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**SUBSTITUTE SENATE BILL 5231**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Environment, Water & Energy (originally sponsored by Senators Nelson, Swecker, Rockefeller, Ranker, Chase, Regala, Kohl-Welles, and Kline; by request of Department of Ecology)

READ FIRST TIME 02/09/11.

1       AN ACT Relating to children's safe products; amending RCW  
2 70.240.010 and 70.240.040; reenacting and amending RCW 43.21B.110 and  
3 43.21B.110; adding new sections to chapter 70.240 RCW; providing an  
4 effective date; and providing an expiration date.

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

6       **Sec. 1.** RCW 70.240.010 and 2008 c 288 s 2 are each amended to read  
7 as follows:

8       The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10       (1) "Children's cosmetics" means cosmetics that are made for,  
11 marketed for use by, or marketed to children under the age of twelve.  
12 "Children's cosmetics" includes cosmetics that meet any of the  
13 following conditions:

14       (a) Represented in its packaging, display, or advertising as  
15 appropriate for use by children;

16       (b) Sold in conjunction with, attached to, or packaged together  
17 with other products that are packaged, displayed, or advertised as  
18 appropriate for use by children; or

19       (c) Sold in any of the following:

1 (i) Retail store, catalogue, or online web site, in which a person  
2 exclusively offers for sale products that are packaged, displayed, or  
3 advertised as appropriate for use by children; or

4 (ii) A discrete portion of a retail store, catalogue, or online web  
5 site, in which a person offers for sale products that are packaged,  
6 displayed, or advertised as appropriate for use by children.

7 (2) "Children's jewelry" means jewelry that is made for, marketed  
8 for use by, or marketed to children under the age of twelve.  
9 "Children's jewelry" includes jewelry that meets any of the following  
10 conditions:

11 (a) Represented in its packaging, display, or advertising as  
12 appropriate for use by children under the age of twelve;

13 (b) Sold in conjunction with, attached to, or packaged together  
14 with other products that are packaged, displayed, or advertised as  
15 appropriate for use by children;

16 (c) Sized for children and not intended for use by adults; or

17 (d) Sold in any of the following:

18 (i) A vending machine;

19 (ii) Retail store, catalogue, or online web site, in which a person  
20 exclusively offers for sale products that are packaged, displayed, or  
21 advertised as appropriate for use by children; or

22 (iii) A discrete portion of a retail store, catalogue, or online  
23 web site, in which a person offers for sale products that are packaged,  
24 displayed, or advertised as appropriate for use by children.

25 (3)(a) "Children's product" includes any of the following:

26 (i) Toys;

27 (ii) Children's cosmetics;

28 (iii) Children's jewelry;

29 (iv) A product designed or intended by the manufacturer to help a  
30 child with sucking or teething, to facilitate sleep, relaxation, or the  
31 feeding of a child, or to be worn as clothing by children; or

32 (v) Child car seats.

33 (b) "Children's product" does not include the following:

34 (i) Batteries;

35 (ii) Slings and catapults;

36 (iii) Sets of darts with metallic points;

37 (iv) Toy steam engines;

38 (v) Bicycles and tricycles;

1 (vi) Video toys that can be connected to a video screen and are  
2 operated at a nominal voltage exceeding twenty-four volts;

3 (vii) Chemistry sets and science kits;

4 (viii) Consumer electronic products, including but not limited to  
5 personal computers, audio and video equipment, calculators, wireless  
6 phones, game consoles, and handheld devices incorporating a video  
7 screen, used to access interactive software and their associated  
8 peripherals;

9 (ix) Interactive software, intended for leisure and entertainment,  
10 such as computer games, and their storage media, such as compact disks;

11 (x) BB guns, pellet guns, and air rifles;

12 (xi) Snow sporting equipment, including skis, poles, boots, snow  
13 boards, sleds, and bindings;

14 (xii) Sporting equipment, including, but not limited to bats,  
15 balls, gloves, sticks, pucks, and pads;

16 (xiii) Roller skates;

17 (xiv) Scooters;

18 (xv) Model rockets;

19 (xvi) Athletic shoes with cleats or spikes; (~~and~~)

20 (xvii) Pocket knives and multitools;

21 (xviii) Used products;

22 (xix) Food and food packaging, over-the-counter drugs,  
23 prescriptions drugs, and dietary supplements regulated by the United  
24 States food and drug administration;

25 (xx) Medical devices regulated by the United States food and drug  
26 administration; and

27 (xxi) Paper or forest products.

