Z-0261.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**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

AN ACT Relating to using chemical action plans to require safer chemicals in Washington; amending RCW 43.21B.110 and 43.21B.110; adding a new section to chapter 39.26 RCW; adding a new chapter to Title 70 RCW; creating a new section; 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.**  The legislature finds:

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

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

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

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

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

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

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

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

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

(5) "Chemical hazard assessment" means an evaluation of the hazards posed by the chemical of concern in a product or a manufacturing process. Chemical hazard assessments follow the guidelines issued by the interstate chemicals clearinghouse, national academy of sciences, or equivalent methodology.

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

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

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

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

(a) Food or beverage;

(b) Tobacco products;

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

(d) Products produced under military specifications;

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

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

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

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

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

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

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

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

(2) Chemicals designated as priority Washington chemicals must meet the criteria of a high priority chemical as defined in RCW 70.240.010 as applied to humans, plants, or wildlife, and must either:

(a) Meet the criteria for a high priority chemical of high concern for children as described in RCW 70.240.030(1) (a) through (c); or

(b) Have been shown through environmental monitoring studies to be present in fish, wildlife, air, water, soil, or sediment.

(3) The department may conduct environmental monitoring or request the department of health to conduct biomonitoring of a chemical to verify the chemical is present in the state's environment or population or to better understand environmental or human exposures in the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) A chemical action plan must identify actions needed to eliminate or reduce threats to human health and the environment and which uses, if any, of the chemical under consideration require an alternatives assessment or should be restricted.

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

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

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

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

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

(5) If the department determines that no revised alternatives assessment meets the definition or objectives of an alternatives assessment, the department may prepare an independent alternatives assessment. When the department prepares an independent alternatives assessment, it may recover its costs from the manufacturers whose products are covered by the alternatives assessment. Costs must be apportioned among manufacturers according to the amount of the chemical used in each manufacturer's product and the estimated number of units of each manufacturer's product sold in Washington. Any alternatives assessment conducted by the department must include a process to involve interested parties.

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

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

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

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

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

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

(2) The department shall establish reasonable deadlines for manufacturers to comply with any prohibition adopted under subsection (1) of this section. In setting reasonable deadlines, the department shall consider information such as existing product inventory. No prohibition may take effect sooner than twelve months after rule adoption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 43.21B.110 and 2013 c 291 s 33 are each 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, 76.09.170, 77.55.291, 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, 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.

(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.

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

(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 2013 c 291 s 34 are each 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, 76.09.170, 77.55.291, 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, 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.

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

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

(f) 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.

(g) 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.

(h) 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.

(i) 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).

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

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

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

(m) 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.

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

(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.

NEW SECTION. **Sec.**  Sections 1 through 11 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  This act may be known and cited as the toxics reduction act.

NEW SECTION. **Sec.**  Section 13 of this act expires June 30, 2019.

NEW SECTION. **Sec.**  Section 14 of this act takes effect June 30, 2019.

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

**--- END ---**