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**HOUSE BILL 1164**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Doglio, Fitzgibbon, Reed, Berry, Ramel, Macri, Lekanoff, Duerr, Pollet, and Kloba

AN ACT Relating to providing for the responsible management of appliances containing harmful gases and other materials; amending RCW 43.21B.110, 43.21B.300, and 70A.65.260; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 70A RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  LEGISLATIVE INTENT. (1) The legislature finds that Washington has taken numerous steps to reduce emissions of ozone-depleting refrigerants and greenhouse gas refrigerants, including by establishing maximum global warming potentials of new appliances introduced into commerce, and initiating a refrigerant management program to address leaks from equipment in operation. State law also prohibits the intentional venting of refrigerants, including refrigerants contained in appliances that reach the end of their useful life. However, the current regulatory environment notably lacks a mechanism to ensure that refrigerants and greenhouse gases contained in foams in appliances that reach the end of their life are managed appropriately. Unfortunately, a misplaced incentive often currently exists for persons disposing of an unwanted appliance that makes it less costly and easier to dispose of refrigerants contained in an appliance through illegal venting, which is functionally challenging to prevent or to take enforcement actions against, rather than through environmentally responsible practices. In addition, the current regulatory environment does not establish incentives or otherwise ensure that greenhouse gas-containing foam in appliances will be managed in an environmentally responsible way.

(2) Federal law, through its responsible appliance disposal program, establishes voluntary achievable and environmentally friendly appliance management standards that many people disposing of unwanted appliances already abide by. In conjunction with utility incentive programs that spur the replacement of energy-inefficient old appliances, there already exists the beginnings of the infrastructure needed to more comprehensively manage greenhouse gas-containing appliances at the end of their useful life. One gap to ensuring this environmentally preferable outcome is a consistent funding mechanism to use and expand this appliance collection recycling infrastructure. Other jurisdictions in North America and around the world have addressed this funding gap by establishing stewardship programs for the funding and management of unwanted appliances. Appliance producer responsibility programs offer a significant opportunity to reduce greenhouse gas emissions that are not currently addressed by the state's other greenhouse gas emissions programs, and do so at a relatively low cost per ton of emissions reductions, and with other environmental benefits from the salvage and recycling of other appliance components.

(3) Therefore, it is the intent of the legislature to establish a responsible appliance disposal extended producer responsibility program.

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

(1) "Appliance stewardship organization" or "stewardship organization" means a producer that directly implements an appliance stewardship plan required under this chapter or a nonprofit organization designated by a producer or group of producers to implement an appliance stewardship plan required under this chapter.

(2) "Category" means, with respect to the performance goals and reporting requirements of covered appliances, each of the following:

(a) Refrigerating and freezing appliances, designed and intended for residential use, for the conservation or storage of food and beverages and other materials including, but not limited to, refrigerators, freezers, refrigerating wine cellars, wine coolers, and water dispensers;

(b) Refrigerating and freezing appliances, designed and intended for commercial or institutional use, for the conservation or storage of food or beverages and other materials including, but not limited to, refrigerators, freezers, cooling units, refrigerating wine cellars, wine coolers, refrigerated displays, ice machines, and refrigerated automatic food or beverage vending machines;

(c) Air conditioners, heat pumps, and dehumidifiers; and

(d) The following appliances designed and intended for residential, commercial, or institutional use: Ranges; built-in ovens; built-in cooking surfaces; dishwashers; washing machines; and dryers.

(3)(a) "Covered appliances" means electric or gas appliances that are:

(i) Of a type that typically contain more than negligible volumes of refrigerants or insulating foam with a potential to release greenhouse gases at the end of the appliance's useful life;

(ii) Designed or intended for residential, commercial, or institutional purposes; and

(iii) Used for cooking, the conservation or storage of food or beverages, the washing or drying of dishware, cloth, or clothing, or to control ventilation, the temperature, or humidity in a room or dwelling.

(b) "Covered appliances" include, but are not limited to: Refrigerators; freezers; wine cellars and coolers; water dispensers; heat pumps; portable or window air conditioners; dehumidifiers; dishwashers; washing machines; and dryers.

(c) "Covered appliances" does not include:

(i) Covered appliances of the categories specified in subsection (2)(a), (c), or (d) of this section whose weight is greater than 1,000 pounds;

(ii) Appliances and air conditioners that form an integral part of a structure to ensure its usefulness or facilitate its use including, but not limited to, ice rink refrigeration systems and central air conditioning systems of commercial or residential multifamily buildings;

(iii) Mobile air conditioning contained in motor vehicles, rail and trains, aircraft, watercraft, recreational vehicles, recreational trailers, and campers; and

(iv) Other appliances identified as infeasible to include in rules adopted by the department.

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

(5) "Final disposition" means the point at which a covered appliance and each of its component parts:

(a) Are reused;

(b) Are recycled; or

(c) Are delivered to a disposal site, as that term is defined in RCW 70A.205.015.

