
SUBSTITUTE SENATE BILL 5135

State of Washington

66th Legislature

2019 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Rolfes, Frockt, Salomon, Palumbo, Cleveland, Carlyle, Kuderer, Saldaña, Billig, Dhingra, Pedersen, Wellman, Hunt, Das, McCoy, Lias, Darneille, Hasegawa, Keiser, and Van De Wege)

1 AN ACT Relating to preventing toxic pollution that affects public
2 health or the environment; amending RCW 70.240.040 and 43.21B.110;
3 adding a new chapter to Title 70 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Consumer product" means any item, including any component
9 parts and packaging, sold for residential or commercial use.

10 (2) "Department" means the department of ecology.

11 (3) "Director" means the director of the department.

12 (4) "Manufacturer" means any person, firm, association,
13 partnership, corporation, governmental entity, organization, or joint
14 venture that produces a product or is an importer or domestic
15 distributor of a product sold or offered for sale in or into the
16 state.

17 (5) "Organohalogen" means a class of chemicals that includes any
18 chemical containing one or more halogen elements bonded to carbon.

19 (6) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS
20 chemicals" means a class of fluorinated organic chemicals containing
21 at least one fully fluorinated carbon atom.

1 (7) "Phenolic compounds" means alkylphenol ethoxylates and
2 bisphenols.

3 (8) "Phthalates" means synthetic chemical esters of phthalic
4 acid.

5 (9) "Polychlorinated biphenyls" or "PCBs" means chemical forms
6 that consist of two benzene rings joined together and containing one
7 to ten chlorine atoms attached to the benzene rings.

8 (10) "Priority chemical" means a chemical or chemical class used
9 as, used in, or put in a consumer product including:

10 (a) Perfluoroalkyl and polyfluoroalkyl substances;
11 (b) Phthalates;
12 (c) Organohalogen flame retardants;
13 (d) Flame retardants, as identified by the department under
14 chapter 70.240 RCW;
15 (e) Phenolic compounds;
16 (f) Polychlorinated biphenyls; or
17 (g) A chemical identified by the department as a priority
18 chemical under section 2 of this act.

19 (11) "Safer alternative" means an alternative that is less
20 hazardous to humans or the environment than the existing chemical or
21 chemical process. A safer alternative to a particular chemical may
22 include a chemical substitute or a change in materials or design that
23 eliminates the need for a chemical alternative.

24 (12) "Sensitive population" means a category of people that is
25 identified by the department that may be or is disproportionately or
26 more severely affected by priority chemicals, such as:

27 (a) Men and women of childbearing age;
28 (b) Infants and children;
29 (c) Pregnant women;
30 (d) Communities that are highly impacted by toxic chemicals;
31 (e) Persons with occupational exposure; and
32 (f) The elderly.

33 (13) "Sensitive species" means a species or grouping of animals
34 that is identified by the department that may be or is
35 disproportionately or more severely affected by priority chemicals,
36 such as:

37 (a) Southern resident killer whales;
38 (b) Salmon; and
39 (c) Forage fish.

1 NEW SECTION. **Sec. 2.** Every five years, and consistent with the
2 timeline established in section 5 of this act, the department, in
3 consultation with the department of health, must identify at least
4 five priority chemicals that meet at least one of the following:

5 (1) The chemical or a member of a class of chemicals are
6 identified by the department as a:

7 (a) High priority chemical of high concern for children under
8 chapter 70.240 RCW; or

9 (b) Persistent, bioaccumulative toxin under chapter 70.105 RCW;

10 (2) The chemical or members of a class of chemicals are
11 regulated:

12 (a) In consumer products under chapter 70.240, 70.76, 70.95G,
13 70.280, 70.285, 70.95M, or 70.75A RCW; or

14 (b) As a hazardous substance under chapter 70.105 or 70.105D RCW;
15 or

16 (3) The department determines the chemical or members of a class
17 of chemicals are a concern for sensitive populations and sensitive
18 species after considering the following factors:

19 (a) A chemical's or members of a class of chemicals' hazard
20 traits or environmental or toxicological endpoints;

21 (b) A chemical's or members of a class of chemicals' aggregate
22 effects;

23 (c) A chemical's or members of a class of chemicals' cumulative
24 effects with other chemicals with the same or similar hazard traits
25 or environmental or toxicological endpoints;

26 (d) A chemical's or members of a class of chemicals'
27 environmental fate;

28 (e) The potential for a chemical or members of a class of
29 chemicals to degrade, form reaction products, or metabolize into
30 another chemical or a chemical that exhibits one or more hazard
31 traits or environmental or toxicological endpoints, or both;

32 (f) The potential for the chemical or class of chemicals to
33 contribute to or cause adverse health or environmental impacts;

34 (g) The chemical's or class of chemicals' potential impact on
35 sensitive populations, sensitive species, or environmentally
36 sensitive habitats;

37 (h) Potential exposures to the chemical or members of a class of
38 chemicals based on:

39 (i) Reliable information regarding potential exposures to the
40 chemical or members of a class of chemicals; and

1 (ii) Reliable information demonstrating occurrence, or potential
2 occurrence, of multiple exposures to the chemical or members of a
3 class of chemicals.

