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SENATE BILL 6131

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State of Washington                      64th Legislature      2015 2nd Special Session

By Senator Ericksen

Read first time 06/11/15.      Referred to Committee on Energy,  
Environment & Telecommunications.

1            AN ACT Relating to requiring safer chemicals in Washington;  
2 amending RCW 43.21B.110, 43.21B.110, 70.240.010, and 70.240.050;  
3 adding a new section to chapter 39.26 RCW; adding a new section to  
4 chapter 70.240 RCW; adding a new chapter to Title 70 RCW; creating  
5 new sections; prescribing penalties; providing an effective date; and  
6 providing expiration dates.

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

8            NEW SECTION.      **Sec. 1.**      The definitions in this section apply  
9 throughout this chapter unless the context clearly requires  
10 otherwise.

11            (1) "Alternatives assessment" means a process for identifying and  
12 comparing chemical and nonchemical alternatives currently in  
13 existence that can be practicably and economically used to replace  
14 the use of a chemical or, if a safer alternative is not identified,  
15 to reduce the amount of or exposure to that chemical.

16            (2) "Biomonitoring" means assessment of human exposures to  
17 chemicals by measuring the chemicals or their metabolites in human  
18 tissues or specimens, such as blood, breast milk, and urine.

19            (3) "Chemical" means a substance, including metals, with a  
20 distinct molecular composition or a group of structurally related  
21 substances, and includes the breakdown products of the substance or

1 substances that form through decomposition, degradation, or  
2 metabolism.

3 (4) "Chemical action plan" means a report that identifies,  
4 characterizes, and evaluates current and legacy uses and releases of  
5 a specific chemical or group of chemicals and identifies actions  
6 needed to protect human health and the environment.

7 (5) "Department" means the department of ecology.

8 (6) "Director" means the director of the department of ecology or  
9 the director's designee.

10 (7) "Emerging chemicals" means chemicals that meet the criteria  
11 of a high priority chemical as defined in RCW 70.240.010 and either:

12 (a) Meet the criteria for a high priority chemical of high  
13 concern for children as described in RCW 70.240.030(1) (a) through  
14 (c); or

15 (b) Have been shown through environmental monitoring studies to  
16 be present in fish, wildlife, air, water, soil, or sediment.

17 (8)(a) "Manufacturer" means any person or entity that produces a  
18 product or is an importer or domestic distributor of a product sold  
19 or offered for sale in or into the state.

20 (b) "Manufacturer" does not include:

21 (i) Small businesses as defined in RCW 19.85.020; or

22 (ii) A person or entity that provides documentation demonstrating  
23 that it does not exercise direct control over the process by which a  
24 product was formulated.

25 (9)(a) "Product" means any item sold for residential or  
26 commercial use, including any component or product packaging.

27 (b) "Product" does not include the following items:

28 (i) Food or beverage and food or beverage packaging, regulated by  
29 the United States food and drug administration or the United States  
30 department of agriculture;

31 (ii) Tobacco products;

32 (iii) Drug or biological products and packaging regulated by the  
33 United States food and drug administration;

34 (iv) Products and components produced under military  
35 specifications;

36 (v) Products and components regulated by the federal aviation  
37 administration;

38 (vi) Products registered for distribution in the state under  
39 chapter 15.54 or 15.58 RCW; and

1 (vii) Any previously owned product sold in casual or isolated  
2 sales as defined in RCW 82.04.040 or products sold by nonprofit  
3 organizations.

4 (10) "Product component" means a uniquely identifiable part,  
5 material, or coating that is included as a part of a finished  
6 product.

7 (11) "Safer alternative" means an alternative, demonstrated by an  
8 alternatives assessment, that meets improved hazard and exposure  
9 considerations, exhibits lower risk, and can be practicably and  
10 economically substituted for the original chemical.

11 (12) "Unsuitable alternative" means an alternative identified  
12 through the alternatives assessment process that does not meet the  
13 hazard, exposure, cost, performance, and availability criteria of a  
14 safer alternative.

15 (13) This section expires June 30, 2025.

16 NEW SECTION. **Sec. 2.** (1) Beginning January 1, 2016, and every  
17 two years thereafter, the department, in consultation with the  
18 department of health, must select up to two chemicals for the  
19 development of chemical action plans, as provided in section 4 of  
20 this act, from the following:

21 (a) Chemicals regulated by the department under human health  
22 criteria for water quality standards in the proposed rule published  
23 by the department on February 4, 2015, in the Washington State  
24 Register, as WSR 15-03-015;

25 (b) Chemicals that are persistent bioaccumulative toxins as  
26 defined in chapter 173-333 WAC, as of the effective date of this  
27 section, that affect water quality; or

28 (c) Emerging chemicals.

