S-3790.1

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**SENATE BILL 5965**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senators Nguyen, Kuderer, Nobles, Saldaña, and C. Wilson

AN ACT Relating to the environmental impacts of fashion; reenacting and amending RCW 43.21B.110 and 43.21B.300; 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.**  (1) The legislature finds that the fashion industry has many negative environmental impacts, including high levels of water use, run-off pollution from the use of agrochemicals and dyes, carbon emissions, industry waste, and hazardous work environments.

(2) The United Nations estimates that a single pair of jeans requires a kilogram of cotton, and because cotton tends to be grown in dry environments, producing this kilogram requires about 7,500 to 10,000 liters of water, which is approximately 10 years' worth of drinking water for one person. The industry accounts for nearly 20 percent of global wastewater, with fabric dyes polluting water bodies and impacting aquatic life and drinking water. Cotton production also uses a high amount of fertilizers and pesticides, discharging toxic substances to waterways. In terms of greenhouse gases, the fashion industry accounts for about eight to 10 percent of global carbon emissions, more than both aviation and shipping combined.

(3) The synthetic polymer polyester is the most common fabric used in clothing, and globally, 65 percent of the clothing that we wear is polymer-based. Around 70,000,000 barrels of oil a year are used to make polyester fibers in our clothes, from waterproof jackets to scarves. Polyester takes hundreds of years to decompose and can lead to microfibers escaping into the environment. The United States environmental protection agency estimates that in 2018, 11,300,000 tons of textiles ended up in landfills, while another 3,200,000 tons were incinerated. According to the Ellen MacArthur foundation, the average number of times a piece of clothing is worn decreased by 36 percent between 2000 and 2015, and according to the world bank, 40 percent of clothing purchased in some countries is never used.

(4) The legislature recognizes that some companies have committed to mitigation measures, such as the use of the science-based targets initiative, a tool for reducing carbon emissions. Additionally, legislation regarding due diligence is being considered in New York and the European Union, and Germany, France, Britain, and Australia have laws requiring due diligence when it comes to human rights and slavery. Therefore, the legislature also intends to address the negative environmental impacts of the fashion industry, by requiring companies to map a minimum of 50 percent of their supply chain, disclose where in that chain they have the greatest environmental impact when it comes to low wages, energy, greenhouse gas emissions, water, and chemical management, and make plans to reduce those numbers. By doing so, the legislature intends for Washington to serve as a leader in mitigating the environmental impact of the fashion industry.

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

(1) "Article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals.

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

(3) "Due diligence" means the process companies carry out to identify, prevent, mitigate, and account for how they address actual and potential adverse impacts in their own operations, their supply chain, and other business relationships, in the manner recommended in the organization for economic cooperation and development guidelines for multinational enterprises, the organization for economic cooperation and development due diligence guidance for responsible business conduct, and United Nations guiding principles of business and human rights, as those guidelines and guidance existed as of January 1, 2024.

(4) "Fashion manufacturer" means a business entity that lists manufacturing as its principal business activity in the state of Washington, as reported on the entity's state business and occupation tax return, and manufactures articles of wearing apparel or footwear.

(5) "Fashion retail seller" means a business entity that lists retail trade as its principal business activity in the state of Washington, as reported on the entity's state business and occupation tax return, and sells articles of wearing apparel or footwear.

(6) "Footwear" means any covering worn or intended to be worn on the foot.

(7) "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

NEW SECTION. **Sec.**  (1)(a) Every fashion retail seller or fashion manufacturer doing business in the state that has an annual worldwide gross income of the business that exceeds $100,000,000 must disclose its environmental due diligence policies, processes, and outcomes, including significant real or potential adverse environmental impacts and disclose targets for prevention and improvement.

(b)(i) The disclosure described in (a) of this subsection must be published on the fashion retail seller's or fashion manufacturer's website with a clear and easily understood link to the required information placed on the fashion retail seller's or fashion manufacturer's homepage by July 1, 2025.

