

Environment & Energy Committee

SSB 5135

Brief Description: Preventing toxic pollution that affects public health or the environment.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Rolfes, Frockt, Salomon, Palumbo, Cleveland, Carlyle, Kuderer, Saldaña, Billig, Dhingra, Pedersen, Wellman, Hunt, Das, McCoy, Liias, Darneille, Hasegawa, Keiser and Van De Wege).

Brief Summary of Substitute Bill

- Directs the Department of Ecology (ECY) to identify priority consumer products for five priority chemicals every five years, with the first process beginning in 2020.
- Authorizes the ECY to take regulatory actions with respect to priority consumer products containing priority chemicals, including restricting or prohibiting the manufacture, sale, or use of a priority chemical in a priority consumer product, or requiring a manufacturer to disclose certain information about the use of a priority chemical in a priority consumer product.
- Authorizes the ECY to require manufacturers to provide certain information about their use of a chemical to support the identification of priority consumer products containing priority chemicals.

Hearing Date: 3/21/19

Staff: Jacob Lipson (786-7196).

Background:

Restrictions on Toxic Materials in Consumer Products.

Several federal policies restrict the use of certain substances with toxic properties in consumer products or manufacturing processes. These include:

- The Consumer Product Safety Commission administers several laws regulating the inclusion of toxic compounds in consumer products.

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- The United States Food and Drug Administration's regulatory responsibilities include the safety of biological products, such as vaccines, and prescription and nonprescription drugs.
- The Environmental Protection Agency administers the Federal Insecticide, Fungicide, and Rodenticide Act, which regulates the sale, distribution, use, and labeling of pesticides, as well as the Toxic Substances Control Act, which includes notification and testing requirements for many chemicals in commercial use and restricts the use of certain chemicals.

State law restricts the use of several substances in various consumer products, including:

- Bisphenol A in sports bottles and other containers;
- lead in vehicle wheel weights;
- copper in boat paint;
- polybrominated diphenyl ethers (PBDEs), a class of flame retardants, in a variety of consumer products;
- five flame retardants (TDCPP, TCEP, decabromodiphenyl ether, HBCD; and additive TBBPA) in children's products and residential upholstered furniture;
- cadmium, phthalates, and lead in children's products;
- lead, mercury, hexavalent chromium, and cadmium in product packaging;
- perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals in firefighting foam and certain types of food packaging, contingent upon the identification of suitable alternatives; and
- mercury, in several categories of consumer products.

Children's Safe Products Act.

In addition, the Children's Safe Products Act (CSPA) directs the Department of Ecology (ECY), working with the Department of Health, to use fetal and childhood exposure potential to identify high-priority chemicals of concern to children (CHCC). Under the CSPA, the ECY identifies high-priority chemicals based on credible scientific evidence that the chemical causes specified types of harm to human health or the environment.

The CSPA requires manufacturers of children's products containing these identified CHCCs to annually report information about the use of the chemicals to the ECY. The annual notice filed with the ECY must include:

- the chemical number of the CHCC used;
- a description of the product or component containing the substance;
- a description of the chemical's function in the product; and
- the amount of the chemical used in each unit of the product.

Manufacturers in violation of restrictions on the use of chemicals regulated under the CSPA or in violation of reporting requirements associated with the use of chemicals on the CHCC list are subject to fines of up to \$5,000 for initial violations and up to \$10,000 for subsequent violations. The ECY has rulemaking authority to implement, administer, and enforce the provisions of the CSPA.

State Hazardous Waste Management Laws and the Model Toxics Control Act.

In implementing the state Hazardous Waste Management law, the ECY requires dangerous waste generators to properly dispose of waste at approved dangerous waste management sites and facilities. Persons who generate dangerous waste are responsible for identifying their wastes as

such based on characteristics including the waste's corrosiveness, ignitability, toxicity, or reactivity.

The Model Toxics Control Act (MTCA), which is administered and enforced by the ECY, requires liable parties to clean up sites contaminated with hazardous substances, and authorizes the ECY to conduct certain pollution prevention activities. Hazardous substances under the MTCA include dangerous or extremely dangerous substances identified under state hazardous waste management laws, petroleum and petroleum products, and hazardous substances identified under the federal Comprehensive Environmental Reponses, Liability, and Compensation Act.

Persistent, Bioaccumulative Toxins.

In 2006 the ECY adopted a rule under state hazardous waste laws outlining the processes it follows for efforts to reduce and phase out the uses, releases, and exposures to persistent, bioaccumulative toxins (PBTs). The PBTs are substances with toxic or harmful effects on people or animals that have a lengthy decomposition time in the environment and accumulate up the food chain in the bodies of organisms, including people. The PBT rule authorizes the ECY to develop a list of PBT substances, which can include all types of PBT chemicals or metals, except fertilizers and pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act. This PBT list is used to inform various ECY activities, including monitoring, voluntary PBT phase-out and use-reduction efforts, and PBT public awareness activities. There are currently 18 individual chemicals and eight groups of chemicals on the ECY's PBT list, creating a total list of 74 PBT chemicals.

The ECY also uses the PBT list to identify and prioritize candidates for the development of chemical action plans (CAPs). In developing a CAP, the ECY works with an external advisory committee to evaluate the chemical's uses, releases, impacts, and management. The CAP process concludes with the issuance of a report with recommendations for how to reduce or manage certain uses of the PBT and encourage safer alternatives to the PBT. Chemical action plan processes have been initiated or completed for a number of chemical groups, including:

- polychlorinated biphenyls;
- PFAS; and
- PBDEs in a variety of consumer products.

Other Provisions.

