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**SENATE BILL 5135**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Rolfes, Frockt, Salomon, Palumbo, Cleveland, Carlyle, Kuderer, Saldaña, Billig, Dhingra, Pedersen, Wellman, Hunt, Das, McCoy, Lias, Darneille, Hasegawa, Keiser, and Van De Wege

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

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

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

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

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

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

12 (4) "Manufacturer" means any person, firm, association,  
13 partnership, corporation, governmental entity, organization, or joint  
14 venture that produces a product or is an importer or domestic  
15 distributor of a product sold or offered for sale in or into the  
16 state.

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

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

- 1 (7) "Phenolic compounds" means alkylphenol ethoxylates and  
2 bisphenols.
- 3 (8) "Phthalates" means synthetic chemical esters of phthalic  
4 acid.
- 5 (9) "Polychlorinated biphenyls" or "PCBs" means chemical forms  
6 that consist of two benzene rings joined together and containing one  
7 to ten chlorine atoms attached to the benzene rings.
- 8 (10) "Priority chemical" means a chemical or chemical class used  
9 as, used in, or put in a consumer product including:
- 10 (a) Perfluoroalkyl and polyfluoroalkyl substances;  
11 (b) Phthalates;  
12 (c) Organohalogen flame retardants;  
13 (d) Flame retardants, as identified by the department under  
14 chapter 70.240 RCW;  
15 (e) Phenolic compounds;  
16 (f) Polychlorinated biphenyls; or  
17 (g) A chemical identified by the department as a priority  
18 chemical under section 2 of this act.
- 19 (11) "Safer alternative" means an alternative that is less  
20 hazardous to humans or the environment than the existing chemical or  
21 chemical process. A safer alternative to a particular chemical may  
22 include a chemical substitute or a change in materials or design that  
23 eliminates the need for a chemical alternative.
- 24 (12) "Sensitive population" means a category of people that is  
25 identified by the department that may be or is disproportionately or  
26 more severely affected by priority chemicals, such as:
- 27 (a) Men and women of childbearing age;  
28 (b) Infants and children;  
29 (c) Pregnant women;  
30 (d) Communities that are highly impacted by toxic chemicals;  
31 (e) Persons with occupational exposure; and  
32 (f) The elderly.
- 33 (13) "Sensitive species" means a species or grouping of animals  
34 that is identified by the department that may be or is  
35 disproportionately or more severely affected by priority chemicals,  
36 such as:
- 37 (a) Southern resident killer whales;  
38 (b) Salmon; and  
39 (c) Forage fish.

1        NEW SECTION.    **Sec. 2.**    Every five years, and consistent with the  
2 timeline established in section 5 of this act, the department must  
3 identify at least five priority chemicals that meet at least one of  
4 the following:

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

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

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

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

12            (a) In consumer products under chapter 70.240, 70.76, 70.95G,  
13 70.280, 70.285, 70.95M, or 70.75A RCW; or

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

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

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

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

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

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

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

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

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

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

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

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

4 NEW SECTION. **Sec. 3.** (1) Every five years, and consistent with  
5 the timeline established in section 5 of this act, the department  
6 shall identify priority consumer products that are a significant  
7 source of or use of priority chemicals.

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

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

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

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

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

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

26 (f) Whether the department has already identified the consumer  
27 product in a chemical action plan completed under chapter 70.105 RCW  
28 as a source of a priority chemical or other reports or information  
29 gathered under chapter 70.240, 70.76, 70.95G, 70.280, 70.285, 70.95M,  
30 or 70.75A RCW.

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

35 (4) To assist with identifying priority consumer products under  
36 this section and making determinations as authorized under section 4  
37 of this act, the department may request a manufacturer to submit a  
38 notice to the department that contains the information specified in  
39 RCW 70.240.040 (1) through (6) or other information relevant to

1 subsection (2)(a) through (d) of this section. The manufacturer must  
2 provide the notice to the department no later than six months after  
3 receipt of such a demand by the department.

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

7 (i) Food or beverages;

8 (ii) Tobacco products;

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

11 (iv) Finished products regulated by the federal aviation  
12 administration; and

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

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

17 NEW SECTION. **Sec. 4.** (1) Every five years, and consistent with  
18 the timeline established in section 5 of this act, the department  
19 must determine regulatory actions to increase transparency and to  
20 reduce the use of priority chemicals in priority consumer products.  
21 The department may:

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

23 (b) Require a manufacturer to provide notice of the use of a  
24 priority chemical or class of priority chemicals consistent with RCW  
25 70.240.040; or

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

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

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

33 (i) A list of products containing priority chemicals;

34 (ii) Product ingredients;

35 (iii) Information regarding exposure and chemical hazard; and

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

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

4 (a) Safer alternatives are feasible and available;

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

8 (c) Another state or nation has restricted the priority chemical  
9 or members of a class of priority chemicals in a product; or

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

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

16 NEW SECTION. **Sec. 5.** (1)(a) By June 1, 2020, and consistent  
17 with section 3 of this act, the department shall identify priority  
18 consumer products that are a significant source of or use of priority  
19 chemicals specified in section 1(10) (a) through (f) of this act.

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

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

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

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

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

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

1 (3) When identifying priority chemicals and priority consumer  
2 products under this chapter, the department must notify the public of  
3 the selection, the basis for the selection, and a draft schedule for  
4 making determinations. The notice must be published in the Washington  
5 State Register. The department shall provide the public with an  
6 opportunity for review and comment of the regulatory determinations.

