



SB-312 Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2020. (2019-2020)

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Senate Bill No. 312

CHAPTER 315

An act to add Section 111792.6 to the Health and Safety Code, relating to cosmetics.

[Approved by Governor September 30, 2020. Filed with Secretary of State September 30, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 312, Leyva. Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2020.

Existing law, the California Safe Cosmetics Act of 2005, requires the manufacturer of a cosmetic product subject to regulation by the federal Food and Drug Administration that is sold in this state to provide the Division of Environmental and Occupational Disease Control within the State Department of Public Health with a complete and accurate list of its cosmetic products that, as of the date of submission, are sold in the state and that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity. Existing law requires the State Department of Public Health to develop and make operational a consumer-friendly, public internet website that creates a database of cosmetic product information collected pursuant to those provisions, as specified. Under existing law, a violation of the act is a crime.

This bill would, commencing January 1, 2022, require a manufacturer of a cosmetic product sold in the state to disclose to the Division of Environmental and Occupational Disease Control a list of each fragrance ingredient or flavor ingredient that is included on a designated list, as defined, and a list of each fragrance allergen that is present in the cosmetic product in specified concentrations. The bill would, commencing January 1, 2022, require the division to post on its existing database of cosmetic product information a list of those fragrance ingredients and flavor ingredients in the cosmetic product and its associated health hazards. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would provide that the provisions of the act are severable.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the Cosmetic Fragrance and Flavor Ingredient Right to Know Act of 2020.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) The fragrance or flavoring in a common beauty or personal care product can be composed of tens to hundreds of individual chemicals, but federal law only requires these ingredients be listed on the product label

by the generic term "fragrance" or "flavor."

(2) There are almost 4,000 fragrance ingredients declared by the International Fragrance Association and over 3,000 flavor ingredients designated by the International Organization of the Flavor Industry. These lists include ingredients that may be classified as carcinogens, reproductive toxicants, asthmagens, neurotoxicants, allergens, and other chemicals of concern.

(3) Studies in the United States indicate that fragrance is included in the vast majority of many types of personal care products. Ninety-six percent of shampoos, 98 percent of conditioners, and 97 percent of hair styling products contain fragrance. Ninety-one percent of antiperspirants, 95 percent of shaving products, 83 percent of moisturizers, and 63 percent of sunscreens contain fragrance. Ninety-one percent of lip moisturizers, 71 percent of lipsticks, 50 percent of foundations, and one-third of all blushes and eyeliners contain fragrance chemicals.

(4) Some studies have shown that fragrance allergy affects 2 to 11 percent of the general population.

(5) In a national web-based survey, over 34 percent of respondents in the United States self-reported health problems, such as migraine headaches and respiratory difficulties, in response to exposure to fragranced products.

(6) Exposure to fragranced products can trigger an episode or exacerbate chronic obstructive pulmonary disease (COPD) symptoms.

(7) The California Work-Related Asthma Prevention Program has documented that use of fragranced products in the workplace is associated with work-related asthma.

(8) The predominantly female nail and hair salon workforce regularly and frequently handles a multitude of products containing fragrance chemicals. Extended exposure on a daily basis to these ingredients makes it even more imperative that salon workers be provided with information on potential hazards.

(9) The American Academy of Dermatology issued a position statement that reads as follows: "The American Academy of Dermatology (AAD) supports identification of the common allergens of fragrances in all formulations of cosmetics, prescription and nonprescription drugs. The Academy believes that consumers should be provided with all of the product information that they need to make the best choices to protect their health."

(b) It is the intent of the Legislature to provide consumers and salon workers with ingredient information about cosmetic products that encourages informed purchasing decisions and reduces public health impacts from exposure to potentially harmful chemicals by requiring product manufacturers to provide a specific list of chemicals used in their fragrance and flavor formulations.

SEC. 3. Section 111792.6 is added to the Health and Safety Code, to read:

111792.6. (a) For purposes of this section, the following definitions apply:

(1) "Cosmetic product" means an article for retail sale or professional use intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance.