(6)(a) "Producer" means with respect to a covered appliance that is sold, offered for sale, or distributed for sale in or into the state for use in the state:

(i) The person that manufactures the covered appliance and sells or offers for sale in or into the state that appliance under the person's own brand;

(ii) If there is no person to which (a)(i) of this subsection applies, the owner of a brand under which the covered appliance is sold, offered for sale, or distributed in or into the state;

(iii) If there is no person to which (a)(i) or (ii) of this subsection applies, the licensee of a brand under which the covered appliance is sold, offered for sale, or distributed in or into the state;

(iv) If there is no person to which (a)(i), (ii), or (iii) of this subsection applies, a person that imports the covered appliance into the United States for sale or distribution into Washington;

(v) If there is no person described in (a)(i), (ii), (iii), or (iv) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered appliance in or into the state; or

(vi) A person who notifies the department of the person's election to assume responsibility in lieu of a producer as identified under (a)(i) through (v) of this subsection. In the event the person that assumes responsibility fails to comply with the requirements of this chapter, the producer identified under (a)(i) through (v) of this subsection remains fully responsible for compliance with the requirements of this chapter.

(b) A retail establishment that sells covered appliances under its own brand, or that otherwise meets the definition of a producer in (a) of this subsection, is a producer for purposes of this chapter.

(7) "Program" means a program implemented by an appliance stewardship organization consistent with the requirements of this chapter.

(8) "RAD account" means the responsible appliance disposal account created in section 16 of this act.

(9) "RAD standards" means the voluntary responsible appliance disposal standards applicable to partners choosing to participate in the United States environmental protection agency's responsible appliance disposal program including, but not limited to, standards that provide for:

(a) The proper recovery and reclamation or destruction of refrigerants;

(b) The proper recovery and reclamation or destruction of foams;

(c) The safe disposal of hazardous waste products including, but not limited to, polychlorinated biphenyls and mercury;

(d) The proper recycling of used oil; and

(e) To the maximum extent possible, the recycling of all recoverable, durable materials including metal, plastic, and glass.

(10) "Regulated refrigerant" has the same meaning as defined in RCW 70A.60.010.

(11) "Retail establishment" means a person who sells covered appliances in or into this state or offers or otherwise makes available covered appliances to a customer, including other businesses, for use in this state.

NEW SECTION. **Sec.**  REQUIREMENT THAT PRODUCERS IMPLEMENT A PROGRAM. (1) Beginning January 1, 2024, each producer selling covered appliances in or into the state of Washington must register with the department through an appliance stewardship organization.

(2)(a) Beginning July 1, 2027, each producer selling covered appliances in or into the state of Washington shall participate in an approved appliance stewardship plan through participation in and appropriate funding of an appliance stewardship organization.

(b) A producer that does not participate in an appliance stewardship organization and appliance stewardship plan may not sell covered appliances in or into Washington.

NEW SECTION. **Sec.**  STEWARDSHIP PLAN COMPONENTS. (1) By January 1, 2027, or no less than six months before a plan begins to be implemented, each appliance stewardship organization must submit a plan to the department for review and approval. An appliance stewardship organization may submit a plan at any time to the department for review and approval. The department must review and may approve a plan based on whether it contains and adequately addresses the following components:

(a) Lists and provides contact information for each producer and covered appliance brand participating in the plan;

(b) Identifies the covered appliance models of each producer participating in the plan;

(c) Proposes the implementation mechanisms through which the program expects to achieve the performance goals established in section 5 of this act, and describes the methods used to calculate whether the program is achieving its performance goals;

(d) Describes how the appliance stewardship organization will help make retail establishments aware of their obligation to sell only covered appliances of producers participating in an approved plan;

(e) Includes a detailed and comprehensive list of promotion activities to be undertaken as part of the educational and outreach program required in section 7 of this act;

(f) Describes the mechanisms used for the collection of covered appliances directly or indirectly from consumers, consistent with section 6 of this act, including the financial incentives described in section 8 of this act that are to be paid to persons that furnish covered appliances for collection by the program;

(g) Describe how the program will, consistent with RAD standards and other environmental best management practices, manage components of collected appliances including, but not limited to, scrap metal, compressors, glass, foam, plastic, nonferrous metal, oil, refrigerants, batteries, and components potentially containing mercury or polychlorinated biphenyls;

(h) Identifies proposed brokers, transporters, processors, and facilities to be used by the program for the recycling and final disposition of covered appliances; and

(i) Describes the financing methods to implement the plan, consistent with section 8 of this act, including how producer fees and fee modulation will incorporate design for recycling and resource conservation as objectives.

(2) If required by the department, an appliance stewardship organization must submit a new plan to the department for approval:

(a) When there is a change to the method of financing plan implementation under section 8 of this act;

(b) If there are significant changes to the methods of collection, transport, or end-of-life management of covered appliances under section 6 of this act that are not covered by the plan. The department may, by rule, identify the types of significant changes that require a new plan to be submitted to the department for approval;

(c) No less than every five years; and

(d) Consistent with subsection (4) of this section.

