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**HOUSE BILL 1984**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Pollet, Appleton, Ryu, Stanford, and Gregerson

AN ACT Relating to the use of certain chemicals in food products; amending RCW 70.280.010 and 70.280.020; adding new sections to chapter 70.280 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) In the course of their daily lives, people are exposed to and ingest thousands of chemicals currently added to foods and food packaging. Many of these chemicals have not been specifically reviewed, tested, and approved by the United States food and drug administration;

(b) While the state of Washington regulates the exposure rate of many toxic, carcinogenic, or otherwise harmful chemicals that are also present in food additives and food packaging, people may be exposed to these same chemicals by direct ingestion of food additives and via food packaging at significantly higher rates than through environmental exposure alone;

(c) Recent scientific studies have detected bisphenol A (BPA), listed as a chemical of high concern to children by the state department of health, in the vast majority of American children and adults. Washington has barred BPA from food and beverage containers designed for use by young children;

(d) Many phthalates are hormone-disrupting chemicals that can cause a variety of negative health impacts. The United States national toxicology program concluded that five commonly used phthalates are reproductive or developmental toxicants and, in 2008, congress directed the consumer product safety commission to ban or provisionally ban the use of six phthalates in children's toys. Washington has also found it prudent to prohibit phthalates from being included in children's toys. In addition, in 2002 the United States food and drug administration issued a safety alert recommending that health care providers limit the exposure of newborn males to the phthalate DEHP in medical procedures; and

(e) Exposure to BPA, phthalates, and other chemicals that have not been tested for ingestion exposure risks pose a public health threat similar to, or even greater than, the risks posed by exposures to those chemicals from environmental sources.

(2) It is therefore the intent of the legislature to reduce the ingestion of phthalates, BPA, and other chemicals by children and adults, and to provide appropriate information about the presence of potentially harmful toxicants in food, food packaging, and food containers

**Sec.**  RCW 70.280.010 and 2010 c 140 s 1 are each amended to read as follows:

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

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

(2) "Metal can" means a single walled container that is manufactured from metal substrate designed to hold or pack food or beverages and sealed by can ends manufactured from metal substrate. The metal substrate for the can and the can ends must be equal to or thinner than 0.0149 inch.

(3) "Sports bottle" means a resealable, reusable container, sixty-four ounces or less in size, that is designed or intended primarily to be filled with a liquid or beverage for consumption from the container, and is sold or distributed at retail without containing any liquid or beverage.

(4) "Youth" means a person twelve years of age or younger.

(5) "Reusable food or beverage container" means a receptacle for storing food or beverages, including but not limited to spill-proof cups, sports bottles, and thermoses. The term does not include food or beverage containers intended for disposal after initial usage.

(6) "Food packaging" means a container or wrapper intended for food contact used to store food and foodstuffs for sale.

(7) "Canned food" means food sterilized by heat in a closed, durable container such as tin and aluminum cans, flexible aluminum foil, and thermoplastic containers including squeeze tubes.

**Sec.**  RCW 70.280.020 and 2010 c 140 s 2 are each amended to read as follows:

(1) Beginning July 1, 2011, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, any bottle, cup, or other container, except a metal can, that contains bisphenol A if that container is designed or intended to be filled with any liquid, food, or beverage primarily for consumption from that container by children three years of age or younger and is sold or distributed at retail without containing any liquid, food, or beverage.

(2) Beginning July 1, 2012, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, sports bottles that contain bisphenol A.

(3) No manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, any bottle, cup, or reusable food and beverage container that contains phthalates individually or in combination at more than 0.10 percent by weight or one thousand parts per million or bisphenol A.

NEW SECTION. **Sec.**  A new section is added to chapter 70.280 RCW to read as follows:

(1) No person or entity may manufacture, sell, or distribute in commerce in this state any food intended for or marketed to youth that contains or is stored in food packaging that contains phthalates individually or in combination at more than 0.10 percent by weight or one thousand parts per million or bisphenol A.

(2) Manufacturers may not replace bisphenol A or phthalates with the chemicals listed in subsection (3) of this section in order to comply with the requirements of subsection (1) of this section or RCW 70.280.020.

