

FINAL BILL REPORT

SSB 5135

C 292 L 19
Synopsis as Enacted

Brief Description: Preventing toxic pollution that affects public health or the environment.

Sponsors: Senate Committee on 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).

Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means
House Committee on Environment & Energy
House Committee on Appropriations

Background: Under the Children's Safe Products Act (CSPA), the Department of Ecology (Ecology), in consultation with the Department of Health (DOH), must identify chemicals of high concern for children. A high-priority chemical:

- harms the normal development of a fetus or child, or causes other developmental toxicity;
- causes cancer, genetic damage, or reproductive harm;
- disrupts the endocrine system;
- damages the nervous system, immune system, or organs, or causes other systemic toxicity;
- is persistent, bioaccumulative, and toxic; or
- is very persistent and very bioaccumulative.

Under CSPA, manufacturers of children's products containing chemicals of high concern for children, are required, in part, to annually report product information to Ecology. The notice must include:

- the name of the chemical used or produced and its chemical abstracts service registry number;
- a brief description of the product or product component containing the substance;
- a description of the function of the chemical in the product;
- the amount of chemical used; and
- any other information the manufacturer determines is relevant to the appropriate use of the product.

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.

Ecology identifies, reviews, evaluates, and makes recommendations on the use and management of persistent, bioaccumulative, and toxic (PBT) chemicals. These chemicals remain in the environment for long periods of time, accumulate in the food chain, and are toxic to humans and wildlife. Ecology has adopted rules for PBT chemical action plans (CAP) establishing criteria used to identify PBTs, procedures to develop a list of PBTs and periodically update that list, and the scope and content of a CAP. The purpose of a CAP is to provide general information about a PBT, its uses, impacts to the environment and human health, and to determine policy options and recommendations.

The Legislature has restricted and authorized Ecology to implement regulations on the use of certain substances, compounds, and chemicals in consumer products impacting human health and the environment. These include:

- PBDE flame retardants;
- PFAS, lead, cadmium, and mercury in food packaging;
- bisphenol A in food and beverage cans and bottles;
- asbestos fibers, cadmium, chromium, lead and mercury in brake friction material, mercury in batteries, thermometers, thermostats, and fluorescent lights; and
- PFAS in firefighting foam.

In addition, the Legislature has authorized Ecology to implement a comprehensive framework for managing hazardous wastes and the release of hazardous substances. Hazardous substances include materials that are short-lived, toxic, and may cause death, injury, or illness, and substances that are persistent and present a significant environmental hazard, and are highly toxic to human beings or wildlife.

Summary: Ecology, in consultation with DOH, must identify priority consumer products that are a significant source of or use priority chemicals. A priority chemical is defined as a chemical or class of chemicals used in consumer products including PFAS, phthalates, organohalogen flame retardants, phenolic compounds, or PCBs. Ecology may identify a chemical as a priority chemical if it is found to be a high priority chemical under CSPA; a PBT; regulated in consumer products or as hazardous waste; or a concern for sensitive populations and sensitive species. To make a determination that a chemical is a concern for sensitive populations or species, Ecology must consider several factors about the chemical including hazard traits, aggregate effects, cumulative effects with other chemicals with similar hazard traits, environmental fate, potential to degrade, impact on sensitive populations, and exposure.

To identify a priority consumer product that is a significant source of priority chemicals, Ecology must consider at a minimum:

- the estimated volume of a priority chemical used in or present in the consumer product;
- the estimated volume or number of units of the consumer product sold in Washington;
- the potential for exposure to the priority chemical by sensitive populations or species when the consumer product is used, disposed of, or has decomposed;
- the potential for priority chemicals to be found in the environment, with priority given to surface water, groundwater, or other sensitive areas when the consumer product is disposed of or has decomposed;

- if another state or nation has taken regulatory action to restrict the priority chemical in the consumer product;
- whether Ecology has identified the consumer product in a CAP as a source of a priority chemical or in other reports or information gathered under state regulations of hazardous substances; and
- the availability and feasibility of safer alternatives.

Equal weight to each criteria is not required.

To assist with identifying priority consumer products, Ecology may request information from manufacturers regarding the estimated volume of a priority chemical added to or present in a consumer product, the volume sold into the state, potential for exposure to the priority chemical by sensitive populations or species, and the potential for the priority chemical to be found in the outdoor environment, or other relevant information. Within six months after receipt of the request, manufacturers must submit notice of the requested information, as specified under the CSPA.

When making regulatory determinations, Ecology may require a manufacturer provide a list of products containing the priority chemical, product ingredients, information regarding exposure and chemical hazard, and a description of the amount and function of the priority chemical.

