

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO.

Introduced by

Representative Delmore

1 A BILL for an Act to create and enact chapter 19-09.1 of the North Dakota Century Code,  
2 relating to safe cosmetics.

### 3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 **SECTION 1.** Chapter 19-09.1 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **19-09.1-01. Definitions.** As used in this chapter, unless context or subject matter  
7 otherwise requires:

- 8 1. "Authoritative body" means any agency or formally organized program or group  
9 recognized by the department as being authoritative for the purpose of identifying  
10 chemicals that cause cancer or reproductive toxicity.
- 11 2. "Chemical identified as causing cancer or reproductive toxicity" means a chemical  
12 identified by an authoritative body as any of the following:
  - 13 a. A substance listed as known or reasonably anticipated to be a human  
14 carcinogen in national toxicology report on carcinogens;
  - 15 b. A substance given an overall carcinogenicity evaluation of group 1, group 2A,  
16 or group 2B, by the international agency for research on cancer;
  - 17 c. A substance identified as a group A, group B1, or group B2 carcinogen, or as  
18 a known or likely carcinogen by the United States environmental protection  
19 agency; or
  - 20 d. A substance identified as having some or clear evidence of adverse  
21 developmental, male reproductive, or female reproductive toxicity effects in a  
22 report by an expert panel of the national toxicology program's center for the  
23 evaluation of risks to human reproduction.

- 1           3. "Cosmetics" has the same meaning as that term is defined in United States Code,  
2           title 21, chapter 9, subchapter II, section 321, and includes:
- 3           a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced  
4           into, or otherwise applied to the human body or any part thereof for cleansing,  
5           beautifying, promoting attractiveness, or altering the appearance; and
- 6           b. Articles intended for use as a component of any such articles, excluding soap.
- 7           4. "Department" means the department of health.
- 8           5. "Ingredient" has the same meaning as that term is defined in Code of Federal  
9           Regulations, title 21, chapter 1, part 700, section 700.3, subdivision e, and does  
10          not include any incidental ingredient as defined in Code of Federal Regulations,  
11          title 21, chapter 1, part 701, section 701.3, subdivision 1.
- 12          6. "Manufacturer" means any person whose name appears on the label of a cosmetic  
13          product pursuant to the requirements of Code of Federal Regulations, title 21,  
14          section 701.12.

15          **19-09.1-02. Safe cosmetics program.**

- 16          1. Beginning January 1, 2010, the manufacturer of any cosmetic product subject to  
17          regulation by the federal food and drug administration that is sold in this state shall,  
18          on a schedule and in electronic or other format, as determined by the department,  
19          provide the department with a complete and accurate list of its cosmetic products  
20          that, as of the date of submission, are sold in the state and that contain any  
21          ingredient that is a chemical identified as causing cancer or reproductive toxicity,  
22          including any chemical that meets either of the following conditions:
- 23          a. A chemical contained in the product for purposes of fragrance or flavoring; or  
24          b. A chemical identified by the phrase "and other ingredients" and determined to  
25          be a trade secret pursuant to the procedure established in Code of Federal  
26          REgulations, title 21, part 702, section 720.8, and part 20. Any ingredient  
27          identified under this subsection must be considered confidential trade secret  
28          information and is not public.
- 29          2. Any information submitted pursuant to subsection 1 must identify each chemical  
30          both by name and chemical abstract service number and must specify the product  
31          or products in which the chemical is contained.

- 1           3. If an ingredient identified under this section subsequently is removed from the  
2           product in which it was contained or is no longer a chemical identified as causing  
3           cancer or reproductive toxicity by an authoritative body, the manufacturer of the  
4           product containing the ingredient shall submit the new information to the  
5           department. Upon receipt of new information, the department after verifying the  
6           accuracy of that information, shall revise the manufacturer's information on record  
7           with the department to reflect the new information. The manufacturer is not under  
8           obligation to submit subsequent information on the presence of the ingredient in  
9           the product unless subsequent changes require submittal of the information.
- 10          4. This section shall apply to cosmetic products that may also be regulated as a drug  
11          by the federal food and drug administration.

12          **19-09.1-03. Investigations.**

- 13          1. In order to determine potential health effects of exposure to ingredients in  
14          cosmetics sold in the state, the department may conduct an investigation of one or  
15          more cosmetic products that contain chemicals identified as causing cancer or  
16          reproductive toxicity or other ingredients of concern to the department.
- 17          2. An investigation conducted pursuant to subsection 1 may include a review of  
18          available health effects data and studies, worksite health hazard evaluations,  
19          epidemiological studies to determine the health effects of exposures to chemicals  
20          in various subpopulations, and exposure assessments to determine total  
21          exposures to individuals in various settings.
- 22          3. If an investigation is conducted under subsection 1, the manufacturer of any  
23          product subject to the investigation may submit relevant health effects data and  
24          studies to the department.
- 25          4. In order to further the purposes of an investigation, the department may require  
26          manufacturers of products subject to the investigation to submit to the department  
27          relevant health effects data and studies available to the manufacturer and other  
28          available information as requested by the department, including the concentration  
29          of the chemical in the product, the amount by volume or weight of the product that  
30          comprises the average daily application or use, and sales and use data necessary  
31          to determine where the product is used in the occupational setting.

- 1           5. The department shall establish reasonable deadlines for the submittal of  
2           information required pursuant to subsection 4. Failure by a manufacturer to submit  
3           the information in compliance with the requirements of the department is a violation  
4           of this section.
- 5           6. If the department determines pursuant to an investigation that an ingredient in a  
6           cosmetic product is potentially toxic at the concentrations present in the product or  
7           under the conditions used, the department shall immediately make the findings  
8           public.
- 9           7. A violation of this section by a manufacturer is subject to a civil penalty not to  
10          exceed five thousand dollars per violation.