
SENATE BILL 5406

State of Washington

64th Legislature

2015 Regular Session

By Senators Billig, Ranker, Cleveland, Nelson, Chase, Fraser, Rolfes, Kohl-Welles, Frockt, and Keiser; by request of Governor Inslee

Read first time 01/21/15. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to using chemical action plans to require safer
2 chemicals in Washington; amending RCW 43.21B.110 and 43.21B.110;
3 adding a new section to chapter 39.26 RCW; adding a new chapter to
4 Title 70 RCW; creating a new section; prescribing penalties;
5 providing an effective date; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds:

8 (1) Biomonitoring studies reveal adults, children, and even
9 fetuses carry a body burden of toxic chemicals. These include
10 chemicals linked to cancer, brain and nervous system damage, birth
11 defects, developmental delays, and reproductive harm.

12 (2) A growing body of scientific evidence demonstrates that these
13 toxic chemical exposures are taking a toll on public health and
14 playing a role in the incidence and prevalence of many diseases and
15 disorders, including learning and behavioral problems, asthma,
16 reproductive problems, birth defects, obesity, and cancer.

17 (3) An emerging concern is the uncontrolled release of chemical
18 pollutants that come from the diffuse, largely unregulated source of
19 products containing those chemicals. Many chemicals of concern are
20 persistent and therefore remain in the environment for decades.

1 (4) It is the policy of the state to protect public health and
2 the environment by eliminating or reducing the exposure of its
3 residents to toxic chemicals of concern, especially children and
4 other sensitive or high exposure populations.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Alternatives assessment" means a process for identifying and
9 comparing potential chemical and nonchemical alternatives currently
10 in existence that can be used to replace the use of priority
11 Washington chemicals. The objective of an alternatives assessment is
12 to select less toxic chemicals or nonchemical alternatives to replace
13 the use of a priority Washington chemical in a product and to avoid
14 the unintended consequence of switching to a substitute that presents
15 an equivalent or greater concern. An alternatives assessment follows
16 the guidelines issued by the interstate chemicals clearinghouse, the
17 national academy of sciences, or equivalent methodology. At a
18 minimum, an alternatives assessment includes: An evaluation of
19 chemical hazard, exposure, performance, cost, and availability;
20 information for each alternative considered; and the identification
21 of alternatives.

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

25 (3) "Chemical" means a substance, including metals, with a
26 distinct molecular composition or a group of structurally related
27 substances and includes the breakdown products of the substance or
28 substances that form through decomposition, degradation, or
29 metabolism.

30 (4) "Chemical action plan" means a plan that identifies,
31 characterizes, and evaluates uses and releases of a specific chemical
32 or group of chemicals and identifies actions needed to protect human
33 health and the environment. A chemical action plan considers
34 information on chemistry, production uses and releases, human health
35 and environmental impacts, and current regulatory approaches.

36 (5) "Chemical hazard assessment" means an evaluation of the
37 hazards posed by the chemical of concern in a product or a
38 manufacturing process. Chemical hazard assessments follow the

1 guidelines issued by the interstate chemicals clearinghouse, national
2 academy of sciences, or equivalent methodology.

3 (6) "Department" means the department of ecology.

4 (7) "Director" means the director of the department of ecology or
5 the director's designee.

6 (8) "Manufacturer" means any person, firm, association,
7 partnership, corporation, governmental entity, organization, or joint
8 venture that produces a product or is an importer or domestic
9 distributor of a product sold or offered for sale in or into the
10 state. "Manufacturer" does not include small businesses as defined in
11 RCW 19.85.020.

12 (9) "Product" means any item sold for residential or commercial
13 use including any component or product packaging. "Product" does not
14 include the following items, but does include their packaging:

15 (a) Food or beverage;

16 (b) Tobacco products;

17 (c) Drug or biological products regulated by the United States
18 food and drug administration;

19 (d) Products produced under military specifications;

20 (e) Finished products regulated by the federal aviation
21 administration;

22 (f) Chemicals used to produce an agricultural commodity, as
23 defined in RCW 17.21.020; and

24 (g) Any previously owned product sold in casual or isolated sales
25 as defined in RCW 82.04.040 or products sold by nonprofit
26 organizations.

27 (10) "Product component" means a uniquely identifiable material
28 or coating that is included as a part of a finished product.

