

---

**SUBSTITUTE SENATE BILL 5426**

---

**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Mullet, Palumbo, Rivers, Nguyen, Dhingra, and Rolfes)

READ FIRST TIME 02/08/19.

1 AN ACT Relating to reducing greenhouse gas emissions from  
2 hydrofluorocarbons; amending RCW 70.235.010, 70.94.430, 70.94.431,  
3 and 70.94.015; adding a new section to chapter 70.235 RCW; adding a  
4 new section to chapter 19.27 RCW; adding a new section to chapter  
5 39.26 RCW; creating new sections; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that  
8 hydrofluorocarbons are air pollutants that pose significant threats  
9 to our environment and that safer alternatives for the most damaging  
10 hydrofluorocarbons are readily available and cost-effective.

11 (2) Hydrofluorocarbons came into widespread commercial use as  
12 United States environmental protection agency-approved replacements  
13 for ozone-depleting substances that were being phased out under an  
14 international agreement. However, under a 2017 federal appeals court  
15 ruling, while the environmental protection agency had been given the  
16 power to originally designate hydrofluorocarbons as suitable  
17 replacements for the ozone-depleting substances, the environmental  
18 protection agency did not have clear authority to require the  
19 replacement of hydrofluorocarbons once the replacement of the  
20 original ozone-depleting substances had already occurred.

1 (3) Because the impacts of climate change will not wait until  
2 congress acts to clarify the scope of the environmental protection  
3 agency's authority, it falls to the states to provide leadership on  
4 addressing hydrofluorocarbons. Doing so will not only help the  
5 climate, but will help American businesses retain their positions as  
6 global leaders in air conditioning and refrigerant technologies.  
7 Although hydrofluorocarbons currently represent a small proportion of  
8 the state's greenhouse gas emissions, emissions of hydrofluorocarbons  
9 have been rapidly increasing in the United States and worldwide, and  
10 they are thousands of times more potent than carbon dioxide. However,  
11 hydrofluorocarbons are also a segment of the state's emissions that  
12 will be comparatively easy to reduce and eliminate without widespread  
13 implications for the way that power is produced, heavy industries  
14 operate, or people transport themselves. Substituting or reducing the  
15 use of hydrofluorocarbons with the highest global warming potential  
16 will provide a significant boost to the state's efforts to reduce its  
17 greenhouse gas emissions to the limits established in RCW 70.235.020.

18 (4) Therefore, it is the intent of the legislature to transition  
19 to the use of less damaging hydrofluorocarbons or suitable  
20 substitutes in various applications in Washington, in a manner  
21 similar to the regulations that were adopted by the environmental  
22 protection agency, and that have been subsequently adopted or will be  
23 adopted in several other states around the country.

24 **Sec. 2.** RCW 70.235.010 and 2010 c 146 s 1 are each amended to  
25 read as follows:

26 The definitions in this section apply throughout this chapter  
27 unless the context clearly requires otherwise.

28 (1) "Carbon dioxide equivalents" means a metric measure used to  
29 compare the emissions from various greenhouse gases based upon their  
30 global warming potential.

31 (2) "Climate advisory team" means the stakeholder group formed in  
32 response to executive order 07-02.

33 (3) "Climate impacts group" means the University of Washington's  
34 climate impacts group.

35 (4) "Department" means the department of ecology.

36 (5) "Director" means the director of the department.

37 (6) "Greenhouse gas" and "greenhouse gases" includes carbon  
38 dioxide, methane, nitrous oxide, hydrofluorocarbons,

1 perfluorocarbons, sulfur hexafluoride, and any other gas or gases  
2 designated by the department by rule.

3 (7) "Person" means an individual, partnership, franchise holder,  
4 association, corporation, a state, a city, a county, or any  
5 subdivision or instrumentality of the state.

6 (8) "Program" means the department's climate change program.

7 (9) "Western climate initiative" means the collaboration of  
8 states, Canadian provinces, Mexican states, and tribes to design a  
9 multisector market-based mechanism as directed under the western  
10 regional climate action initiative signed by the governor on February  
11 22, 2007.