28 (4) "Cosmetics" includes articles intended to be rubbed, poured,  
29 sprinkled, or sprayed on, introduced into, or otherwise applied to the  
30 human body or any part thereof for cleansing, beautifying, promoting  
31 attractiveness, or altering the appearance, and articles intended for  
32 use as a component of such an article. "Cosmetics" does not include  
33 soap, dietary supplements, or food and drugs approved by the United  
34 States food and drug administration.

35 (5) "Department" means the department of ecology.

36 (6) "High priority chemical" means a chemical identified by a state  
37 agency, federal agency, or accredited research university, or other

1 scientific evidence deemed authoritative by the department on the basis  
2 of credible scientific evidence as known to do one or more of the  
3 following:

4 (a) Harm the normal development of a fetus or child or cause other  
5 developmental toxicity;

6 (b) Cause cancer, genetic damage, or reproductive harm;

7 (c) Disrupt the endocrine system;

8 (d) Damage the nervous system, immune system, or organs or cause  
9 other systemic toxicity;

10 (e) Be persistent, bioaccumulative, and toxic; or

11 (f) Be very persistent and very bioaccumulative.

12 (7) "Manufacturer" includes any person, firm, association,  
13 partnership, corporation, governmental entity, organization, or joint  
14 venture that produces a children's product or an importer or domestic  
15 distributor of a children's product. For the purposes of this  
16 subsection, "importer" means the owner of the children's product.

17 (8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl  
18 phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl phthalate  
19 (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

20 (9) "Toy" means a product designed or intended by the manufacturer  
21 to be used by a child at play.

22 (10) "Trade association" means a membership organization of persons  
23 engaging in a similar or related line of commerce, organized to promote  
24 and improve business conditions in that line of commerce and not to  
25 engage in a regular business of a kind ordinarily carried on for  
26 profit.

27 (11) "Very bioaccumulative" means having a bioconcentration factor  
28 or bioaccumulation factor greater than or equal to five thousand, or if  
29 neither are available, having a log Kow greater than 5.0.

30 (12) "Very persistent" means having a half-life greater than or  
31 equal to one of the following:

32 (a) A half-life in soil or sediment of greater than one hundred  
33 eighty days;

34 (b) A half-life greater than or equal to sixty days in water or  
35 evidence of long-range transport.

36 (13) "Children" means persons under twelve years old.

37 (14) "Priority product" means a product that requires an  
38 alternatives assessment under section 3(6) of this act.

1       (15) "Product category" means a classification standard that  
2 identifies products that serve a common purpose, are of similar form  
3 and material, and share the same set of category attributes.

4       (16) "Product component" means a uniquely identifiable part, piece,  
5 substrate, or coating (including ink or dye) that is intended to be  
6 included as a part of a finished children's product or performs a  
7 distinctive and necessary function in the operation of a product. For  
8 formulated products, the homogenous mixture is considered a single  
9 component.

10       (17) "Used product" means a previously owned product containing  
11 chemicals of high concern for children that is: Sold in casual or  
12 isolated sales as defined in RCW 82.04.040; sold by nonprofit  
13 organizations; or sold through consignment shops.

14       **Sec. 2.** RCW 70.240.040 and 2008 c 288 s 5 are each amended to read  
15 as follows:

16       (1) Beginning six months after the department has adopted rules  
17 ((under section 8(5) of this act)) identifying chemicals of high  
18 concern for children, a manufacturer of a children's product, or a  
19 trade organization on behalf of its member manufacturers, shall provide  
20 notice to the department that the manufacturer's product contains a  
21 high priority chemical. The notice must be filed annually with the  
22 department and must include the following information:

23       ((+1)) (a) The name of the chemical used or produced and its  
24 chemical abstracts service registry number;

25       ((+2)) (b) A brief description of the product or product component  
26 containing the substance;

27       ((+3)) (c) A description of the function of the chemical in the  
28 product or product component;

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

32       ((+5)) (e) The name and address of the manufacturer and the name,  
33 address, and phone number of a contact person for the manufacturer; and

34       ((+6)) (f) Any other information the manufacturer deems relevant  
35 to the appropriate use of the product.