29 (11) "Safer alternative" means an alternative that is less
30 hazardous to humans or the environment than the existing chemical or
31 chemical process. A safer alternative to a particular chemical may
32 include a chemical substitute or a change in materials or design that
33 eliminates the need for a chemical alternative.

34 (12) "Summary report" means a report prepared by the department
35 summarizing available alternatives assessments and includes a
36 determination regarding the existence of a safer alternative. The
37 summary report also includes a determination of the completeness of
38 the alternatives assessments reviewed and identifies unsuitable
39 alternatives.

1 (13) "Unsuitable alternative" means an alternative identified
2 through the alternatives assessment process that is not a safer
3 alternative.

4 NEW SECTION. **Sec. 3.** (1) By January 1, 2018, and periodically
5 thereafter, the department, in consultation with the department of
6 health, shall adopt by rule a list of not more than one hundred fifty
7 priority Washington chemicals.

8 (2) Chemicals designated as priority Washington chemicals must
9 meet the criteria of a high priority chemical as defined in RCW
10 70.240.010 as applied to humans, plants, or wildlife, and must
11 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 (3) The department may conduct environmental monitoring or
18 request the department of health to conduct biomonitoring of a
19 chemical to verify the chemical is present in the state's environment
20 or population or to better understand environmental or human
21 exposures in the state.

22 NEW SECTION. **Sec. 4.** (1) By January 1, 2018, the director shall
23 by rule select up to twenty of the priority Washington chemicals for
24 potential chemical action plan development.

25 (2) The department may require information from manufacturers of
26 products that contain a priority Washington chemical selected
27 pursuant to subsection (1) of this section in order to develop
28 chemical action plans under section 5 of this act. Manufacturers
29 shall report the following:

30 (a) The name and address of the manufacturer and the name,
31 address, and phone number of a contact person for the manufacturer;

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

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

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

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

4 (f) An estimate of the number of products containing the chemical
5 that the manufacturer sells in and into Washington each year; and

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

8 (3) The department shall specify the required format for
9 submission of the information required under subsection (2) of this
10 section. The format should be generally consistent with the format
11 specified in other states with substantially similar reporting
12 requirements.

13 (4) Multiple businesses, or a business association, may
14 collaborate and submit a single submission on a chemical found in
15 similar products.

16 (5) Where information submitted by a manufacturer under chapter
17 70.240 RCW is the same as the information required to be submitted by
18 the manufacturer in subsection (2) of this section, that manufacturer
19 is not required to submit the same information again.

20 (6) The department may, by order, require a manufacturer subject
21 to the reporting requirement in subsection (2) of this section to
22 provide additional information that is relevant to the development of
23 a chemical action plan under section 5 of this act.

24 NEW SECTION. **Sec. 5.** (1) Beginning July 1, 2018, and every two
25 years thereafter, the director shall select up to four priority
26 Washington chemicals identified under section 4 of this act for
27 development of a chemical action plan by the department and the
28 department of health.

29 (2) When selecting a priority Washington chemical for development
30 of a chemical action plan, the director shall notify the public of
31 the selection, the basis for the selection, and a draft schedule. The
32 notice must be posted in the Washington State Register. The
33 department shall provide the public with an opportunity for review
34 and comment before finalizing the schedule.

35 (3) When developing a chemical action plan, the department shall
36 convene an external advisory committee to provide stakeholder input
37 and expertise.

38 (4) A chemical action plan must identify actions needed to
39 eliminate or reduce threats to human health and the environment and

1 which uses, if any, of the chemical under consideration require an
2 alternatives assessment or should be restricted.

3 (5) The department may rely on recommendations in chemical action
4 plans developed under chapter 173-333 WAC before the effective date
5 of this section.

6 NEW SECTION. **Sec. 6.** (1) The department is authorized to
7 require manufacturers, by order, to conduct alternatives assessments,
8 as detailed in this section, consistent with actions identified in
9 the chemical action plan needed to reduce or eliminate threats to
10 human health and the environment.

11 (2) If ordered by the department, a manufacturer of a product
12 that contains a priority Washington chemical for which a chemical
13 action plan has been completed under section 5 of this act or under
14 chapter 173-333 WAC must submit an alternatives assessment to the
15 department for each use of the chemical specified by the department.
16 The manufacturer must submit the alternatives assessment to the
17 department within one year of receipt of the department's order.
18 Multiple businesses, or a business association, may collaborate and
19 submit a single alternatives assessment on a chemical found in
20 similar products.