(3) If required by the department, an appliance stewardship organization must provide plan amendments to the department for approval:

(a) After a producer begins or ceases to participate in an appliance stewardship organization, as part of a quarterly update submitted to the department that also includes a current identification of the producers and brands participating in the plan and their covered appliance models; or

(b) When adding or removing a processor or transporter, as part of a quarterly update submitted to the department.

(4) No earlier than five years after the initial approval of a plan, the department may require an appliance stewardship organization to submit a revised plan, which may include improvements to the collection mechanisms used by the plan, the amount of the incentive payments made by the stewardship organization to persons who furnish unwanted covered appliances, or increased expenditures dedicated to education and outreach, if the approved plan does not meet the performance goals under section 5 of this act.

(5) As a supplement or component of all new or updated plans under this chapter submitted by an appliance stewardship organization, the stewardship organization must submit a contingency plan demonstrating how the activities in the plan will continue to be carried out by some other entity, if needed, such as an escrow company:

(a) Until such time as a new plan is submitted and approved by the department;

(b) Upon the expiration of an approved plan;

(c) In the event that the stewardship organization has been notified by the department that they must transfer implementation responsibility for the program to a different stewardship organization;

(d) In the event that the stewardship organization notifies the department that it will cease to implement an approved plan; or

(e) In any other event that the stewardship organization can no longer carry out plan implementation.

NEW SECTION. **Sec.**  PERFORMANCE GOALS. (1) The stewardship organization must achieve the following recovery rates, comparing covered appliances collected and managed by the program relative to the number of covered appliances sold in or into Washington, by category of covered appliance:

(a) For the covered product categories specified in section 2(2)(a) of this act: 75 percent in 2027; 80 percent in 2028; 85 percent in 2029; and 90 percent beginning in 2030 and each year thereafter;

(b) For the covered product categories specified in section 2(2)(b) of this act: 35 percent in 2027, increasing by five percent per year until the rate reaches 80 percent;

(c) For the covered product categories specified in section 2(2)(c) of this act: 30 percent in 2027, increasing by five percent per year until the rate reaches 70 percent; and

(d) For covered product categories specified in section 2(2)(d) of this act: 70 percent as of 2028, increasing by five percent per year until the rate reaches 90 percent.

(2) The department may, by rule, increase the rates for a given year specified in subsection (1) of this section.

(3) The department must adopt rules or guidance to specify the methods to be used by a stewardship organization in the calculation of recovery rates achieved consistent with this section including, but not limited to:

(a) Identifying the sales year against which a covered product category's recovery rate is to be calculated, assuming a typical lifespan for each category of covered product; and

(b) How the stewardship organization will identify and report to the department, using the best information made available to the stewardship organization from producers participating in the stewardship organization, the historical sales data for each year pertinent to the calculation of the recovery rate.

NEW SECTION. **Sec.**  COLLECTION AND MANAGEMENT. (1) An appliance stewardship organization must provide for the collection of covered appliances from any person, business, government agency, or nonprofit organization. A fee may not be charged at the time unwanted covered appliances are collected at a collection site or directly from a person and a financial incentive must be paid to the person from whom the covered appliance is collected, consistent with section 8 of this act.

(2) At a minimum, each stewardship organization must provide statewide opportunities for the collection of covered appliances through:

(a) Collection sites at which a person may deposit an unwanted covered appliance. At a minimum, a stewardship organization must provide for at least one permanent collection site in each county unless granted an infeasibility waiver from this requirement by the department; and

(b) The direct door-to-door collection of unwanted covered appliances from any residence, commercial business, or institution in any geographic location in Washington where a covered appliance becomes unwanted.

(3)(a) Collection sites and any businesses hired by a stewardship organization to collect, transport, process, recycle, or otherwise manage unwanted covered appliances, including entities hired to deliver newly purchased covered appliances to customers and simultaneously take away unwanted covered appliances from those customers, must adhere to safety requirements and other procedures developed by the appliance stewardship organization. Collection sites relied upon by a stewardship organization to fulfill its obligations under this section may be permanent locations, temporary events, or both.

(b) Except as provided in (c) of this subsection, a stewardship organization must manage covered appliances consistent with RAD standards as they existed as of January 1, 2023.

(c) By rule, the department may require an appliance stewardship organization to manage covered appliances consistent with an updated version of RAD standards adopted by the United States environmental protection agency after January 1, 2023.

(4)(a) A retail establishment may voluntarily elect to serve as a collection site for some or all types of covered appliances.

(b) Local governments that operate household hazardous waste facilities or other solid waste facilities may voluntarily elect for these facilities to serve as collection sites under the program.

(c) Stewardship organizations must use existing public and private appliance collection services and facilities where cost-effective, mutually agreeable, and otherwise practicable.

(d) Programs must use as a collection site for covered appliances any retail establishment, wholesaler, municipality, solid waste management facility, or other entity that meets the collection site criteria provided in this section and the criteria for collection locations in the approved plan, upon the submission of a request by the entity to the appliance stewardship organization to serve as a collection site.

(e) A stewardship organization may suspend or terminate a collection site or service that does not adhere to the collection site criteria in the approved plan and that poses an immediate health and safety concern. The stewardship organization must notify the department upon suspending or terminating a collection site or service.