(3) The department shall compile a list of prohibited alternatives to bisphenol A or phthalates composed of the following chemicals:

(a)(i) Chemicals rated by the United States environmental protection agency as carcinogenic to humans, likely to be carcinogenic to humans, or suggestive evidence of carcinogenic potential as of January 1, 2015, under the 2005 guidelines for carcinogen risk assessment published pursuant to 42 U.S.C. Sec. 7412(o)(7).

(ii) Chemicals rated by the United States environmental protection agency as a human carcinogen, probable human carcinogen, or possible human carcinogen under the 1986 guidelines for carcinogen risk assessment published in the federal register on September 24, 1986 (51 C.F.R. Sec. 33992).

(b) Reproductive toxicants that the United States environmental protection agency has identified as of January 1, 2015, as causing birth defects, reproductive harm, or developmental harm under the guidelines for reproductive toxicity risk assessment published in the federal register on October 31, 1996, (61 C.F.R. Sec. 56274) or the guidelines for developmental toxicity risk assessment published in the federal register on December 5, 1991, (56 C.F.R. Sec. 63798).

(c) A chemical identified by the European commission on the environment as of January 1, 2015, as a category 1 substance for which there is at least one study providing evidence of endocrine disruption in an intact organism in the report dated June 21, 2000, entitled "towards the establishment of a priority list of substances for further evaluation of their role in endocrine disruption: Preparation of a candidate list of substances as a basis for priority setting."

(d) A chemical identified by the department as a high priority chemical of high concern for children as required under RCW 70.240.030.

(e) A chemical identified by the department for inclusion on the list pursuant to section 7 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 70.280 RCW to read as follows:

(1) All food packaging that contains bisphenol A must display a label on the front of the package stating "This package contains bisphenol A (a chemical that may harm fetal development) which can leach into the food."

(2) All food packaging that contains phthalates individually or in combination at more than 0.10 percent by weight or one thousand parts per million must display a label on the front of the package stating "This package contains phthalates (a type of chemical that may harm fetal development) that can leach into the food."

(3) All food packaging containing the following chemicals must be labeled on the packaging or at the point of display for retail sale with a notice that the food packaging contains a chemical that, if ingested at levels that may be present in the food, is a potential or known human carcinogen, reproductive toxin, mutagen, or hazardous substance that:

(a) As of January 1, 2015, the United States environmental protection agency has identified under 42 U.S.C. chapter 103, the 2005 guidelines for carcinogen risk assessment published pursuant to 42 U.S.C. Sec. 7412(o)(7), the guidelines for reproductive toxicity risk assessment published in the federal register on October 31, 1996, (61 C.F.R. Sec. 56274), or the guidelines for developmental toxicity risk assessment published in the federal register on December 5, 1991, (56 C.F.R. Sec. 63798) as a human carcinogen, reproductive toxicant, mutagen, or hazardous substance if ingested at levels that may be present in the food;

(b) As of January 1, 2015, the state has identified as a high priority chemical pursuant to chapter 70.240 RCW;

(c) As of January 1, 2015, the state of California has identified as known to cause cancer or reproductive toxicity in the list developed pursuant to section 25249.5 through 25249.13 of the California health and safety code; or

(d) Is a chemical identified by the department upon consideration of a petition pursuant to section 7(2) of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 70.280 RCW to read as follows:

All food containing the following chemicals must be labeled on the packaging or at the point of display for retail sale with a notice that the food contains a potential or known human carcinogen, reproductive toxin, mutagen, or hazardous substance:

(1) A food additive that has not been tested and shown to be safe for human consumption by the United States food and drug administration pursuant to 21 U.S.C. chapter 9 as of January 1, 2015;

(2) A chemical that:

(a) As of January 1, 2015, the United States environmental protection agency has identified under 42 U.S.C. chapter 103, the 2005 guidelines for carcinogen risk assessment published pursuant to 42 U.S.C. Sec. 7412(o)(7), the guidelines for reproductive toxicity risk assessment published in the federal register on October 31, 1996, (61 C.F.R. Sec. 56274), or the guidelines for developmental toxicity risk assessment published in the federal register on December 5, 1991, (56 C.F.R. Sec. 63798) as a human carcinogen, reproductive toxicant, mutagen, or hazardous substance if ingested at levels that may be present in the food;