Ecology may not identify food or beverages, tobacco products, drug or biological products regulated by the Food and Drug Administration (FDA), chemicals used to produce agricultural commodities, or plastic shipping pallets manufactured before 2012 as a priority consumer product. However, the packaging of these products may be identified as priority consumer products. Additionally, Ecology is prohibited from identifying as a priority consumer product finished products regulated by and used in a manner as certified or regulated the Federal Aviation Administration (FAA) or the Department of Defense (DOD), as well as parts, materials and processes used to manufacture or maintain the finished products. Motorized vehicles, including on and off-highway vehicles, farm equipment, and personal assistive mobility devices may not be designated as priority consumer products. For an identified electronic priority consumer product, Ecology may not restrict or require disclosure of a priority chemical in an inaccessible electronic component.

To increase transparency and reduce the use of priority chemicals in priority consumer products, Ecology must determine regulatory actions and may:

- determine no action is required;
- require a manufacturer to provide notice of the use of the priority chemical; or
- restrict or prohibit the manufacture, wholesale, distribution, retail sale, or use of a priority chemical in a consumer product.

Ecology may restrict or prohibit a priority chemical in priority consumer products when it determines safer alternatives are feasible and available and the restriction:

- will reduce a significant source or use of a priority chemical; or
- is necessary to protect the health of sensitive populations or species.

Restrictions or prohibitions on priority chemicals in priority consumer products may include exemptions to address existing stock in commerce at the time the restriction takes effect.

When determining regulatory actions, in addition to the criteria to identify priority chemicals and designate priority consumer products, Ecology may also consider whether:

- the priority chemical is not functionally necessary in the priority consumer product; and
- another state or nation has restricted the priority chemical.

Ecology must submit a report every five years to the Legislature when designating priority chemicals and at the time of identifying priority consumer products and determining regulatory actions.

The designations made by Ecology regarding priority chemicals, priority consumer products, and regulatory actions do not take effect until after adjournment of the regular legislative session immediately following Ecology's decisions to provide the Legislature an opportunity to amend the lists of priority chemicals and priority consumer products, and determinations of regulatory actions. However, Ecology is not limited in its authority to begin identifying priority consumer products prior to the effective date of the designation of a priority chemical, considering regulatory actions prior to designation of a priority consumer product, or initiating rulemaking prior to the effective date of a regulatory action.

By June 1, 2020 Ecology must identify priority consumer products that are a significant source of or use of PFAS, phthalates, organohalogen flame retardants, phenolic compounds, or PCBs. Ecology must determine regulatory actions for identified priority consumer products by June 1, 2022, and adopt rules to implement the regulatory actions by June 1, 2023.

Ecology must adhere to a scheduled timeline to designate priority chemicals, identify priority consumer products, determine regulatory actions, and adopt rules to implement regulatory actions. Every five years, beginning June 1, 2024, Ecology must select at least five priority chemicals and the following year identify priority consumer products containing new priority chemicals. Beginning June 1, 2027 and every five years thereafter Ecology must determine regulatory actions and the following year adopt rules to implement the regulatory actions.

When identifying priority chemicals and consumer products, Ecology must notify the public of the selection and the peer-reviewed science and other sources of information relied upon as the basis for the selection. A draft schedule for making determinations must also be included. Ecology must publish the notice in the Washington State Register and provide an opportunity for public review and comment on the regulatory determinations.

By June 1, 2020, Ecology must create a stakeholder advisory process to provide expertise, input and a review of the rationale used for identifying priority chemicals and priority consumer products and proposed regulatory determinations. Stakeholder input must be considered and addressed when adopting rules. The stakeholder process must include at least representatives from large and small business sectors; community, environmental, and public health advocacy groups; public health agencies; scientific data analysis experts; local governments; and affected and interested businesses.

A manufacturer may request information on manufacturing processes or chemical formulations used in products submitted to Ecology to remain confidential. If the director determines, after considering the request, that it is not detrimental to public interest, the proprietary information must be kept confidential.

Ecology may enter into an agreement with federal agencies to ensure confidentiality of information that is provided by the agency on the condition that the information receive the same confidentiality protections as provided under federal law. The director of Ecology may determine the information is exempt from public disclosure and available only to the director or appropriate divisions of Ecology.

Ecology is authorized to adopt rules to implement this act and must adopt rules to implement regulatory determinations. Ecology must identify the expected costs and benefits to private persons or businesses and to state agencies to administer and enforce proposed or adopted rules. Rules implementing regulatory determinations that restrict a priority consumer product containing a priority chemical may not take effect until one year after the rule is adopted. Regulatory determinations that require a manufacturer to provide notice of the use of a priority chemical or restrict or prohibit a priority chemical are considered significant legislative rules under the Administrative Procedures Act and require a small business economic impact statement.

A manufacturer in violation is subject to a civil penalty up to \$5,000 for the first offense. Repeat violators are subject to a civil penalty not to exceed \$10,000 for each repeat offense. Penalties received must be placed in the State Toxics Control Account and may be appealed to the Pollution Control Hearings Board.

Votes on Final Passage:

Senate	25	24	
House	60	37	(House amended)
Senate	27	22	(Senate concurred)

Effective: July 28, 2019