NEW SECTION. **Sec.**  EDUCATION AND OUTREACH. (1) Each appliance stewardship organization must carry out promotional activities in support of plan implementation including, but not limited to:

(a) The development and maintenance of a website;

(b) The development and distribution of periodic press releases and articles;

(c) The development and placement of graphic advertisements for use on social media or other relevant media platforms;

(d) The development of promotional materials about the program and the restriction on the disposal of covered appliances in section 14 of this act to be used by retail establishments, government agencies, and nonprofit organizations; and

(e) The development and implementation of outreach and educational resources targeted to overburdened communities and vulnerable populations identified by the department under chapter 70A.02 RCW that are conceptually, linguistically, and culturally accurate for the communities served and reach the state's diverse ethnic populations, including through meaningful consultation with communities that bear disproportionately higher levels of adverse environmental and social justice impacts.

(2) Each appliance stewardship organization must provide:

(a) Consumer-focused educational promotional materials to each collection location used by the program and at each retailer that sells covered appliances; and

(b) Safety and best environmental management practice information related to covered appliance collection activities to the operator of each collection site and transporters of unwanted covered appliances, including information related to compliance with the requirements of RCW 70A.60.070 and appropriate protocols to reduce risks of release of greenhouse gases or hazardous materials.

(3) A producer that supplies covered appliances to a retail establishment must, upon request by the retail establishment, provide the retail establishment educational materials developed by the stewardship organization in consultation with stakeholders describing collection opportunities for covered appliances or must arrange for the program implementing the plan in which the producer participates to provide these materials.

(4) If multiple appliance stewardship organizations are implementing plans approved by the department, the appliance stewardship organizations must coordinate in carrying out their education and outreach responsibilities under this section and must include in their annual reports to the department a summary of their coordinated education and outreach efforts.

(5) During the first year of program implementation and every five years thereafter, each appliance stewardship organization must carry out a survey of public awareness to determine the effectiveness of the requirements of the program established under this chapter, including the provisions of section 14 of this act. Each appliance stewardship organization must share the results of the public awareness surveys with the department.

NEW SECTION. **Sec.**  FINANCIAL REQUIREMENTS. (1) Each appliance stewardship organization must ensure adequate funding is available to fully implement its appliance stewardship plan, including the implementation of aspects of the plan addressing:

(a) Appliance collection, transport, and processing;

(b) Education and outreach;

(c) Program evaluation and reporting to the department;

(d) The payments of a financial incentive to persons that furnish unwanted covered appliances to the program for collection; and

(e) The payment of administrative fees to the department.

(2) An appliance stewardship organization must develop, and continually improve over the years of program implementation, a system to collect charges from participating producers to cover the costs of plan implementation in an environmentally sound and socially just manner. The system of charges established by the stewardship organization must use eco-modulated fees to encourage the use of design attributes that reduce the environmental impacts of covered appliances. Examples of eco-modulated fees include, but are not limited to:

(a) Encouraging designs intended to facilitate reuse and recycling;

(b) Encouraging the use of recycled content;

(c) Discouraging the use of problematic materials that the appliance stewardship organization expects to increase the program's costs of managing covered appliances;

(d) Decreasing the global warming potential of appliances through any combination of:

(i) The use of substitute refrigerants and foams with comparative low global warming potential relative to alternative refrigerants and foams for the same specific end use of the refrigerant or foam;

(ii) The inclusion of lower volumes of refrigerants and foams in covered appliances; and

(iii) Product designs that minimize the releases of greenhouse gases from the covered appliance during and after the covered appliance's lifetime of use; and

(e) Encouraging other design attributes that reduce the environmental impacts of covered appliances, including reducing the use of toxic chemicals.

(3) Each appliance stewardship organization is responsible for all costs of participating covered appliance collection, transportation, processing, education, administration, agency reimbursement, recycling, and end-of-life management in accordance with RAD standards and other best environmental management practices.

(4) An appliance stewardship organization is not authorized to reduce or cease collection, education and outreach, or other activities implemented under an approved plan based on the achievement of program performance goals or upon collecting and providing for the end-of-life management of more covered appliances than required in section 5 of this act.

(5)(a) To encourage persons to manage covered appliances through the program and to ensure that the program goals established in section 5 of this act are achieved, the stewardship organization must propose in its plan, and carry out in its program, the payment of a financial incentive for each covered appliance that a person furnishes to the program for management. The stewardship organization must demonstrate to the department that the amount of the financial incentive for each covered appliance will be sufficient to incentivize the use of the program by consumers with unwanted covered appliances, to discourage illegal dumping or venting of refrigerants or other pollutants, and must be in addition to any other incentive payments offered for the same covered appliances through utility rebate, energy efficiency, or other programs.

(b) The financial incentives offered through the program may vary as appropriate to ensure the achievement of the goals established in section 5 of this act in an efficient manner including, but not limited to the:

(i) Type of person furnishing the unwanted covered appliance; and

(ii) Number of covered appliances furnished by a person.

(c) A stewardship organization may not pay a financial incentive for the furnishing of a covered appliance that no longer contains the refrigerants used in the appliance or that has otherwise been damaged in a manner likely to have resulted in the release of greenhouse gases.