4 NEW SECTION. **Sec. 3.** (1) Every five years, and consistent with
5 the timeline established in section 5 of this act, the department, in
6 consultation with the department of health, shall identify priority
7 consumer products that are a significant source of or use of priority
8 chemicals.

9 (2) When identifying priority consumer products under this
10 section, the department must consider, at a minimum, the following
11 criteria:

12 (a) The estimated volume of a priority chemical or priority
13 chemicals added to, used in, or present in the consumer product;

14 (b) The estimated volume or number of units of the consumer
15 product sold or present in the state;

16 (c) The potential for exposure to priority chemicals by sensitive
17 populations or sensitive species when the consumer product is used,
18 disposed of, or has decomposed;

19 (d) The potential for priority chemicals to be found in the
20 outdoor environment, with priority given to surface water,
21 groundwater, marine waters, sediments, and other ecologically
22 sensitive areas, when the consumer product is used, disposed of, or
23 has decomposed;

24 (e) If another state or nation has identified or taken regulatory
25 action to restrict or otherwise regulate the priority chemical in the
26 consumer product; and

27 (f) Whether the department has already identified the consumer
28 product in a chemical action plan completed under chapter 70.105 RCW
29 as a source of a priority chemical or other reports or information
30 gathered under chapter 70.240, 70.76, 70.95G, 70.280, 70.285, 70.95M,
31 or 70.75A RCW.

32 (3) The department is not required to give equal weight to each
33 of the criteria in subsection (2)(a) through (f) of this section when
34 identifying priority consumer products that use or are a significant
35 source of priority chemicals.

36 (4) To assist with identifying priority consumer products under
37 this section and making determinations as authorized under section 4
38 of this act, the department may request a manufacturer to submit a
39 notice to the department that contains the information specified in

1 RCW 70.240.040 (1) through (6) or other information relevant to
2 subsection (2)(a) through (d) of this section. The manufacturer must
3 provide the notice to the department no later than six months after
4 receipt of such a demand by the department.

5 (5)(a) Except as provided in (b) of this subsection, the
6 department may not identify the following as priority consumer
7 products under this section:

8 (i) Food or beverages;

9 (ii) Tobacco products;

10 (iii) Drug or biological products regulated by the United States
11 food and drug administration;

12 (iv) Finished products certified or regulated by the federal
13 aviation administration or the department of defense, or both, when
14 used in a manner that was certified or regulated by such agencies,
15 including parts, materials, and processes when used to manufacture or
16 maintain such regulated or certified finished products;

17 (v) Motorized vehicles, including on and off-highway vehicles,
18 such as all-terrain vehicles, motorcycles, side-by-side vehicles,
19 farm equipment, and personal assistive mobility devices; and

20 (vi) Chemical products used to produce an agricultural commodity,
21 as defined in RCW 17.21.020.

22 (b) The department may identify the packaging of products listed
23 in (a) of this subsection as priority consumer products.

24 NEW SECTION. **Sec. 4.** (1) Every five years, and consistent with
25 the timeline established in section 5 of this act, the department, in
26 consultation with the department of health, must determine regulatory
27 actions to increase transparency and to reduce the use of priority
28 chemicals in priority consumer products. The department may:

29 (a) Determine that no regulatory action is currently required;

30 (b) Require a manufacturer to provide notice of the use of a
31 priority chemical or class of priority chemicals consistent with RCW
32 70.240.040; or

33 (c) Restrict or prohibit the manufacture, wholesale,
34 distribution, sale, retail sale, or use, or any combination thereof,
35 of a priority chemical or class of priority chemicals in a consumer
36 product.

37 (2)(a) The department may order a manufacturer to submit
38 information consistent with section 3(4) of this act.

39 (b) The department may require a manufacturer to provide:

1 (i) A list of products containing priority chemicals;
2 (ii) Product ingredients;
3 (iii) Information regarding exposure and chemical hazard; and
4 (iv) A description of the amount and the function of the high
5 priority chemical in the product.