29 (2) The department may conduct environmental monitoring or,  
30 subject to the availability of amounts appropriated for this specific  
31 purpose, may request the department of health to conduct  
32 biomonitoring of a chemical, to verify the chemical is present in the  
33 state's environment or population or to better understand  
34 environmental or human exposure in the state. Environmental  
35 monitoring and biomonitoring conducted pursuant to this chapter must  
36 be of a minimum scope necessary to adequately inform a chemical  
37 action plan.

1 (3)(a) The first five chemicals selected for a chemical action  
2 plan must be chosen from the chemicals identified in subsection  
3 (1)(a) or (b) of this section.

4 (b) The director shall notify the public of the selection of a  
5 chemical for the development of a chemical action plan. The notice  
6 must state the basis for the selection, and include a draft schedule  
7 for completing the chemical action plan. The notice must be published  
8 in the Washington State Register. The department shall provide an  
9 opportunity for public review and comment before finalizing the  
10 schedule.

11 (c) When selecting chemicals for the development of chemical  
12 action plans, the department must consider:

13 (i) Opportunities for reducing or phasing out uses, production,  
14 or releases of a chemical;

15 (ii) Current scientific evidence on the combined effects of  
16 exposure to a chemical and other substances commonly present in the  
17 Washington environment;

18 (iii) Current scientific evidence on the susceptibility of  
19 sensitive population groups and environmental media from exposure to  
20 a chemical, as well as the cumulative effects of multiple exposures;

21 (iv) The relative ranking assigned to a chemical by the  
22 department based on information applicable to Washington about a  
23 chemical's properties, uses of a chemical, releases of a chemical,  
24 and levels of a chemical present in the environment and in residents;

25 (v) Whether a chemical has been determined to impact Washington  
26 state waters through identification under section 303(d) of the  
27 federal clean water act;

28 (vi) The potential for an emerging chemical to impair water  
29 quality; and

30 (vii) Existing plans or regulatory requirements to reduce or  
31 phase out the uses and releases of a chemical.

32 (d) The department must identify the sources of information it  
33 relied upon in selecting chemicals for the development of chemical  
34 action plans under this section, including peer-reviewed science.

35 (4) This section expires June 30, 2025.

36 NEW SECTION. **Sec. 3.** (1) The department may request information  
37 from manufacturers about products or product components that contain  
38 a chemical selected for a chemical action plan under section 2 of  
39 this act. Prior to requesting information from a manufacturer under

1 this subsection, the department must consult with a chemical action  
2 plan external advisory committee to evaluate the chemical that is the  
3 subject of the information request. Requests for information must be  
4 reasonable in scope and frequency and focused on:

5 (a) The most common and prevalent uses of the chemical, product,  
6 or product components that contain the chemical, based on the  
7 department's existing knowledge about the chemical;

8 (b) Areas where there is an identified gap in public or  
9 department knowledge about the chemical; and

10 (c) Uses of the chemical, product, or product components that the  
11 department has reason to believe are likely to be responsible for or  
12 associated with a significant portion of chemical releases into the  
13 environment or public health exposures.

14 (2) Within twelve months of a request by the department,  
15 manufacturers shall report the following:

16 (a) The name and address of the manufacturer and the contact  
17 information of the person responsible for responding to the  
18 department's requests on behalf of the manufacturer;

19 (b) The chemical abstracts service registry number of the  
20 chemical for which information is being requested;

21 (c) A brief description of the manufacturer's product or product  
22 component categories containing the chemical;

23 (d) A description of the function or functions of the chemical in  
24 the manufacturer's product or product components;

25 (e) The amount of the chemical used in each unit of the  
26 manufacturer's product or product components, which may be reported  
27 in ranges rather than the exact amount; and

28 (f) Any other information the manufacturer deems relevant to the  
29 appropriate use of the chemical, product, or product components.