(6)(a) An appliance stewardship organization must reimburse local governments for demonstrable costs incurred as a result of a local government facility or solid waste handling facility serving as a collection location for a program including, but not limited to, associated labor costs and other costs associated with safety, accessibility, and collection site standards such as storage.

(b) An appliance stewardship organization must include in its stewardship plan, and provide upon request, a template of the service agreement and any other forms, contracts, or other documents for use in distribution of reimbursements. The service agreement template must be developed with local government and business input. The entities seeking or receiving reimbursement from the appliance stewardship organization are not required to use the service agreement template included in the program plan and are not limited to the terms of the service agreement template included in the program plan.

NEW SECTION. **Sec.**  ROLE OF RETAIL ESTABLISHMENTS. (1) Beginning July 1, 2027, a retail establishment may not sell, offer for sale, or otherwise make available for sale a covered appliance unless the producer of the covered appliance participates in an appliance stewardship organization.

(2) A retail establishment is in compliance with the requirements of subsection (1) of this section and is not subject to penalties as long as the website made available by the department under section 12 of this act lists, as of the date a product is made available for retail sale, a producer or brand and appliance model of a covered appliance sold by the retail establishment as being a participant in an approved plan or the implementer of an approved plan.

(3) A retail establishment that sells covered appliances is not required to make retail locations available to serve as collection locations for a program operated by an appliance stewardship organization. However, a retail establishment that agrees to make a retail location available to serve as a collection location for a program must comply with the requirements for collection locations, consistent with section 6 of this act.

(4) A retail establishment selling or offering covered appliances for sale in Washington must provide information to customers, provided to the retail establishment by the stewardship organization, regarding available end-of-life management options for covered appliances collected by the stewardship organization. The information that an appliance stewardship organization must make available to retail establishments by retailers must include, but is not limited to, in-store signage, written materials, and other promotional materials that retail establishments may use to inform customers of the available end-of-life management options for covered appliances collected by the stewardship organization. All materials developed by a stewardship organization under this subsection must emphasize to consumers the importance of using the program established under this chapter for unwanted covered appliances, the prohibitions on disposal established in section 14 of this act, and the prohibitions under federal law and chapters 70A.15 and 70A.60 RCW on the willful release of refrigerants contained in covered appliances.

(5) Retail establishments, producers, or stewardship organizations may not charge a point-of-sale fee to consumers to cover the administrative or operational costs of the stewardship organization or the program.

NEW SECTION. **Sec.**  REPORTING. By June 1, 2028, and each June 1st thereafter, each appliance stewardship organization must submit an annual report to the department covering the preceding calendar year of program implementation. The report must include:

(1) An independent financial audit of a program implemented by the appliance stewardship organization, including a breakdown of the program's expenses, such as collection, recycling, education, and overhead;

(2) A summary financial statement documenting the financing of an appliance stewardship organization's program and an analysis of program costs and expenditures, including an analysis of the program's expenses, such as collection, transportation, recycling, education, and administrative overhead;

(3) Key quantitative data regarding program operations, including:

(a) The number of units of each category of covered appliance collected by the program;

(b) The weight, by component or material type contained in covered appliances, of materials that were: (i) Salvaged, repaired, or reused; (ii) recycled; (iii) landfilled; or (iv) managed through other methods;

(c) The quantity of each type of recovered refrigerant, and the management outcomes of those recovered refrigerants, as calculated consistent with methods adopted by the department by rule;

(d) The quantity of each type of recovered greenhouse gas from foam contained in covered appliances, as calculated consistent with methods adopted by the department by rule;

(e) Estimates of the net greenhouse gas emissions in carbon dioxide equivalents avoided through the activities of the program, using a form and method specified by the department by rule; and

(f) The performance of the program relative to the goals established in section 5 of this act;

(4) For each facility used for the final disposition of covered appliances or appliance components, the name and address of the facility and a description of how the facility recycled or otherwise disposed of the covered appliances or appliance components;

(5) A summary of the education and outreach supporting plan implementation;

(6) A list of all permanent collection locations and the address for each listed site, with links to appropriate websites where there are existing websites associated with a location; and

(7) Any other information about program operations required to be included in the annual report in rules adopted by the department.

NEW SECTION. **Sec.**  INFORMATION SUBMISSION. A stewardship organization 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 of the department, or the appropriate division of the department. The director of the department must give consideration to the request and if this action is not detrimental to the public interest and is otherwise in accordance 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.

NEW SECTION. **Sec.**  ROLES AND RESPONSIBILITIES OF THE DEPARTMENT OF ECOLOGY. (1) The department must implement, administer, and enforce this chapter. The department may adopt rules as necessary to implement, administer, and enforce this chapter.