7 NEW SECTION. **Sec. 6.** (1) A manufacturer that submits  
8 information or records to the department under this chapter may  
9 request that the information or records be made available only for  
10 the confidential use of the department, the director, or the  
11 appropriate division of the department. The director shall give  
12 consideration to the request and if this action is not detrimental to  
13 the public interest and is otherwise within accord with the policies  
14 and purposes of chapter 43.21A RCW, the director must grant the  
15 request for the information to remain confidential as authorized in  
16 RCW 43.21A.160. Under the procedures established under RCW  
17 43.21A.160, the director must keep confidential any records furnished  
18 by a manufacturer under this chapter that relate to proprietary  
19 manufacturing processes or chemical formulations used in products or  
20 processes.

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

31 NEW SECTION. **Sec. 7.** (1) A manufacturer violating a requirement  
32 of this chapter, a rule adopted under this chapter, or an order  
33 issued under this chapter, is subject to a civil penalty not to  
34 exceed five thousand dollars for each violation in the case of a  
35 first offense. Manufacturers who are repeat violators are subject to  
36 a civil penalty not to exceed ten thousand dollars for each repeat  
37 offense.

1 (2) Any penalty provided for in this section, and any order  
2 issued by the department under this chapter, may be appealed to the  
3 pollution control hearings board.

4 (3) All penalties collected under this chapter shall be deposited  
5 in the state toxics control account created in RCW 70.105D.070.

6 NEW SECTION. **Sec. 8.** (1) The department may adopt rules as  
7 necessary for the purpose of implementing, administering, and  
8 enforcing this chapter.

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

12 **Sec. 9.** RCW 70.240.040 and 2008 c 288 s 5 are each amended to  
13 read as follows:

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

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

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

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

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

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

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



1       **Sec. 10.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to  
2 read as follows:

3       (1) The hearings board shall only have jurisdiction to hear and  
4 decide appeals from the following decisions of the department, the  
5 director, local conservation districts, the air pollution control  
6 boards or authorities as established pursuant to chapter 70.94 RCW,  
7 local health departments, the department of natural resources, the  
8 department of fish and wildlife, the parks and recreation commission,  
9 and authorized public entities described in chapter 79.100 RCW:

10       (a) Civil penalties imposed pursuant to RCW 18.104.155,  
11 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170,  
12 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
13 90.56.310, 90.56.330, and 90.64.102.

14       (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 7 of this act,  
16 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

17       (c) Except as provided in RCW 90.03.210(2), the issuance,  
18 modification, or termination of any permit, certificate, or license  
19 by the department or any air authority in the exercise of its  
20 jurisdiction, including the issuance or termination of a waste  
21 disposal permit, the denial of an application for a waste disposal  
22 permit, the modification of the conditions or the terms of a waste  
23 disposal permit, or a decision to approve or deny an application for  
24 a solid waste permit exemption under RCW 70.95.300.

25       (d) Decisions of local health departments regarding the grant or  
26 denial of solid waste permits pursuant to chapter 70.95 RCW.

27       (e) Decisions of local health departments regarding the issuance  
28 and enforcement of permits to use or dispose of biosolids under RCW  
29 70.95J.080.

30       (f) Decisions of the department regarding waste-derived  
31 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
32 decisions of the department regarding waste-derived soil amendments  
33 under RCW 70.95.205.

34       (g) Decisions of local conservation districts related to the  
35 denial of approval or denial of certification of a dairy nutrient  
36 management plan; conditions contained in a plan; application of any  
37 dairy nutrient management practices, standards, methods, and  
38 technologies to a particular dairy farm; and failure to adhere to the  
39 plan review and approval timelines in RCW 90.64.026.

1 (h) Any other decision by the department or an air authority  
2 which pursuant to law must be decided as an adjudicative proceeding  
3 under chapter 34.05 RCW.

4 (i) Decisions of the department of natural resources, the  
5 department of fish and wildlife, and the department that are  
6 reviewable under chapter 76.09 RCW, and the department of natural  
7 resources' appeals of county, city, or town objections under RCW  
8 76.09.050(7).

9 (j) Forest health hazard orders issued by the commissioner of  
10 public lands under RCW 76.06.180.

11 (k) Decisions of the department of fish and wildlife to issue,  
12 deny, condition, or modify a hydraulic project approval permit under  
13 chapter 77.55 RCW.

14 (l) Decisions of the department of natural resources that are  
15 reviewable under RCW 78.44.270.

16 (m) Decisions of an authorized public entity under RCW 79.100.010  
17 to take temporary possession or custody of a vessel or to contest the  
18 amount of reimbursement owed that are reviewable by the hearings  
19 board under RCW 79.100.120.

20 (2) The following hearings shall not be conducted by the hearings  
21 board:

22 (a) Hearings required by law to be conducted by the shorelines  
23 hearings board pursuant to chapter 90.58 RCW.

24 (b) Hearings conducted by the department pursuant to RCW  
25 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
26 90.44.180.

27 (c) Appeals of decisions by the department under RCW 90.03.110  
28 and 90.44.220.

29 (d) Hearings conducted by the department to adopt, modify, or  
30 repeal rules.

31 (3) Review of rules and regulations adopted by the hearings board  
32 shall be subject to review in accordance with the provisions of the  
33 administrative procedure act, chapter 34.05 RCW.

34 NEW SECTION. **Sec. 11.** If any provision of this act or its  
35 application to any person or circumstance is held invalid, the  
36 remainder of the act or the application of the provision to other  
37 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 12.**    Sections 1 through 8 and 13 of this act  
2    constitute a new chapter in Title 70 RCW.

3        NEW SECTION.    **Sec. 13.**    This act may be known and cited as the  
4    pollution prevention for healthy people and Puget Sound act.

--- **END** ---