30 (3) In response to an information request from the department  
31 under this section, a manufacturer may extrapolate amounts and  
32 estimates from the manufacturer's national data, or data compiled by  
33 federal agencies, other states, nations, or other sources. In  
34 addition, multiple manufacturers, or a business association, may  
35 collaborate and submit a single submission on behalf of multiple  
36 manufacturers for a chemical found in similar products or product  
37 components in response to the department's request for information.  
38 All submissions in response to the department's information request  
39 must include the information required in subsection (2)(a) of this  
40 section for each manufacturer. However, the information required in

1 subsection (2)(b) through (f) of this section is not required to be  
2 provided in a manner that attributes product or chemical use data or  
3 information to individual manufacturers.

4 (4) The department shall specify the required format for  
5 submission of the information required under subsection (2) of this  
6 section. The format must be generally consistent with the format  
7 specified by other states or federal agencies with substantially  
8 similar reporting requirements.

9 (5) Where information submitted by a manufacturer under chapter  
10 70.240 RCW is the same as the information required to be submitted by  
11 the manufacturer in subsection (2) of this section, the manufacturer  
12 is not required to submit the same information more than once.

13 (6) The department may, by order, require a manufacturer subject  
14 to the reporting requirement in subsection (2) of this section to  
15 provide additional information that is relevant to the development of  
16 a chemical action plan under section 4 of this act. Prior to an order  
17 under this subsection, the department must consult with the external  
18 advisory committee formed for the chemical action plan. An order by  
19 the department must also meet the reasonableness criteria of  
20 subsection (1) of this section.

21 (7) A manufacturer may request information submitted under this  
22 section be held confidential as provided under section 7 of this act.

23 (8) This section expires June 30, 2025.

24 NEW SECTION. **Sec. 4.** (1) When developing a chemical action  
25 plan, the department shall convene an external advisory committee to  
26 hold meetings and provide input, expertise, and additional  
27 information. All external advisory committee meetings must be open to  
28 the public. The department must invite representatives from, at  
29 minimum, the following organizations and entities to serve as  
30 external advisory committee members: Large and small business  
31 sectors; a statewide business association with over one thousand  
32 total members and that represents multiple business sectors;  
33 community, environmental, and public health advocacy groups; local  
34 governments; affected and interested businesses; and public health  
35 agencies. State agencies and technical experts may be requested to  
36 participate.

37 (2) All chemical action plans must include the following:

38 (a) The chemical name and a description of its properties, uses,  
39 and products or product components in which the chemical is found;

1 (b) An analysis of the available information on the production,  
2 unintentional production, current and legacy uses, and disposal of  
3 the chemical;

4 (c) Information on the known, potential, or proven impacts on  
5 human health and the environment associated with the use and release  
6 of the chemical;

7 (d) An evaluation of regulatory and nonregulatory activities that  
8 influence production, uses, releases, and management of the chemical;

9 (e) Identification of actions that, if needed, would eliminate,  
10 reduce, or manage exposures to the chemical;

11 (f) A prioritization of sources of exposures and releases of the  
12 chemical into the environment. The prioritization must be based on  
13 impacts to human health and the environment, the potential to affect  
14 water quality, and the feasibility and cost of actions that could be  
15 taken to address exposures or releases;

16 (g) A determination as to whether an alternatives assessment is  
17 recommended, which must address the prioritization of sources as  
18 required under (f) of this subsection; and

19 (h) A determination of the persons or entities responsible for  
20 completing an alternatives assessment, if recommended.

21 (3) All recommendations in a chemical action plan may be included  
22 only after consideration of the following criteria:

23 (a) Opportunity for environmental and human health benefits in  
24 the state of Washington;

25 (b) Economic and social impacts;

26 (c) Feasibility;

27 (d) Availability and effectiveness of safer alternatives, if  
28 known; and

29 (e) Consistency with existing federal and state regulatory  
30 requirements.

31 (4) The department must include in the chemical action plan a  
32 summary of all views, including dissenting views, held by external  
33 advisory committee members regarding the recommendations contained in  
34 the plan.

35 (5) The department must identify the sources of information it  
36 relied upon in completing a chemical action plan under this section,  
37 including peer-reviewed science.

38 (6) This section expires June 30, 2025.

1        NEW SECTION.    **Sec. 5.**    (1) The department may require, by order,  
2 manufacturers to conduct two alternatives assessments consistent with  
3 recommendations from chemical action plans.

4        (a) If the department orders a manufacturer to conduct an  
5 alternatives assessment for a chemical under section 2(1)(a) of this  
6 act, the department may not require an alternatives assessment to be  
7 conducted for a greater breadth of uses, products, or manufacturers  
8 than is necessary to address sources of environmental or human  
9 exposure to the chemical.

