
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2647

State of Washington

60th Legislature

2008 Regular Session

By House Appropriations (originally sponsored by Representatives Dickerson, Hudgins, Hunt, Morrell, Pedersen, Williams, Cody, Green, Campbell, VanDeWege, Hasegawa, Roberts, Loomis, Upthegrove, Lias, Hunter, Chase, Smith, McIntire, Barlow, Conway, Priest, Schual-Berke, Simpson, Kenney, Goodman, Sells, Rolfes, Darneille, and Lantz)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to the children's safe products act; amending RCW
2 43.70.660; adding a new chapter to Title 70 RCW; creating a new
3 section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** Research shows that many toys and other
6 children's products contain toxic chemicals, such as lead, cadmium, and
7 phthalates that have been shown to cause harm to children's health and
8 the environment. These chemicals, and others like them, have been
9 linked to long-term health impacts such as birth defects, reproductive
10 harm, impaired learning, liver toxicity, and cancer. Because
11 children's bodies are growing and developing, they are especially
12 vulnerable to the effects of toxic chemicals. Regulation of toxic
13 chemicals in children's toys and other products is woefully inadequate.
14 To protect children's health, it is important to phase out the use of
15 lead, cadmium, and phthalates in children's toys and other products and
16 to begin collecting information on other chemicals that are present in
17 toys and other products to determine whether further action is
18 required.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Children's cosmetics" means cosmetics that are made for,
4 marketed for use by, or marketed to children under the age of twelve.
5 Children's cosmetics includes cosmetics that meet any of the following
6 conditions:

7 (a) Represented in its packaging, display, or advertising as
8 appropriate for use by children;

9 (b) Sold in conjunction with, attached to, or packaged together
10 with other products that are packaged, displayed, or advertised as
11 appropriate for use by children; or

12 (c) Sold in any of the following:

13 (i) Retail store, catalogue, or online web site, in which a person
14 exclusively offers for sale products that are packaged, displayed, or
15 advertised as appropriate for use by children; or

16 (ii) A discrete portion of a retail store, catalogue, or online web
17 site, in which a person offers for sale products that are packaged,
18 displayed, or advertised as appropriate for use by children.

19 (2) "Children's jewelry" means jewelry that is made for, marketed
20 for use by, or marketed to children under the age of twelve.
21 Children's jewelry includes jewelry that meets any of the following
22 conditions:

23 (a) Represented in its packaging, display, or advertising as
24 appropriate for use by children under the age of twelve;

25 (b) Sold in conjunction with, attached to, or packaged together
26 with other products that are packaged, displayed, or advertised as
27 appropriate for use by children;

28 (c) Sized for children and not intended for use by adults; or

29 (d) Sold in any of the following:

30 (i) A vending machine;

31 (ii) Retail store, catalogue, or online web site, in which a person
32 exclusively offers for sale products that are packaged, displayed, or
33 advertised as appropriate for use by children; or

34 (iii) A discrete portion of a retail store, catalogue, or online
35 web site, in which a person offers for sale products that are packaged,
36 displayed, or advertised as appropriate for use by children.

37 (3)(a) "Children's product" includes any of the following:

38 (i) Toys;

1 (ii) Children's cosmetics;
2 (iii) Children's jewelry;
3 (iv) A product designed or intended by the manufacturer to help a
4 child with sucking or teething, to facilitate sleep, relaxation, or the
5 feeding of a child, or to be worn as clothing by children; or
6 (v) Child car seats.
7 (b) "Children's product" does not include the following:
8 (i) Batteries with a voltage of 1.5 or less;
9 (ii) Slings and catapults;
10 (iii) Sets of darts with metallic points;
11 (iv) Toy steam engines;
12 (v) Bicycles;
13 (vi) Video toys that can be connected to a video screen and are
14 operated at a nominal voltage exceeding 24 volts; and
15 (vii) Chemistry sets.
16 (4) "Cosmetics" includes articles intended to be rubbed, poured,
17 sprinkled, or sprayed on, introduced into, or otherwise applied to the
18 human body or any part thereof for cleansing, beautifying, promoting
19 attractiveness, or altering the appearance, and articles intended for
20 use as a component of such an article. "Cosmetics" does not include
21 soap, dietary supplements, or food and drugs approved by the United
22 States food and drug administration.
23 (5) "Department" means the department of ecology.
24 (6) "High priority chemical" means a chemical identified by a state
25 agency, federal agency, or accredited research university, or other
26 scientific evidence deemed authoritative by the department on the basis
27 of credible scientific evidence as known to do one or more of the
28 following:
29 (a) Harm the normal development of a fetus or child or cause other
30 developmental toxicity;
31 (b) Cause cancer, genetic damage, or reproductive harm;
32 (c) Disrupt the endocrine system;
33 (d) Damage the nervous system, immune system, or organs or cause
34 other systemic toxicity;
35 (e) Be persistent, bioaccumulative, and toxic; or
36 (f) Be very persistent and very bioaccumulative.
37 (7) "Manufacturer" includes any person, firm, association,
38 partnership, corporation, governmental entity, organization, or joint