(b) As of January 1, 2015, the state has identified as a high priority chemical pursuant to chapter 70.240 RCW; or

(c) As of January 1, 2015, the state of California has identified as known to cause cancer or reproductive toxicity in the list developed pursuant to section 25249.5 through 25249.13 of the California health and safety code; or

(3) A chemical identified by the department upon consideration of a petition pursuant to section 7(2) of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 70.280 RCW to read as follows:

(1)(a) A person may submit a petition for consideration by the department to add a chemical to the list of prohibited bisphenol A or phthalate replacements in section 4(3) of this act based on scientific evidence demonstrating harm or potential for harm from those chemicals. The petition must provide the following information:

(i) Chemical abstracts service registry number;

(ii) Chemical prime name;

(iii) Whether the chemical is a hazardous substance as defined in chapter 70.105 RCW; and

(iv) Credible peer-reviewed scientific information documenting the potential carcinogenic, developmental, or reproductive harm posed by the chemical; or, for a hazardous substance as defined in chapter 70.105 RCW, data indicating whether ingestion of food packaged in packaging containing the substance will, under ordinary consumption, result in exposures at concentrations exceeding clean-up action levels established by the department pursuant to chapter 70.105D RCW or maximum concentration limits established pursuant to the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq.

(b) Upon review of a petition, if the department determines in consultation with the department of health that a chemical has the potential to cause reproductive harm, developmental harm, birth defects, or is a possible or probable human carcinogen, and the risk of excess lifetime cancer when ingested at levels likely to occur from ordinary consumption over a person's lifetime, including childhood, would be greater than one in one million, the department must add the chemical to the list compiled pursuant to section 4(3) of this act of prohibited replacements for bisphenol A and phthalates.

(c) The department must remove a chemical from the list of prohibited food and food packaging contents created under section 4 of this act if the chemical is used as a food additive and the United States food and drug administration specifically finds that the chemical has been tested and shown to be safe for human consumption pursuant to 21 U.S.C. chapter 9 as of January 1, 2015. However, the department may still require food or food packaging containing the chemical to be labeled in accordance with sections 5 and 6 of this act.

(2)(a) A person may submit a petition for consideration by the department to require labeling of any food additive pursuant to section 6 of this act or food packaging pursuant to section 5 of this act that would be projected in the normal course of consumption of the food to result in exposures to a carcinogen or hazardous substance at concentrations above maximum concentration limits pursuant to the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq.; or, clean-up action levels established by the department pursuant to chapter 70.105D RCW. The petition must provide the following information:

(i) Chemical abstracts service registry number;

(ii) Chemical prime name;

(iii) Whether the chemical is a hazardous substance as defined in chapter 70.105 RCW; and

(iv) Credible peer-reviewed scientific information documenting the potential carcinogenic, developmental, or reproductive harm posed by the chemical; or, for a hazardous substance as defined in chapter 70.105 RCW, data indicating whether ingestion of food packaged in packaging containing the substance will, under ordinary consumption, result in exposures at concentrations exceeding clean-up action levels established by the department pursuant to chapter 70.105D RCW or maximum concentration limits established pursuant to the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq.

(b) Upon review of a petition, if the department determines in consultation with the department of health that a chemical has the potential to cause reproductive harm, developmental harm, birth defects, or is a possible or probable human carcinogen, and the risk of excess lifetime cancer when ingested at levels likely to occur from ordinary consumption over a person's lifetime, including in children, would be greater than one in one million, the department must require labeling pursuant to section 5 or 6 of this act, and add the chemical to the list compiled pursuant to section 4(3) of this act of prohibited replacements for bisphenol A and phthalates.

(3) The department shall review petitions in accordance with RCW 34.05.330.

NEW SECTION. **Sec.**  A new section is added to chapter 70.280 RCW to read as follows:

The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. The department may amend the rules from time to time to maintain consistency with the lists of chemicals that: (1) The state of California identifies as known to cause cancer or reproductive toxicity; (2) the United States environmental protection agency identifies as a human carcinogen, reproductive toxicant, mutagen, or hazardous substance; or (3) the European commission identifies as a category one endocrine disruptor.

NEW SECTION. **Sec.**  Sections 4 through 7 of this act take effect January 1, 2017.

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 ---**