21 (3) The department shall review an alternatives assessment
22 submitted to the department in compliance with an order issued by the
23 department under subsection (2) of this section to determine if the
24 assessment meets the definition and objective of an alternatives
25 assessment.

26 (4) If the department determines that an alternatives assessment
27 submitted in response to an order issued under subsection (2) of this
28 section is incomplete, the department may require the manufacturer or
29 association to submit a revised alternatives assessment within an
30 additional three months to correct deficiencies identified by the
31 department.

32 (5) If the department determines that no revised alternatives
33 assessment meets the definition or objectives of an alternatives
34 assessment, the department may prepare an independent alternatives
35 assessment. When the department prepares an independent alternatives
36 assessment, it may recover its costs from the manufacturers whose
37 products are covered by the alternatives assessment. Costs must be
38 apportioned among manufacturers according to the amount of the
39 chemical used in each manufacturer's product and the estimated number

1 of units of each manufacturer's product sold in Washington. Any
2 alternatives assessment conducted by the department must include a
3 process to involve interested parties.

4 (6) The department may rely on existing information indicating
5 that a safer alternative for a chemical exists if that information is
6 equivalent to an alternatives assessment.

7 NEW SECTION. **Sec. 7.** (1) The department, in consultation with
8 the department of health, shall prepare a summary report of all
9 reviewed alternatives assessments and other relevant information
10 assembled by the department for a priority Washington chemical under
11 section 6 of this act. The summary report must include a
12 determination of whether a safer alternative exists and identify
13 unsuitable alternatives.

14 (2) The department shall seek public input on its determination,
15 including a notice in the Washington State Register and shall submit
16 the final report to the appropriate committees of the legislature in
17 compliance with RCW 43.01.036.

18 (3) Any manufacturer that would be adversely affected by a
19 restriction imposed under section 8 of this act on the use of the
20 chemical in question may appeal the department's determination of
21 whether a safer alternative exists to the pollution control hearings
22 board. Such an appeal must be filed within thirty days of final
23 publication of the department's determination.

24 (4) If the department determines that a safer alternative does
25 not exist, then the department may reevaluate information on the
26 availability of safer alternatives not more often than once every
27 five years.

28 NEW SECTION. **Sec. 8.** (1) If the department determines that a
29 safer alternative exists, based on a completed alternatives
30 assessment or equivalent information, the department shall, by rule,
31 prohibit specific uses of the chemical, or prohibit the sale, offer
32 for sale, or distribution of a specific product or products
33 containing the chemical. Manufacturers may not use a chemical
34 determined by the department to be an unsuitable alternative to
35 replace a chemical restricted under this section.

36 (2) The department shall establish reasonable deadlines for
37 manufacturers to comply with any prohibition adopted under subsection
38 (1) of this section. In setting reasonable deadlines, the department

1 shall consider information such as existing product inventory. No
2 prohibition may take effect sooner than twelve months after rule
3 adoption.

4 (3) Manufacturers of a product that is subject to a chemical
5 content prohibition shall make available within thirty days of a
6 request by the department a certificate of compliance stating that
7 the product meets the requirements of the prohibition adopted under
8 subsection (1) of this section. A certificate of compliance must
9 include the following:

10 (a) Chemical names and chemical abstracts service registry
11 numbers for all chemicals that currently contribute to the specific
12 function previously served by the prohibited chemical;

13 (b) How the manufacturer is meeting the function of the
14 prohibited chemical with a safer alternative; and

15 (c) The signature of an authorized official of the manufacturer.

16 NEW SECTION. **Sec. 9.** (1) A manufacturer violating a requirement
17 of this chapter, a rule adopted under this chapter, or an order
18 issued under this chapter, is subject to a civil penalty not to
19 exceed five thousand dollars for each violation in the case of a
20 first offense. Manufacturers who are repeat violators are subject to
21 a civil penalty not to exceed ten thousand dollars for each repeat
22 offense.

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

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

28 NEW SECTION. **Sec. 10.** Manufacturers submitting information or
29 records to the department may request that the information or records
30 be made available only for the confidential use of the director, the
31 department, or the appropriate division of the department. The
32 director shall give consideration to the request and if such action
33 would not be detrimental to the public interest and is otherwise
34 within accord with the policies and purposes of chapter 43.21A RCW,
35 the director may grant the request for the information to remain
36 confidential as authorized in RCW 43.21A.160.

