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May 22, 2023

### Washington State Enacts Toxic-Free Cosmetics Act



Governor Jay Inslee signed [Washington state's Toxic-Free Cosmetic Act](#) (the Act) into law on May 15, 2023. The Act sets stringent standards for companies operating within the state, aiming to eliminate the use of toxic ingredients in cosmetics and personal care products. It prioritizes consumer safety and emphasizes sustainable practices, aiming to protect both consumers and the environment.

Pursuant to the Act, beginning January 1, 2025, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state any cosmetic product that contains any of the following intentionally added chemicals or chemical classes:

1. Ortho-phthalates;
2. Perfluoroalkyl and polyfluoroalkyl substances (PFAS);
3. Formaldehyde (CAS 50-00-0) and chemicals determined by the Washington State Department of Ecology (Ecology) to release formaldehyde;
4. Methylene glycol (CAS 463-57-0);
5. Mercury and mercury compounds (CAS 7439-97-6);
6. Triclosan (CAS 3380-34-5);
7. m-Phenylenediamine and its salts (CAS 108-45-2); and
8. o-Phenylenediamine and its salts (CAS 95-54-5).

Additionally, beginning January 1, 2025, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in Washington state any cosmetic product that contains intentionally added lead or lead compounds (CAS 7439-92-1), lead or lead compounds at one part per million (ppm) or above, or as otherwise determined by Ecology through rulemaking.

Note that an in-state retailer in possession of cosmetic products on the date that restrictions on the sale of the products take effect may exhaust its existing stock through sales to the public until January 1, 2026.

## **Enforcement**

Violations of the law are subject to \$5,000 civil penalties for each violation in the case of a first offense, and repeat offenses are subject to a \$10,000 civil penalty for each repeat offense. Any penalties can be appealed to the pollution control hearings board within Ecology. While there is no private right of action under the Act, Ecology may adopt rules as necessary for the purposes of implementing, administering, and enforcing the Act.

## **Next Steps**

By June 1, 2024, in consultation with the Washington State Department of Health, Ecology must identify and assess the hazards of chemicals that provide similar functions as those prohibited under the Act. Ecology must also identify and assess the hazards of chemicals that can affect vulnerable populations. These exercises may lead to further prohibitions. Information regarding the findings will be made publicly available.

Additionally, by May 2024, Ecology shall implement an initiative to support small businesses that manufacture cosmetics products by providing technical assistance and support, resources for chemical hazard assessments, and resources for reformulating products. Ecology shall also execute an initiative to support independent cosmetologists and small businesses that provide cosmetology services, such as beauty salons, in an effort to assist with the transition to using safer cosmetic products.

The law provides additional rulemaking authority for Ecology to implement the new restrictions and to determine what compounds should be regulated as chemicals that release formaldehyde. It requires Ecology to engage with relevant stakeholders to ensure the availability of adequate expertise and input. The stakeholder process should include, but is not limited to, soliciting input from representatives from independent cosmetologists, small businesses offering cosmetology services, such as beauty salons, and small manufacturers of cosmetic products.

Washington's law follows at least six other states, including California, New York, Maryland, Minnesota, Maine, and Colorado, which have also enacted laws regulating the use of substances used in cosmetics and personal care products.

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