(2)(a) By April 1, 2024, and every April 1st thereafter, the department must:

(i) Identify the projected annual costs to implement, administer, and enforce this chapter;

(ii) Determine a total annual fee payment to be paid by each stewardship organization that is adequate to cover, but not exceed, the costs identified in (a)(i) of this subsection;

(iii) Until rules are adopted under (a)(iv) of this subsection, issue a general order to all registered stewardship organizations. The department must equitably determine fee amounts for stewardship organizations;

(iv) By January 1, 2026, adopt rules to equitably determine annual fee payments by stewardship organizations. Once these rules are adopted, the general order issued under (a)(iii) of this subsection is no longer effective; and

(v) Send notice to stewardship organizations of fee amounts due consistent with either the general order issued under (a)(iii) of this subsection or rules adopted under (a)(iv) of this subsection.

(b) The department must:

(i) Apply any remaining annual payment funds from the current year to the annual payment for the coming fiscal year, if the collected annual payment exceeds the costs identified under (a)(ii) of this subsection for a given year; and

(ii) Increase annual payments for the coming fiscal year to cover the costs identified under (a)(ii) of this subsection, if the collected annual payment was less than the amount required to cover those costs for a given year.

(3)(a) The department must review new, updated, and revised plans submitted by appliance stewardship organizations. The department must:

(i) Make new, updated, and revised plans available for public review and comment for at least 30 days prior to the department's approval decision;

(ii) Review new, updated, and revised stewardship organization plans within 180 days of receipt of a complete plan;

(iii) Make a determination as to whether or not to approve a plan, plan update, or plan revision and notify the stewardship organization of the:

(A) Determination of approval if a plan provides for a program that meets the requirements of this chapter, taking into consideration comments received under (a)(i) of this subsection; or

(B) Reasons for not approving a plan. The appliance stewardship organization must submit a new or revised plan within 60 days after receipt of the letter of disapproval. In the event that a new or revised plan submitted by a appliance stewardship organization does not sufficiently meet the requirements of this chapter, including any deficiencies identified in the initial letter of disapproval, the department may:

(I) Use the enforcement powers specified in section 13 of this act; or

(II) Amend the contents of the insufficient new or revised plan in a manner that ensures that the plan meets the requirements of this chapter and the department may require the appliance stewardship organization to implement the plan as amended by the department.

(b) The approval of a plan by the department does not relieve producers participating in the plan from responsibility for fulfilling the requirements of this chapter.

(4) The department must review annual reports submitted by stewardship organizations as required in section 10 of this act. The department must:

(a) Make annual reports available for public review and comment for at least 30 days upon the receipt of the annual report by the department;

(b) Review the annual report within 120 days of receipt of a complete annual report;

(c) Make a determination as to whether or not an annual report meets the requirements of section 10 of this act and notify the stewardship organization of the:

(i) Determination of approval of the annual report; or

(ii) Reasons for not approving the annual report. The stewardship organization must submit a revised annual report within 60 days after receipt of the letter of disapproval;

(d) Notify a stewardship organization if the annual report demonstrates that the program and activities to implement the plan fail to achieve the reuse and recycling targets approved by the department or otherwise fail to achieve significant requirements under this chapter.

(5) Consistent with section 6 of this act, the department may grant an infeasibility waiver temporarily exempting, for the duration of a plan, a stewardship organization from the requirement to provide a permanent collection site in each county. The department may only grant an exemption if the stewardship organization demonstrates that no retail establishment or local government has voluntarily elected to serve as a collection site and that access to collection services by persons in possession of an unwanted covered appliance will not be substantially affected by the lack of a permanent collection location in a low population density county. An appliance stewardship organization granted an infeasibility waiver under this section must, at minimum, hold at least two collection events each year in any counties covered by the infeasibility waiver.

(6) The department must maintain a public website that:

(a) Lists each registered appliance stewardship organization along with its member producers and their covered appliances that are included under the stewardship organization's plan; and

(b) Makes available each plan and annual report received by the department under this chapter.

NEW SECTION. **Sec.**  PENALTIES. (1)(a) The department may administratively impose a civil penalty of up to $1,000 per violation per day on any person who violates this chapter and up to $10,000 per violation per day for the second and each subsequent violation.

(b) Prior to imposing penalties under this subsection, the department must provide a person with a written warning for the first violation by the person of the requirements of this chapter. The written warning must inform the person that it must participate in an approved plan or otherwise come into compliance with the requirements of this chapter within 30 days of the notice. A person that violates a provision of this chapter after the initial written warning may be assessed a penalty as provided in this subsection.

(2) Upon the department notifying an appliance stewardship organization that it has not met a significant requirement of this chapter, the department may, in addition to assessing the penalties provided in subsection (1) of this section, take any combination of the following actions:

(a)(i) Issue corrective action orders to a producer or stewardship organization;

(ii) Issue orders to a stewardship organization to provide for the continued implementation of the program in the absence of an approved plan;

(b) Revoke the stewardship organization's plan approval and require the stewardship organization to implement its contingency plan;

(c) Require a stewardship organization to revise or resubmit a plan within a specified time frame; or

(d) Require additional reporting related to compliance with the significant requirement of this chapter that was not met.

(3) Prior to taking the actions described in subsection (2)(b) of this section, the department must provide the stewardship organization with an opportunity to respond to or rebut the written finding upon which the action is predicated.