36       (2) Manufacturers may provide notification through a department-  
37 approved and certified third party.

1           NEW SECTION.   **Sec. 3.**   (1) Using information submitted by October  
2 2012 by manufacturers in compliance with RCW 70.240.040, the department  
3 shall review and evaluate the information submitted as well as other  
4 relevant information, and develop a draft list of products to be  
5 considered for alternatives assessments. The department shall repeat  
6 this review using additional information submitted in compliance with  
7 RCW 70.240.040 by April 2014 and no more frequently than every two  
8 years thereafter. Such products must be identified based on the  
9 following criteria:

10           (a) Degree of toxicity of a chemical of high concern for children  
11 present in the product, product category, or product component;

12           (b) Extent of individual and population exposure to chemicals of  
13 high concern for children based on the following:

14           (i) Presence of a chemical of high concern for children in multiple  
15 products, product categories, or product components;

16           (ii) Presence of a chemical of high concern for children in high  
17 concentrations relative to other products, product categories, or  
18 product components;

19           (iii) Presence of multiple chemicals of high concern for children  
20 in a single product, product category, or product component;

21           (iv) Presence of multiple potential routes of exposure to a  
22 chemical of high concern for children from the product, product  
23 category, or product component; and

24           (v) Evidence of children's exposure to chemicals of high concern  
25 for children from sources other than children's products;

26           (c) Evidence of the availability of safer alternatives to the  
27 chemical of high concern for children for the product; and

28           (d) Whether the sale of the product has been banned or limited by  
29 another state.

30           (2) The department shall submit its draft list of products to be  
31 considered for alternatives assessment to the department of health for  
32 prioritization.

33           (3) Within twelve months of receiving the draft list of products to  
34 be considered for alternatives assessment, the department of health  
35 shall prioritize the draft list based on the following criteria:

36           (a) The potential for hazard to children from potential exposure to  
37 the chemical of high concern for children through direct or indirect  
38 contact with the product;

1 (b) The likelihood that a chemical of high concern for children  
2 will be released from the product into a child's environment; and

3 (c) The number of units of the product sold in Washington or  
4 nationally.

5 (4) If necessary to complete the prioritization process under  
6 subsection (3) of this section, the department of health may request  
7 the department to order manufacturers to submit additional information  
8 such as, but not limited to: A detailed description or name of the  
9 product; the universal product code of the product; the number of units  
10 sold or distributed for sale in the state or nationally; the likelihood  
11 that the chemical of high concern for children will be released from  
12 the children's product to the environment during the children's product  
13 life cycle; or the extent to which users of children's products are  
14 likely to be exposed to the chemical of high concern for children.

15 (5) The department shall seek public input on the prioritized list  
16 of products to be considered for alternatives assessment.

17 (6) The department may identify priority products for alternatives  
18 assessment consistent with the department of health prioritization and  
19 in consideration of public comment.

20 (7) The department may issue administrative orders to require  
21 manufacturers of priority products to conduct alternatives assessments  
22 consistent with section 4 of this act.

23 (8) Manufacturers of priority products shall submit alternatives  
24 assessments to the department within the time frames established in the  
25 administrative order for each priority product.

26 (9) Manufacturers required to conduct an alternatives assessment  
27 under this section may work with other manufacturers of similar  
28 children's products containing the same chemical to complete and submit  
29 a single alternatives assessment.

30 (10) The department may apply the provisions of this section that  
31 are applicable to children's products with equal effect to product  
32 categories or product components.

33 NEW SECTION. **Sec. 4.** (1) The department, in consultation with the  
34 department of health, shall consult with technical experts to develop  
35 guidelines for conducting alternatives assessments consistent with  
36 subsection (3) of this section. The department shall seek to develop

1 alternatives assessment guidance consistent with existing guidance from  
2 other jurisdictions. Technical experts to be consulted may include,  
3 but not be limited to:

- 4 (a) Manufacturers of fabricated products;
- 5 (b) Manufacturers of formulated products;
- 6 (c) Small manufacturers of children's products;
- 7 (d) Manufacturers of children's product components;
- 8 (e) Nongovernmental organizations concerned with the environment;
- 9 (f) Nongovernmental organizations concerned with consumer  
10 protection;
- 11 (g) Toxicologists;
- 12 (h) Children's health specialists; and
- 13 (i) Epidemiologists.

