
SENATE BILL 5426

State of Washington

66th Legislature

2019 Regular Session

By Senators Mullet, Palumbo, Rivers, Nguyen, Dhingra, and Rolfes

Read first time 01/21/19. Referred to Committee on Environment,
Energy & Technology.

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 an
12 United States environmental protection agency approved replacement
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 a suitable
17 replacement 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 phasing out 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 represent a small proportion of the state
8 greenhouse gas emissions, emissions of hydrofluorocarbons have been
9 rapidly increasing in the United States and worldwide, and they are
10 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. Phasing out the use of
15 hydrofluorocarbons will provide a significant boost to the state's
16 efforts to reduce its greenhouse gas emissions to the limits
17 established in RCW 70.235.020.

18 (4) Therefore, it is the intent of the legislature to phase out
19 the use of hydrofluorocarbons in various applications in Washington,
20 in a manner similar to the regulations that were adopted by the
21 environmental protection agency, and that have been subsequently
22 adopted or will be adopted in several other states around the
23 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) "Residential consumer refrigeration products" has the same
20 meaning as defined in section 430.2 of Subpart A of 10 C.F.R. Part
21 430 (2017).

22 (13) "Substitute" means a chemical, product substitute, or
23 alternative manufacturing process, whether existing or new, that is
24 used to perform a function previously performed by a class I
25 substance or class II substance and any substitute subsequently
26 adopted to perform that function, including, but not limited to,
27 hydrofluorocarbons.

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

30 (1) A person may not use, sell, install, or offer for lease,
31 rent, or otherwise cause any equipment or product to enter into
32 commerce in Washington if that equipment or product consists of,
33 uses, or will use a substitute, as set forth in Appendix U and
34 Appendix V of Subpart G of 40 C.F.R. Part 82, and the portion of
35 Appendix B of Subpart G of 40 C.F.R. Part 82 pertaining to motor
36 vehicle air conditioning, as those read on January 3, 2017, for the
37 applications or end uses restricted by the federal regulation,
38 consistent with the deadlines established in subsection (2) of this
39 section.

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

5 (a) January 1, 2020, for:

6 (i) Propellants;

7 (ii) Rigid polyurethane applications and spray foam, flexible
8 polyurethane, integral skin polyurethane, polystyrene applications,
9 polyolefin, phenolic insulation board, and bunstock;

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

12 (b) January 1, 2021, for refrigerated food processing and
13 dispensing equipment;

14 (c) January 1, 2022, for residential consumer refrigeration
15 products other than built-in residential consumer refrigeration
16 products;

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

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

20 (f) January 1, 2024, for centrifugal chillers and positive
21 displacement chillers;

22 (g) Model year 2021 for light duty vehicles; and

23 (h) On either January 1, 2020, or the effective date of the
24 restrictions identified in Appendix B, Appendix U, and Appendix V of
25 Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017,
26 whichever comes later, for all other applications and end uses for
27 substitutes not covered by the categories listed in (a) through (g)
28 of this subsection.

29 (3) The department may by rule:

30 (a) Modify the effective date of a prohibition established in
31 subsection (2) of this section, if the department determines that the
32 rule reduces the overall risk to human health or the environment and
33 reflects the earliest date that a substitute is currently or
34 potentially available;

35 (b) Prohibit the use of a substitute if the department determines
36 that the prohibition reduces the overall risk to human health or the
37 environment and that a lower risk substitute is currently or
38 potentially available;

39 (c) (i) Create a list of approved substitutes, use conditions, or
40 use limits, if any; and

1 (ii) Add or remove substitutes, use conditions, or use limits to
2 or from the list of approved substitutes if the department determines
3 those substitutes reduce the overall risk to human health and the
4 environment.

5 (4) A person that offers equipment or a product for sale for
6 which the use of a substitute is restricted under subsection (2) or
7 (3) of this section must retain records relating to the person's
8 compliance with this chapter. The department may require a person
9 that manufacturers or offers equipment or a product for sale that is
10 subject to the restrictions on the use of substitutes under this
11 section to fulfill the following, with respect to the use of
12 substitutes associated with the equipment or product:

13 (a) Disclose the use of substitutes on the label of the equipment
14 or product; and

15 (b) Submit information about the use of substitutes to the
16 department, upon request.

17 (5) The department may adopt rules to administer, implement, and
18 enforce this section. The department should seek, where feasible and
19 appropriate, to adopt rules, including rules under subsection (4) of
20 this section, that are consistent with the regulatory standards,
21 exemptions, reporting obligations, and other compliance requirements
22 of other states that have adopted restrictions on the use of
23 hydrofluorocarbons and other substitutes.

24 (6) The authority granted by this section to the department for
25 restricting the use of substitutes is supplementary to the
26 department's authority to control air pollution pursuant to chapter
27 70.94 RCW. Nothing in this section limits the authority of the
28 department under chapter 70.94 RCW.

