
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

AB 2762 (Muratsuchi) - Cosmetics: safety

Version: May 18, 2020

Urgency: No

Hearing Date: August 17, 2020

Policy Vote: E.Q. 5 - 0

Mandate: Yes

Consultant: Ashley Ames

Bill Summary: This bill would provide that no person or entity shall manufacture, sell, deliver, hold or offer for sale in commerce any cosmetic product that contains intentionally added ingredients listed as a banned substances, as specified, beginning January 1, 2025.

Fiscal Impact:

- CDPH estimates costs of \$742,000 in the first year and \$709,000 ongoing (General Fund), along with 3.0 positions, to investigate complaints, enforce and impose penalties and perform the necessary lab work, offset to some extent by penalty revenue.
- Potential Department of Justice costs if, upon notification, the department decides to prosecute (General Fund).

Background: 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))

Proposed Law: 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 specified ingredients.
- 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.

Related 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.

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