1 NEW SECTION. **Sec. 11.** The department may adopt rules as
2 necessary for the purpose of implementing, administering, and
3 enforcing this chapter.

4 NEW SECTION. **Sec. 12.** A new section is added to chapter 39.26
5 RCW to read as follows:

6 (1) The department shall establish purchasing and procurement
7 policies that provide a preference for products and products in
8 packaging that do not contain priority Washington chemicals.

9 (2) No agency may knowingly purchase products or products in
10 packaging containing priority Washington chemicals except when it is
11 not cost-effective or technically feasible to do so. When all
12 available products contain a priority Washington chemical, a
13 preference must be given to alternative products that contain lesser
14 amounts of priority Washington chemicals.

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

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

21 (5) The department or any other agency may request suppliers of
22 products to provide testing data from an accredited laboratory or
23 testing facility documenting levels of priority Washington chemicals
24 in products or product packaging. Requested or voluntarily received
25 testing data from businesses, manufacturers, organizations, and
26 individuals must be submitted for review to the department of
27 ecology.

28 (6) For the purposes of this section, "priority Washington
29 chemicals" means those chemicals identified under section 3 of this
30 act.

31 **Sec. 13.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to
32 read as follows:

33 (1) The hearings board shall only have jurisdiction to hear and
34 decide appeals from the following decisions of the department, the
35 director, local conservation districts, the air pollution control
36 boards or authorities as established pursuant to chapter 70.94 RCW,
37 local health departments, the department of natural resources, the

1 department of fish and wildlife, the parks and recreation commission,
2 and authorized public entities described in chapter 79.100 RCW:

3 (a) Civil penalties imposed pursuant to RCW 18.104.155,
4 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,
5 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
6 90.64.102.

7 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
8 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
9 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

22 (f) Decisions of local health departments regarding the issuance
23 and enforcement of permits to use or dispose of biosolids under RCW
24 70.95J.080.

25 (g) Decisions of the department regarding waste-derived
26 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
27 decisions of the department regarding waste-derived soil amendments
28 under RCW 70.95.205.

29 (h) Decisions of local conservation districts related to the
30 denial of approval or denial of certification of a dairy nutrient
31 management plan; conditions contained in a plan; application of any
32 dairy nutrient management practices, standards, methods, and
33 technologies to a particular dairy farm; and failure to adhere to the
34 plan review and approval timelines in RCW 90.64.026.

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

38 (j) Decisions of the department of natural resources, the
39 department of fish and wildlife, and the department that are
40 reviewable under chapter 76.09 RCW, and the department of natural

1 resources' appeals of county, city, or town objections under RCW
2 76.09.050(7).

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

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

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

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

14 (o) Decisions regarding a restriction, order, or penalty issued
15 under chapter 70.--- RCW (the new chapter created in section 15 of
16 this act).

17 (2) The following hearings shall not be conducted by the hearings
18 board:

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

21 (b) Hearings conducted by the department pursuant to RCW
22 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
23 90.44.180.

24 (c) Appeals of decisions by the department under RCW 90.03.110
25 and 90.44.220.

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

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

31 **Sec. 14.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
32 read as follows:

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

1 (a) Civil penalties imposed pursuant to RCW 18.104.155,
2 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,
3 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
4 90.64.102.

5 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
6 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
7 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

18 (e) Decisions of local health departments regarding the issuance
19 and enforcement of permits to use or dispose of biosolids under RCW
20 70.95J.080.

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

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

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

34 (i) Decisions of the department of natural resources, the
35 department of fish and wildlife, and the department that are
36 reviewable under chapter 76.09 RCW, and the department of natural
37 resources' appeals of county, city, or town objections under RCW
38 76.09.050(7).

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

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

6 (m) 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 (n) Decisions regarding a restriction, order, or penalty issued
11 under chapter 70.--- RCW (the new chapter created in section 15 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 NEW SECTION. Sec. 15. Sections 1 through 11 of this act
28 constitute a new chapter in Title 70 RCW.

29 NEW SECTION. Sec. 16. This act may be known and cited as the
30 toxics reduction act.

31 NEW SECTION. Sec. 17. Section 13 of this act expires June 30,
32 2019.

33 NEW SECTION. Sec. 18. Section 14 of this act takes effect June
34 30, 2019.

1 NEW SECTION. **Sec. 19.** 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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