

SENATE BILL REPORT

ESHB 2658

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, February 22, 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: House Committee on Environment (originally sponsored by Representatives McBride, Kagi, Peterson, Fitzgibbon, Doglio, Gregerson, Appleton, Jinkins, Ortiz-Self, Macri, Ryu, Pollet, Kloba, Goodman, Frame and Stanford).

Brief History: Passed House: 2/12/18, 56-41; 2/12/18, 56-41.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/20/18, 2/22/18 [DP-WM, DNP].

Brief Summary of Bill

- Requires the Department of Ecology (Ecology) to conduct an alternatives assessment of safer alternatives to perfluorinated (PFAS) chemicals for specific food packaging applications as part of the Ecology and the Department of Health (DOH) Chemical Action Plan (CAP).
- Prohibits the use of PFAS chemicals for specific food packaging applications if the alternatives assessment identifies multiple safer alternatives that meet certain requirements.
- Requires identified safer alternatives be supported by an external peer review.
- Requires safer alternatives that are chemical be approved for food contact by the U.S. Food and Drug Association (FDA).
- Provides certification of compliance guidelines for manufacturers.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Van De Wege, Chair; McCoy, Vice Chair; Nelson.

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.

Minority Report: Do not pass.

Signed by Senators Warnick, Ranking Member; Honeyford.

Staff: Angela Kleis (786-7469)

Background: PFAS Overview. PFAS chemicals are a class of man-made chemicals that are not found naturally in the environment. PFAS chemicals have been widely used to make products stain-resistant, waterproof, and nonstick. Some examples of products that use PFAS chemicals 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, PFAS chemicals are very persistent in the environment and in the human body. Ecology states that the toxicity of PFAS chemicals compounds varies. Studies in animals show that exposure to some PFAS chemicals can affect liver function, reproductive hormones, development of offspring, and mortality. However, PFAS chemicals 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.

CAP. Ecology and DOH are developing a CAP on PFAS chemicals that will identify the potential health and environmental effects, and recommend strategies to reduce or eliminate those impacts. Draft recommendations regarding drinking water contamination will be released early 2018. Additional recommendations on the use and impacts of PFAS chemicals will be released in 2019.

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.

FDA. The FDA regulates food manufacturers to ensure that food contact substances are safe. Food contact substance means any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food. Examples of food contact substances are plastic packaging materials and materials used during the manufacture of paper and paperboard.

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: Ecology must conduct an alternatives assessment as part of the CAP to determine the existence of safer alternatives to PFAS chemicals for specific food packaging applications. The alternatives assessment must:

- evaluate less toxic chemicals and non-chemical alternatives;
- follow the guidelines for alternatives 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. In order to determine that safer alternatives are available, the safer alternatives must be readily available in sufficient quantity and at a comparable cost, and perform as well as or better than PFAS chemicals in a specific food packaging application. Safer alternatives must be supported by feedback from an external peer review. If an alternative is a chemical, it must have previously been approved for food contact by the FDA.

If the findings demonstrate the existence of safer alternatives, the use of PFAS chemicals for specific food packaging applications is prohibited beginning January 1, 2022.

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

Manufacturers must develop a compliance certificate for food packaging by the date the prohibition on the use of PFAS chemicals 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.

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: PRO: This is a straightforward bill that phases out PFAS chemicals in food packaging. PFAS chemicals are persistent once released into the environment. We have worked with stakeholders and members to improve the bill. The ban will only go into effect once multiple alternatives are identified and any identified alternatives must be approved by an external peer review.

Many people who have a developmental disability also have a weakened immune system. Exposure to these chemicals can negatively affect the health of people sensitive to chemicals.

Many of our members live in poverty and eat food that use wrappers with these chemicals. Evidence shows that food wrappers can be made without PFAS chemicals.

CON: This legislation is premature because Ecology is currently conducting a PFAS CAP. A better path forward would be to have the CAP recommendations in place before passing legislation. We can only support the bill if the ban is removed.

This bill is unnecessary because PFAS chemicals are regulated at the federal level. Only some PFAS chemicals are permitted to be used in food packaging. Any PFAS chemicals that have been proved to negatively affect a person's health are not used in food packaging—they are different strands.

This bill would make it difficult for multi-state distributors to handle shipments.

Persons Testifying: PRO: Representative Joan McBride, Prime Sponsor; Diana Stadden, The Arc Of Washington; Nick Federici, Toxic-Free Future; Ivanova Smith, SAIL; Samantha Louderback, Washington Hospitality Association.

CON: Mark Johnson, Washington Retail Association; Mary Catherine McAleer, Association of Washington Business; Grant Nelson, American Chemistry Council; Jessica Bowman, FluoroCouncil.

Persons Signed In To Testify But Not Testifying: No one.