

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1694

Chapter 264, Laws of 2022
(partial veto)

67th Legislature
2022 Regular Session

PRIORITY CHEMICALS IN CONSUMER PRODUCTS—PFAS CHEMICALS

EFFECTIVE DATE: June 9, 2022

Passed by the House March 10, 2022
Yeas 83 Nays 14

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate March 9, 2022
Yeas 46 Nays 3

DENNY HECK

President of the Senate

Approved March 31, 2022 4:31 PM with
the exception of sections 4 and 5,
which are vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1694** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

April 1, 2022

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1694

AS AMENDED BY THE SENATE

Passed Legislature - 2022 Regular Session

State of Washington 67th Legislature 2022 Regular Session

By House Environment & Energy (originally sponsored by Representatives Berry, Fitzgibbon, Ramel, Bateman, Duerr, Callan, Macri, Harris-Talley, Hackney, and Frame)

READ FIRST TIME 01/31/22.

1 AN ACT Relating to logistical processes for the regulation of
2 priority chemicals in consumer products; amending RCW 70A.350.050,
3 70A.350.030, 70A.350.020, and 70A.350.040; and adding a new section
4 to chapter 70A.350 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 70A.350
7 RCW to read as follows:

8 (1) For purposes of the regulatory process established in this
9 chapter, the department may consider any product identified in the
10 department's final PFAS chemical action plan dated November 2021 as a
11 source of or use of PFAS chemicals to be a priority consumer product
12 under this chapter. No additional action, including publication in
13 the Washington State Register, is required for the department to
14 designate such a product as a priority consumer product for purposes
15 of this chapter. For such products, the department may, under the
16 process established in RCW 70A.350.040, determine regulatory actions
17 and adopt rules to implement those regulatory determinations.

18 (2) Firefighting personal protective equipment, as defined in RCW
19 70A.400.005, is established as a priority consumer product for PFAS
20 chemicals.

1 (3) For the products identified in this section, the department
2 is directed to:

3 (a) Determine an initial set of regulatory actions under this
4 chapter by June 1, 2024; and

5 (b) Adopt rules to implement the initial set of determinations of
6 regulatory actions under (a) of this subsection by December 1, 2025.

7 **Sec. 2.** RCW 70A.350.050 and 2020 c 20 s 1455 are each amended to
8 read as follows:

9 (1)(a) By June 1, 2020, and consistent with RCW 70A.350.030, the
10 department shall identify priority consumer products that are a
11 significant source of or use of priority chemicals specified in RCW
12 70A.350.010(12) (a) through (f).

13 (b) By June 1, 2022, and consistent with RCW 70A.350.040, the
14 department must determine regulatory actions regarding the priority
15 chemicals and priority consumer products identified in (a) of this
16 subsection. The deadline of June 1, 2022, does not apply to the
17 priority consumer products identified in section 1 of this act.

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

20 (2)(a) By June 1, 2024, and every five years thereafter, the
21 department shall select at least five priority chemicals specified in
22 RCW 70A.350.010(12) (a) through (g) that are identified consistent
23 with RCW 70A.350.020.

24 (b) By June 1, 2025, and every five years thereafter, the
25 department must identify priority consumer products that contain any
26 new priority chemicals after notifying the appropriate committees of
27 the legislature, consistent with RCW 70A.350.030.

28 (c) By June 1, 2027, and every five years thereafter, the
29 department must determine regulatory actions for any priority
30 chemicals in priority consumer products identified under (b) of this
31 subsection, consistent with RCW 70A.350.040.

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

35 (3)(a) The designation of priority chemicals by the department
36 does not take effect until the adjournment of the regular legislative
37 session immediately following the identification of chemicals, in
38 order to allow an opportunity for the legislature to add to, limit,

1 or otherwise amend the list of priority chemicals to be considered by
2 the department.

3 (b) The designation of priority consumer products by the
4 department does not take effect until the adjournment of the regular
5 legislative session immediately following the identification of
6 priority consumer products, in order to allow an opportunity for the
7 legislature to add to, limit, or otherwise amend the list of priority
8 consumer products to be considered by the department.

9 (c) The determination of regulatory actions by the department
10 does not take effect until the adjournment of the regular legislative
11 session immediately following the determination by the department, in
12 order to allow an opportunity for the legislature to add to, limit,
13 or otherwise amend the regulatory determinations by the department.

14 (d) Nothing in this subsection (3) limits the authority of the
15 department to:

16 (i) Begin to identify priority consumer products for a priority
17 chemical prior to the effective date of the designation of a priority
18 chemical;

19 (ii) Begin to consider possible regulatory actions prior to the
20 effective date of the designation of a priority consumer product; or

21 (iii) Initiate a rule-making process prior to the effective date
22 of a determination of a regulatory action.

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

31 (b)(i) By June 1, 2020, the department must create a stakeholder
32 advisory process to provide expertise, input, and a review of the
33 department's rationale for identifying priority chemicals and
34 priority consumer products and proposed regulatory determinations.
35 The input received from a stakeholder process must be considered and
36 addressed when adopting rules.

37 (ii) The stakeholder process must include, but is not limited to,
38 representatives from: Large and small business sectors; community,
39 environmental, and public health advocacy groups; local governments;

1 affected and interested businesses; an expert in scientific data
2 analysis; and public health agencies.

3 **Sec. 3.** RCW 70A.350.030 and 2020 c 20 s 1453 are each amended to
4 read as follows:

5 (1) Every five years, and consistent with the timeline
6 established in RCW 70A.350.050, the department, in consultation with
7 the department of health, shall identify priority consumer products
8 that are a significant source of or use of priority chemicals. The
9 department must submit a report to the appropriate committees of the
10 legislature at the time that it identifies a priority consumer
11 product.