12 (10) "Class I substance" and "class II substance" means those  
13 substances listed in 42 U.S.C. Sec. 7671a, as it read on November 15,  
14 1990, or those substances listed in Appendix A or B of Subpart A of  
15 40 C.F.R. Part 82, as those read on January 3, 2017.

16 (11) "Hydrofluorocarbons" means a class of greenhouse gases that  
17 are saturated organic compounds containing hydrogen, fluorine, and  
18 carbon.

19 (12) "Manufacturer" includes any person, firm, association,  
20 partnership, corporation, governmental entity, organization, or joint  
21 venture that produces any product that contains or uses  
22 hydrofluorocarbons or is an importer or domestic distributor of such  
23 a product.

24 (13) "Residential consumer refrigeration products" has the same  
25 meaning as defined in section 430.2 of Subpart A of 10 C.F.R. Part  
26 430 (2017).

27 (14) "Substitute" means a chemical, product substitute, or  
28 alternative manufacturing process, whether existing or new, that is  
29 used to perform a function previously performed by a class I  
30 substance or class II substance and any substitute subsequently  
31 adopted to perform that function, including, but not limited to,  
32 hydrofluorocarbons. "Substitute" does not include 2-BTP or any  
33 compound as applied to its use in aerospace fire extinguishing  
34 systems.

35 NEW SECTION. Sec. 3. A new section is added to chapter 70.235  
36 RCW to read as follows:

37 (1) A person may not offer any product or equipment for sale,  
38 lease, or rent, or install or otherwise cause any equipment or  
39 product to enter into commerce in Washington if that equipment or

1 product consists of, uses, or will use a substitute, as set forth in  
2 appendix U and V, Subpart G of 40 C.F.R. Part 82, as those read on  
3 January 3, 2017, for the applications or end uses restricted by  
4 appendix U or V of the federal regulation, as those read on January  
5 3, 2017, consistent with the deadlines established in subsection (2)  
6 of this section. Nothing in this subsection requires a person that  
7 acquired a restricted product or equipment prior to the effective  
8 date of the restrictions in subsection (2) of this section to cease  
9 use of that product or equipment. Products or equipment manufactured  
10 prior to the applicable effective date of the restrictions specified  
11 in subsection (2) of this section may be sold, imported, exported,  
12 distributed, installed, and used after the specified effective date.

13 (2) The restrictions under subsection (1) of this section for the  
14 following products and equipment identified in appendix U and V,  
15 Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017,  
16 take effect beginning:

17 (a) January 1, 2020, for:

18 (i) Propellants;

19 (ii) Rigid polyurethane applications and spray foam, flexible  
20 polyurethane, integral skin polyurethane, flexible polyurethane foam,  
21 polystyrene extruded sheet, polyolefin, phenolic insulation board,  
22 and bunstock;

23 (iii) Supermarket systems, remote condensing units, stand-alone  
24 units, and vending machines;

25 (b) January 1, 2021, for:

26 (i) Refrigerated food processing and dispensing equipment;

27 (ii) Compact residential consumer refrigeration products;

28 (iii) Polystyrene extruded boardstock and billet, and rigid  
29 polyurethane low-pressure two component spray foam;

30 (c) January 1, 2022, for residential consumer refrigeration  
31 products other than compact and built-in residential consumer  
32 refrigeration products;

33 (d) January 1, 2023, for cold storage warehouses;

34 (e) January 1, 2023, for built-in residential consumer  
35 refrigeration products;

36 (f) January 1, 2024, for centrifugal chillers and positive  
37 displacement chillers; and

38 (g) On either January 1, 2020, or the effective date of the  
39 restrictions identified in appendix U and V, Subpart G of 40 C.F.R.  
40 Part 82, as those read on January 3, 2017, whichever comes later, for

1 all other applications and end uses for substitutes not covered by  
2 the categories listed in (a) through (f) of this subsection.

