

## ASSEMBLY THIRD READING

AB 496 (Friedman)

As Amended March 8, 2023

Majority vote

**SUMMARY**

Prohibits, commencing January 1, 2027, a person or entity from manufacturing, selling, delivering, holding or offering for sale in commerce any cosmetic product that contains any of the ingredients specified in this bill.

**Major Provisions****COMMENTS**

*Public health concerns with cosmetics:* Cosmetic products are sold to consumers across California, including to children who are still in the formative years of development. These products are used as part of daily beauty and cleansing routines, often times on the skin's most sensitive areas, like the face, eyelids, and lips. Cosmetic products are most heavily used by women, including those of childbearing age, increasing the likelihood of exposing mothers, fetuses, and nursing children to substances that can cause cancer and reproductive toxicity. That is why it is so important that cosmetic products are safe, properly labeled, and free of contamination.

*State cosmetic regulatory requirements:* California has two laws governing the safety of cosmetics. The first is the Sherman Act, which is administered by the California Department of Public Health (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.

Pursuant to the Sherman Act, any cosmetic is considered to be adulterated "if it bears or contains any poisonous or deleterious substance that may render it injurious to users." However, adulteration, in many instances, refers to tampering with a product after the manufacturer has completed its manufacturing. Selling adulterated cosmetics can lead to civil and administrative penalties, embargoes, and even bans on products.

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. CDPH is required to make these data user-friendly and available to the public. To date, 867 companies have reported 119,089 products to CDPH.

*Federal cosmetics regulatory requirements:* Neither the Food and Drug Administration (FDA) nor CDPH require premarket safety testing, review, or approval of cosmetic products.

Under the Food Drug and Cosmetic Act (FD&C Act), cosmetics and their ingredients are not required to be approved before they are sold to the public, and the 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.

*What we know about the chemicals listed in this bill vis-à-vis the EU:* The European Union (EU), which includes 27 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 27 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. On September 15, 2022, the European Commission published Regulation (EU) 2022/1531 to amend Cosmetics Regulation (EC) No. 1223/2009 for the use of certain ingredients classified as carcinogenic, mutagenic, or toxic for reproduction (CMR substances) 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 496 have been fully banned in the EU Directive and its Annexes and consequently have already been removed from cosmetic products sold in the EU.

*Prior legislation:* AB 2762 (Muratsuchi), Chapter, 314, Statutes of 2020 bans a list of specified ingredients from cosmetics products consistent with the EU's Annex II of regulation No 1223/2009, which lists the substances prohibited in cosmetic products sold in the EU.

As AB 2762 moved through the legislative process, industry stakeholders weighed in and formally opposed the bill while it was being heard in the Assembly Environmental Safety and Toxic Materials Committee. Specifically, the Personal Care Products Council, Fragrance Creators Association, California Chamber of Commerce, and other industry groups opposed unless the bill was further amended. They collectively stated:

"The undersigned organizations support better alignment with the health and safety standards set forth by the European Union that prohibit the intentional use of specified ingredients which are listed in the EU Cosmetics Regulation 1223/2009, ANNEX II, List of Substances Prohibited in Cosmetic Products. In order to achieve this goal, AB 2762 needs further amendments. The authors have already publicly committed to aligning California law with the EU regulation – not anything more or less. We remain committed to achieving this goal. As such, we have submitted draft language that we believe would fully align AB 2762 with the EU regulations."

AB 496 is consistent with AB 2762 and aligns with the EU regulations along the same lines as requested during the debate of AB 2762.

*Consistency with the European Union:* AB 2762 included the following intent language: "It is the intent of the Legislature to enact a prohibition on the presence of intentionally added ingredients in cosmetics that is consistent with the prohibition on the presence of intentionally added ingredients in cosmetics that was enacted by the European Union." The approach in AB 496 is modeled after AB 2762 and reflects a strategy specifically requested by industry stakeholders when they were negotiating amendments to AB 2762 – aligning California's bans on cosmetic ingredients with ingredients that are also banned in the EU. California does not have a rigorous scientific process to evaluate chemical ingredients in cosmetics. Until such time

that California has a process, it seems reasonable to protect California consumers in the same manner that consumers in the EU have been protected. It is important to note that the cosmetic products for sale in the EU have been reformulated to remove the ingredients banned in the Directive and therefore could also be sold in California if this bill were to pass and become law.

