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THIRD READING

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Bill No: AB 496  
Author: Friedman (D), et al.  
Amended: 3/8/23 in Assembly  
Vote: 21

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SENATE ENVIRONMENTAL QUALITY COMMITTEE: 6-0, 6/7/23  
AYES: Allen, Dahle, Gonzalez, Hurtado, Menjivar, Skinner  
NO VOTE RECORDED: Nguyen

ASSEMBLY FLOOR: 62-0, 3/23/23 - See last page for vote

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**SUBJECT:** Cosmetic safety

**SOURCE:** Environmental Working Group

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**DIGEST:** This bill 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 26 intentionally added ingredients specified in this bill.

**ANALYSIS:**

Existing law:

- 1) 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)
- 2) 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)

- 3) Prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale in commerce any cosmetic product that contains 13 chemical ingredients banned from use in cosmetics by the European Union (EU).

#### *UNCODIFIED INTENT LANGUAGE*

- 4) Provides that 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 EU. (Added by AB 2762, Chapter 314, Statutes of 2020).

This bill 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 26 intentionally added ingredients specified in this bill classified as carcinogenic, mutagenic, or toxic for reproduction.

#### **Background**

- 1) *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.
- 2) *State cosmetic regulatory requirement.* 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.

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.

- 3) *Federal cosmetics regulatory requirements.* Neither the FDA nor CDPH require premarket safety testing, review, or approval of cosmetic products.

Under the 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.

- 4) *What we know about the chemicals listed in the bill vis-à-vis the EU.* The 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 EU Directive requires member states to take all necessary measures to ensure that only cosmetic products which conform to the provisions of the Directive and its Annexes can be put on the market. Additionally, the Directive requires member states to prohibit the marketing of cosmetic products containing ingredients listed in the Directive and its Annexes. 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.

- 5) *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. While AB 2762 was moving 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 in opposition to AB 2762, the Personal Care Products Council, Fragrance Creators Association, California Chamber of Commerce, and other industry groups were oppose 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."

## Comments

- 1) *Purpose of bill.* 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."
- 2) *Consistency with the European Union.* 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. 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.

- 3) 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.
- 4) *Should California be different than the EU?* Industry representatives who negotiated AB 2762 had 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 the 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.
- 5) *The case for and against the exclusion of lilial.* The fragrance industry is opposed to AB 496 unless the bill is amended to remove lily aldehyde, also known as lilial, from the bill's list of prohibited cosmetic ingredients. The industry maintains that the EU did not base their restriction on risk, but made a hazard-based decision. This hazard-based action “does not consider existing safety assessments of the Research Institute for Fragrance Materials nor the International Fragrance Association Standards that support the safe use on risk considerations.”
- 6) However, the sponsors of AB 496 counter that the EU's Risk Assessment Committee and its Scientific Committee on Consumer Safety have evaluated both the hazards and risks of lilial and concluded that the chemical poses reproductive and developmental dangers to humans under industry standards of use. Moreover, the sponsors maintain that “lilial's harmful effects in consumer products are recognized under California law and regulation, since lilial is listed as a Candidate Chemical under the Department of Toxic Safety Control's Safer Consumer Products Program.”

**Related/Prior Legislation**

AB 2762 (Muratsuchi, Chapter 314, Statutes of 2020) prohibits, beginning January 1, 2025, the manufacture, sale, delivery, holding, or offering for sale in commerce of any cosmetic product containing specified intentionally added ingredients.

**FISCAL EFFECT:** Appropriation: No   Fiscal Com.: No   Local: No

**SUPPORT:** (Verified 6/8/23)

Environmental Working Group (source)

Active San Gabriel Valley

Alliance of Nurses for Healthy Environments

American Bird Conservancy

American College of Obstetricians and Gynecologists District IX

As You Sow

Attn: Grace

Ban Sup

Beautycounter

Booni Doon

Brand Geek

California Health Coalition Advocacy

California Nurses for Environmental Health and Justice

California Product Stewardship Council

California Water Service

Calpirg

City and County of San Francisco

Clean Water Action

Codex Labs Corp

Consumer Federation of California

Dietrick Institute for Applied Insect Ecology

Eco Plum

Educate. Advocate.

Families Advocating for Chemical and Toxics Safety

Feminists in Action Los Angeles

Friends Committee on Legislation of California

Friends of the Earth

Green Science Policy Institute

Grove Collaborative

Healthy Highways  
Indivisible Alta Pasadena  
Indivisible California Green Team  
Indivisible Ventura  
Inna Organics  
Intelligent Nutrients  
Jonas Philanthropies  
Just the Goods  
Long Beach Environmental Alliance  
Moms Across America  
National Association of Environmental Medicine  
National Stewardship Action Council  
Nontoxic Neighborhoods  
Olita  
Osea Skincare  
Poison Free Malibu  
Prima  
Queers 4 Climate  
Rooted in Resistance  
San Francisco Baykeeper  
Save Our Shores  
Seventh Generation  
Sierra Club California  
SoCal 350 Climate Action  
Sonoma Safe Agriculture Safe Schools  
The Keep a Breast Foundation  
Women for A Healthy Environment  
Women's Voices for the Earth  
Worksafe

**OPPOSITION:** (Verified 6/8/23)

Fragrance Creators Association  
Fragrance Science & Advocacy Council

**ARGUMENTS IN SUPPORT:** According to a coalition of supporters, including the sponsor of the 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.

**ARGUMENTS IN OPPOSITION:** According to the Fragrance Creators Association, "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."

**ASSEMBLY FLOOR:** 62-0, 3/23/23

**AYES:** Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner Horvath, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Waldron, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

**NO VOTE RECORDED:** Cervantes, Chen, Megan Dahle, Davies, Dixon, Essayli, Flora, Vince Fong, Gallagher, Hoover, Lackey, Mathis, McCarty, Jim Patterson, Joe Patterson, Sanchez, Ta, Wallis

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6/9/23 9:49:08

\*\*\*\* END \*\*\*\*