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**ENGROSSED SECOND SUBSTITUTE SENATE BILL 6213**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Das, Carlyle, Van De Wege, Dhingra, Kuderer, Lovelett, Nguyen, Billig, Rolfes, Saldaña, Darneille, Hasegawa, Liias, Keiser, Pedersen, Stanford, Frockt, Wellman, and Wilson, C.)

AN ACT Relating to certain expanded polystyrene products; reenacting and amending RCW 43.21B.110 and 43.21B.110; adding a new chapter to Title 70 RCW; prescribing penalties; providing an effective date; and providing an expiration date.

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

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

(a) Recycling development center established in chapter 70.370 RCW was created to facilitate the development of markets for recycled products and to assist businesses with transforming or remanufacturing waste materials into usable and marketable materials or products; and

(b) Evaluation and assessment of plastic packaging sold into the state as required under chapter 70.380 RCW will provide options for reducing plastic packaging.

(2) It is the intent of the legislature to: Prohibit all expanded polystyrene products in coordination with the efforts of the recycling development center and information provided through the evaluation and assessment of plastic packaging; and address through the recycling development center how to assist existing businesses that employ vulnerable populations in the transition from processing expanded polystyrene products to processing other materials.

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

(1)(a) "Covered product" means the following products made of expanded polystyrene:

(i) A portable container used for cold storage, except for expanded polystyrene containers used for drugs, medical devices, and biological materials as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or shipping perishable commodities from a wholesale or retail establishment;

(ii) Food service products that include food containers, plates, clamshell-style containers, and hot and cold beverage cups; and

(iii) Void filling packaging products, which means loose fill packaging material, also referred to as packing peanuts.

(b) "Covered product" does not include packaging for raw, uncooked, or butchered meat, fish, poultry, or seafood, vegetables, fruit, or egg cartons.

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

(3) "Expanded polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

(4) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces covered products or is an importer or domestic distributor of a product sold or offered for sale in or into the state.

NEW SECTION. **Sec.**  Beginning June 1, 2023:

(1) The sale and distribution of covered products in or into the state is prohibited.

(2) Any void filling loose fill packaging materials sold or distributed into the state must be compostable.

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

(2) The department must:

(a) Prepare and post on its web site information regarding the prohibitions on the sale and distribution of covered products. The department may develop culturally appropriate and translated educational materials and resources for the state's diverse ethnic populations from existing materials used by local jurisdictions and other states.

(b) Provide technical assistance and guidance to manufacturers of covered products, as requested.

(c) Provide written notification and offer information and assistance to manufacturers and distributors that sell or offer to sell or distribute covered products who are in violation of this chapter. For the purposes of this section, written notification serves as notice of the violation. The department must issue at least two notices of violation by certified mail to a manufacturer or distributor prior to assessing a penalty.

NEW SECTION. **Sec.**  Beginning June 1, 2023:

(1) A manufacturer of products in violation of this chapter is subject to a civil penalty not to exceed two hundred fifty dollars for each violation in the case of a first offense. Manufacturers that are repeat violators are subject to a civil penalty not to exceed one thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the model toxics control operating account created in RCW 70.105D.190.

(2) Penalties issued under this section are appealable to the pollution control hearings board established in chapter 43.21B RCW.

NEW SECTION. **Sec.**  A city, town, county, or municipal corporation may not implement a local ordinance restricting covered products unless the ordinance is filed by April 1, 2020, and enacted by June 1, 2020. An ordinance restricting covered products that was not enacted as of June 1, 2020, is preempted by this chapter.

**Sec.**  RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and 2019 c 290 s 12 are each reenacted and amended to read as follows:

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

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, section 5 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

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

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

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

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

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

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

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

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

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

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

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

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

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

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

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

**Sec.**  RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and 2019 c 290 s 12 are each reenacted and amended to read as follows:

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(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, section 5 of this act, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

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

NEW SECTION. **Sec.**  Sections 1 through 6 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  Section 7 of this act expires June 30, 2021.

NEW SECTION. **Sec.**  Section 8 of this act takes effect June 30, 2021.

**--- END ---**