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**SUBSTITUTE SENATE BILL 5135**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Rolfes, Frockt, Salomon, Palumbo, Cleveland, Carlyle, Kuderer, Saldaña, Billig, Dhingra, Pedersen, Wellman, Hunt, Das, McCoy, Liias, Darneille, Hasegawa, Keiser, and Van De Wege)

AN ACT Relating to preventing toxic pollution that affects public health or the environment; amending RCW 70.240.040 and 43.21B.110; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

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

(1) "Consumer product" means any item, including any component parts and packaging, sold for residential or commercial use.

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

(3) "Director" means the director of the department.

(4) "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.

(5) "Organohalogen" means a class of chemicals that includes any chemical containing one or more halogen elements bonded to carbon.

(6) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemicals" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(7) "Phenolic compounds" means alkylphenol ethoxylates and bisphenols.

(8) "Phthalates" means synthetic chemical esters of phthalic acid.

(9) "Polychlorinated biphenyls" or "PCBs" means chemical forms that consist of two benzene rings joined together and containing one to ten chlorine atoms attached to the benzene rings.

(10) "Priority chemical" means a chemical or chemical class used as, used in, or put in a consumer product including:

(a) Perfluoroalkyl and polyfluoroalkyl substances;

(b) Phthalates;

(c) Organohalogen flame retardants;

(d) Flame retardants, as identified by the department under chapter 70.240 RCW;

(e) Phenolic compounds;

(f) Polychlorinated biphenyls; or

(g) A chemical identified by the department as a priority chemical under section 2 of this act.

(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) "Sensitive population" means a category of people that is identified by the department that may be or is disproportionately or more severely affected by priority chemicals, such as:

(a) Men and women of childbearing age;

(b) Infants and children;

(c) Pregnant women;

(d) Communities that are highly impacted by toxic chemicals;

(e) Persons with occupational exposure; and

(f) The elderly.

(13) "Sensitive species" means a species or grouping of animals that is identified by the department that may be or is disproportionately or more severely affected by priority chemicals, such as:

(a) Southern resident killer whales;

(b) Salmon; and

(c) Forage fish.

NEW SECTION. **Sec.**  Every five years, and consistent with the timeline established in section 5 of this act, the department, in consultation with the department of health, must identify at least five priority chemicals that meet at least one of the following:

(1) The chemical or a member of a class of chemicals are identified by the department as a:

(a) High priority chemical of high concern for children under chapter 70.240 RCW; or

(b) Persistent, bioaccumulative toxin under chapter 70.105 RCW;

(2) The chemical or members of a class of chemicals are regulated:

(a) In consumer products under chapter 70.240, 70.76, 70.95G, 70.280, 70.285, 70.95M, or 70.75A RCW; or

(b) As a hazardous substance under chapter 70.105 or 70.105D RCW; or

(3) The department determines the chemical or members of a class of chemicals are a concern for sensitive populations and sensitive species after considering the following factors:

(a) A chemical's or members of a class of chemicals' hazard traits or environmental or toxicological endpoints;

(b) A chemical's or members of a class of chemicals' aggregate effects;

(c) A chemical's or members of a class of chemicals' cumulative effects with other chemicals with the same or similar hazard traits or environmental or toxicological endpoints;

(d) A chemical's or members of a class of chemicals' environmental fate;

(e) The potential for a chemical or members of a class of chemicals to degrade, form reaction products, or metabolize into another chemical or a chemical that exhibits one or more hazard traits or environmental or toxicological endpoints, or both;

(f) The potential for the chemical or class of chemicals to contribute to or cause adverse health or environmental impacts;

(g) The chemical's or class of chemicals' potential impact on sensitive populations, sensitive species, or environmentally sensitive habitats;

(h) Potential exposures to the chemical or members of a class of chemicals based on:

(i) Reliable information regarding potential exposures to the chemical or members of a class of chemicals; and

(ii) Reliable information demonstrating occurrence, or potential occurrence, of multiple exposures to the chemical or members of a class of chemicals.

NEW SECTION. **Sec.**  (1) Every five years, and consistent with the timeline established in section 5 of this act, the department, in consultation with the department of health, shall identify priority consumer products that are a significant source of or use of priority chemicals.

(2) When identifying priority consumer products under this section, the department must consider, at a minimum, the following criteria:

(a) The estimated volume of a priority chemical or priority chemicals added to, used in, or present in the consumer product;

(b) The estimated volume or number of units of the consumer product sold or present in the state;

(c) The potential for exposure to priority chemicals by sensitive populations or sensitive species when the consumer product is used, disposed of, or has decomposed;

(d) The potential for priority chemicals to be found in the outdoor environment, with priority given to surface water, groundwater, marine waters, sediments, and other ecologically sensitive areas, when the consumer product is used, disposed of, or has decomposed;

(e) If another state or nation has identified or taken regulatory action to restrict or otherwise regulate the priority chemical in the consumer product; and

(f) Whether the department has already identified the consumer product in a chemical action plan completed under chapter 70.l05 RCW as a source of a priority chemical or other reports or information gathered under chapter 70.240, 70.76, 70.95G, 70.280, 70.285, 70.95M, or 70.75A RCW.

(3) The department is not required to give equal weight to each of the criteria in subsection (2)(a) through (f) of this section when identifying priority consumer products that use or are a significant source of priority chemicals.

(4) To assist with identifying priority consumer products under this section and making determinations as authorized under section 4 of this act, the department may request a manufacturer to submit a notice to the department that contains the information specified in RCW 70.240.040 (1) through (6) or other information relevant to subsection (2)(a) through (d) of this section. The manufacturer must provide the notice to the department no later than six months after receipt of such a demand by the department.

