THE SENATE
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

S.B. NO. 2409

JAN 19 2018

A BILL FOR AN ACT

RELATING TO SUNSCREEN PRODUCTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that oxybenzone and octinoxate have significant impacts on Hawaii's marine environment and ecosystems, including causing mortality in coral planula and gametes, increasing the susceptibility of coral bleaching at temperatures lower than 87.8 degrees Fahrenheit, and causing potential damage to coral and other marine organisms' genomic integrity. These compounds have also been shown to degrade coral physiology and coral reef community integrity, which reduce acclimation and resiliency to climate change factors and degrade coral reefs by inhibiting recruitment. Other scientific studies show that both chemicals can induce feminization in adult male fish, induce deformities in the embryonic development of fish, sea urchins, coral, and shrimp, and induce neurological behavioral changes in fish that threaten the continuity of fish demographic populations. Furthermore, species covered by the United States Endangered Species Act that inhabit Hawaii's waters may be exposed to

oxybenzone and octinoxate contamination, including sea turtle species, marine mammals, and migratory birds. Increased probability of endocrine disruption, either causing demographic feminization in fish or other types of reproductive diseases, has been observed in marine invertebrate species (e.g., sea urchins), vertebrate species (e.g., wrasses, eels, and parrotfish), and mammals (in species similar to the Hawaiian monk seal).

The legislature further finds that oxybenzone and octinoxate are chemical blockers that protect skin from ultraviolet radiation. As a result, oxybenzone and octinoxate are commonly found in sunscreens and other similar sunscreen products. Oxybenzone and octinoxate can be released into the ocean when a swimmer who has applied sunscreen enters the water, or through the waste mist plume of spray-on sunscreen. Oxybenzone and octinoxate act as pseudo-persistent pollutants in Hawaii's coastal waters, meaning that their environmental contamination levels are constantly sustained or elevated by swimmers, beachgoers, and other water users unless actively mitigated. The legislature also finds that elevated levels of oxybenzone and octinoxate have been detected at popular swimming

beaches and critical coral reef areas throughout the State, including Waimea Bay, Hanauma Bay, and Waikiki beach on Oahu, and Honolua Bay and Ahihi-Kinau natural area reserve on Maui. Sewage contamination of coastal waters is another source of oxybenzone and octinoxate environmental contamination, as oxybenzone and octinoxate are not removed from leaking cesspits, septic systems, or leaks and discharges from municipal waste-water collection and treatment systems.

Accordingly, the purpose of this Act is to prohibit the sale in the State of sunscreen products containing oxybenzone and octinoxate.

SECTION 2. Chapter 328, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"**§328- Sale of sunscreen products containing oxybenzone or octinoxate; prohibition.** (a) No person shall knowingly sell in the State any sunscreen product containing oxybenzone or octinoxate without a medically-licensed prescription.

(b) For purposes of this section:

"Epidermal sunscreen product" includes lotion, paste, balm, ointment, cream, solid stick applicator, brush applicator, roll-

on applicator, aerosol spray, non-aerosol spray pump, and automated and manual mist spray.

"Octinoxate" is the chemical (RS)-2-Ethylhexyl (E)-3-(4-methoxyphenyl)prop-2-enoate under the International Union of Pure and Applied Chemistry chemical nomenclature registry, has a chemical abstract service registry number 5466-77-3, includes ethylhexyl methoxycinnamate, octyl methoxycinnamate, Eusolex 2292, and Uvinul MC80, and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from 370 nanometers to 220 nanometers in an epidermal sunscreen product.

"Oxybenzone" is the chemical (2-Hydroxy-4-methoxyphenyl)-phenylmethanone under the International Union of Pure and Applied Chemistry chemical nomenclature registry, has a chemical abstract service registry number 131-57-7, includes benzophenone-3, Escalol 567, Eusolex 4360, KAHSCREEN BZ-3, 4-methoxy-2-hydroxybenzophenone, and Milestab 9, and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from 370 nanometers to 220 nanometers in an epidermal sunscreen product."