10       (b) If the department orders a manufacturer to conduct an  
11 alternatives assessment for a chemical under section 2(1)(b) or (c)  
12 of this act, the alternatives assessment must be limited to a single  
13 type of use of a chemical or a single type of product or product  
14 component in which the chemical is found.

15       (2) The department may require, by order, manufacturers to  
16 conduct: An alternatives assessment for polychlorinated biphenyls in  
17 pigments and dyes.

18       (3)(a) When ordered by the department to conduct an alternatives  
19 assessment, a manufacturer must submit:

20       (i) An alternatives assessment as required under subsection (6)  
21 of this section to the department for each use of the chemical  
22 specified by the department; or

23       (ii) A peer-reviewed alternatives assessment completed by an  
24 authoritative entity, including the United States environmental  
25 protection agency, the federal food and drug administration, or other  
26 nations or states, that meets the requirements of subsection (6) of  
27 this section.

28       (b) A manufacturer must submit the alternatives assessment to the  
29 department within eighteen months from the date the alternatives  
30 assessment is ordered. However, the department may grant an extension  
31 on a case-by-case basis for good cause if the manufacturer shows that  
32 additional time is necessary to complete the alternatives assessment  
33 or to substantially improve the quality of the alternatives  
34 assessment.

35       (c) A manufacturer may meet its obligation under this section by  
36 collaborating with other manufacturers or business associations of  
37 similar products to conduct and complete the alternatives assessment.  
38 A manufacturer complying with this subsection (3)(c) is not in  
39 violation of this chapter.

1 (4) A manufacturer is not required to submit an alternatives  
2 assessment when the manufacturer provides the department, within  
3 thirty days of receipt of an order to conduct an alternatives  
4 assessment, a certificate of compliance.

5 (a) A certificate of compliance must include the following:

6 (i) Chemical names and chemical abstracts service registry  
7 numbers for all of the chemicals that currently contribute to the  
8 specific function previously served by the chemical for which an  
9 alternatives assessment has been ordered;

10 (ii) How the manufacturer is using a safer alternative to meet  
11 the function of a chemical for which an alternatives assessment has  
12 been ordered;

13 (iii) Documentation demonstrating that the manufacturer has: (A)  
14 Ceased using the chemical for which it would be required to conduct  
15 an alternatives assessment; or (B) committed resources in pursuit of  
16 a plan to phase out, within a reasonable time, the chemical for which  
17 the manufacturer would be required to conduct an alternatives  
18 assessment; and

19 (iv) The signature of an authorized official of the manufacturer.

20 (b) A manufacturer that is not required to conduct an  
21 alternatives assessment under this subsection (4) is not in violation  
22 of this chapter.

23 (5)(a) The department, in consultation with the chemical action  
24 plan external advisory committee, may contract with an independent,  
25 qualified third party to conduct an alternatives assessment when:

26 (i) A manufacturer is not required to conduct an alternatives  
27 assessment under this section; or

28 (ii) The department determines that an alternatives assessment  
29 submitted by a manufacturer does not meet the definition or required  
30 objectives of an alternatives assessment.

31 (b) The department must ensure an alternatives assessment  
32 completed by an independent, qualified third party is peer-reviewed  
33 and meets the requirements under subsection (6) of this section.

34 (c) The department may by order require a manufacturer,  
35 consistent with recommendations in a chemical action plan, to provide  
36 additional information that is relevant to the development of a  
37 department-conducted alternatives assessment.

38 (6) An alternatives assessment must:

39 (a) Meet the objective of assessing less toxic chemicals and  
40 nonchemical alternatives to replace the use of a chemical or, if a

1 safer alternative is not identified, to reduce the amount of or  
2 exposure to chemicals in products and product components and to avoid  
3 the unintended consequence of switching to a substitute that presents  
4 an equivalent or greater concern;

5 (b) Follow the guidelines issued by the interstate chemicals  
6 clearinghouse, the national academy of sciences, or equivalent  
7 methodology; and

8 (c) Include, at a minimum: (i) An evaluation of chemical hazard,  
9 exposure, performance, consumer acceptance, cost, and availability;  
10 (ii) equivalent information, as required under (c)(i) of this  
11 subsection, for each alternative considered; and (iii) the  
12 identification of alternatives and unsuitable alternatives.

13 (7) If the department determines, based on an alternatives  
14 assessment, that a safer alternative exists, the department may  
15 submit agency request legislation recommending the prohibition of  
16 certain uses of a chemical or other actions determined appropriate,  
17 including restrictions on the use of unsuitable alternatives.

