
HOUSE BILL 2779

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Pollet, Appleton, Ryu, and Farrell

Read first time 02/07/14. Referred to Committee on Environment.

1 AN ACT Relating to the use of certain chemicals in food products;
2 amending RCW 70.280.010 and 70.280.020; adding new sections to chapter
3 70.280 RCW; creating a new section; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) In the course of their daily lives, people are exposed to and
7 ingest thousands of chemicals currently added to foods and food
8 packaging. Many of these chemicals have not been specifically
9 reviewed, tested, and approved by the United States food and drug
10 administration;

11 (b) While the state of Washington regulates the exposure rate of
12 many toxic, carcinogenic, or otherwise harmful chemicals that are also
13 present in food additives and food packaging, people may be exposed to
14 these same chemicals by direct ingestion of food additives and via food
15 packaging at significantly higher rates than through environmental
16 exposure alone;

17 (c) Recent scientific studies have detected bisphenol A (BPA),
18 listed as a chemical of high concern to children by the state

1 department of health, in the vast majority of American children and
2 adults. Washington has barred BPA from food and beverage containers
3 designed for use by young children;

4 (d) Many phthalates are hormone-disrupting chemicals that can cause
5 a variety of negative health impacts. The United States national
6 toxicology program concluded that five commonly used phthalates are
7 reproductive or developmental toxicants and, in 2008, congress directed
8 the consumer product safety commission to ban or provisionally ban the
9 use of six phthalates in children's toys. Washington has also found it
10 prudent to prohibit phthalates from being included in children's toys.
11 In addition, in 2002 the United States food and drug administration
12 issued a safety alert recommending that health care providers limit the
13 exposure of newborn males to the phthalate DEHP in medical procedures;
14 and

15 (e) Exposure to BPA, phthalates, and other chemicals that have not
16 been tested for ingestion exposure risks pose a public health threat
17 similar to, or even greater than, the risks posed by exposures to those
18 chemicals from environmental sources.

19 (2) It is therefore the intent of the legislature to reduce the
20 ingestion of phthalates, BPA, and other chemicals by children and
21 adults, and to provide appropriate information about the presence of
22 potentially harmful toxicants in food, food packaging, and food
23 containers

24 **Sec. 2.** RCW 70.280.010 and 2010 c 140 s 1 are each amended to read
25 as follows:

26 The definitions in this section apply throughout this chapter
27 unless the context clearly requires otherwise.

28 (1) "Department" means the department of ecology.

29 (2) "Metal can" means a single walled container that is
30 manufactured from metal substrate designed to hold or pack food or
31 beverages and sealed by can ends manufactured from metal substrate.
32 The metal substrate for the can and the can ends must be equal to or
33 thinner than 0.0149 inch.

34 (3) "Sports bottle" means a resealable, reusable container, sixty-
35 four ounces or less in size, that is designed or intended primarily to
36 be filled with a liquid or beverage for consumption from the container,

1 and is sold or distributed at retail without containing any liquid or
2 beverage.

3 (4) "Youth" means a person twelve years of age or younger.

4 (5) "Reusable food or beverage container" means a receptacle for
5 storing food or beverages, including but not limited to spill-proof
6 cups, sports bottles, and thermoses. The term does not include food or
7 beverage containers intended for disposal after initial usage.

8 (6) "Food packaging" means a container or wrapper intended for food
9 contact used to store food and foodstuffs for sale.

10 (7) "Canned food" means food sterilized by heat in a closed,
11 durable container such as tin and aluminum cans, flexible aluminum
12 foil, and thermoplastic containers including squeeze tubes.

13 **Sec. 3.** RCW 70.280.020 and 2010 c 140 s 2 are each amended to read
14 as follows:

15 (1) Beginning July 1, 2011, no manufacturer, wholesaler, or
16 retailer may manufacture, knowingly sell, offer for sale, distribute
17 for sale, or distribute for use in this state, any bottle, cup, or
18 other container, except a metal can, that contains bisphenol A if that
19 container is designed or intended to be filled with any liquid, food,
20 or beverage primarily for consumption from that container by children
21 three years of age or younger and is sold or distributed at retail
22 without containing any liquid, food, or beverage.

23 (2) Beginning July 1, 2012, no manufacturer, wholesaler, or
24 retailer may manufacture, knowingly sell, offer for sale, distribute
25 for sale, or distribute for use in this state, sports bottles that
26 contain bisphenol A.

27 (3) No manufacturer, wholesaler, or retailer may manufacture,
28 knowingly sell, offer for sale, distribute for sale, or distribute for
29 use in this state, any bottle, cup, or reusable food and beverage
30 container that contains phthalates individually or in combination at
31 more than 0.10 percent by weight or one thousand parts per million or
32 bisphenol A.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.280 RCW
34 to read as follows:

35 (1) No person or entity may manufacture, sell, or distribute in
36 commerce in this state any food intended for or marketed to youth that

1 contains or is stored in food packaging that contains phthalates
2 individually or in combination at more than 0.10 percent by weight or
3 one thousand parts per million or bisphenol A.