(ii) In the event the fashion retail seller or fashion manufacturer does not have an internet website, the fashion manufacturer or fashion retail seller must provide a written disclosure within 30 days of receiving a written request for the disclosure from any person.

(2) The due diligence that must be carried out by the fashion manufacturer or fashion retail seller and disclosed pursuant to subsection (1) of this section must include, at a minimum:

(a) Supply chain mapping, including:

(i) Taking a risk-based approach, using good faith efforts to map suppliers across all tiers of production, from raw material to final production. A minimum of 50 percent of suppliers by volume across all tiers of production must be mapped; and

(ii) Using good faith efforts to map the suppliers and associated supply chains relevant to the prioritized risk, and obtain and disclose the names of prioritized suppliers;

(b) Impact due diligence, including an environmental sustainability report, to include externally relevant information on due diligence policies, processes, and activities conducted to identify, prevent, mitigate, and account for potential adverse impacts, including the findings and outcomes of those activities. Such a report must include, in line with the United Nations guiding principles on business and human rights, the international labor organization declaration on fundamental principles and rights at work, the organization for economic cooperation and development guidelines for multinational enterprises, and the organization for economic cooperation and development due diligence guidance for responsible business conduct.

(3) The impact due diligence specified in subsection (2)(b) of this section that is disclosed consistent with this section must also include:

(a) A link on the fashion retail seller's or fashion manufacturer's website to relevant policies on responsible business conduct for entities specified in subsection (1)(b)(i) of this section, or the inclusion in written disclosures of relevant policies on responsible business conduct for entities specified in (1)(b)(ii) of this section;

(b) Information on measures taken to embed responsible business conduct into policies and management systems;

(c) The fashion retail seller's or fashion manufacturer's identified areas of significant risks in the contexts of its own activities and business relationships, such as supply chains;

(d) The significant adverse impacts on risks identified, prioritized, and assessed in the context of its own activities and business relationships, such as supply chain;

(e) The prioritization criteria;

(f) The actions taken to prevent or mitigate those risks, such as corrective action plans, to be cited where available, including estimated timelines, targets, and benchmarks for improvement and their outcomes;

(g) Measures to track implementation and results; and

(h) The fashion retail seller's or fashion manufacturer's provision of or cooperation in any remediation.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2027, fashion retail sellers and fashion manufacturers must establish, track, and disclose progress towards performance targets established in this section. Disclosure of progress towards performance targets must be done in a manner consistent with disclosures required in section 3 of this act. The requirements of this section include the establishment, tracking, and disclosure of:

(a) A quantitative baseline and reduction targets on energy and greenhouse gas emissions, water, and chemical management. Greenhouse gas emissions reporting must be independently verified, include absolute figures, and conform with the greenhouse gas protocol corporate account and reporting standard and the greenhouse gas protocol corporate value chain scope three standard promulgated by the world resources institute, as it existed as of January 1, 2024;

(b) Annual volume of material produced, including breakdown by material type, which must be independently verified;

(c) How much production has been displaced with recycled materials as compared to growth targets, which must be independently verified; and

(d) What targets fashion retail sellers and fashion manufacturers have for impact reductions, and for tracking due diligence implementation and results including, where possible, estimated timelines and benchmarks for improvement. These targets must include absolute targets for greenhouse gas emissions reductions that align with the apparel and footwear sector science-based targets guidance promulgated by the world resources institute, as it existed as of January 1, 2024, and include all scopes of production.

(2) Each fashion retail seller or fashion manufacturer must meet the targets established under subsection (1) of this section.

(3) Beginning April 1, 2028, and each April 1st thereafter, each fashion retail seller or fashion manufacturer must submit an annual report to the department in a format prescribed by the department that allows the department to determine whether the fashion retail seller or fashion manufacturer achieved the performance targets established in this section.

