
HOUSE BILL 1984

State of Washington 64th Legislature 2015 Regular Session

By Representatives Pollet, Appleton, Ryu, Stanford, and Gregerson

Read first time 02/04/15. 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
3 chapter 70.280 RCW; creating a new section; and providing an
4 effective date.

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

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

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

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

18 (c) Recent scientific studies have detected bisphenol A (BPA),
19 listed as a chemical of high concern to children by the state
20 department of health, in the vast majority of American children and

1 adults. Washington has barred BPA from food and beverage containers
2 designed for use by young children;

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

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

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

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

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

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

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

33 (3) "Sports bottle" means a resealable, reusable container,
34 sixty-four ounces or less in size, that is designed or intended
35 primarily to be filled with a liquid or beverage for consumption from
36 the container, and is sold or distributed at retail without
37 containing any liquid or beverage.

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

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

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

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

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

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

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

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

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

32 (1) No person or entity may manufacture, sell, or distribute in
33 commerce in this state any food intended for or marketed to youth
34 that contains or is stored in food packaging that contains phthalates
35 individually or in combination at more than 0.10 percent by weight or
36 one thousand parts per million or bisphenol A.

37 (2) Manufacturers may not replace bisphenol A or phthalates with
38 the chemicals listed in subsection (3) of this section in order to

1 comply with the requirements of subsection (1) of this section or RCW
2 70.280.020.

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

6 (a)(i) Chemicals rated by the United States environmental
7 protection agency as carcinogenic to humans, likely to be
8 carcinogenic to humans, or suggestive evidence of carcinogenic
9 potential as of January 1, 2015, under the 2005 guidelines for
10 carcinogen risk assessment published pursuant to 42 U.S.C. Sec.
11 7412(o)(7).

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

17 (b) Reproductive toxicants that the United States environmental
18 protection agency has identified as of January 1, 2015, as causing
19 birth defects, reproductive harm, or developmental harm under the
20 guidelines for reproductive toxicity risk assessment published in the
21 federal register on October 31, 1996, (61 C.F.R. Sec. 56274) or the
22 guidelines for developmental toxicity risk assessment published in
23 the federal register on December 5, 1991, (56 C.F.R. Sec. 63798).

24 (c) A chemical identified by the European commission on the
25 environment as of January 1, 2015, as a category 1 substance for
26 which there is at least one study providing evidence of endocrine
27 disruption in an intact organism in the report dated June 21, 2000,
28 entitled "towards the establishment of a priority list of substances
29 for further evaluation of their role in endocrine disruption:
30 Preparation of a candidate list of substances as a basis for priority
31 setting."

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

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

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

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

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

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

16 (a) As of January 1, 2015, the United States environmental
17 protection agency has identified under 42 U.S.C. chapter 103, the
18 2005 guidelines for carcinogen risk assessment published pursuant to
19 42 U.S.C. Sec. 7412(o)(7), the guidelines for reproductive toxicity
20 risk assessment published in the federal register on October 31,
21 1996, (61 C.F.R. Sec. 56274), or the guidelines for developmental
22 toxicity risk assessment published in the federal register on
23 December 5, 1991, (56 C.F.R. Sec. 63798) as a human carcinogen,
24 reproductive toxicant, mutagen, or hazardous substance if ingested at
25 levels that may be present in the food;

26 (b) As of January 1, 2015, the state has identified as a high
27 priority chemical pursuant to chapter 70.240 RCW;

28 (c) As of January 1, 2015, the state of California has identified
29 as known to cause cancer or reproductive toxicity in the list
30 developed pursuant to section 25249.5 through 25249.13 of the
31 California health and safety code; or

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

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

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

1 (1) A food additive that has not been tested and shown to be safe
2 for human consumption by the United States food and drug
3 administration pursuant to 21 U.S.C. chapter 9 as of January 1, 2015;

4 (2) A chemical that:

5 (a) As of January 1, 2015, the United States environmental
6 protection agency has identified under 42 U.S.C. chapter 103, the
7 2005 guidelines for carcinogen risk assessment published pursuant to
8 42 U.S.C. Sec. 7412(o)(7), the guidelines for reproductive toxicity
9 risk assessment published in the federal register on October 31,
10 1996, (61 C.F.R. Sec. 56274), or the guidelines for developmental
11 toxicity risk assessment published in the federal register on
12 December 5, 1991, (56 C.F.R. Sec. 63798) as a human carcinogen,
13 reproductive toxicant, mutagen, or hazardous substance if ingested at
14 levels that may be present in the food;

15 (b) As of January 1, 2015, the state has identified as a high
16 priority chemical pursuant to chapter 70.240 RCW; or

17 (c) As of January 1, 2015, the state of California has identified
18 as known to cause cancer or reproductive toxicity in the list
19 developed pursuant to section 25249.5 through 25249.13 of the
20 California health and safety code; or

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

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

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

30 (i) Chemical abstracts service registry number;

31 (ii) Chemical prime name;

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

34 (iv) Credible peer-reviewed scientific information documenting
35 the potential carcinogenic, developmental, or reproductive harm posed
36 by the chemical; or, for a hazardous substance as defined in chapter
37 70.105 RCW, data indicating whether ingestion of food packaged in
38 packaging containing the substance will, under ordinary consumption,
39 result in exposures at concentrations exceeding clean-up action

1 levels established by the department pursuant to chapter 70.105D RCW
2 or maximum concentration limits established pursuant to the federal
3 safe drinking water act, 42 U.S.C. Sec. 300f et seq.

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

14 (c) The department must remove a chemical from the list of
15 prohibited food and food packaging contents created under section 4
16 of this act if the chemical is used as a food additive and the United
17 States food and drug administration specifically finds that the
18 chemical has been tested and shown to be safe for human consumption
19 pursuant to 21 U.S.C. chapter 9 as of January 1, 2015. However, the
20 department may still require food or food packaging containing the
21 chemical to be labeled in accordance with sections 5 and 6 of this
22 act.

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

33 (i) Chemical abstracts service registry number;
34 (ii) Chemical prime name;
35 (iii) Whether the chemical is a hazardous substance as defined in
36 chapter 70.105 RCW; and

37 (iv) Credible peer-reviewed scientific information documenting
38 the potential carcinogenic, developmental, or reproductive harm posed
39 by the chemical; or, for a hazardous substance as defined in chapter
40 70.105 RCW, data indicating whether ingestion of food packaged in

1 packaging containing the substance will, under ordinary consumption,
2 result in exposures at concentrations exceeding clean-up action
3 levels established by the department pursuant to chapter 70.105D RCW
4 or maximum concentration limits established pursuant to the federal
5 safe drinking water act, 42 U.S.C. Sec. 300f et seq.

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

16 (3) The department shall review petitions in accordance with RCW
17 34.05.330.

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

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

29 NEW SECTION. **Sec. 9.** Sections 4 through 7 of this act take
30 effect January 1, 2017.

31 NEW SECTION. **Sec. 10.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

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