14 (2) The department shall provide at least sixty days for public  
15 input on the draft guidelines and shall consider all comments before  
16 finalizing the guidelines.

17 (3) An alternatives assessment must, at a minimum, include the  
18 following elements:

19 (a) Availability of alternatives to chemicals of high concern for  
20 children in priority products identified under section 3 of this act  
21 must be determined in consideration of the following:

- 22 (i) Cost;
- 23 (ii) Performance;
- 24 (iii) Opportunities for product reformulation, chemical  
25 substitution, product redesign, and manufacturing process redesign;
- 26 (iv) Whether the sale of a priority product has been banned or  
27 limited by another state; and
- 28 (v) Whether the alternative is sold in the United States.

29 (b) Information on the persistence of, and potential for  
30 bioaccumulation of, any alternatives.

31 (c) Information relevant to determining the potential hazard to  
32 children's health including, but not limited to, toxicity of  
33 alternative chemicals, potential for children's exposure to those  
34 chemicals, and potential hazards from those chemicals as they may be  
35 used in the product.

36 (d) Information on the environmental impacts of any alternatives.

37 (e) Any additional information the manufacturer deems relevant to  
38 the alternatives assessment for the priority product.

1        NEW SECTION.    **Sec. 5.**    (1) The department shall provide at least  
2 sixty days for public input on all alternatives assessments submitted  
3 under section 3 of this act.

4        (2) The department, in consultation with the department of health,  
5 shall review alternatives assessments and other relevant information,  
6 including any public comments on alternatives assessments and determine  
7 if additional actions should be taken by the legislature to protect  
8 children's health.

9        (3) By December 1, 2015, the department, in consultation with the  
10 department of health, shall prepare a report of the review conducted  
11 under subsection (2) of this section and submit these findings to the  
12 appropriate committees of the legislature.

13        NEW SECTION.    **Sec. 6.**    (1) Manufacturers of children's products  
14 with annual gross sales, both within and outside of Washington, of less  
15 than one million dollars, based on the manufacturer's most recent tax  
16 year filing, are exempt from the requirements established in RCW  
17 70.240.040 and section 3 of this act.

18        (2) Manufacturers of children's products that have a current label  
19 from the United States environmental protection agency design for the  
20 environment program are exempt from the requirements established in RCW  
21 70.240.040 and section 3 of this act for as long as the label remains  
22 current. This exemption applies only to those children's products that  
23 carry a current design for the environment label.

24        **Sec. 7.**    RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are  
25 each reenacted and amended to read as follows:

26        (1) The hearings board shall only have jurisdiction to hear and  
27 decide appeals from the following decisions of the department, the  
28 director, local conservation districts, the air pollution control  
29 boards or authorities as established pursuant to chapter 70.94 RCW,  
30 local health departments, the department of natural resources, the  
31 department of fish and wildlife, and the parks and recreation  
32 commission:

33        (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
34 70.105.080, 70.107.050, 70.240.050, 76.09.170, 77.55.291, 78.44.250,  
35 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
36 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 3 of this act,  
3 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

4 (c) A final decision by the department or director made under  
5 chapter 183, Laws of 2009.

6 (d) Except as provided in RCW 90.03.210(2), the issuance,  
7 modification, or termination of any permit, certificate, or license by  
8 the department or any air authority in the exercise of its  
9 jurisdiction, including the issuance or termination of a waste disposal  
10 permit, the denial of an application for a waste disposal permit, the  
11 modification of the conditions or the terms of a waste disposal permit,  
12 or a decision to approve or deny an application for a solid waste  
13 permit exemption under RCW 70.95.300.

14 (e) Decisions of local health departments regarding the grant or  
15 denial of solid waste permits pursuant to chapter 70.95 RCW.

16 (f) Decisions of local health departments regarding the issuance  
17 and enforcement of permits to use or dispose of biosolids under RCW  
18 70.95J.080.

19 (g) Decisions of the department regarding waste-derived fertilizer  
20 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
21 department regarding waste-derived soil amendments under RCW 70.95.205.

22 (h) Decisions of local conservation districts related to the denial  
23 of approval or denial of certification of a dairy nutrient management  
24 plan; conditions contained in a plan; application of any dairy nutrient  
25 management practices, standards, methods, and technologies to a  
26 particular dairy farm; and failure to adhere to the plan review and  
27 approval timelines in RCW 90.64.026.