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

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

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

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

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

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

30 (f) The availability and feasibility of safer alternatives; and

31 (g) Whether the department has already identified the consumer
32 product in a chemical action plan completed under chapter 70A.300 RCW
33 as a source of a priority chemical or other reports or information
34 gathered under chapter 70A.430, 70A.405, 70A.222, 70A.335, 70A.340,
35 70A.230, or 70A.400 RCW.

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

1 (4) To assist with identifying priority consumer products under
2 this section and making determinations as authorized under RCW
3 70A.350.040, the department may (~~request~~) order a manufacturer to
4 submit a notice to the department that contains the information
5 specified in RCW 70A.430.060 (1) through (6) or other information
6 relevant to subsection (2)(a) through (d) of this section. The
7 manufacturer must provide the notice to the department no later than
8 six months after receipt of such a demand by the department.

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

- 12 (i) Plastic shipping pallets manufactured prior to 2012;
- 13 (ii) Food or beverages;
- 14 (iii) Tobacco products;
- 15 (iv) Drug or biological products regulated by the United States
16 food and drug administration;
- 17 (v) Finished products certified or regulated by the federal
18 aviation administration or the department of defense, or both, when
19 used in a manner that was certified or regulated by such agencies,
20 including parts, materials, and processes when used to manufacture or
21 maintain such regulated or certified finished products;
- 22 (vi) Motorized vehicles, including on and off-highway vehicles,
23 such as all-terrain vehicles, motorcycles, side-by-side vehicles,
24 farm equipment, and personal assistive mobility devices; and
- 25 (vii) Chemical products used to produce an agricultural
26 commodity, as defined in RCW 17.21.020.

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

29 (6) For an electronic product identified by the department as a
30 priority consumer product under this section, the department may not
31 make a regulatory determination under RCW 70A.350.040 to restrict or
32 require the disclosure of a priority chemical in an inaccessible
33 electronic component of the electronic product.

34 ***Sec. 4. RCW 70A.350.020 and 2020 c 20 s 1452 are each amended**
35 **to read as follows:**

36 **Every five years, and consistent with the timeline established in**
37 **RCW 70A.350.050, the department, in consultation with the department**
38 **of health, must report to the appropriate committees of the**

1 legislature its decision to designate at least five priority
2 chemicals that meet at least one of the following:

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

5 (a) High priority chemical of high concern for children under
6 chapter 70A.430 RCW; or

7 (b) Persistent, bioaccumulative toxin under chapter 70A.300 RCW;

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

10 (a) In consumer products under chapter 70A.430, 70A.405, 70A.222,
11 70A.335, 70A.340, 70A.230, or 70A.400 RCW; or

12 (b) As a hazardous substance under chapter 70A.300 or 70A.305
13 RCW; or

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

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

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

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

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

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

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

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

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

37 (i) Reliable information regarding potential exposures to the
38 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.*

**Sec. 4 was vetoed. See message at end of chapter.*

4 **Sec. 5. RCW 70A.350.040 and 2020 c 20 s 1454 are each amended*
5 *to read as follows:*

6 (1) *Every five years, and consistent with the timeline*
7 *established in RCW 70A.350.050, the department, in consultation with*
8 *the department of health, must determine regulatory actions to*
9 *increase transparency and to reduce the use of priority chemicals in*
10 *priority consumer products. The department must submit a report to*
11 *the appropriate committees of the legislature at the time that it*
12 *determines regulatory actions. The department may:*

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

14 (b) *Require a manufacturer to provide notice of the use of a*
15 *priority chemical or class of priority chemicals consistent with RCW*
16 *70A.430.060; or*

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

21 (2) (a) *The department may order a manufacturer to submit*
22 *information consistent with RCW 70A.350.030(4).*

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

24 (i) *A list of products containing priority chemicals;*

25 (ii) *Product ingredients;*

26 (iii) *Information regarding exposure and chemical hazard; and*

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

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

32 (a) *Safer alternatives are feasible and available; and*

33 (b) (i) *The restriction will reduce a significant source of or use*
34 *of a priority chemical; or*

35 (ii) *The restriction is necessary to protect the health of*
36 *sensitive populations or sensitive species.*

37 (4) *When determining regulatory actions under this section, the*
38 *department may consider, in addition to the criteria pertaining to*

1 *the selection of priority chemicals and priority consumer products*
2 *that are specified in RCW 70A.350.020 and 70A.350.030, whether:*

3 *(a) The priority chemical or members of a class of priority*
4 *chemicals are functionally necessary in the priority consumer*
5 *product; and*

6 *(b) A restriction would be consistent with regulatory actions*
7 *taken by another state or nation on a priority chemical or members of*
8 *a class of priority chemicals in a product.*

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

**Sec. 5 was vetoed. See message at end of chapter.*

Passed by the House March 10, 2022.

Passed by the Senate March 9, 2022.

Approved by the Governor March 31, 2022, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 2022.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 4 and 5, Engrossed Substitute House Bill No. 1694 entitled:

"AN ACT Relating to logistical processes for the regulation of priority chemicals in consumer products."

Sections 4 and 5 of this bill are existing statutes related to two different reports that must be provided to the Legislature regarding priority chemicals. However, the proposed changes that were made to these statutes in the original bill were removed as this bill moved through the legislative process, leaving the current statutes unchanged. I am vetoing sections 4 and 5 of this bill because they do not make any amendments to the underlying statutes in question.

For these reasons I have vetoed Sections 4 and 5 of Engrossed Substitute House Bill No. 1694.

With the exception of Sections 4 and 5, Engrossed Substitute House Bill No. 1694 is approved."

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