforcement authorities. Amendments made in the Assembly removed those provisions, as well as all registered opposition to the bill.

In its current form, AB 2762 bans chemicals with proven health harms from being included in cosmetics in California, and it does so without creating intolerable conditions for manufacturers. The committee may wish to consider supporting this measure.

Related/Prior Legislation

SB 312 (Leyva, 2020) – Is nearly identical to SB 574, albeit with an additional year before requirements are enacted on departments. SB 312 is currently before the Assembly Appropriations Committee.

AB 495 (Muratsuchi, 2019) – Amended the Sherman Act to define adulterated cosmetics as those containing certain intentionally-added ingredients, and had other specified duties for the Office of Health Hazard Assessment and CDPH. AB 495 was held in the Assembly Health Committee.

SB 574 (Leyva, 2019) – Required manufacturers of cosmetic products to report flavor and fragrance ingredients in their products that are deemed toxic according to any of a set of specified lists published by regulatory authorities, with some exceptions for trade secrets, and requires CDPH to publish the data. SB 574 was held in the Assembly Appropriations Committee.

SOURCE: Black Women for Wellness, CALPIRG, Breast Cancer Prevention Partners, California Public Interest Research Group, Campaign for Safe Cosmetics, Environmental Working Group (Co-sponsors)

SUPPORT:

100% pure
A Voice for Choice Advocacy

Alaska Community Action on Toxics
American Congress of Obstetricians & Gynecologists - District IX
Beautycounter
Biossance
Black Women for Wellness
Breast Cancer Action
Breast Cancer Over Time
Breast Cancer Prevention Partners
California Baby
California Health Coalition Advocacy
California Healthy Nail Salon Collaborative
California League of Conservation Voters
California Product Stewardship Council
Calpirg
Center for Environmental Health
Clean Water Action
Coalition for Clean Air
Consumer Federation of California
Dignity Health
Earth Mama Organics
EcoPlum Sustainable Swag
Eighty2degrees Design Studio
Environment America
Environment California
Environmental Working Group
EO Products
Friends Committee on Legislation of California
Han Skin Care Cosmetics
Innersense Beauty
Juice Beauty
Just the Goods
Los Angeles County Sanitation Districts
National Stewardship Action Council
Natural Resources Defense Council (NRDC)
Orange County Sanitation District (OCSD)
Oz Naturals
Personal Care Products Council
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Pipette
Sanitation Districts of Los Angeles County
Science and Environmental Health Network
Seventh Generation
Seventh Generation Advisors
Sierra Club California

Skin Owl
SmartOakland.org
Sprout San Francisco
US PIRG
W.S. Badger Company
Women's Voices for The Earth

OPPOSITION:

None received

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