SECTION 3. Section 328-6, Hawaii Revised Statutes, is amended to read as follows:

"**§328-6 Prohibited acts.** The following acts and the causing thereof within the State by any person are prohibited:

(1) The manufacture, sale, delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) The adulteration or misbranding of any food, drug, device, or cosmetic;

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 328-11, 328-12, or 328-17;

(5) The dissemination of any false advertisement;

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by sections 328-22 and 328-23 to 328-27, or to permit

access to or copying of any record as authorized by section 328-23;

(7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State from whom the person received in good faith the food, drug, device, or cosmetic;

(8) The removal or disposal of a detained or embargoed article in violation of sections 328-25 to 328-27;

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being adulterated or misbranded;

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under

this part or regulations adopted under the Federal Act;

(11) The use, on the labeling of any drug or in any advertisement relating to the drug, of any representation or suggestion that an application with respect to the drug is effective under section 328-17, or that the drug complies with that section;

(12) The use by any person to the person's own advantage, or revealing other than to the department of health or to the courts when relevant in any judicial proceeding under this part, any information acquired under authority of section 328-11, 328-12, 328-17, or 328-23, concerning any method or process which as a trade secret is entitled to protection;

(13) In the case of a prescription drug distributed or offered for sale in this State, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner who makes written request for information as to the drug, true and correct copies of all printed matter which is required to be included in any package

in which that drug is distributed or sold, or such other printed matter as is approved under the Federal Act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this part;

(14) (A) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or

(B) Selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subparagraph (A); or

(C) Making, selling, disposing of, or causing to be made, sold, or disposed of, or keeping in possession, control, or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;

(15) Except as provided in part VI and section 461-1, dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without express permission in each case of the person ordering or prescribing;

(16) The distribution in commerce of a consumer commodity as defined in this part, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to this part and of rules adopted under authority of this part; provided that this prohibition shall not apply to persons engaged in business as wholesale or retail

distributors of consumer commodities except to the extent that such persons:

(A) Are engaged in the packaging or labeling of such commodities; or

(B) Prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(17) The selling or dispensing in restaurants, soda fountains, drive-ins, lunch wagons, or similar public eating establishments of imitation milk and imitation milk products in place of fresh milk and fresh milk products respectively; of liquid or dry products which simulate cream but do not comply with content requirements for cream in place of cream; of non-dairy frozen desserts which do not comply with content requirements for dairy frozen desserts in place of dairy frozen desserts; and of any other imitation food or one made in semblance of a genuine food in place of such genuine food, unless the consumer is notified by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements informing of such substitution, to include but not

limited to the substitution of imitation milk in milk shake and malted milk drinks;

(18) Wilfully and falsely representing or using any devices, substances, methods, or treatment as effective in the diagnosis, cure, mitigation, treatment, or alleviation of cancer. This paragraph shall not apply to any person who depends exclusively upon prayer for healing in accordance with teachings of a bona fide religious sect, denomination, or organization, nor to a person who practices such teachings;

(19) The selling or offering for sale at any food facility which serves or sells over the counter directly to the consumer an unlabeled or unpackaged food that is a confectionery which contains alcohol in excess of one-half of one per cent by weight unless the consumer is notified of that fact by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements;

(20) The sale to a person below the age of twenty-one years of any food which is a confectionery which contains

alcohol in excess of one-half of one per cent by weight[~~.~~]; and

(21) The sale of certain sunscreen products, in violation of section 328- ."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 2019.

INTRODUCED BY:

S.B. NO. 2409

S.B. NO. 2409

Report Title:
Sunscreen; Cosmetics; Oxybenzone; Octinoxate; Sale; Prohibition

Description:
Bans knowingly selling in the State sunscreen products containing oxybenzone or octinoxate, except for medically-licensed prescriptions. Takes effect on 1/1/2019.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.