18 (8) This section expires June 30, 2025.

19 NEW SECTION. **Sec. 6.** (1) A manufacturer violating this chapter  
20 is subject to a civil penalty not to exceed five thousand dollars for  
21 each violation in the case of a first offense. Manufacturers who are  
22 repeat violators are subject to a civil penalty not to exceed ten  
23 thousand dollars for each repeat offense.

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

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

29 (4) This section expires June 30, 2025.

30 NEW SECTION. **Sec. 7.** (1) Manufacturers submitting information  
31 or records to the department may request that the information or  
32 records be made available only for the confidential use of the  
33 director, the department, or the appropriate division of the  
34 department.

35 (2)(a) A manufacturer requesting confidentiality for information  
36 submitted under this act must demonstrate to the department how the  
37 records relate to processes of production unique to the manufacturer

1 or how releasing the records to the public may adversely affect the  
2 manufacturer's competitive position.

3 (b)(i) The director shall give consideration to the request for  
4 confidentiality and if such action would not be detrimental to the  
5 public interest and is otherwise within accord with the policies and  
6 purposes of chapter 43.21A RCW, the director must grant the request  
7 for the information to remain confidential as authorized in RCW  
8 43.21A.160.

9 (ii) The department must respond to a manufacturer's request  
10 within fourteen days of receipt of the request. The department must  
11 inform the manufacturer regarding its determination of whether the  
12 submitted information should be kept confidential under this section  
13 and RCW 43.21A.160 and its reasons for the determination.

14 (iii) The department must keep confidential any records furnished  
15 by a manufacturer under this chapter that relate to proprietary  
16 manufacturing processes or chemical formulations used in products or  
17 manufacturing processes.

18 (3) If the director denies the request of a manufacturer to keep  
19 submitted information or records confidential under this section, the  
20 manufacturer may appeal the denial to a court of competent  
21 jurisdiction. In a review of whether the submitted information or  
22 records meet the criteria of RCW 43.21A.160 and this section, a court  
23 must examine submitted information or records in camera.

24 (4) This section expires June 30, 2025.

25 NEW SECTION. **Sec. 8.** (1) The department may adopt rules as  
26 necessary for the purpose of implementing, administering, and  
27 enforcing this chapter. Rules adopted to require manufacturers to  
28 conduct alternatives assessments must be consistent with section 5 of  
29 this act.

30 (2) This section expires June 30, 2025.

31 NEW SECTION. **Sec. 9.** A new section is added to chapter 39.26  
32 RCW to read as follows:

33 (1) The department shall establish purchasing and procurement  
34 policies that provide a preference for products and products in  
35 packaging that do not contain:

36 (a) Persistent bioaccumulative toxins, as defined in chapter  
37 173-333 WAC as of the effective date of this section; and

1 (b) Chemicals that have been addressed by a completed chemical  
2 action plan that has included a recommendation that the state adopt a  
3 purchasing and procurement policy for products and products in  
4 packaging that do not contain the chemical.

5 (2) No agency may knowingly purchase products or products in  
6 packaging containing chemicals identified in subsection (1) of this  
7 section unless there is no cost-effective and technologically  
8 feasible alternative. When all available products contain a chemical  
9 identified in subsection (1) of this section, a preference must be  
10 given to alternative products that contain lesser amounts of  
11 chemicals identified in subsection (1) of this section.

12 (3) Nothing in this section requires the department or any other  
13 state agency to breach an existing contract or dispose of stock that  
14 has been ordered or is in the possession of the department or other  
15 state agency as of the effective date of this section.

16 (4) This section does not require the department or any other  
17 agency to test every product procured.

18 (5) The department or any other agency may request suppliers of  
19 products to provide testing data from an accredited laboratory or  
20 testing facility documenting levels of a chemical identified in  
21 subsection (1) of this section in products or product packaging.  
22 Requested or voluntarily received testing data from businesses,  
23 manufacturers, organizations, and individuals must be submitted for  
24 review to the department of ecology.

25 **Sec. 10.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to  
26 read as follows:

27 (1) The hearings board shall only have jurisdiction to hear and  
28 decide appeals from the following decisions of the department, the  
29 director, local conservation districts, the air pollution control  
30 boards or authorities as established pursuant to chapter 70.94 RCW,  
31 local health departments, the department of natural resources, the  
32 department of fish and wildlife, the parks and recreation commission,  
33 and authorized public entities described in chapter 79.100 RCW:

34 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
35 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,  
36 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
37 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
3 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

4 (c) A final decision by the department or director made under  
5 chapter 183, Laws of 2009.

