HOUSE DOCKET, NO. 2505 FILED ON: 1/20/2011

HOUSE . . . . . No. 2361

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to safe cosmetics in the Commonwealth of Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradley H. Jones, Jr.	*20th Middlesex*
Paul K. Frost	*7th Worcester*
George N. Peterson, Jr.	*9th Worcester*
Elizabeth A. Poirier	*14th Bristol*
Viriato Manuel deMacedo	*1st Plymouth*
Donald F. Humason, Jr.	*4th Hampden*
F. Jay Barrows	*1st Bristol*
George T. Ross	*2nd Bristol*
Donald H. Wong	*9th Essex*
Sheila C. Harrington	*1st Middlesex*
Matthew A. Beaton	*11th Worcester*

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By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 2361) of Bradley H. Jones, Jr. and others relative to health concerns of cosmetics. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to safe cosmetics in the Commonwealth of Massachusetts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 94 of the General Laws, as amended by chapter 154 of the acts of 2010, is hereby amended by inserting after section 329 the following new section:-

Section 330. As used in this section, section 330A, section 330B, and section 330C, the following terms, shall, unless the context clearly indicates otherwise, have the following meanings:-

"Authoritative body", any federal, state, or private agency or formally organized program or group recognized pursuant to the General Laws as being authoritative for the purpose of identifying chemicals that cause cancer, or reproductive, or developmental toxicity.

"Bureau", the bureau of environmental health.

"Commissioner", the commissioner of public health.

"Chemical identified as causing cancer or reproductive or developmental toxicity", a chemical identified pursuant to section 330B of chapter 94 or by an authoritative body, including, but not limited to: (a) a substance listed as known or reasonable anticipated to be a human carcinogen in a National Toxicology Report; (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; (d) a substance identified as having some 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.

21 “Department”, the department of public health.

22 “Director”, the director of the bureau of environmental health.

23 “Ingredient”, a chemical in a cosmetic, including, but not limited to: (a) chemicals that
24 provide a technical or functional effect; (b) chemicals that have no technical or functional effect
25 in the cosmetic but are present by reason of having been incorporated into the cosmetic as an
26 ingredient of another cosmetic ingredient; (c) processing aids that are present by reason of
27 having been added to a cosmetic during the processing of such cosmetic; (d) substances that are
28 present by reason of having been added to a cosmetic during processing for their technical or
29 functional effect; (e) contaminants present at levels above technically feasible detection limits;
30 (f) contaminants that may leach from container materials or form via reactions over the shelf life
31 of a cosmetic and that may be present at levels above technically feasible detection limits; (g)
32 components of a fragrance, flavor, or preservative declared individually by their appropriate
33 label names; (h) any chemical identified by the phrase “and other ingredients” and determined to
34 be a trade secret pursuant to the procedure established in Part 20 of Section 720.8 of Part 720 of
35 Title 21 of the Code of Federal Regulations; or (i) any individual component of a botanical,
36 petroleum-derived, animal-derived, or other ingredient that the Commissioner or the Director
37 determines to be considered an ingredient.

38 “Ingredient of concern”, any ingredient reported to the bureau by a manufacturer for
39 being a chemical identified as causing cancer, or reproductive, or developmental toxicity.

40 “Manufacturer”, any entity, including a distributor, whose name appears on the label of a
41 cosmetic product pursuant to the requirements of Section 701.12 of Title 21 of the Code of
42 Federal Regulations.

43 Section 330A. (a) Any manufacturer of any cosmetic product subject to regulation by the
44 federal Food and Drug Administration that is sold in the commonwealth shall, on a schedule and
45 in electronic or other format as determined by the bureau, provide the bureau with a complete
46 and accurate list of its cosmetic products that, as of the date of submission, are sold in the state
47 and that contain any ingredient that is a chemical identified as causing cancer, or reproductive, or
48 developmental toxicity, as defined in section 330. Any ingredient determined to be a trade secret
49 shall be treated by the bureau in a manner consistent with the requirements of Part 20 and Part
50 720 of the Title of the Code of Federal Regulations. Any information submitted by a
51 manufacturer pursuant to this section shall identify each chemical both by name and Chemical
52 Abstract Service number and shall specify the product or products in which the chemical is
53 contained.