28 (i) Any other decision by the department or an air authority which  
29 pursuant to law must be decided as an adjudicative proceeding under  
30 chapter 34.05 RCW.

31 (j) Decisions of the department of natural resources, the  
32 department of fish and wildlife, and the department that are reviewable  
33 under chapter 76.09 RCW, and the department of natural resources'  
34 appeals of county, city, or town objections under RCW 76.09.050(7).

35 (k) Forest health hazard orders issued by the commissioner of  
36 public lands under RCW 76.06.180.

37 (l) Decisions of the department of fish and wildlife to issue,

1 deny, condition, or modify a hydraulic project approval permit under  
2 chapter 77.55 RCW.

3 (m) Decisions of the department of natural resources that are  
4 reviewable under RCW 78.44.270.

5 (n) Decisions of a state agency that is an authorized public entity  
6 under RCW 79.100.010 to take temporary possession or custody of a  
7 vessel or to contest the amount of reimbursement owed that are  
8 reviewable under RCW 79.100.120.

9 (2) The following hearings shall not be conducted by the hearings  
10 board:

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

13 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
14 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

15 (c) Appeals of decisions by the department under RCW 90.03.110 and  
16 90.44.220.

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

19 ~~((e) Appeals of decisions by the department as provided in chapter  
20 43.21B RCW.))~~

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

24 **Sec. 8.** RCW 43.21B.110 and 2010 c 210 s 8 and 2010 c 84 s 3 are  
25 each reenacted and amended to read as follows:

26 (1) The hearings board shall only have jurisdiction to hear and  
27 decide appeals from the following decisions of the department, the  
28 director, local conservation districts, the air pollution control  
29 boards or authorities as established pursuant to chapter 70.94 RCW,  
30 local health departments, the department of natural resources, the  
31 department of fish and wildlife, and the parks and recreation  
32 commission:

33 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
34 70.105.080, 70.107.050, 70.240.050, 76.09.170, 77.55.291, 78.44.250,  
35 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
36 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 3 of this act,  
3 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,  
5 modification, or termination of any permit, certificate, or license by  
6 the department or any air authority in the exercise of its  
7 jurisdiction, including the issuance or termination of a waste disposal  
8 permit, the denial of an application for a waste disposal permit, the  
9 modification of the conditions or the terms of a waste disposal permit,  
10 or a decision to approve or deny an application for a solid waste  
11 permit exemption under RCW 70.95.300.

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

14 (e) Decisions of local health departments regarding the issuance  
15 and enforcement of permits to use or dispose of biosolids under RCW  
16 70.95J.080.

17 (f) Decisions of the department regarding waste-derived fertilizer  
18 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
19 department regarding waste-derived soil amendments under RCW 70.95.205.

20 (g) Decisions of local conservation districts related to the denial  
21 of approval or denial of certification of a dairy nutrient management  
22 plan; conditions contained in a plan; application of any dairy nutrient  
23 management practices, standards, methods, and technologies to a  
24 particular dairy farm; and failure to adhere to the plan review and  
25 approval timelines in RCW 90.64.026.

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

29 (i) Decisions of the department of natural resources, the  
30 department of fish and wildlife, and the department that are reviewable  
31 under chapter 76.09 RCW, and the department of natural resources'  
32 appeals of county, city, or town objections under RCW 76.09.050(7).

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

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

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2 reviewable under RCW 78.44.270.

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4 under RCW 79.100.010 to take temporary possession or custody of a  
5 vessel or to contest the amount of reimbursement owed that are  
6 reviewable under RCW 79.100.120.

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8 board:

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

11 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
12 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

13 (c) Appeals of decisions by the department under RCW 90.03.110 and  
14 90.44.220.

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

17 ~~((e) Appeals of decisions by the department as provided in chapter  
18 43.211 RCW.))~~

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

22 NEW SECTION. **Sec. 9.** Sections 3 through 6 of this act are each  
23 added to chapter 70.240 RCW.

24 NEW SECTION. **Sec. 10.** Section 7 of this act expires June 30,  
25 2019.

26 NEW SECTION. **Sec. 11.** Section 8 of this act takes effect June 30,  
27 2019.

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