1 venture that produces a children's product or an importer or domestic
2 distributor of a children's product. For the purposes of this
3 subsection, "importer" means the owner of the children's product.

4 (8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl
5 phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl phthalate
6 (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

7 (9) "Toy" means a product designed or intended by the manufacturer
8 to be used by a child at play.

9 (10) "Trade association" means a membership organization of persons
10 engaging in a similar or related line of commerce, organized to promote
11 and improve business conditions in that line of commerce and not to
12 engage in a regular business of a kind ordinarily carried on for
13 profit.

14 (11) "Very bioaccumulative" means having a bioconcentration factor
15 or bioaccumulation factor greater than or equal to five thousand, or if
16 neither are available, having a log Kow greater than 5.0.

17 (12) "Very persistent" means having a half-life greater than or
18 equal to one of the following:

19 (a) A half-life in soil or sediment of greater than one hundred
20 eighty days;

21 (b) A half-life greater than or equal to sixty days in water or
22 evidence of long-range transport.

23 NEW SECTION. **Sec. 3.** Beginning July 1, 2009, no manufacturer,
24 wholesaler, or retailer may manufacture, knowingly sell, offer for
25 sale, distribute for sale, or distribute for use in this state a
26 children's product or product component containing the following:

27 (1) Lead or cadmium at more than .004 percent by weight (forty
28 parts per million);

29 (2) Phthalates, individually or in combination, at more than .01
30 percent by weight (one hundred parts per million).

31 NEW SECTION. **Sec. 4.** (1) By January 1, 2009, the department, in
32 consultation with the department of health, shall identify high
33 priority chemicals that are of high concern for children after
34 considering a child's or developing fetus's potential for exposure to
35 each chemical. In identifying the chemicals, the department shall
36 include chemicals that meet one or more of the following criteria:

1 (a) The chemical has been found through biomonitoring studies that
2 demonstrate the presence of the chemical in human umbilical cord blood,
3 human breast milk, human urine, or other bodily tissues or fluids;

4 (b) The chemical has been found through sampling and analysis to be
5 present in household dust, indoor air, drinking water, or elsewhere in
6 the home environment; or

7 (c) The chemical has been added to or is present in a consumer
8 product used or present in the home.

9 (2) By January 1, 2009, the department shall identify children's
10 products or product categories that may contain chemicals identified
11 under subsection (1) of this section.

12 (3) By January 1, 2009, the department shall submit a report on the
13 chemicals of high concern to children and the children's products or
14 product categories they identify to the appropriate standing committees
15 of the legislature. The report shall include policy options for
16 addressing children's products that contain chemicals of high concern
17 for children, including recommendations for additional ways to inform
18 consumers about toxic chemicals in products, such as labeling.

19 NEW SECTION. **Sec. 5.** Beginning six months after the department
20 has adopted rules under section 8(5) of this act, a manufacturer of a
21 children's product, or a trade organization on behalf of its member
22 manufacturers, shall provide notice to the department that the
23 manufacturer's product contains a high priority chemical. The notice
24 must be filed annually with the department and must include the
25 following information:

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

28 (2) A brief description of the product or product component
29 containing the substance;

30 (3) A description of the function of the chemical in the product;

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

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

36 (6) Any other information the manufacturer deems relevant to the
37 appropriate use of the product.

