

SENATE BILL REPORT

SB 6396

As of February 5, 2018

Title: An act relating to the use of perfluorinated chemicals in food packaging.

Brief Description: Concerning the use of perfluorinated chemicals in food packaging.

Sponsors: Senators Wellman, Carlyle, McCoy, Van De Wege, Billig, Chase, Keiser and Kuderer.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/29/18, 2/01/18
[DPS-WM, DNP].

Ways & Means: 2/05/18.

Brief Summary of First Substitute Bill

- Requires the Department of Ecology (Ecology) to conduct an alternative assessment of safer alternatives to perfluoroalkyl and polyfluoroalkyl chemicals (PFASs) for specific food packaging applications.
- Prohibits the use of PFASs for specific food packaging applications if the alternative assessment identifies a safer alternative.
- Provides guidelines for when manufacturers need to develop a certificate of compliance for specific food packaging applications.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 6396 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; McCoy, Vice Chair; Nelson.

Minority Report: Do not pass.

Signed by Senators Warnick, Ranking Member; Honeyford.

Staff: Angela Kleis (786-7469)

SENATE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jed Herman (786-7346)

Background: PFASs Overview. PFASs are a class of man-made chemicals that are not found naturally in the environment. PFASs have been widely used to make products stain-resistant, waterproof, and nonstick. Some examples of products that use PFASs are:

- paper wrappers for fast food and microwave popcorn;
- nonstick cookware and food packaging; and
- waterproof and stain-resistant apparel and mattresses.

According to the U.S. Environmental Protection Agency, PFASs are very persistent in the environment and in the human body. Ecology states that the toxicity of PFASs compounds varies. Studies in animals show that exposure to some PFASs can affect liver function, reproductive hormones, development of offspring, and mortality. However, PFASs toxicity in humans is less understood and exposure may be linked to high cholesterol, ulcerative colitis, thyroid disease, testicular cancer, kidney cancer, and pregnancy-induced hypertension.

Interstate Chemicals Clearinghouse (IC2). The IC2 is an association of state, local, and tribal governments that promotes a clean environment, healthy communities, and a vital economy through the development and use of safer chemicals and products. The functions of the IC2 includes supporting the development of alternative assessment methods and identification of safer alternatives.

Current Law. The maximum allowable concentration levels for selected metals in product packaging is specified. Packaging manufacturers are required to develop and retain a certificate of compliance stating that product packaging is in compliance with these requirements. Ecology may prohibit the sale of any package if a manufacturer does not comply with the certificate of compliance requirement.

Summary of Bill (First Substitute): Ecology must conduct an alternatives assessment to determine the existence of safer alternatives to PFASs for specific food packaging applications. The alternative assessment must:

- evaluate less toxic chemicals and non-chemical alternatives;
- follow the guidelines for alternative assessments issued by IC2; and
- include an evaluation of chemical hazards, exposure, performance, cost, and availability.

Ecology must publish its findings and submit a report to the Legislature by January 1, 2020.

If the findings demonstrate the existence of a safer alternative, the use of PFASs for specific food packaging applications is prohibited beginning January 1, 2022.

If the findings do not identify a safer alternative, Ecology must annually conduct a PFASs alternative assessment and submit a report to the Legislature on safer alternatives beginning January 1, 2021. The use of PFASs for specific food packaging applications is prohibited beginning two years after a submitted report finds a safer alternative is available.

Manufacturers must develop a compliance certificate for food packaging by the date the prohibition on the use of PFASs for specific food packaging applications takes effect.

Food package means a package or packaging component that is intended for direct food contact and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE (First Substitute):

- Narrows the types of food packaging subject to the prohibition on PFAS chemicals.
- Delays, in the event that Ecology identifies a safer alternative to PFASs in a food packaging application, the effective date of PFASs prohibitions to two years after the safer alternative determination. The effective date is no earlier than January 1, 2022, rather than January 1, 2021.
- Requires manufacturers of food packaging to develop certificates of compliance by the date that a PFAS prohibition in food packaging takes effect, rather than requiring certificates of compliance within a year of a PFAS prohibition taking effect.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Agriculture, Water, Natural Resources & Parks): *The committee recommended a different version of the bill than what was heard.* PRO: PFASs threaten our health and the environment. Alternatives are available on the market. PFASs disrupt the endocrine system, which alters how the body functions and develops. The amount of evidence is growing that shows short-chain PFASs share the same traits of the already banned compounds. Federal systems do no test for these types of health concerns. We are worried about communities that are more likely to consume more fast food. These are typically low-income neighborhoods with less access to fresh produce. Restricting PFASs is good for our kids. We are major supporters of compost. Studies have shown PFASs in compost, which can affect our water resources.

CON: This would restrict all PFASs unnecessarily, without actual attention paid to use. The FDA strictly regulates food packing. We think this is premature because of the chemical action plan Ecology is currently conducting. The terms in the bill are vague or undefined. We cannot control what kind of food packaging is brought into the state. There needs to be more than a safer alternative. We need multiple alternatives to be available. Food costs are sensitive and changing food packaging options may affect costs.

OTHER: Once a persistent, mobile, and water-soluble chemical gets out into the environment, there are not any do-overs. We think we should set a high-bar for these chemicals.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Senator Lisa Wellman, Prime Sponsor; Cheri Peele, Clean Production Action; Erika Schreder, Toxic-Free Future; Katherine Pelch, Endocrine Disruption Exchange; Shirlee Tan, Environmental Health Services Division, King County Department of Public Health; Heather Trim, Zero Waste Washington.

CON: Jessica Bowman, FluoroCouncil; Mary Catherine McAleer, Association of Washington Business.

OTHER: Darin Rice, Department of Ecology; Barb Morrissey, Department of Health; Carolyn Logue, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This is a good investment in a preventive approach. PFASs do not stay in the products. For example, they are in compostable materials. Citizens are concerned that plants grown with this compost can take up the PFASs or the PFASs can be spread throughout the environment by run-off. The bill was scaled back in committee.

CON: We are currently in the middle of a PFASs Chemical Action Plan (CAP). We are concerned that changing course in the middle of the CAP may affect funding. We cannot control how food packaging is brought into the state. This debate should be at the federal level rather than the state level.

OTHER: We support the underlying policy but cannot support the bill because the fiscal impact is not part of the Governor's budget.

Persons Testifying (Ways & Means): PRO: Laurie Valeriano, Toxic-Free Future; Diana Stadden, The Arc Of Washington.

CON: Mark Johnson, Washington Retail Association; Mary Catherine McAleer, Association of Washington Business.

OTHER: Kimberly Goetz, Department of Ecology.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.