4 (2) Manufacturers may not replace bisphenol A or phthalates with
5 the chemicals listed in subsection (3) of this section in order to
6 comply with the requirements of subsection (1) of this section or RCW
7 70.280.020.

8 (3) The department shall compile a list of prohibited alternatives
9 to bisphenol A or phthalates composed of the following chemicals:

10 (a)(i) Chemicals rated by the United States environmental
11 protection agency as carcinogenic to humans, likely to be carcinogenic
12 to humans, or suggestive evidence of carcinogenic potential as of
13 January 1, 2014, under the 2005 guidelines for carcinogen risk
14 assessment published pursuant to 42 U.S.C. Sec. 7412(o)(7).

15 (ii) Chemicals rated by the United States environmental protection
16 agency as a human carcinogen, probable human carcinogen, or possible
17 human carcinogen under the 1986 guidelines for carcinogen risk
18 assessment published in the federal register on September 24, 1986 (51
19 C.F.R. Sec. 33992).

20 (b) Reproductive toxicants that the United States environmental
21 protection agency has identified as of January 1, 2014, as causing
22 birth defects, reproductive harm, or developmental harm under the
23 guidelines for reproductive toxicity risk assessment published in the
24 federal register on October 31, 1996, (61 C.F.R. Sec. 56274) or the
25 guidelines for developmental toxicity risk assessment published in the
26 federal register on December 5, 1991, (56 C.F.R. Sec. 63798).

27 (c) A chemical identified by the European commission on the
28 environment as of January 1, 2014, as a category 1 substance for which
29 there is at least one study providing evidence of endocrine disruption
30 in an intact organism in the report dated June 21, 2000, entitled
31 "towards the establishment of a priority list of substances for further
32 evaluation of their role in endocrine disruption: Preparation of a
33 candidate list of substances as a basis for priority setting."

34 (d) A chemical identified by the department as a high priority
35 chemical of high concern for children as required under RCW 70.240.030.

36 (e) A chemical identified by the department for inclusion on the
37 list pursuant to section 7 of this act.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.280 RCW
2 to read as follows:

3 (1) All food packaging that contains bisphenol A must display a
4 label on the front of the package stating "This package contains
5 bisphenol A (a chemical that may harm fetal development) which can
6 leach into the food."

7 (2) All food packaging that contains phthalates individually or in
8 combination at more than 0.10 percent by weight or one thousand parts
9 per million must display a label on the front of the package stating
10 "This package contains phthalates (a type of chemical that may harm
11 fetal development) that can leach into the food."

12 (3) All food packaging containing the following chemicals must be
13 labeled on the packaging or at the point of display for retail sale
14 with a notice that the food packaging contains a chemical that, if
15 ingested at levels that may be present in the food, is a potential or
16 known human carcinogen, reproductive toxin, mutagen, or hazardous
17 substance that:

18 (a) As of January 1, 2014, the United States environmental
19 protection agency has identified under 42 U.S.C. chapter 103, the 2005
20 guidelines for carcinogen risk assessment published pursuant to 42
21 U.S.C. Sec. 7412(o)(7), the guidelines for reproductive toxicity risk
22 assessment published in the federal register on October 31, 1996, (61
23 C.F.R. Sec. 56274), or the guidelines for developmental toxicity risk
24 assessment published in the federal register on December 5, 1991, (56
25 C.F.R. Sec. 63798) as a human carcinogen, reproductive toxicant,
26 mutagen, or hazardous substance if ingested at levels that may be
27 present in the food;

28 (b) As of January 1, 2014, the state has identified as a high
29 priority chemical pursuant to chapter 70.240 RCW;

30 (c) As of January 1, 2014, the state of California has identified
31 as known to cause cancer or reproductive toxicity in the list developed
32 pursuant to section 25249.5 through 25249.13 of the California health
33 and safety code; or

34 (d) Is a chemical identified by the department upon consideration
35 of a petition pursuant to section 7(2) of this act.

36 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.280 RCW
37 to read as follows:

1 All food containing the following chemicals must be labeled on the
2 packaging or at the point of display for retail sale with a notice that
3 the food contains a potential or known human carcinogen, reproductive
4 toxin, mutagen, or hazardous substance:

5 (1) A food additive that has not been tested and shown to be safe
6 for human consumption by the United States food and drug administration
7 pursuant to 21 U.S.C. chapter 9 as of January 1, 2014;

8 (2) A chemical that:

9 (a) As of January 1, 2014, the United States environmental
10 protection agency has identified under 42 U.S.C. chapter 103, the 2005
11 guidelines for carcinogen risk assessment published pursuant to 42
12 U.S.C. Sec. 7412(o)(7), the guidelines for reproductive toxicity risk
13 assessment published in the federal register on October 31, 1996, (61
14 C.F.R. Sec. 56274), or the guidelines for developmental toxicity risk
15 assessment published in the federal register on December 5, 1991, (56
16 C.F.R. Sec. 63798) as a human carcinogen, reproductive toxicant,
17 mutagen, or hazardous substance if ingested at levels that may be
18 present in the food;

19 (b) As of January 1, 2014, the state has identified as a high
20 priority chemical pursuant to chapter 70.240 RCW; or

21 (c) As of January 1, 2014, the state of California has identified
22 as known to cause cancer or reproductive toxicity in the list developed
23 pursuant to section 25249.5 through 25249.13 of the California health
24 and safety code; or

25 (3) A chemical identified by the department upon consideration of
26 a petition pursuant to section 7(2) of this act.