6 (d) Except as provided in RCW 90.03.210(2), the issuance,  
7 modification, or termination of any permit, certificate, or license  
8 by the department or any air authority in the exercise of its  
9 jurisdiction, including the issuance or termination of a waste  
10 disposal permit, the denial of an application for a waste disposal  
11 permit, the modification of the conditions or the terms of a waste  
12 disposal permit, or a decision to approve or deny an application for  
13 a solid waste permit exemption under RCW 70.95.300.

14 (e) Decisions of local health departments regarding the grant or  
15 denial of solid waste permits pursuant to chapter 70.95 RCW.

16 (f) Decisions of local health departments regarding the issuance  
17 and enforcement of permits to use or dispose of biosolids under RCW  
18 70.95J.080.

19 (g) Decisions of the department regarding waste-derived  
20 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
21 decisions of the department regarding waste-derived soil amendments  
22 under RCW 70.95.205.

23 (h) Decisions of local conservation districts related to the  
24 denial of approval or denial of certification of a dairy nutrient  
25 management plan; conditions contained in a plan; application of any  
26 dairy nutrient management practices, standards, methods, and  
27 technologies to a particular dairy farm; and failure to adhere to the  
28 plan review and approval timelines in RCW 90.64.026.

29 (i) Any other decision by the department or an air authority  
30 which pursuant to law must be decided as an adjudicative proceeding  
31 under chapter 34.05 RCW.

32 (j) Decisions of the department of natural resources, the  
33 department of fish and wildlife, and the department that are  
34 reviewable under chapter 76.09 RCW, and the department of natural  
35 resources' appeals of county, city, or town objections under RCW  
36 76.09.050(7).

37 (k) Forest health hazard orders issued by the commissioner of  
38 public lands under RCW 76.06.180.

1 (l) Decisions of the department of fish and wildlife to issue,  
2 deny, condition, or modify a hydraulic project approval permit under  
3 chapter 77.55 RCW.

4 (m) Decisions of the department of natural resources that are  
5 reviewable under RCW 78.44.270.

6 (n) Decisions of an authorized public entity under RCW 79.100.010  
7 to take temporary possession or custody of a vessel or to contest the  
8 amount of reimbursement owed that are reviewable by the hearings  
9 board under RCW 79.100.120.

10 (o) Decisions regarding a restriction, order, or penalty issued  
11 under chapter 70.--- RCW (the new chapter created in section 16 of  
12 this act).

13 (2) The following hearings shall not be conducted by the hearings  
14 board:

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

17 (b) Hearings conducted by the department pursuant to RCW  
18 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
19 90.44.180.

20 (c) Appeals of decisions by the department under RCW 90.03.110  
21 and 90.44.220.

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

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

27 **Sec. 11.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to  
28 read as follows:

29 (1) The hearings board shall only have jurisdiction to hear and  
30 decide appeals from the following decisions of the department, the  
31 director, local conservation districts, the air pollution control  
32 boards or authorities as established pursuant to chapter 70.94 RCW,  
33 local health departments, the department of natural resources, the  
34 department of fish and wildlife, the parks and recreation commission,  
35 and authorized public entities described in chapter 79.100 RCW:

36 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
37 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,  
38 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
39 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
3 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,  
5 modification, or termination of any permit, certificate, or license  
6 by the department or any air authority in the exercise of its  
7 jurisdiction, including the issuance or termination of a waste  
8 disposal permit, the denial of an application for a waste disposal  
9 permit, the modification of the conditions or the terms of a waste  
10 disposal permit, or a decision to approve or deny an application for  
11 a solid waste permit exemption under RCW 70.95.300.

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

14 (e) Decisions of local health departments regarding the issuance  
15 and enforcement of permits to use or dispose of biosolids under RCW  
16 70.95J.080.

17 (f) Decisions of the department regarding waste-derived  
18 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
19 decisions of the department regarding waste-derived soil amendments  
20 under RCW 70.95.205.

21 (g) Decisions of local conservation districts related to the  
22 denial of approval or denial of certification of a dairy nutrient  
23 management plan; conditions contained in a plan; application of any  
24 dairy nutrient management practices, standards, methods, and  
25 technologies to a particular dairy farm; and failure to adhere to the  
26 plan review and approval timelines in RCW 90.64.026.