6 (3) The department may restrict or prohibit a priority chemical
7 or members of a class of priority chemicals in a priority consumer
8 product when it determines:

9 (a) Safer alternatives are feasible and available;

10 (b) The priority chemical or members of a class of priority
11 chemicals is not functionally necessary in the priority consumer
12 product;

13 (c) Another state or nation has restricted the priority chemical
14 or members of a class of priority chemicals in a product; or

15 (d) It is necessary to protect the health of sensitive
16 populations or sensitive species.

17 (4) A restriction or prohibition on a priority chemical in a
18 consumer product may include exemptions or exceptions, including
19 exemptions to address existing stock of a product in commerce at the
20 time that a restriction takes effect.

21 NEW SECTION. **Sec. 5.** (1)(a) By June 1, 2020, and consistent
22 with section 3 of this act, the department shall identify priority
23 consumer products that are a significant source of or use of priority
24 chemicals specified in section 1(10) (a) through (f) of this act.

25 (b) By June 1, 2022, and consistent with section 4 of this act,
26 the department must determine regulatory actions regarding the
27 priority chemicals and priority consumer products identified in (a)
28 of this subsection.

29 (c) By June 1, 2023, the department must adopt rules to implement
30 regulatory actions determined under (b) of this subsection.

31 (2)(a) By June 1, 2024, and every five years thereafter, the
32 department shall identify at least five priority chemicals specified
33 in section 1(10) (a) through (g) of this act that are identified
34 consistent with section 2 of this act.

35 (b) By June 1, 2025, and every five years thereafter, the
36 department must identify priority consumer products that contain
37 priority chemicals, consistent with section 3 of this act.

38 (c) By June 1, 2027, and every five years thereafter, the
39 department must determine regulatory actions for the priority

1 chemicals in priority consumer products identified under (b) of this
2 subsection, consistent with section 4 of this act.

3 (d) By June 1, 2028, and every five years thereafter, the
4 department must adopt rules to implement regulatory actions
5 identified under (c) of this subsection.

6 (3) When identifying priority chemicals and priority consumer
7 products under this chapter, the department must notify the public of
8 the selection, including the identification of the peer-reviewed
9 science and other sources of information that the department relied
10 upon, the basis for the selection, and a draft schedule for making
11 determinations. The notice must be published in the Washington State
12 Register. The department shall provide the public with an opportunity
13 for review and comment on the regulatory determinations.

14 NEW SECTION. **Sec. 6.** (1) A manufacturer that submits
15 information or records to the department under this chapter may
16 request that the information or records be made available only for
17 the confidential use of the department, the director, or the
18 appropriate division of the department. The director shall give
19 consideration to the request and if this action is not detrimental to
20 the public interest and is otherwise within accord with the policies
21 and purposes of chapter 43.21A RCW, the director must grant the
22 request for the information to remain confidential as authorized in
23 RCW 43.21A.160. Under the procedures established under RCW
24 43.21A.160, the director must keep confidential any records furnished
25 by a manufacturer under this chapter that relate to proprietary
26 manufacturing processes or chemical formulations used in products or
27 processes.

28 (2) For records or other information furnished to the department
29 by a federal agency on the condition that the information be afforded
30 the same confidentiality protections as under federal law, the
31 director may determine that the information or records be available
32 only for the confidential use of the director, the department, or the
33 appropriate division of the department. All such records and
34 information are exempt from public disclosure. The director is
35 authorized to enter into an agreement with the federal agency
36 furnishing the records or information to ensure the confidentiality
37 of the records or information.

1 NEW SECTION. **Sec. 7.** (1) A manufacturer violating a requirement
2 of this chapter, a rule adopted under this chapter, or an order
3 issued under this chapter, is subject to a civil penalty not to
4 exceed five thousand dollars for each violation in the case of a
5 first offense. Manufacturers who are repeat violators are subject to
6 a civil penalty not to exceed ten thousand dollars for each repeat
7 offense.

8 (2) Any penalty provided for in this section, and any order
9 issued by the department under this chapter, may be appealed to the
10 pollution control hearings board.

11 (3) All penalties collected under this chapter shall be deposited
12 in the state toxics control account created in RCW 70.105D.070.

13 NEW SECTION. **Sec. 8.** (1) The department may adopt rules as
14 necessary for the purpose of implementing, administering, and
15 enforcing this chapter.

16 (2) The department must adopt rules to implement the
17 determinations of regulatory actions specified in section 4(1) (b) or
18 (c) of this act.