(5)(a) Except as provided in (b) of this subsection, the department may not identify the following as priority consumer products under this section:

(i) Food or beverages;

(ii) Tobacco products;

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

(iv) Finished products certified or regulated by the federal aviation administration or the department of defense, or both, when used in a manner that was certified or regulated by such agencies, including parts, materials, and processes when used to manufacture or maintain such regulated or certified finished products;

(v) Motorized vehicles, including on and off-highway vehicles, such as all-terrain vehicles, motorcycles, side-by-side vehicles, farm equipment, and personal assistive mobility devices; and

(vi) Chemical products used to produce an agricultural commodity, as defined in RCW 17.21.020.

(b) The department may identify the packaging of products listed in (a) of this subsection as priority consumer products.

NEW SECTION. **Sec.**  (1) Every five years, and consistent with the timeline established in section 5 of this act, the department, in consultation with the department of health, must determine regulatory actions to increase transparency and to reduce the use of priority chemicals in priority consumer products. The department may:

(a) Determine that no regulatory action is currently required;

(b) Require a manufacturer to provide notice of the use of a priority chemical or class of priority chemicals consistent with RCW 70.240.040; or

(c) Restrict or prohibit the manufacture, wholesale, distribution, sale, retail sale, or use, or any combination thereof, of a priority chemical or class of priority chemicals in a consumer product.

(2)(a) The department may order a manufacturer to submit information consistent with section 3(4) of this act.

(b) The department may require a manufacturer to provide:

(i) A list of products containing priority chemicals;

(ii) Product ingredients;

(iii) Information regarding exposure and chemical hazard; and

(iv) A description of the amount and the function of the high priority chemical in the product.

(3) The department may restrict or prohibit a priority chemical or members of a class of priority chemicals in a priority consumer product when it determines:

(a) Safer alternatives are feasible and available;

(b) The priority chemical or members of a class of priority chemicals is not functionally necessary in the priority consumer product;

(c) Another state or nation has restricted the priority chemical

 or members of a class of priority chemicals in a product; or

(d) It is necessary to protect the health of sensitive populations or sensitive species.

(4) A restriction or prohibition on a priority chemical in a consumer product may include exemptions or exceptions, including exemptions to address existing stock of a product in commerce at the time that a restriction takes effect.

NEW SECTION. **Sec.**  (1)(a) By June 1, 2020, and consistent with section 3 of this act, the department shall identify priority consumer products that are a significant source of or use of priority chemicals specified in section 1(10) (a) through (f) of this act.

(b) By June 1, 2022, and consistent with section 4 of this act, the department must determine regulatory actions regarding the priority chemicals and priority consumer products identified in (a) of this subsection.

(c) By June 1, 2023, the department must adopt rules to implement regulatory actions determined under (b) of this subsection.

(2)(a) By June 1, 2024, and every five years thereafter, the department shall identify at least five priority chemicals specified in section 1(10) (a) through (g) of this act that are identified consistent with section 2 of this act.

(b) By June 1, 2025, and every five years thereafter, the department must identify priority consumer products that contain priority chemicals, consistent with section 3 of this act.

(c) By June 1, 2027, and every five years thereafter, the department must determine regulatory actions for the priority chemicals in priority consumer products identified under (b) of this subsection, consistent with section 4 of this act.

(d) By June 1, 2028, and every five years thereafter, the department must adopt rules to implement regulatory actions identified under (c) of this subsection.

(3) When identifying priority chemicals and priority consumer products under this chapter, the department must notify the public of the selection, including the identification of the peer-reviewed science and other sources of information that the department relied upon, the basis for the selection, and a draft schedule for making determinations. The notice must be published in the Washington State Register. The department shall provide the public with an opportunity for review and comment on the regulatory determinations.

NEW SECTION. **Sec.**  (1) A manufacturer that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director, or the appropriate division of the department. The director shall give consideration to the request and if this action is not detrimental to the public interest and is otherwise within accord with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160. Under the procedures established under RCW 43.21A.160, the director must keep confidential any records furnished by a manufacturer under this chapter that relate to proprietary manufacturing processes or chemical formulations used in products or processes.

(2) For records or other information furnished to the department by a federal agency on the condition that the information be afforded the same confidentiality protections as under federal law, the director may determine that the information or records be available only for the confidential use of the director, the department, or the appropriate division of the department. All such records and information are exempt from public disclosure. The director is authorized to enter into an agreement with the federal agency furnishing the records or information to ensure the confidentiality of the records or information*.*

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, may be 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.**  (1) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

(2) The department must adopt rules to implement the determinations of regulatory actions specified in section 4(1) (b) or (c) of this act.

**Sec.**  RCW 70.240.040 and 2008 c 288 s 5 are each amended to read as follows:

((~~Beginning six months after the department has adopted rules under section 8(5) of this act,~~)) A manufacturer of a children's product or a consumer product containing a priority chemical subject to a rule adopted to implement a determination made consistent with section 4(1)(b) of this act, or a trade organization on behalf of its member manufacturers, shall provide notice to the department that the manufacturer's product contains a high priority chemical or a priority chemical identified under chapter 70.--- RCW (the new chapter created in section 12 of this act). The notice must be filed annually with the department and must include the following information:

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

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

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

(4) 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;

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

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

**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, section 7 of this act, 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, section 7 of this act, 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.

(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.**  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.

NEW SECTION. **Sec.**  Sections 1 through 8 and 13 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  This act may be known and cited as the pollution prevention for healthy people and Puget Sound act.

**--- END ---**