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Toxic-Free Cosmetic Act Enacted in Washington State

By: [Marissa Alkhazov](#)

Governor Jay Inslee signed HB 1047, Washington State's Toxic-Free Cosmetic Act (the Act) into law on May 15, 2023. The Act bans some of the most concerning chemicals added into cosmetic and personal care products, including PFAS, phthalates, formaldehyde and formaldehyde releasing agents. Washington State joins six other states,¹ enacting a ban on hazardous chemicals incorporated into personal care and cosmetics, but stands out as the most stringent state law in the country regulating toxic chemicals.

Chemicals incorporated into personal care and beauty products are largely unregulated, and contribute to larger scale pollution and environmental impact during manufacturing and disposal. By banning many known hazardous chemicals, the Act prioritizes consumer safety and emphasizes sustainable environmental practices. In fact, the Act requires collaboration with the Washington State Health Department, Ecology to 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. 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.

Effective 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).

¹ California, Colorado, Minnesota, Maryland, Maine and New York have enacted state laws banning toxic substances in personal care products.

As of 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.

**In-state retailers in possession of cosmetic products containing banned chemicals may exhaust their existing stock through sales to the public until January 1, 2026.

Violations do not allow for Private Rights of Action

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.

Marissa Alkhazov is a Shareholder and the Northwest Chair of Buchalter's Products Liability Practice Group. If you have any questions, please contact Marissa or your Buchalter relationship attorney.



Marissa Alkhazov

Shareholder

(206) 319-7008

malkhazov@buchalter.com