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

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

38 (2) Any person who negligently releases into the ambient air any
39 substance listed by the department of ecology as a hazardous air

1 pollutant, other than in compliance with the terms of an applicable
2 permit or emission limit, and who at the time negligently places
3 another person in imminent danger of death or substantial bodily harm
4 is guilty of a gross misdemeanor and shall, upon conviction, be
5 punished by a fine of not more than ten thousand dollars, or by
6 imprisonment for up to three hundred sixty-four days, or both.

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

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

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

22 (1) (a) Except as provided in RCW 43.05.060 through 43.05.080 and
23 43.05.150, and in addition to or as an alternate to any other penalty
24 provided by law, any person who violates any of the provisions of
25 this chapter, chapter 70.120 (~~(RCW, chapter)~~) or 70.310 RCW, section
26 3 of this act, or any of the rules in force under such chapters or
27 section may incur a civil penalty in an amount not to exceed ten
28 thousand dollars per day for each violation. Each such violation
29 shall be a separate and distinct offense, and in case of a continuing
30 violation, each day's continuance shall be a separate and distinct
31 violation.

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

36 (2) (a) Penalties incurred but not paid shall accrue interest,
37 beginning on the ninety-first day following the date that the penalty
38 becomes due and payable, at the highest rate allowed by RCW 19.52.020
39 on the date that the penalty becomes due and payable. If violations

1 or penalties are appealed, interest shall not begin to accrue until
2 the thirty-first day following final resolution of the appeal.

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

6 (3) Each act of commission or omission which procures, aids or
7 abets in the violation shall be considered a violation under the
8 provisions of this section and subject to the same penalty. The
9 penalties provided in this section shall be imposed pursuant to RCW
10 43.21B.300.

11 (4) All penalties recovered under this section by the department
12 shall be paid into the state treasury and credited to the air
13 pollution control account established in RCW 70.94.015 or, if
14 recovered by the authority, shall be paid into the treasury of the
15 authority and credited to its funds. If a prior penalty for the same
16 violation has been paid to a local authority, the penalty imposed by
17 the department under subsection (1) of this section shall be reduced
18 by the amount of the payment.

19 (5) To secure the penalty incurred under this section, the state
20 or the authority shall have a lien on any vessel used or operated in
21 violation of this chapter which shall be enforced as provided in RCW
22 60.36.050.

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

27 (7) In addition to other penalties provided by this chapter,
28 persons knowingly under-reporting emissions or other information used
29 to set fees, or persons required to pay emission or permit fees who
30 are more than ninety days late with such payments may be subject to a
31 penalty equal to three times the amount of the original fee owed.

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

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

1 (1) The air pollution control account is established in the state
2 treasury. All receipts collected by or on behalf of the department
3 from RCW 70.94.151(2), and receipts from nonpermit program sources
4 under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW
5 (~~70.94.650, 70.94.660, 82.44.020(2), and 82.50.405~~) 70.94.6528 and
6 70.94.6534 shall be deposited into the account. Moneys in the account
7 may be spent only after appropriation. Expenditures from the account
8 may be used only to develop and implement the provisions of chapters
9 70.94 and 70.120 RCW and section 3 of this act.

10 (2) The amounts collected and allocated in accordance with this
11 section shall be expended upon appropriation except as otherwise
12 provided in this section and in accordance with the following
13 limitations:

14 Portions of moneys received by the department of ecology from the
15 air pollution control account shall be distributed by the department
16 to local authorities based on:

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

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

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

24 (3) The air operating permit account is created in the custody of
25 the state treasurer. All receipts collected by or on behalf of the
26 department from permit program sources under RCW 70.94.152(1),
27 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the
28 account. Expenditures from the account may be used only for the
29 activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and
30 70.94.154(7). Moneys in the account may be spent only after
31 appropriation.

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

34 The building code council shall adopt rules that permit the use
35 of allowed substitutes consistent with section 3 of this act and that
36 do not require the use of substitutes that are restricted under
37 section 3 of this act.

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

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

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

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

18 (b) Do not contain hydrofluorocarbons;

19 (c) Are not designed to function only in conjunction with
20 hydrofluorocarbons; and

21 (d) Were not manufactured using hydrofluorocarbons.

22 (2) No agency may knowingly purchase products identified in
23 subsection (1) of this section unless there is no cost-effective and
24 technologically feasible alternative. When all available products
25 contain hydrofluorocarbons, are designed to function in conjunction
26 with hydrofluorocarbons, or were manufactured using
27 hydrofluorocarbons, a preference must be given to alternative
28 products that use or are likely to be associated with the release of
29 the lowest amount of or comparatively lower amounts of
30 hydrofluorocarbons.

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

35 (4) By December 1, 2020, and each December 1st of even numbered
36 years thereafter, the department must submit a status report to the
37 appropriate committees of the house of representatives and senate
38 regarding the implementation and compliance of the department and
39 state agencies with this section.

1 NEW SECTION. **Sec. 10.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

--- **END** ---