The ECY has an established administrative process that allows for information submitted to the ECY to be designated for the ECY's confidential use because the information relates to unique production processes and their release would hurt the competitive position of the entity that submitted the information. The ECY may designate these submitted records as confidential if doing so would not be detrimental to the public interest and is in accord with other policies and purposes governing the ECY's activities.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties made by the ECY and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

Summary of Bill:

Priority Chemical and Priority Consumer Products.

Priority chemicals are defined to include perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals, polychlorinated biphenyls (PCBs), phthalates, organohalogen flame retardants (OFRs) and other flame retardants identified under the Children's Safe Products Act (CSPA), and phenolic compounds.

The Department of Ecology (ECY), in consultation with the Department of Health (DOH), may also designate priority chemicals. Every five years, the ECY must designate at least five priority chemicals or chemical classes. To be designated as a priority chemical by the ECY, a chemical must be:

- designated as a high-priority chemical for children under the CSPA;
- designated by the ECY as a persistent, bioaccumulative and toxins (PBT);
- regulated in consumer products under CSPA or laws targeting polybrominated diphenyl ethers (PBDEs), product packaging, PFAS in firefighting foam, mercury, copper in boat paint, and Bisphenol A;
- be a hazardous substance under the Model Toxics Control Act or state hazardous waste management laws; or
- of concern to sensitive populations and sensitive species, after considering hazard traits, toxicological endpoints, aggregate or cumulative effects with other chemicals, environmental fate, the potential of degradation into another chemical with hazard traits or environmental or toxicological endpoints, the potential contribution to adverse health or environmental impacts, the potential impacts on sensitive populations, species, or environmentally sensitive habitats, and the potential exposures to the chemical.

Sensitive populations and species are defined to include people and species that may be disproportionately or more severely affected by priority chemicals.

Every five years, the ECY must also identify priority consumer products that are a significant source of or use of priority chemicals. In designating a priority consumer product, the ECY must consider criteria that includes:

- the volume of a chemical in the consumer product;
- the volume or number of units of a product sold in Washington;
- the potential for exposure to the priority chemical by sensitive populations or species;
- the potential for chemicals to be found in the outdoor environment;
- regulatory actions taken by other states or nations;
- whether the product has been identified as a source of a chemical as part of chemical action plan under the PBT rule or other reports or information gathered under the CSPA; and
- other specified state laws that restrict toxic chemicals in consumer products.

To assist with the identification of priority consumer products and making regulatory determinations, the ECY may request that manufacturers submit a notice to the ECY containing the information that is required to be reported under the CSPA or other information relevant to specified aspects of the use of a chemical in a consumer product.

The following products may not be identified as priority consumer products: food and beverages, tobacco products, drug or biological products regulated by the United States Food and Drug Administration, finished products regulated by the Federal Aviation Administration (FAA), motorized vehicles, finished products regulated or certified by the FAA or Department of

Defense, as well as parts, materials, and processes when used to manufacture or maintain those regulated or certified finished products and chemical products used to produce an agricultural commodity.

Department of Ecology Regulatory Actions.

Every five years, the ECY, in consultation with the DOH, must determine regulatory actions to reduce the use of priority chemicals in priority consumer products and to increase transparency. The ECY may determine no regulatory action is currently needed, may require manufacturers to provide notice of the use of a chemical consistent with the CSPA reporting requirements, or may restrict or prohibit the manufacture, distribution, sale, or use of a priority chemical in a consumer product. To restrict or prohibit priority chemicals or members of a class of priority chemicals in priority consumer products, the ECY must determine safer alternatives are available, the chemical is not fundamentally necessary, other states or nations have restricted the chemicals in a product, or the restriction is necessary to protect the health of sensitive populations or species. Restrictions adopted by the ECY may include exemptions.

Schedule.

From an initial list of priority chemicals that may include PFAS chemicals, PCBs, phthalates, OFRs, other flame retardants identified under the CSPA, phenolic compounds, and PCBs, the ECY must designate priority consumer products that are a significant source of or use of those chemicals by June 1, 2020. The ECY must determine regulatory actions for these priority chemicals and priority consumer products by June 1, 2022, and must adopt rules to implement those regulatory actions by June 1, 2023.

Every five years, the ECY must:

- designate five priority chemicals, starting June 1, 2024;
- delegate priority consumer products for those chemicals, starting June 1, 2025;
- determine regulatory actions for those priority consumer products and chemicals, starting June 1, 2027; and
- adopt implementation rules for those regulatory actions, starting June 1, 2028.

When identifying priority chemicals and priority consumer products, the ECY must: notify the public, including via the Washington State Register, of the selection and the sources of information that it relied upon, the basis for the selection, and a draft schedule for making determinations. The ECY must provide an opportunity for review and comment on the regulatory determinations.

Confidential Information, Program Administration, Enforcement, and Other Provisions.

A manufacturer that submits information to the ECY may request that the information or records be made available only for ECY's confidential use. The ECY must grant this request if it is made in accord with the policies and procedures established under the ECY's existing administrative process and standards for evaluating confidential information submitted to the ECY. The ECY must also keep confidential and may not publicly disclose any information furnished to the ECY by a federal agency on the condition that it be afforded the confidentiality protections available under federal law.

Manufacturers in violation of requirements, rules, or orders related to priority chemicals, priority consumer products, and associated regulatory actions are subject to civil penalties of up to

\$5,000 for a first offense and up to \$10,000 for repeat offenses. Penalties and orders are appealable to the Pollution Control Hearings Board.

The ECY may adopt rules to implement, administer, and enforce this chapter, and must adopt rules to implement regulatory determinations to restrict or prohibit a priority chemical in a priority consumer product, or to require the disclosure of a priority chemical's use.

A severability clause is included.

Appropriation: None.

Fiscal Note: Requested on March 11, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.