(2) "Designated list" means any of the following, including subsequent revisions when adopted by the authoritative body:

(A) Chemicals known to the State of California to cause cancer or reproductive toxicity that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Chapter 6.6 (commencing with Section 25249.5 of Division 20)).

(B) Chemicals classified by the European Union as carcinogens, mutagens, or reproductive toxicants pursuant to Category 1A or 1B in Annex VI to Regulation (EC) 1272/2008.

(C) Chemicals included in the European Union Candidate List of Substances of Very High Concern in accordance with Article 59 of Regulation (EC) 1907/2006 on the basis of Article 57(f) for endocrine disrupting properties.

(D) Chemicals for which a reference dose or reference concentration has been developed based on neurotoxicity in the federal Environmental Protection Agency's Integrated Risk Information System.

(E) Chemicals that are identified as carcinogenic to humans, likely to be carcinogenic to humans, or as Group A, B1, or B2 carcinogens in the federal Environmental Protection Agency's Integrated Risk Information System.

(F) Chemicals included in the European Chemicals Agency Candidate List of Substances of Very High Concern in accordance with Article 59 of Regulation (EC) 1907/2006 on the basis of Article 57(d), Article 57(e), or Article 57(f) of Regulation (EC) 1907/2006 for persistent, bioaccumulative and toxic, or very persistent and very bioaccumulative, properties.

(G) Chemicals that are identified as persistent, bioaccumulative, and inherently toxic to the environment by the Canadian Environmental Protection Act Environmental Registry Domestic Substances List.

(H) Chemicals classified by the European Union in Annex VI to Regulation (EC) 1272/2008 as respiratory sensitizer category 1.

(I) Group 1, 2A, or 2B carcinogens identified by the International Agency for Research on Cancer.

(J) Neurotoxicants that are identified in the federal Agency for Toxic Substances and Disease Registry's Toxic Substances Portal, Health Effects of Toxic Substances and Carcinogens, Nervous System.

(K) Persistent bioaccumulative and toxic priority chemicals that are identified by the federal Environmental Protection Agency National Waste Minimization Program.

(L) Reproductive or developmental toxicants identified in Monographs on the Potential Human Reproductive and Developmental Effects published by the federal National Toxicology Program, Office of Health Assessment and Translation.

(M) Chemicals identified by the federal Environmental Protection Agency's Toxics Release Inventory as Persistent, Bioaccumulative and Toxic Chemicals that are subject to reporting under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001, et seq.).

(N) The Washington Department of Ecology's Persistent, Bioaccumulative, Toxic (PBT) Chemicals identified in Chapter 173-333 of Title 173 of the Washington Administrative Code.

(O) Chemicals that are identified as known to be, or reasonably anticipated to be, human carcinogens by the 13th Report on Carcinogens prepared by the federal National Toxicology Program.

(P) Chemicals for which notification levels, as defined in Section 116455, have been established by the State Department of Public Health or the State Water Resources Control Board.

(Q) Chemicals for which primary maximum contaminant levels have been established and adopted under Section 64431 or 64444 of Title 22 of the California Code of Regulations.

(R) Chemicals identified as toxic air contaminants under Section 93000 or 93001 of Title 17 of the California Code of Regulations.

(S) Chemicals that are identified as priority pollutants in the California water quality control plans pursuant to subdivision (c) of Section 303 of the federal Clean Water Act (33 U.S.C. Sec. 1341) and in Section 131.38 of Title 40 of the Code of Federal Regulations, or identified as pollutants by the state or the federal Environmental Protection Agency for one or more water bodies in the state under subdivision (d) of Section 303 of the federal Clean Water Act (33 U.S.C. Sec. 1341) and Section 130.7 of Title 40 of the Code of Federal Regulations.

(T) Chemicals that are identified with noncancer endpoints and listed with an inhalation or oral reference exposure level by the Office of Environmental Health Hazard Assessment pursuant to paragraph (2) of subdivision (b) of Section 44360.

(U) Chemicals identified as priority chemicals by the California Environmental Contaminant Biomonitoring Program pursuant to Section 105449.

(V) Chemicals that are identified on Part A of the List of Chemicals for Priority Action prepared by the Oslo and Paris Conventions for the Protection of the Marine Environment of the North-East Atlantic.