(4) Any person who incurs a penalty under subsection (1) of this section or an order under subsection (2) of this section may appeal the penalty or order to the pollution control hearings board established in chapter 43.21B RCW.

(5) Penalties levied under this subsection must be deposited in the climate commitment account created in RCW 70A.65.260.

NEW SECTION. **Sec.**  REQUIREMENT TO USE PROGRAM. (1) All persons, residents, businesses, and government, commercial, industrial, and retail facilities, and office buildings must dispose of unwanted covered appliances through approved collection methods established by the programs created by this chapter.

(2)(a) A person may not place covered appliances in waste containers for disposal at incinerators, waste to energy facilities, or landfills. A person may not dispose of covered appliances at incinerators, waste to energy facilities, or landfills.

(b) Nothing in this subsection restricts the incineration or landfilling of component materials contained in a covered appliance that has been collected and managed by the stewardship organization consistent with the requirements of section 6 of this act.

(3) A person servicing or repairing covered appliances or disposing of unwanted covered appliances must comply with the requirements of RCW 70A.60.070.

NEW SECTION. **Sec.**  ANTITRUST. Producers or appliance stewardship organizations acting on behalf of producers that prepare, submit, and implement an appliance stewardship program plan pursuant to this chapter and who are thereby subject to regulation by the department are granted immunity from state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade and commerce, for the limited purpose of planning, reporting, and operating an appliance stewardship program, including:

(1) The creation, implementation, or management of an appliance stewardship organization and any appliance stewardship plan regardless of whether it is submitted, denied, or approved;

(2) The cost and structure of an appliance stewardship plan; and

(3) The types or quantities of appliances and component greenhouse gases being recycled or otherwise managed pursuant to this chapter.

NEW SECTION. **Sec.**  RAD ACCOUNT. The responsible appliance disposal account is created in the state treasury. All receipts from the fees imposed under section 12 of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for the implementation of this chapter.

NEW SECTION. **Sec.**  PROHIBITION ON THE USES OF FUNDS. A stewardship organization may not use funds collected for purposes of implementing a plan required under this chapter associated with:

(1) The payment of an administrative penalty levied;

(2) Administrative appeals of orders or penalties;

(3) Litigation between the appliance stewardship organization and the state;

(4) Compensation of a person whose position is primarily representing the appliance stewardship organization relative to the passage, defeat, approval, or modification of legislation that is being considered by a government entity; or

(5) Paid advertisements related to encouraging the passage, defeat, approval, or modification of legislation that is being considered during an upcoming or current legislative session, or was considered during the previous legislative session.

NEW SECTION. **Sec.**  LIMITATION OF CHAPTER. Nothing in this chapter changes or limits the applicability of the requirements of chapter 70A.15 or 70A.300 RCW to covered appliances.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

BUSINESS AND OCCUPATION TAX EXEMPTION.

(1) This chapter does not apply to the receipts of an appliance stewardship organization formed under chapter 70A.--- RCW (the new chapter created in section 23 of this act) from charges to participating producers under an appliance stewardship program as provided in section 8 of this act.

(2) This section is not subject to the requirements of RCW 82.32.805 and 82.32.808 and is not subject to an expiration date.

(3) The definitions in section 2 of this act apply throughout this section unless the context clearly requires otherwise.

**Sec.**  RCW 43.21B.110 and 2022 c 180 s 812 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 70A.15 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, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, 76.09.170, 77.55.440, 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 and chapter 70A.--- RCW (the new chapter created in section 23 of this act).

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330 and chapter 70A.--- RCW (the new chapter created in section 23 of this act).

(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 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(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 70A.205.145.

(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, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(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.

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

(o) Orders by the department of ecology under RCW 70A.455.080.

(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 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, 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.

**Sec.**  RCW 43.21B.300 and 2022 c 180 s 813 are each amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapters 70A.355 and 70A.--- (the new chapter created in section 23 of this act) RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within 30 days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority 30 days after the date of receipt by the person penalized of the notice imposing the penalty or 30 days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within 30 days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within 30 days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70A.15.3160, the disposition of which shall be governed by that provision, RCW 70A.245.040 and 70A.245.050, which shall be credited to the recycling enhancement account created in RCW 70A.245.100, RCW 70A.300.090, which shall be credited to the model toxics control operating account created in RCW 70A.305.180, RCW 70A.65.200, which shall be credited to the climate investment account created in RCW 70A.65.250, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, ((~~and~~)) RCW 70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090, and chapter 70A.--- RCW (the new chapter created in section 23 of this act), which shall be credited to the refrigerant emission management account created in RCW 70A.60.050.

