

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 643

(Delegate Palakovich Carr)

Health and Government Operations

Finance

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Public Health - Cosmetic Products - Ingredient Prohibition

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This bill bans a person from knowingly manufacturing, selling, delivering, holding, or offering for sale in the State, a cosmetic product that contains any of 24 listed intentionally added “ingredients,” which include formaldehyde, mercury, and several per- and polyfluoroalkyl substances and their salts. However, a person is not in violation of the bill if the person manufactures, sells, delivers, holds, or offers for sale in the State, a cosmetic product that (1) was manufactured through a process intended to comply with the bill and (2) contains a technically unavoidable trace quantity of a prohibited ingredient due to an impurity of an ingredient, the manufacturing process, storage, or packaging. Violations are subject to existing criminal and civil penalties. **The bill takes effect January 1, 2025.**

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Fiscal Summary

**State Effect:** The Maryland Department of Health (MDH) can likely handle enforcement with existing resources, assuming enforcement is complaint based. However, if compliant volume is high, expenditures may increase for MDH. The application of existing penalty provisions is not anticipated to have a material impact on State revenues.

**Local Effect:** The bill, and the application of existing penalty provisions, is not expected to materially affect local government finances or operations.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** An “ingredient” is any single chemical entity or mixture used as a component in the manufacture of a cosmetic product and does not include an incidental ingredient as described in federal regulations.

The bill expresses the intent of the General Assembly that the bill be construed in a manner that is consistent with the prohibition on the presence of the same intentionally added ingredients in cosmetics enacted by the European Union under European Parliament and Council Regulation No. 1223/2009 and any subsequent amendments.

**Current Law:** Statute defines “cosmetic” to mean any substance, or any component of a substance, that is 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 appearance. “Cosmetic” does not include soap. Federal regulations (21 C.F.R. § 701.3(L)) consider incidental ingredients to be substances that have no technical or functional effect in the cosmetic but are present by reason of having been incorporated into the cosmetic as an ingredient of another cosmetic ingredient.

The federal Food, Drug, and Cosmetics Act prohibits the distribution of cosmetics that are adulterated or misbranded in interstate commerce. MDH implements the Maryland Food, Drug, and Cosmetic Act, which conforms to the federal act. Specifically, pursuant to § 21-256 of the Health-General Article, a person may not (1) manufacture or sell any cosmetic that is adulterated or misbranded; (2) adulterate or misbrand a cosmetic; (3) make a cosmetic become adulterated by altering or damaging the cosmetic product’s labeling while the product is for sale, as specified; (4) receive any adulterated or misbranded cosmetic in commerce; (5) deliver or offer for delivery any adulterated or misbranded cosmetic; (6) disseminate any false advertisement; (7) fail to comply with statutory inspection, sampling, a or record access requirements; (8) remove or dispose of any article that is detained or restricted, as specified; or (9) forge, counterfeit, simulate, falsely represent, or (without proper authority) use any mark, stamp, tag, label, or other identifying symbol that is legally authorized or required at the State or federal level, as specified.

A person who violates any of these prohibitions is subject to both criminal and civil penalties. More specifically, a violator is guilty of a misdemeanor, and upon conviction, a fine up to \$10,000 and imprisonment of up to a year for the first conviction, and a fine up to \$25,000 and imprisonment up to three years for a second or subsequent conviction. In addition, a person who violates Title 21, Subtitle 2 of the Health-General Article is subject to a civil penalty up to \$5,000 in an action in any District Court and can be enjoined from continuing the violation. Each day that a violation occurs is a separate violation.

According to the European Commission, Regulation No. 1223/2009 regulates cosmetic products and is the main regulatory framework for finished cosmetic products that are placed on the European Union market.

**Small Business Effect:** Any small business that manufactures, sells, delivers, or holds affected cosmetic products or the prohibited ingredients for use in cosmetics could be significantly impacted by the bill's prohibition. However, the number of affected manufacturers and/or sellers in the State, if any, is unknown.

The State of California enacted a similar ban, which takes effect January 1, 2025 (the same date as the prohibition under the bill). Thus, larger manufacturing companies may already be developing alternative ingredients or product formulations to comply with the California law. This could mitigate the impact on Maryland small businesses.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Department of Health; Maryland Association of County Health Officers; California Legislative Information; European Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - February 12, 2021  
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Analysis by: Kathleen P. Kennedy

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510