State of Washington 60th Legislature 2008 Regular Session

By Representatives Dickerson, Hudgins, Hunt, Morrell, Pedersen, Williams, Cody, Green, Campbell, VanDeWege, Hasegawa, Roberts, Loomis, Upthegrove, Lilias, Hunter, Chase, Smith, McIntire, Barlow, Conway, Priest, Schual-Berke, Simpson, Kenney, Goodman, Sells, Rolfes, Darneille, and Lantz

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AN ACT Relating to the children's safe products act; amending RCW 43.70.660; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. Research shows that many toys and other children's products contain toxic chemicals, such as lead, cadmium, and phthalates that have been shown to cause harm to children's health and the environment. These chemicals, and others like them, have been linked to long-term health impacts such as birth defects, reproductive harm, impaired learning, liver toxicity, and cancer. Because children's bodies are growing and developing, they are especially vulnerable to the effects of toxic chemicals. Regulation of toxic chemicals in children's toys and other products is woefully inadequate. To protect children's health, it is important to phase out the use of lead, cadmium, and phthalates in children's toys and other products and to begin collecting information on other chemicals that are present in toys and other products to determine whether further action is required.
NEW SECTION.  Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children under the age of twelve. Children's jewelry includes jewelry that meets any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children under the age of twelve;
(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;
(c) Sized for children and not intended for use by adults; or
(d) Sold in any of the following:
   (i) A vending machine;
   (ii) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or
   (iii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(2) "Children's product" includes any of the following:

(a) Toys;
(b) Cosmetics intended for children under the age of twelve;
(c) Children's jewelry;
(d) A product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or
(e) Child car seats.

(3) "Cosmetics" includes articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of such an article. "Cosmetics" does not include soap.

(4) "Department" means the department of ecology.

(5) "High priority chemical" means a chemical identified by an authoritative governmental entity on the basis of credible scientific evidence as known to do one or more of the following:
(a) Harm the normal development of a fetus or child or cause other developmental toxicity;

(b) Cause cancer, genetic damage, or reproductive harm;

(c) Disrupt the endocrine system;

(d) Damage the nervous system, immune system, or organs or cause other systemic toxicity;

(e) Be persistent, bioaccumulative, and toxic; or

(f) Be very persistent and very bioaccumulative.

(6) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a children's product or an importer or domestic distributor of a children's product.

(7) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(8) "Toy" means a product designed or intended by the manufacturer to be used by a child at play.

(9) "Trade association" means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit.

NEW SECTION. Sec. 3. Beginning January 1, 2009, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing the following:

(1) Lead or cadmium at more than .004 percent by weight (forty parts per million);

(2) Phthalates, individually or in combination, at more than .01 percent by weight (one hundred parts per million).

NEW SECTION. Sec. 4. (1) By January 1, 2009, the department shall identify high priority chemicals that are of high concern for children after considering a child's or developing fetus's potential for exposure to each chemical. In identifying the chemicals, the department shall include chemicals that meet one or more of the following criteria:
(a) The chemical has been found through biomonitoring studies that
demonstrate the presence of the chemical in human umbilical cord blood,
human breast milk, human urine, or other bodily tissues or fluids;
(b) The chemical has been found through sampling and analysis to be
present in household dust, indoor air, drinking water, or elsewhere in
the home environment; or
(c) The chemical has been added to or is present in a consumer
product used or present in the home.
(2) By January 1, 2009, the department shall identify children's
products or product categories that may contain chemicals identified
under subsection (1) of this section.
(3) The department shall submit a report on the chemicals of high
concern to children and the children's products or product categories
they identify to the appropriate standing committees of the
legislature. The report shall include policy options for addressing
children's products that contain chemicals of high concern for
children, including recommendations for additional ways to inform
consumers about toxic chemicals in products, such as labeling.

NEW SECTION. Sec. 5. (1) Beginning six months after a chemical
has been identified as a chemical of high concern for children under
section 4 of this act, a manufacturer of a children's product, or a
trade organization on behalf of its member manufacturers, shall provide
notice to the department that the manufacturer's product contains a
high priority chemical. The notice must be filed annually with the
department and must include the following information:
(a) The name of the chemical used or produced and its chemical
abstracts service registry number;
(b) A brief description of the product or product component
containing the substance;
(c) A description of the function of the chemical in the product;
(d) The amount of the chemical used in each unit of the product or
product component. The amount may be reported in ranges, rather than
the exact amount; and
(e) The name and address of the manufacturer and the name, address,
and phone number of a contact person for the manufacturer.
(2) The requirements of this section do not apply to drugs approved
by the United States food and drug administration or to products or product components for which federal law governs notice in a manner that preempts state authority.

Sec. 6. RCW 43.70.660 and 2001 c 257 s 2 are each amended to read as follows:

(1) The legislature authorizes the secretary to establish and maintain a product safety education campaign to promote greater awareness of products designed to be used by infants and children((, excluding toys)) that:

(a) Are recalled by the United States consumer products safety commission;
(b) Do not meet federal safety regulations and voluntary safety standards; ((or))
(c) Are unsafe or illegal to place into the stream of commerce under the infant crib safety act, chapter 70.111 RCW; or
(d) Contain chemicals of high concern for children as identified under section 4 of this act.

(2) The department shall make reasonable efforts to ensure that this infant and children product safety education campaign reaches the target population. The target population for this campaign includes, but is not limited to, parents, foster parents and other caregivers, child care providers, consignment and resale stores selling infant and child products, and charitable and governmental entities serving infants, children, and families.

(3) The secretary may utilize a combination of methods to achieve this outreach and education goal, including but not limited to print and electronic media. The secretary may operate the campaign or may contract with a vendor.

(4) The department shall coordinate this infant and children product safety education campaign with child-serving entities including, but not limited to, hospitals, birthing centers, midwives, pediatricians, obstetricians, family practice physicians, governmental and private entities serving infants, children, and families, and relevant manufacturers.

(5) The department shall coordinate with other agencies and entities to eliminate duplication of effort in disseminating infant and children consumer product safety information.
(6) The department may receive funding for this infant and children product safety education effort from federal, state, and local governmental entities, child-serving foundations, or other private sources.

NEW SECTION. Sec. 7. (1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(4) Retailers who unknowingly sell products that are restricted from sale under this chapter are not liable under this chapter.

NEW SECTION. Sec. 8. (1) Before the prohibitions under section 3 of this act take effect, the department shall prepare and distribute information to in-state and out-of-state manufacturers, to the maximum extent practicable, to assist them in identifying products prohibited for manufacture, sale, or distribution under this chapter.

(2) The department must assist in-state retailers in identifying products restricted under this chapter.

(3) The department may require manufacturers to electronically file the notice required under section 5 of this act to the department that the manufacturer's product contains a high priority chemical.

(4) The department shall develop and publish a web site that provides consumers with information on the chemicals used in children's products, the reason the chemical has been identified as a high priority chemical, and any safer alternatives to the chemical.
NEW SECTION. Sec. 9. The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

NEW SECTION. Sec. 10. Sections 1 through 5 and 7 through 9 of this act constitute a new chapter in Title 70 RCW.

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