**Sec.**  RCW 70A.65.260 and 2022 c 179 s 17 are each amended to read as follows:

(1) The climate commitment account is created in the state treasury. The account must receive moneys distributed to the account from the climate investment account created in RCW 70A.65.250 and from penalties imposed under section 13 of this act. Moneys in the account may be spent only after appropriation. Projects, activities, and programs eligible for funding from the account must be physically located in Washington state and include, but are not limited to, the following:

(a) Implementing the working families' tax ((~~rebate~~)) credit in RCW 82.08.0206;

(b) Supplementing the growth management planning and environmental review fund established in RCW 36.70A.490 for the purpose of making grants or loans to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and 36.70A.600, for costs associated with RCW 36.70A.610, and to cover costs associated with the adoption of optional elements of comprehensive plans consistent with RCW 43.21C.420;

(c) Programs, activities, or projects that reduce and mitigate impacts from greenhouse gases and copollutants in overburdened communities, including strengthening the air quality monitoring network to measure, track, and better understand air pollution levels and trends and to inform the analysis, monitoring, and pollution reduction measures required in RCW 70A.65.020;

(d) Programs, activities, or projects that deploy renewable energy resources, such as solar and wind power, and projects to deploy distributed generation, energy storage, demand-side technologies and strategies, and other grid modernization projects;

(e) Programs, activities, or projects that increase the energy efficiency or reduce greenhouse gas emissions of industrial facilities including, but not limited to, proposals to implement combined heat and power, district energy, or on-site renewables, such as solar and wind power, to upgrade the energy efficiency of existing equipment, to reduce process emissions, and to switch to less emissions intensive fuel sources;

(f) Programs, activities, or projects that achieve energy efficiency or emissions reductions in the agricultural sector including:

(i) Fertilizer management;

(ii) Soil management;

(iii) Bioenergy;

(iv) Biofuels;

(v) Grants, rebates, and other financial incentives for agricultural harvesting equipment, heavy-duty trucks, agricultural pump engines, tractors, and other equipment used in agricultural operations;

(vi) Grants, loans, or any financial incentives to food processors to implement projects that reduce greenhouse gas emissions;

(vii) Renewable energy projects;

(viii) Farmworker housing weatherization programs;

(ix) Dairy digester research and development;

(x) Alternative manure management; and

(xi) Eligible fund uses under RCW 89.08.615;

(g) Programs, activities, or projects that increase energy efficiency in new and existing buildings, or that promote low carbon architecture, including use of newly emerging alternative building materials that result in a lower carbon footprint in the built environment over the life cycle of the building and component building materials;

(h) Programs, activities, or projects that promote the electrification and decarbonization of new and existing buildings, including residential, commercial, and industrial buildings;

(i) Programs, activities, or projects that improve energy efficiency, including district energy, and investments in market transformation of high efficiency electric appliances and equipment for space and water heating;

(j) Clean energy transition and assistance programs, activities, or projects that assist affected workers or people with lower incomes during the transition to a clean energy economy, or grow and expand clean manufacturing capacity in communities across Washington state including, but not limited to:

(i) Programs, activities, or projects that directly improve energy affordability and reduce the energy burden of people with lower incomes, as well as the higher transportation fuel burden of rural residents, such as bill assistance, energy efficiency, and weatherization programs;

(ii) Community renewable energy projects that allow qualifying participants to own or receive the benefits of those projects at reduced or no cost;

(iii) Programs, activities, or other worker-support projects for bargaining unit and nonsupervisory fossil fuel workers who are affected by the transition away from fossil fuels to a clean energy economy. Worker support may include, but is not limited to: (A) Full wage replacement, health benefits, and pension contributions for every worker within five years of retirement; (B) full wage replacement, health benefits, and pension contributions for every worker with at least one year of service for each year of service up to five years of service; (C) wage insurance for up to five years for workers reemployed who have more than five years of service; (D) up to two years of retraining costs, including tuition and related costs, based on in-state community and technical college costs; (E) peer counseling services during transition; (F) employment placement services, prioritizing employment in the clean energy sector; and (G) relocation expenses;

(iv) Direct investment in workforce development, via technical education, community college, institutions of higher education, apprenticeships, and other programs including, but not limited to:

(A) Initiatives to develop a forest health workforce established under RCW 76.04.521; and

(B) Initiatives to develop new education programs, emerging fields, or jobs pertaining to the clean energy economy;

(v) Transportation, municipal service delivery, and technology investments that increase a community's capacity for clean manufacturing, with an emphasis on communities in greatest need of job creation and economic development and potential for commute reduction;

(k) Programs, activities, or projects that reduce emissions from landfills and waste-to-energy facilities through diversion of organic materials, methane capture or conversion strategies, installation of gas collection devices and gas control systems, monitoring and reporting of methane emissions, or other means, prioritizing funding needed for any activities by local governments to comply with chapter 70A.540 RCW;

(l) Carbon dioxide removal projects, programs, and activities; and

(m) Activities to support efforts to mitigate and adapt to the effects of climate change affecting Indian tribes, including capital investments in support of the relocation of Indian tribes located in areas at heightened risk due to anticipated sea level rise, flooding, or other disturbances caused by climate change. The legislature intends to dedicate at least $50,000,000 per biennium from the account for purposes of this subsection.

(2) Moneys in the account may not be used for projects or activities that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions. Investments from this account must result in long-term environmental benefits and increased resilience to the impacts of climate change.

NEW SECTION. **Sec.**  Sections 1 through 18 of this act constitute a new chapter in Title 70A 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.

**--- END ---**