54 (b) Each such manufacturer shall submit said list one year after this act takes effect and
55 shall update said list according to a schedule determined by the bureau.

56 (c) The commissioner shall compile and maintain a master list of all manufacturers
57 selling cosmetics, in the commonwealth, that sell or distribute products that contain ingredients
58 that are chemicals identified as causing cancer, or reproductive, or developmental toxicity, as
59 well as, a master list of all ingredients of concern.

60 (d) Up-to-date master lists shall be reported to the attorney general, the executive office
61 of energy and environmental affairs, the department, as well as, the General Court and made
62 available to the public on an annual basis as determined by the commissioner.

63 (e) This section shall not apply to any manufacturer of cosmetic products having fewer
64 than 100 employees or with annual aggregate sales of cosmetic products, both within and outside
65 of Massachusetts, of less than $5,000,000 during the previous year.

66 Section 330B. (a) In order to determine the potential health effects of exposure to
67 ingredients of concern in cosmetics sold in the commonwealth, the bureau may conduct an
68 investigation of one or more cosmetic products that contain said ingredients of concern or of
69 other ingredients that are of concern to the bureau for potentially causing cancer or biologically
70 adverse effects on the reproductive systems of female or male humans or animals, including
71 alterations to the female or male reproductive system development, the related endocrine system,
72 fertility, pregnancy, pregnancy outcomes, or modifications in other functions that are dependent
73 on the integrity of the reproductive system.

74 (b) An investigation conducted pursuant to subsection (a) may include, but not be limited
75 to, a review of available health effects data and studies, worksite health hazard evaluations,
76 epidemiological studies to determine the health effects of exposure to chemicals in various
77 subpopulations, and exposure assessments to determine total exposures to individuals in various
78 settings.

79 (c) If an investigation is conducted the director may require the manufacturer of any
80 product subject to the investigation to submit relevant health data and studies to the bureau.

81 (d) The bureau may require a manufacturer of products subject to investigation to submit
82 to the bureau relevant health data and studies reasonably available to the manufacturer and other
83 available information as requested by the bureau, including, but not limited to:

84 (1) all reasonably available information regarding the physical, chemical, and
85 toxicological properties of chemicals in products under investigation;

86 (2) the concentration of ingredients of concern in the product under investigation;

87 (3) the amount by volume or weight of the product that comprises the average daily
88 application or use;

89 (4) sales and use data necessary to determine where the product is used in the
90 occupational setting;

91 (5) exposure and fate information;

92 (6) tests of the finished cosmetics; and

93 (7) any other information used to substantiate the safety of such cosmetics or ingredients.

94 (e) The bureau shall establish reasonable deadlines for the submittal of information
95 required pursuant to section 330B.

96 (f) This section shall not apply to any manufacturer of cosmetic products having fewer
97 than 100 employees or with annual aggregate sales of cosmetic products, both within and outside
98 of Massachusetts, of less than $5,000,000 during the previous fiscal year.

99 Section 330C. (a) The commissioner and the director shall require manufacturers to label
100 cosmetic products sold and distributed in the commonwealth with a consumer warning if the
101 product contains a known carcinogen or chemical identified as causing reproductive or
102 developmental toxicity. The label shall include the signal word "WARNING or CAUTION" and
103 the commissioner and the director shall promulgate such rules and regulations as it shall deem
104 necessary to implement the provisions of this section.

105 (b) All cosmetics that are available for retail sale shall be labeled in a manner that
106 complies with the requirements under subsection (a) and manufacturers shall comply with
107 subsection (a) no later than 2 years after the passage of this act.