3 (3) The department may by rule:

4 (a) Modify the effective date of a prohibition established in  
5 subsection (2) of this section if the department determines that the  
6 rule reduces the overall risk to human health or the environment and  
7 reflects the earliest date that a substitute is currently or  
8 potentially available;

9 (b) Prohibit the use of a substitute if the department determines  
10 that the prohibition reduces the overall risk to human health or the  
11 environment and that a lower risk substitute is currently or  
12 potentially available;

13 (c)(i) Adopt a list of approved substitutes, use conditions, or  
14 use limits, if any; and

15 (ii) Add or remove substitutes, use conditions, or use limits to  
16 or from the list of approved substitutes if the department determines  
17 those substitutes reduce the overall risk to human health and the  
18 environment; and

19 (d) Designate acceptable uses of hydrofluorocarbons for medical  
20 uses that are exempt from the requirements of subsection (2) of this  
21 section.

22 (4) Within twelve months of another state's enactment or adoption  
23 of restrictions on substitutes applicable to new light duty vehicles,  
24 the department must adopt restrictions applicable to the sale, lease,  
25 rental, or other introduction into commerce by a manufacturer of new  
26 light duty vehicles consistent with the restrictions identified in  
27 appendix B, Subpart G of 40 C.F.R. Part 82, as it read on January 3,  
28 2017. The department may not adopt restrictions that take effect  
29 prior to the effective date of restrictions adopted or enacted in at  
30 least one other state.

31 (5) A manufacturer must disclose the substitutes used in its  
32 products or equipment. That disclosure must take the form of:

33 (a) A label on the equipment or product. The label must meet  
34 requirements designated by the department by rule. To the extent  
35 feasible, the department must recognize existing labeling that  
36 provides sufficient disclosure of the use of substitutes in the  
37 product or equipment. The department may not require labeling of  
38 aircraft and aircraft components subject to certification  
39 requirements of the federal aviation administration.

1 (b) Submitting information about the use of substitutes to the  
2 department, upon request. Beginning December 31, 2019, and annually  
3 thereafter, all manufacturers must notify the department of the types  
4 of products and equipment containing hydrofluorocarbons the  
5 manufacturer sells, offers for sale, leases, installs, or rents in  
6 Washington state. Such a notice must identify each product or piece  
7 of equipment and must identify the individual substitutes used in  
8 each product or piece of equipment.

9 (6) The department may adopt rules to administer, implement, and  
10 enforce this section. If the department elects to adopt rules, the  
11 department must seek, where feasible and appropriate, to adopt rules,  
12 including rules under subsection (4) of this section, that are the  
13 same or consistent with the regulatory standards, exemptions,  
14 reporting obligations, disclosure requirements, and other compliance  
15 requirements of other states or the federal government that have  
16 adopted restrictions on the use of hydrofluorocarbons and other  
17 substitutes. Prior to the adoption or update of a rule under this  
18 section, the department must identify the sources of information it  
19 relied upon, including peer-reviewed science.

20 (7) For the purposes of implementing the restrictions specified  
21 in appendix U of Subpart G of 40 C.F.R. Part 82, as it read on  
22 January 3, 2017, consistent with this section, the department must  
23 interpret the term "aircraft maintenance" to mean activities to  
24 support the production, fabrication, manufacture, rework, inspection,  
25 maintenance, overhaul, or repair of commercial, civil, or military  
26 aircraft, aircraft parts, aerospace vehicles, or aerospace  
27 components.

28 (8) The authority granted by this section to the department for  
29 restricting the use of substitutes is supplementary to the  
30 department's authority to control air pollution pursuant to chapter  
31 70.94 RCW. Nothing in this section limits the authority of the  
32 department under chapter 70.94 RCW.

33 (9) The restrictions of this section do not apply to or limit any  
34 use of commercial refrigeration equipment that was installed or in  
35 use prior to the effective date of the restrictions established in  
36 this section.

37 **Sec. 4.** RCW 70.94.430 and 2011 c 96 s 49 are each amended to  
38 read as follows:

1 (1) Any person who knowingly violates any of the provisions of  
2 chapter 70.94 or 70.120 RCW, section 3 of this act, or any ordinance,  
3 resolution, or regulation in force pursuant thereto is guilty of a  
4 gross misdemeanor and upon conviction thereof shall be punished by a  
5 fine of not more than ten thousand dollars, or by imprisonment in the  
6 county jail for up to three hundred sixty-four days, or by both for  
7 each separate violation.