*Should California be different than the EU?* Industry representatives who negotiated AB 2762 argued that it would be helpful to industry if California conformed its list of banned ingredients to the EU's list. In a shift from industry's previous position on AB 2762, opposition to AB 496 is now asking for one of the chemicals in this bill to be removed even though it is already banned in the EU, so that it could continue to be sold in California. If the Legislature were to agree to remove a chemical banned in the EU from the state's ban list, this would effectively create a list in California that no longer aligns with the EU. This would arguably open the door to future conversations about additional chemicals that California would like to ban, even when these chemicals are not currently banned in the EU.

### **According to the Author**

"Personal care products and cosmetics should be non-toxic for everyone. If you consider that the European Union prohibits over 1,600 chemicals in such products, a ban in California on these noxious carcinogens and endocrine disrupters is long overdue. AB 496 continues our progress toward cleaner, healthier, and environmentally-safer products."

### **Arguments in Support**

According to a coalition of supporters, including the sponsor of this bill, the Environmental Working Group:

"This important bill will add to the list of chemicals that California does not allow in cosmetics sold in the state. In particular, AB 496 prohibits the sale in California of beauty and personal care products containing any one of 26 highly toxic chemicals that pose public health harms, such as increased risk of cancer, harm to the reproductive system, and harm to aquatic life with long-lasting effects. The environmental risks of these 26 chemicals are particularly concerning because cosmetics are regularly washed off after use. Because of their toxicity, all of the AB 496-listed chemicals are prohibited from being used in cosmetics sold in the European Union.

"Out of the more than 10,000 chemicals used to formulate beauty and personal care products, the United States Food and Drug Administration has only ever banned or restricted 11. In contrast, the European Union prohibits or restricts the use of nearly 1,600 chemicals including the AB 496 chemicals in cosmetics, and many other countries tightly regulate cosmetics sold to their citizens. According to CDPH's Safe Cosmetics Program, at least 88 different carcinogens and reproductive toxicants are intentionally added to thousands of cosmetic products sold in California today. Also, even after a manufacturer has reformulated a product to comply with European standards, the manufacturer often continues to sell the originally-formulated product to Californians."

### **Arguments in Opposition**

"Fragrance Creators Association (Fragrance Creators) is writing to express our opposed unless amended position on AB 496. We appreciate your goal of limiting the use of ingredients in cosmetics that pose a risk to California consumers. We would like to raise a concern regarding the proposal to prohibit the fragrance ingredient p-BMHCA (2-(tert-butylbenzyl propionaldehyde) (CAS Number: 80-54-6) commonly known as Lilial® and also known as Lily aldehyde. We must respectfully request that this ingredient be removed from the legislation, as

the body of science does not show there is a risk to consumers when the ingredient is used in alignment with industry safety standards and applicable regulatory requirements.

"AB 496 seeks to align cosmetic ingredient restrictions with those adopted by the European Union (EU). Unfortunately, the EU did not base their restriction on risk, but made a hazard-based decision. For over 50 years, the Research Institute for Fragrance Materials (RIFM)'s purpose has been to gather and analyze scientific data, engage in testing and evaluation, distribute information, cooperate with official agencies and to encourage uniform safety standards related to the use of fragrance ingredients. According to RIFM's assessment, Linal may be safely used in cosmetic products below certain specific concentration limits set in an IFRA Standard."

### **FISCAL COMMENTS**

This bill is keyed non-fiscal by the Legislative Counsel.

### **VOTES**

**ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 7-0-2**

**YES:** Lee, Arambula, Bauer-Kahan, Connolly, McKinnor, Pacheco, Zbur

**ABS, ABST OR NV:** Hoover, Ta

### **UPDATED**

VERSION: March 8, 2023

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