Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1183

Introduced by

Representatives Delmore, N. Johnson, Potter

Senators Bakke, J. Lee, Nelson

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

19-09.1-01. Definitions. As used in this chapter, unless context otherwise requires:

1. "Authoritative body" means any agency or formally organized program or group recognized by the department as being authoritative for the purpose of identifying chemicals that cause cancer or reproductive toxicity.
2. "Chemical identified as causing cancer or reproductive toxicity" means a chemical identified by an authoritative body as:
   a. A substance listed as known or reasonably anticipated to be a human carcinogen in a national toxicology report on carcinogens;
   b. A substance given an overall carcinogenicity evaluation of group 1, group 2A, or group 2B, by the international agency for research on cancer;
   c. A substance identified as a group A, group B1, or group B2 carcinogen, or as a known or likely carcinogen by the United States environmental protection agency; or
   d. A substance identified as having some or clear evidence of adverse developmental, male reproductive, or female reproductive toxicity effects in a report by an expert panel of the national toxicology program's center for the evaluation of risks to human reproduction.
3. "Cosmetics" has the same meaning as that term is defined in title 21, United States Code, chapter 9, subchapter II, section 321, and includes:

a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

b. Articles intended for use as a component of any such articles, excluding soap.

4. "Department" means the state department of health.

5. "Ingredient" has the same meaning as that term is defined in title 21, Code of Federal Regulations, chapter 1, part 700, section 700.3, subdivision (e), and does not include any incidental ingredient as defined in Code of Federal Regulations, title 21, chapter 1, part 701, section 701.3, subdivision (l).

6. "Manufacturer" means any person whose name appears on the label of a cosmetic product pursuant to the requirements of Code of Federal Regulations, title 21, section 701.12.

19-09.1-02. Safe cosmetics program.

1. Beginning January 1, 2010, the manufacturer of any cosmetic product subject to regulation by the federal food and drug administration which is sold in this state shall provide, on a schedule and in electronic or other format as determined by the department, the department with a complete and accurate list of its cosmetic products that, as of the date of submission, are sold in the state and which contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity, including any chemical that is:

   a. Contained in the product for purposes of fragrance or flavoring; or

   b. Identified by the phrase "and other ingredients" and determined to be a trade secret pursuant to the procedure established in title 21, Code of Federal Regulations, part 702, section 720.8, and part 20. Any ingredient identified under this subdivision must be considered confidential trade secret information and is not public information.

2. Any information submitted pursuant to subsection 1 must identify each chemical both by name and chemical abstract service number and must specify the product or products in which the chemical is contained.

3. If an ingredient identified under this section subsequently is removed from the product in which it was contained or is no longer a chemical identified as causing

cancer or reproductive toxicity by an authoritative body, the manufacturer of the product containing the ingredient shall submit the new information to the department. Upon receipt of new information, the department, after verifying the accuracy of that information, shall revise the manufacturer's information on record with the department to reflect the new information. The manufacturer is not under obligation to submit subsequent information on the presence of the ingredient in the product unless subsequent changes require submittal of the information.

4. This section applies to cosmetic products that may be regulated as a drug by the federal food and drug administration.

19-09.1-03. Investigations - Civil penalty.

1. In order to determine potential health effects of exposure to ingredients in cosmetics sold in the state, the department may conduct an investigation of one or more cosmetic products that contain chemicals identified as causing cancer or reproductive toxicity or other ingredients of concern to the department.
2. An investigation conducted pursuant to subsection 1 may include a review of available health effects data and studies, worksite health hazard evaluations, epidemiological studies to determine the health effects of exposures to chemicals in various subpopulations, and exposure assessments to determine total exposures to individuals in various settings.
3. If an investigation is conducted under subsection 1, the manufacturer of any product subject to the investigation may submit relevant health effects data and studies to the department.
4. To further the purposes of an investigation, the department may require manufacturers of products subject to the investigation to submit to the department relevant health effects data and studies available to the manufacturer and other available information as requested by the department, including the concentration of the chemical in the product, the amount by volume or weight of the product that comprises the average daily application or use, and sales and use data necessary to determine where the product is used in the occupational setting.
5. The department shall establish reasonable deadlines for the submittal of information required pursuant to subsection 4.

6. If the department determines pursuant to an investigation that an ingredient in a cosmetic product is potentially toxic at the concentrations present in the product or under the conditions used, the department immediately shall make the findings public.

7. A manufacturer that violates of this section is subject to a civil penalty not to exceed five thousand dollars per violation.