27 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.280 RCW
28 to read as follows:

29 (1)(a) A person may submit a petition for consideration by the
30 department to add a chemical to the list of prohibited bisphenol A or
31 phthalate replacements in section 4(3) of this act based on scientific
32 evidence demonstrating harm or potential for harm from those chemicals.
33 The petition must provide the following information:

34 (i) Chemical abstracts service registry number;

35 (ii) Chemical prime name;

36 (iii) Whether the chemical is a hazardous substance as defined in
37 chapter 70.105 RCW; and

1 (iv) Credible peer-reviewed scientific information documenting the
2 potential carcinogenic, developmental, or reproductive harm posed by
3 the chemical; or, for a hazardous substance as defined in chapter
4 70.105 RCW, data indicating whether ingestion of food packaged in
5 packaging containing the substance will, under ordinary consumption,
6 result in exposures at concentrations exceeding clean-up action levels
7 established by the department pursuant to chapter 70.105D RCW or
8 maximum concentration limits established pursuant to the federal safe
9 drinking water act, 42 U.S.C. Sec. 300f et seq.

10 (b) Upon review of a petition, if the department determines in
11 consultation with the department of health that a chemical has the
12 potential to cause reproductive harm, developmental harm, birth
13 defects, or is a possible or probable human carcinogen, and the risk of
14 excess lifetime cancer when ingested at levels likely to occur from
15 ordinary consumption over a person's lifetime, including childhood,
16 would be greater than one in one million, the department must add the
17 chemical to the list compiled pursuant to section 4(3) of this act of
18 prohibited replacements for bisphenol A and phthalates.

19 (c) The department must remove a chemical from the list of
20 prohibited food and food packaging contents created under section 4 of
21 this act if the chemical is used as a food additive and the United
22 States food and drug administration specifically finds that the
23 chemical has been tested and shown to be safe for human consumption
24 pursuant to 21 U.S.C. chapter 9 as of January 1, 2014. However, the
25 department may still require food or food packaging containing the
26 chemical to be labeled in accordance with sections 5 and 6 of this act.

27 (2)(a) A person may submit a petition for consideration by the
28 department to require labeling of any food additive pursuant to section
29 6 of this act or food packaging pursuant to section 5 of this act that
30 would be projected in the normal course of consumption of the food to
31 result in exposures to a carcinogen or hazardous substance at
32 concentrations above maximum concentration limits pursuant to the
33 federal safe drinking water act, 42 U.S.C. Sec. 300f et seq.; or,
34 clean-up action levels established by the department pursuant to
35 chapter 70.105D RCW. The petition must provide the following
36 information:

37 (i) Chemical abstracts service registry number;

38 (ii) Chemical prime name;

1 (iii) Whether the chemical is a hazardous substance as defined in
2 chapter 70.105 RCW; and

3 (iv) Credible peer-reviewed scientific information documenting the
4 potential carcinogenic, developmental, or reproductive harm posed by
5 the chemical; or, for a hazardous substance as defined in chapter
6 70.105 RCW, data indicating whether ingestion of food packaged in
7 packaging containing the substance will, under ordinary consumption,
8 result in exposures at concentrations exceeding clean-up action levels
9 established by the department pursuant to chapter 70.105D RCW or
10 maximum concentration limits established pursuant to the federal safe
11 drinking water act, 42 U.S.C. Sec. 300f et seq.

12 (b) Upon review of a petition, if the department determines in
13 consultation with the department of health that a chemical has the
14 potential to cause reproductive harm, developmental harm, birth
15 defects, or is a possible or probable human carcinogen, and the risk of
16 excess lifetime cancer when ingested at levels likely to occur from
17 ordinary consumption over a person's lifetime, including in children,
18 would be greater than one in one million, the department must require
19 labeling pursuant to section 5 or 6 of this act, and add the chemical
20 to the list compiled pursuant to section 4(3) of this act of prohibited
21 replacements for bisphenol A and phthalates.

22 (3) The department shall review petitions in accordance with RCW
23 34.05.330.

24 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.280 RCW
25 to read as follows:

26 The department may adopt rules as necessary for the purpose of
27 implementing, administering, and enforcing this chapter. The
28 department may amend the rules from time to time to maintain
29 consistency with the lists of chemicals that: (1) The state of
30 California identifies as known to cause cancer or reproductive
31 toxicity; (2) the United States environmental protection agency
32 identifies as a human carcinogen, reproductive toxicant, mutagen, or
33 hazardous substance; or (3) the European commission identifies as a
34 category one endocrine disruptor.

35 NEW SECTION. **Sec. 9.** Sections 4 through 7 of this act take effect
36 January 1, 2016.

1 NEW SECTION. **Sec. 10.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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