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

30 (i) Decisions of the department of natural resources, the  
31 department of fish and wildlife, and the department that are  
32 reviewable under chapter 76.09 RCW, and the department of natural  
33 resources' appeals of county, city, or town objections under RCW  
34 76.09.050(7).

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

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

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

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

7 (n) Decisions regarding a restriction, order, or penalty issued  
8 under chapter 70.--- RCW (the new chapter created in section 16 of  
9 this act).

10 (2) The following hearings shall not be conducted by the hearings  
11 board:

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

14 (b) Hearings conducted by the department pursuant to RCW  
15 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
16 90.44.180.

17 (c) Appeals of decisions by the department under RCW 90.03.110  
18 and 90.44.220.

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

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

24 NEW SECTION. Sec. 12. (1) By June 30, 2024, the department must  
25 provide a report to the appropriate committees of the legislature to  
26 review and evaluate the processes for chemical action plans and  
27 alternatives assessments provided in this act.

28 (2) The report must include recommendations for changes to  
29 developing chemical action plans and alternatives assessments;  
30 necessary legislative actions to improve the processes; and whether  
31 the department should continue developing chemical actions plans and  
32 alternatives assessments.

33 (3) This section expires June 30, 2025.

34 NEW SECTION. Sec. 13. A new section is added to chapter 70.240  
35 RCW to read as follows:

36 Beginning July 1, 2016, no manufacturer, wholesaler, or retailer  
37 may manufacture, knowingly sell, offer for sale, distribute for sale,  
38 or distribute for use in this state children's products or

1 residential upholstered furniture, as defined in RCW 70.76.010,  
2 containing TDCPP (tris(1,3-dichloro-2-propyl)phosphate), chemical  
3 abstracts service number 13674-87-8, as of the effective date of this  
4 section, TCEP (tris(2-chloroethyl)phosphate), chemical abstracts  
5 service number 115-96-8, as of the effective date of this section,  
6 decabromodiphenyl ether, chemical abstracts service number 1163-19-5,  
7 as of the effective date of this section, hexabromocyclododecane,  
8 chemical abstracts service number 25637-99-4, as of the effective  
9 date of this section, or the additive form of TBBPA, chemical  
10 abstracts service number 79-94-7, as of the effective date of this  
11 section, in amounts greater than one thousand parts per million in  
12 any product component.

13 **Sec. 14.** RCW 70.240.010 and 2008 c 288 s 2 are each amended to  
14 read as follows:

15 The definitions in this section apply throughout this chapter  
16 unless the context clearly requires otherwise.

17 (1) "Children's cosmetics" means cosmetics that are made for,  
18 marketed for use by, or marketed to children under the age of twelve.  
19 "Children's cosmetics" includes cosmetics that meet any of the  
20 following conditions:

21 (a) Represented in its packaging, display, or advertising as  
22 appropriate for use by children;

23 (b) Sold in conjunction with, attached to, or packaged together  
24 with other products that are packaged, displayed, or advertised as  
25 appropriate for use by children; or

26 (c) Sold in any of the following:

27 (i) Retail store, catalogue, or online web site, in which a  
28 person exclusively offers for sale products that are packaged,  
29 displayed, or advertised as appropriate for use by children; or

30 (ii) A discrete portion of a retail store, catalogue, or online  
31 web site, in which a person offers for sale products that are  
32 packaged, displayed, or advertised as appropriate for use by  
33 children.

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

38 (a) Represented in its packaging, display, or advertising as  
39 appropriate for use by children under the age of twelve;

1 (b) Sold in conjunction with, attached to, or packaged together  
2 with other products that are packaged, displayed, or advertised as  
3 appropriate for use by children;

4 (c) Sized for children and not intended for use by adults; or

5 (d) Sold in any of the following:

6 (i) A vending machine;

7 (ii) Retail store, catalogue, or online web site, in which a  
8 person exclusively offers for sale products that are packaged,  
9 displayed, or advertised as appropriate for use by children; or

10 (iii) A discrete portion of a retail store, catalogue, or online  
11 web site, in which a person offers for sale products that are  
12 packaged, displayed, or advertised as appropriate for use by  
13 children.