(3) "Flavor ingredient" means any intentionally added substance or complex mixture of aroma chemicals, flavor chemicals, natural essential oils, and other functional ingredient or ingredients for which the purpose is to impart a flavor or taste, or to counteract a flavor or taste.

(4) "Fragrance ingredient" means any intentionally added substance or complex mixture of aroma chemicals, natural essential oils, and other functional ingredient or ingredients for which the purpose is to impart an odor or scent, or to counteract an odor.

(5) "Manufacturer" means any entity whose name appears on the label of a cosmetic product pursuant to the requirements of Section 701.12 of Title 21 of the Code of Federal Regulations.

(6) "Professional cosmetic" has the same meaning as provided in paragraph (3) of subdivision (b) of Section 110371.

(b) (1) Commencing January 1, 2022, a manufacturer of a cosmetic product sold in the state shall disclose all of the following information to the Division of Environmental and Occupational Disease Control within the State Department of Public Health:

(A) A list of each fragrance ingredient or flavor ingredient that is included on a designated list, as defined in paragraph (2) of subdivision (a), and present in the cosmetic product. This section does not require a manufacturer of a cosmetic product to disclose the presence of any fragrance ingredient or flavor ingredient that is not included on a designated list.

(B) A list of each fragrance allergen included in Annex III of the EU Cosmetics Regulation No. 1223/2009, as required to be disclosed pursuant to the EU Detergents Regulation No. 21 648/2004, and subsequent updates to those regulations, that is present in a rinse-off cosmetic product at a concentration at or above 0.01 percent (100 parts per million) or in a leave-on cosmetic product at a concentration at or above 0.001 percent (10 parts per million). Those ingredients shall appear on the database in a unique manner that distinguishes those ingredients from other reportable ingredients and indicates that they are hazardous only to individuals who suffer from fragrance allergies.

(C) Whether the cosmetic product is intended for professional use or retail cosmetic use.

(D) The Chemical Abstracts Service (CAS) number for each ingredient or allergen that requires disclosure pursuant to subparagraph (A) or (B).

(E) The corresponding Universal Product Code (UPC) for the cosmetic product described in subparagraph (A).

(2) (A) To protect trade secrets, this section does not require a manufacturer to disclose the weight or amount of an ingredient that requires disclosure pursuant to subparagraph (A) or (B) of paragraph (1) or to disclose the manner in which a cosmetic product or intentionally added fragrance ingredient or flavor ingredient is formulated. A manufacturer may protect as a trade secret, and is not required to disclose, any ingredient or combination of ingredients that is not on a designated list or required to be disclosed pursuant to subparagraph (A) or (B) of paragraph (1). A fragrance ingredient or flavor ingredient that is included in a designated list, or a fragrance allergen that requires disclosure pursuant to subparagraph (B) of paragraph (1), does not constitute a trade secret.

(B) Pursuant to subdivision (k) of Section 6254 of the Government Code, a fragrance ingredient or flavor ingredient that constitutes a trade secret is not subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) (A) A manufacturer that is required to disclose a fragrance ingredient or flavor ingredient pursuant to paragraph (1) due to a change in a designated list shall disclose the ingredient no later than six months after the revised list is adopted by the authoritative body, or six months after the revised list becomes effective, whichever is later.

(B) The State Department of Public Health shall create a voluntary electronic mailing list for the department to provide updates on the inclusion or deletion of fragrance allergens, fragrance ingredients, and flavor ingredients on the designated lists.

(c) (1) Commencing January 1, 2022, the Division of Environmental and Occupational Disease Control shall post on the database created pursuant to Section 111792, in an easily readable format, all of the following information related to a cosmetic product described in, and disclosed pursuant to, subparagraph (A) of paragraph (1) of subdivision (b):

(A) A list of all fragrance ingredients and flavor ingredients that are included on a designated list and all fragrance allergens required to be disclosed pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(B) The health hazards associated with each fragrance ingredient or flavor ingredient.

(2) The division shall identify whether an ingredient is a fragrance ingredient or a flavor ingredient.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for

a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.