1 **Sec. 6.** RCW 43.70.660 and 2001 c 257 s 2 are each amended to read
2 as follows:

3 (1) The legislature authorizes the secretary to establish and
4 maintain a product safety education campaign to promote greater
5 awareness of products designed to be used by infants and children(~~(~~
6 ~~excluding toys,~~) that:

7 (a) Are recalled by the United States consumer products safety
8 commission;

9 (b) Do not meet federal safety regulations and voluntary safety
10 standards; (~~or~~)

11 (c) Are unsafe or illegal to place into the stream of commerce
12 under the infant crib safety act, chapter 70.111 RCW; or

13 (d) Contain chemicals of high concern for children as identified
14 under section 4 of this act.

15 (2) The department shall make reasonable efforts to ensure that
16 this infant and children product safety education campaign reaches the
17 target population. The target population for this campaign includes,
18 but is not limited to, parents, foster parents and other caregivers,
19 child care providers, consignment and resale stores selling infant and
20 child products, and charitable and governmental entities serving
21 infants, children, and families.

22 (3) The secretary may utilize a combination of methods to achieve
23 this outreach and education goal, including but not limited to print
24 and electronic media. The secretary may operate the campaign or may
25 contract with a vendor.

26 (4) The department shall coordinate this infant and children
27 product safety education campaign with child-serving entities
28 including, but not limited to, hospitals, birthing centers, midwives,
29 pediatricians, obstetricians, family practice physicians, governmental
30 and private entities serving infants, children, and families, and
31 relevant manufacturers.

32 (5) The department shall coordinate with other agencies and
33 entities to eliminate duplication of effort in disseminating infant and
34 children consumer product safety information.

35 (6) The department may receive funding for this infant and children
36 product safety education effort from federal, state, and local
37 governmental entities, child-serving foundations, or other private
38 sources.

1 NEW SECTION. **Sec. 7.** (1) A manufacturer of products that are
2 restricted under this chapter must notify persons that sell the
3 manufacturer's products in this state about the provisions of this
4 chapter no less than ninety days prior to the effective date of the
5 restrictions.

6 (2) A manufacturer that produces, sells, or distributes a product
7 prohibited from manufacture, sale, or distribution in this state under
8 this chapter shall recall the product and reimburse the retailer or any
9 other purchaser for the product.

10 (3) A manufacturer of children's products in violation of this
11 chapter is subject to a civil penalty not to exceed five thousand
12 dollars for each violation in the case of a first offense.
13 Manufacturers who are repeat violators are subject to a civil penalty
14 not to exceed ten thousand dollars for each repeat offense. Penalties
15 collected under this section must be deposited in the state toxics
16 control account created in RCW 70.105D.070.

17 (4) Retailers who unknowingly sell products that are restricted
18 from sale under this chapter are not liable under this chapter.

19 NEW SECTION. **Sec. 8.** (1) Before the prohibitions under section 3
20 of this act take effect, the department shall prepare and distribute
21 information to in-state and out-of-state manufacturers, to the maximum
22 extent practicable, to assist them in identifying products prohibited
23 for manufacture, sale, or distribution under this chapter.

24 (2) The department must assist in-state retailers in identifying
25 products restricted under this chapter.

26 (3) The department may require manufacturers to electronically file
27 the notice required under section 5 of this act to the department that
28 the manufacturer's product contains a high priority chemical.

29 (4) The department shall develop and publish a web site that
30 provides consumers with information on the chemicals used in children's
31 products, the reason the chemical has been identified as a high
32 priority chemical, and any safer alternatives to the chemical.

33 (5) The department shall adopt rules to finalize the list of high
34 priority chemicals that are of high concern for children identified in
35 section 4(1) of this act by January 1, 2010.

1 NEW SECTION. **Sec. 9.** The department may adopt rules as necessary
2 for the purpose of implementing, administering, and enforcing this
3 chapter.

4 NEW SECTION. **Sec. 10.** Sections 1 through 5 and 7 through 9 of
5 this act constitute a new chapter in Title 70 RCW.

6 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
7 this act, referencing this act by bill or chapter number, is not
8 provided by June 30, 2008, in the omnibus appropriations act, this act
9 is null and void.

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