8 (2) Any person who negligently releases into the ambient air any  
9 substance listed by the department of ecology as a hazardous air  
10 pollutant, other than in compliance with the terms of an applicable  
11 permit or emission limit, and who at the time negligently places  
12 another person in imminent danger of death or substantial bodily harm  
13 is guilty of a gross misdemeanor and shall, upon conviction, be  
14 punished by a fine of not more than ten thousand dollars, or by  
15 imprisonment for up to three hundred sixty-four days, or both.

16 (3) Any person who knowingly releases into the ambient air any  
17 substance listed by the department of ecology as a hazardous air  
18 pollutant, other than in compliance with the terms of an applicable  
19 permit or emission limit, and who knows at the time that he or she  
20 thereby places another person in imminent danger of death or  
21 substantial bodily harm, is guilty of a class C felony and shall,  
22 upon conviction, be punished by a fine of not less than fifty  
23 thousand dollars, or by imprisonment for not more than five years, or  
24 both.

25 (4) Any person who knowingly fails to disclose a potential  
26 conflict of interest under RCW 70.94.100 is guilty of a gross  
27 misdemeanor, and upon conviction thereof shall be punished by a fine  
28 of not more than five thousand dollars.

29 **Sec. 5.** RCW 70.94.431 and 2013 c 51 s 6 are each amended to read  
30 as follows:

31 (1) (a) Except as provided in RCW 43.05.060 through 43.05.080 and  
32 43.05.150, and in addition to or as an alternate to any other penalty  
33 provided by law, any person who violates any of the provisions of  
34 this chapter, chapter 70.120 (~~RCW, chapter~~) or 70.310 RCW, section  
35 3 of this act, or any of the rules in force under such chapters or  
36 section may incur a civil penalty in an amount not to exceed ten  
37 thousand dollars per day for each violation. Each such violation  
38 shall be a separate and distinct offense, and in case of a continuing

1 violation, each day's continuance shall be a separate and distinct  
2 violation.

3 (b) Any person who fails to take action as specified by an order  
4 issued pursuant to this chapter shall be liable for a civil penalty  
5 of not more than ten thousand dollars for each day of continued  
6 noncompliance.

7 (2) (a) Penalties incurred but not paid shall accrue interest,  
8 beginning on the ninety-first day following the date that the penalty  
9 becomes due and payable, at the highest rate allowed by RCW 19.52.020  
10 on the date that the penalty becomes due and payable. If violations  
11 or penalties are appealed, interest shall not begin to accrue until  
12 the thirty-first day following final resolution of the appeal.

13 (b) The maximum penalty amounts established in this section may  
14 be increased annually to account for inflation as determined by the  
15 state office of the economic and revenue forecast council.

16 (3) Each act of commission or omission which procures, aids or  
17 abets in the violation shall be considered a violation under the  
18 provisions of this section and subject to the same penalty. The  
19 penalties provided in this section shall be imposed pursuant to RCW  
20 43.21B.300.

21 (4) All penalties recovered under this section by the department  
22 shall be paid into the state treasury and credited to the air  
23 pollution control account established in RCW 70.94.015 or, if  
24 recovered by the authority, shall be paid into the treasury of the  
25 authority and credited to its funds. If a prior penalty for the same  
26 violation has been paid to a local authority, the penalty imposed by  
27 the department under subsection (1) of this section shall be reduced  
28 by the amount of the payment.

29 (5) To secure the penalty incurred under this section, the state  
30 or the authority shall have a lien on any vessel used or operated in  
31 violation of this chapter which shall be enforced as provided in RCW  
32 60.36.050.

33 (6) Public or private entities that are recipients or potential  
34 recipients of department grants, whether for air quality related  
35 activities or not, may have such grants rescinded or withheld by the  
36 department for failure to comply with provisions of this chapter.

37 (7) In addition to other penalties provided by this chapter,  
38 persons knowingly under-reporting emissions or other information used  
39 to set fees, or persons required to pay emission or permit fees who

1 are more than ninety days late with such payments may be subject to a  
2 penalty equal to three times the amount of the original fee owed.