19 **Sec. 9.** RCW 70.240.040 and 2008 c 288 s 5 are each amended to
20 read as follows:

21 (~~Beginning six months after the department has adopted rules~~
22 ~~under section 8(5) of this act,~~) A manufacturer of a children's
23 product or a consumer product containing a priority chemical subject
24 to a rule adopted to implement a determination made consistent with
25 section 4(1)(b) of this act, or a trade organization on behalf of its
26 member manufacturers, shall provide notice to the department that the
27 manufacturer's product contains a high priority chemical or a
28 priority chemical identified under chapter 70.--- RCW (the new
29 chapter created in section 12 of this act). The notice must be filed
30 annually with the department and must include the following
31 information:

32 (1) The name of the chemical used or produced and its chemical
33 abstracts service registry number;

34 (2) A brief description of the product or product component
35 containing the substance;

36 (3) A description of the function of the chemical in the product;

1 (4) The amount of the chemical used in each unit of the product
2 or product component. The amount may be reported in ranges, rather
3 than the exact amount;

4 (5) The name and address of the manufacturer and the name,
5 address, and phone number of a contact person for the manufacturer;
6 and

7 (6) Any other information the manufacturer deems relevant to the
8 appropriate use of the product.

9 **Sec. 10.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
10 read as follows:

11 (1) The hearings board shall only have jurisdiction to hear and
12 decide appeals from the following decisions of the department, the
13 director, local conservation districts, the air pollution control
14 boards or authorities as established pursuant to chapter 70.94 RCW,
15 local health departments, the department of natural resources, the
16 department of fish and wildlife, the parks and recreation commission,
17 and authorized public entities described in chapter 79.100 RCW:

18 (a) Civil penalties imposed pursuant to RCW 18.104.155,
19 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170,
20 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
21 90.56.310, 90.56.330, and 90.64.102.

22 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
23 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 7 of this act,
24 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

25 (c) Except as provided in RCW 90.03.210(2), the issuance,
26 modification, or termination of any permit, certificate, or license
27 by the department or any air authority in the exercise of its
28 jurisdiction, including the issuance or termination of a waste
29 disposal permit, the denial of an application for a waste disposal
30 permit, the modification of the conditions or the terms of a waste
31 disposal permit, or a decision to approve or deny an application for
32 a solid waste permit exemption under RCW 70.95.300.

33 (d) Decisions of local health departments regarding the grant or
34 denial of solid waste permits pursuant to chapter 70.95 RCW.

35 (e) Decisions of local health departments regarding the issuance
36 and enforcement of permits to use or dispose of biosolids under RCW
37 70.95J.080.

38 (f) Decisions of the department regarding waste-derived
39 fertilizer or micronutrient fertilizer under RCW 15.54.820, and

1 decisions of the department regarding waste-derived soil amendments
2 under RCW 70.95.205.

3 (g) Decisions of local conservation districts related to the
4 denial of approval or denial of certification of a dairy nutrient
5 management plan; conditions contained in a plan; application of any
6 dairy nutrient management practices, standards, methods, and
7 technologies to a particular dairy farm; and failure to adhere to the
8 plan review and approval timelines in RCW 90.64.026.

9 (h) Any other decision by the department or an air authority
10 which pursuant to law must be decided as an adjudicative proceeding
11 under chapter 34.05 RCW.

12 (i) Decisions of the department of natural resources, the
13 department of fish and wildlife, and the department that are
14 reviewable under chapter 76.09 RCW, and the department of natural
15 resources' appeals of county, city, or town objections under RCW
16 76.09.050(7).

17 (j) Forest health hazard orders issued by the commissioner of
18 public lands under RCW 76.06.180.

19 (k) Decisions of the department of fish and wildlife to issue,
20 deny, condition, or modify a hydraulic project approval permit under
21 chapter 77.55 RCW.

22 (l) Decisions of the department of natural resources that are
23 reviewable under RCW 78.44.270.

24 (m) Decisions of an authorized public entity under RCW 79.100.010
25 to take temporary possession or custody of a vessel or to contest the
26 amount of reimbursement owed that are reviewable by the hearings
27 board under RCW 79.100.120.

28 (2) The following hearings shall not be conducted by the hearings
29 board:

30 (a) Hearings required by law to be conducted by the shorelines
31 hearings board pursuant to chapter 90.58 RCW.

32 (b) Hearings conducted by the department pursuant to RCW
33 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
34 90.44.180.

35 (c) Appeals of decisions by the department under RCW 90.03.110
36 and 90.44.220.

37 (d) Hearings conducted by the department to adopt, modify, or
38 repeal rules.

1 (3) Review of rules and regulations adopted by the hearings board
2 shall be subject to review in accordance with the provisions of the
3 administrative procedure act, chapter 34.05 RCW.

4 NEW SECTION. **Sec. 11.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 12.** Sections 1 through 8 and 13 of this act
9 constitute a new chapter in Title 70 RCW.

10 NEW SECTION. **Sec. 13.** This act may be known and cited as the
11 pollution prevention for healthy people and Puget Sound act.

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