14 (3)(a) "Children's product" includes any of the following:

15 (i) Toys;

16 (ii) Children's cosmetics;

17 (iii) Children's jewelry;

18 (iv) A product designed or intended by the manufacturer to help a  
19 child with sucking or teething, to facilitate sleep, relaxation, or  
20 the feeding of a child, or to be worn as clothing by children; or

21 (v) (~~Child car seats~~) A portable infant or child safety seat  
22 designed to attach to an automobile seat.

23 (b) "Children's product" does not include the following:

24 (i) Batteries;

25 (ii) Slings and catapults;

26 (iii) Sets of darts with metallic points;

27 (iv) Toy steam engines;

28 (v) Bicycles and tricycles;

29 (vi) Video toys that can be connected to a video screen and are  
30 operated at a nominal voltage exceeding twenty-four volts;

31 (vii) Chemistry sets;

32 (viii) Consumer and children's electronic products, including but  
33 not limited to personal computers, audio and video equipment,  
34 calculators, wireless phones, game consoles, and handheld devices  
35 incorporating a video screen, used to access interactive software and  
36 their associated peripherals;

37 (ix) Interactive software, intended for leisure and  
38 entertainment, such as computer games, and their storage media, such  
39 as compact disks;

40 (x) BB guns, pellet guns, and air rifles;

1 (xi) Snow sporting equipment, including skis, poles, boots, snow  
2 boards, sleds, and bindings;

3 (xii) Sporting equipment, including, but not limited to bats,  
4 balls, gloves, sticks, pucks, and pads;

5 (xiii) Roller skates;

6 (xiv) Scooters;

7 (xv) Model rockets;

8 (xvi) Athletic shoes with cleats or spikes; and

9 (xvii) Pocket knives and multitools.

10 (4) "Cosmetics" includes articles intended to be rubbed, poured,  
11 sprinkled, or sprayed on, introduced into, or otherwise applied to  
12 the human body or any part thereof for cleansing, beautifying,  
13 promoting attractiveness, or altering the appearance, and articles  
14 intended for use as a component of such an article. "Cosmetics" does  
15 not include soap, dietary supplements, or food and drugs approved by  
16 the United States food and drug administration.

17 (5) "Department" means the department of ecology.

18 (6) "High priority chemical" means a chemical identified by a  
19 state agency, federal agency, or accredited research university, or  
20 other scientific evidence deemed authoritative by the department on  
21 the basis of credible scientific evidence as known to do one or more  
22 of the following:

23 (a) Harm the normal development of a fetus or child or cause  
24 other developmental toxicity;

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

26 (c) Disrupt the endocrine system;

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

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

30 (f) Be very persistent and very bioaccumulative.

31 (7) "Manufacturer" includes any person, firm, association,  
32 partnership, corporation, governmental entity, organization, or joint  
33 venture that produces a children's product or an importer or domestic  
34 distributor of a children's product. For the purposes of this  
35 subsection, "importer" means the owner of the children's product.

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

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

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

8 (11) "Very bioaccumulative" means having a bioconcentration  
9 factor or bioaccumulation factor greater than or equal to five  
10 thousand, or if neither are available, having a log Kow greater than  
11 5.0.

12 (12) "Very persistent" means having a half-life greater than or  
13 equal to one of the following:

14 (a) A half-life in soil or sediment of greater than one hundred  
15 eighty days;

16 (b) A half-life greater than or equal to sixty days in water or  
17 evidence of long-range transport.

18 **Sec. 15.** RCW 70.240.050 and 2008 c 288 s 7 are each amended to  
19 read as follows:

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

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

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

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

37 (5) The sale or purchase of any previously owned products  
38 containing a chemical restricted under this chapter made in casual or

1 isolated sales as defined in RCW 82.04.040, or by a nonprofit  
2 organization, is exempt from this chapter.

3 NEW SECTION. **Sec. 16.** Sections 1 through 8 and 12 of this act  
4 constitute a new chapter in Title 70 RCW.

5 NEW SECTION. **Sec. 17.** This act may be known and cited as the  
6 toxics reduction act.

7 NEW SECTION. **Sec. 18.** (1) Section 10 of this act expires June  
8 30, 2019.

9 (2) Section 11 of this act expires June 30, 2025.

10 NEW SECTION. **Sec. 19.** Section 11 of this act takes effect June  
11 30, 2019.

12 NEW SECTION. **Sec. 20.** If specific funding for the purposes of  
13 this act, referencing this act by bill or chapter number, is not  
14 provided by June 30, 2015, in the omnibus appropriations act, this  
15 act is null and void.

16 NEW SECTION. **Sec. 21.** If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

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