108 (c) If a manufacturer, who sells cosmetic products containing chemical identified as
109 causing cancer or reproductive or developmental toxicity, fails to comply with this section, the
110 manufacturer's relevant products shall be deemed adulterated and misbranded pursuant to
111 section 186 and section 187 of chapter 94.

112 (d) The bureau shall report to the attorney general, the executive office of energy and
113 environmental affairs, the department, as well as, the General Court investigations made
114 pursuant to subsection (a) of section 330B, enforcement action, and recommendations, if any,
115 together with drafts of legislation necessary to carry out its recommendations, by filing the same
116 with the clerk of the House of Representatives on an annual basis as determined by the
117 commissioner.

118 (e) This section shall not apply to any manufacturer of cosmetic products having fewer
119 than 100 employees or with annual aggregate sales of cosmetic products, both within and outside
120 of Massachusetts, of less than $5,000,000 during the previous fiscal year.

121 SECTION 2. Section 186 of said chapter 94, is hereby amended by inserting after the
122 word, "use." in line 107, the following new paragraph:- Sixth, if a product containing a chemical

123 identified as causing cancer or reproductive or developmental toxicity is not labeled pursuant to
124 section 330C of chapter 94.

125 SECTION 3. Section 187 of said chapter 94, is hereby amended by inserting after the
126 word, "misleading." in line 175, the following new paragraph:- Fourth, if a product containing a
127 chemical identified as causing cancer or reproductive or developmental toxicity is not labeled
128 pursuant to section 330C of chapter 94.

129 SECTION 4. Notwithstanding any general or special law to the contrary, there shall be a
130 special commission, called the Commission on Safe Cosmetics, to study and report on the
131 implementation of the Massachusetts Safe Cosmetics Act, as well as the need for additional
132 legislation to regulate cosmetics sold and distributed in the commonwealth. The commission
133 shall consist of the attorney general; the commissioner of the department of environmental
134 protection; the secretary of energy and environmental affairs; the commissioner of public health;
135 the director of environmental health; 3 members of the house of representatives, 2 of whom shall
136 be appointed by the speaker of the house, and 1 of whom shall be appointed by the minority
137 leader of the house; 3 members of the senate, 2 of whom shall be appointed by the senate
138 president, and 1 of whom shall be appointed by the senate minority leader; 5 members appointed
139 by the attorney general, 1 of whom shall be a distributor of cosmetics, 2 of whom shall be
140 experts in the area of toxicity: one from the UMass Lowell Center for Sustainable Production
141 and one from The Warner Institute of Green Chemistry, and 2 of whom shall be the owners of
142 businesses in the commonwealth that sells cosmetics, at least 1 of which has signed the Compact
143 for Safe Cosmetics; and 1 member shall be appointed by the governor. The scope of the
144 commission shall include, but not be limited to: researching, evaluating, and developing
145 recommendations regarding the economic, environmental, and public health benefits and costs of
146 regulating cosmetics sold and distributed in the commonwealth, specifically of phasing out
147 ingredients containing chemicals identified as causing cancer or reproductive or developmental
148 toxicity, pursuant to section 330 of chapter 94, and when possible substituting them with safer
149 alternatives. The commission shall research, assess, and develop recommendations regarding the
150 commonwealth's current green chemistry capacity and the commonwealth's economic
151 development potential for safe cosmetics ingredients. The commission shall consult with
152 environmental advocacy organizations, such as the Massachusetts Breast Cancer Coalition,
153 Clean Water Action, and the Massachusetts Coalition for Occupational Safety and Health, as
154 well as, manufacturers, retailers, local units of government, and other interested parties,
155 including providing at least one opportunity for public comment as well as the public review of
156 the commission's draft report. The commission shall prepare a final report of the findings and
157 recommendations together with recommendations for legislation to implement those
158 recommendations by filing the same with the clerks of the senate and house not later than July
159 31, 2012. The commission shall not receive compensation.