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

(b) The department must annually publish and make publicly available a report regarding compliance with this chapter, listing the fashion retail sellers and fashion manufacturers who are known to be out of compliance with this chapter and including an up-to-date report on enforcement activities under this chapter.

(2) A fashion retail seller or fashion manufacturer that violates a disclosure, performance target achievement, or reporting requirement of this chapter is subject to a civil penalty not to exceed $5,000 for each violation in the case of a first offense. Repeat violators are subject to a civil penalty not to exceed $10,000 for each repeat offense.

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

(4) All penalties collected under this chapter must be deposited in the community benefit account created in section 7 of this act.

NEW SECTION. **Sec.**  (1) Any person may commence a civil action against any fashion retail seller or fashion manufacturer who is alleged to have violated or to be in violation of this chapter or an order by the department with respect to the standards and requirements set forth in this chapter.

(2) Any person may commence a civil action to compel the department to investigate an entity's compliance with this chapter, to enforce compliance with this chapter, or to apply the prohibitions set forth in this chapter to any fashion retail seller or fashion manufacturer operating within this state.

(3) Any person may commence a civil action against the department where there is an alleged failure of the department to perform any act or duty under this chapter that is not discretionary with the department.

(4) No action may be commenced:

(a) Prior to 60 days after the plaintiff has given notice of the alleged violation to the department and to any alleged violator; or

(b) If the department has commenced an enforcement action under section 5 of this act to require compliance with the law, rule, or order.

(5)(a) Any action respecting a violation of a law, rule, or order under this chapter may be brought in any judicial district in which a fashion retail seller or fashion manufacturer engages in commerce.

(b) In such an action under this section, the department, if not a party, may intervene as a matter of right.

(6) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorneys' and expert witness fees, to any prevailing party, wherever the court determines such an award is appropriate.

(7) A civil action to enforce compliance with a law, rule, or order may not be brought under this section if any other statute, or the common law, provides authority for the plaintiff to bring a civil action and, in such an action, obtain the same relief, as authorized under this section, for enforcement of such a law, rule, or order. Nothing in this section restricts any right that any person, or class of persons, may have under any statute or common law to seek any relief, including relief against the state or a state agency.

NEW SECTION. **Sec.**  (1) The community benefit account is created in the custody of the state treasurer. All receipts from penalties imposed under section 5 of this act must be deposited into the account. Expenditures from the account may be used only for the purpose of implementing one or more environmental benefit projects that directly and verifiably benefit overburdened communities and vulnerable populations identified by the department in a manner consistent with chapter 70A.02 RCW. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) The department must consult with the environmental justice council established in RCW 70A.02.110 in making expenditures under this section.

(3) For the purposes of this section, "environmental benefit" has the same meaning as "environmental benefits" defined in RCW 70A.02.010.

**Sec.**  RCW 43.21B.110 and 2023 c 455 s 5, 2023 c 434 s 20, 2023 c 344 s 5, and 2023 c 135 s 6 are each reenacted and 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.245.130, 70A.245.140, 70A.65.200, 70A.455.090, 70A.550.030, 70A.555.110, 70A.560.020, section 5 of this act, 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.

(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, 70A.555.110, 70A.560.020, section 5 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 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 2023 c 455 s 6, 2023 c 434 s 21, and 2023 c 135 s 7 are each reenacted and 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.245.130, 70A.245.140, 70A.65.200, 70A.455.090, 70A.555.110, 70A.560.020, 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.355 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) 30 days after receipt of the notice imposing the penalty;

(b) 30 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) 30 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, 70A.555.110, and 70A.560.020, 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, section 5 of this act, which shall be credited to the community benefit account created in section 7 of this act, and RCW 70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090.

NEW SECTION. **Sec.**  This chapter may be known and cited as the Washington fashion sustainability accountability act.

NEW SECTION. **Sec.**  Sections 1 through 7 and 10 of this act constitute a new chapter in Title 70A RCW.

**--- END ---**