3 (8) (~~By January 1, 1992,~~) The department shall develop rules  
4 for excusing excess emissions from enforcement action if such excess  
5 emissions are unavoidable. The rules shall specify the criteria and  
6 procedures for the department and local air authorities to determine  
7 whether a period of excess emissions is excusable in accordance with  
8 the state implementation plan.

9 **Sec. 6.** RCW 70.94.015 and 1998 c 321 s 33 are each amended to  
10 read as follows:

11 (1) The air pollution control account is established in the state  
12 treasury. All receipts collected by or on behalf of the department  
13 from RCW 70.94.151(2), and receipts from nonpermit program sources  
14 under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW  
15 (~~70.94.650, 70.94.660, 82.44.020(2), and 82.50.405~~) 70.94.6528 and  
16 70.94.6534 shall be deposited into the account. Moneys in the account  
17 may be spent only after appropriation. Expenditures from the account  
18 may be used only to develop and implement the provisions of chapters  
19 70.94 and 70.120 RCW and section 3 of this act.

20 (2) The amounts collected and allocated in accordance with this  
21 section shall be expended upon appropriation except as otherwise  
22 provided in this section and in accordance with the following  
23 limitations:

24 Portions of moneys received by the department of ecology from the  
25 air pollution control account shall be distributed by the department  
26 to local authorities based on:

27 (a) The level and extent of air quality problems within such  
28 authority's jurisdiction;

29 (b) The costs associated with implementing air pollution  
30 regulatory programs by such authority; and

31 (c) The amount of funding available to such authority from other  
32 sources, whether state, federal, or local, that could be used to  
33 implement such programs.

34 (3) The air operating permit account is created in the custody of  
35 the state treasurer. All receipts collected by or on behalf of the  
36 department from permit program sources under RCW 70.94.152(1),  
37 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the  
38 account. Expenditures from the account may be used only for the  
39 activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and

1 70.94.154(7). Moneys in the account may be spent only after  
2 appropriation.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.27  
4 RCW to read as follows:

5 The building code council shall adopt rules that permit the use  
6 of substitutes approved under section 3 of this act and that do not  
7 require the use of substitutes that are restricted under section 3 of  
8 this act.

9 NEW SECTION. **Sec. 8.** The department of ecology, in consultation  
10 with the department of commerce and the utilities and transportation  
11 commission, must complete a report addressing how to increase the use  
12 of refrigerants with a low global warming potential in mobile  
13 sources, utility equipment, and consumer appliances, and how to  
14 reduce other uses of hydrofluorocarbons in Washington. The report  
15 must be submitted to the legislature consistent with RCW 43.01.036 by  
16 December 1, 2020, and must include recommendations for how to fund,  
17 structure, and prioritize a state program that incentivizes or  
18 provides grants to support the elimination of legacy uses of  
19 hydrofluorocarbons regulated under section 3 of this act or uses of  
20 hydrofluorocarbons not covered by section 3 of this act.

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

23 (1) The department shall establish purchasing and procurement  
24 policies that provide a preference for products that:

25 (a) Are not restricted under section 3 of this act;

26 (b) Do not contain hydrofluorocarbons or contain  
27 hydrofluorocarbons with a comparatively low global warming potential;

28 (c) Are not designed to function only in conjunction with  
29 hydrofluorocarbons characterized by a comparatively high global  
30 warming potential; and

31 (d) Were not manufactured using hydrofluorocarbons or were  
32 manufactured using hydrofluorocarbons with a low global warming  
33 potential.

34 (2) No agency may knowingly purchase products that are not  
35 accorded a preference in the purchasing and procurement policies  
36 established by the department pursuant to subsection (1) of this

1 section, unless there is no cost-effective and technologically  
2 feasible option that is accorded a preference.

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

7 (4) By December 1, 2020, and each December 1st of even numbered  
8 years thereafter, the department must submit a status report to the  
9 appropriate committees of the house of representatives and senate  
10 regarding the implementation and compliance of the department and  
11 state agencies with this section.

12 NEW SECTION. **Sec. 10.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

--- END ---