
HOUSE BILL 1180

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By Representatives Dickerson, Hudgins, Campbell, Dunshee, Pedersen, Hunt, Rolfes, Appleton, Moeller, Kagi, VanDeWege, Hunter, Cody, Chase, Green, Morrell, Pettigrew, White, Williams, Simpson, and Kenney

Read first time 01/14/09. Referred to Committee on Environmental Health.

1 AN ACT Relating to the use of bisphenol A; reenacting and amending
2 RCW 70.105D.070; adding a new chapter to Title 70 RCW; and prescribing
3 penalties.

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

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

7 (1) "Alternative" or "alternatives" means a substitute process,
8 product, material, chemical, strategy, or combination of these that
9 serves a functionally equivalent purpose to a chemical in a consumer
10 product.

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

12 NEW SECTION. **Sec. 2.** Beginning July 1, 2010, no manufacturer,
13 wholesaler, or retailer may manufacture, knowingly sell, offer for
14 sale, distribute for sale, or distribute for use in this state any of
15 the following:

16 (1) Any bottle, cup, or other container that contains bisphenol A
17 if that container is designed or intended to be filled with any liquid,

1 food, or beverage primarily for consumption from that container by
2 children three years of age or younger and is sold or distributed
3 without containing any liquid, food, or beverage;

4 (2) Any liquid, food, or beverage in a can, jar, or other container
5 containing bisphenol A, at a level of .5 parts per billion if the
6 liquid, food, or beverage is designed or intended primarily for
7 consumption by children three years of age or younger; or

8 (3) Any sports water bottle.

9 NEW SECTION. **Sec. 3.** Manufacturers may not replace bisphenol A as
10 a result of the prohibitions in section 2 of this act with a high
11 priority chemical that has been identified by the department under RCW
12 70.240.030.

13 NEW SECTION. **Sec. 4.** (1) By July 1, 2012, the department shall
14 conduct an alternatives assessment for bisphenol A in cans, jars, or
15 other containers that are used to hold liquids, food, or beverages
16 primarily for human consumption and are not prohibited under section 2
17 of this act.

18 (2) In conducting the alternatives assessment, the department shall
19 use scientific studies and other relevant findings regarding bisphenol
20 A and the alternatives to the use of bisphenol A, including any
21 information identified in section 5(1) (a) through (c) of this act.

22 (3) For the purpose of determining whether a safer alternative is
23 available, the department may presume that, in the absence of
24 persuasive evidence to the contrary:

25 (a) An alternative is a safer alternative if the alternative is not
26 a high priority chemical that is of high concern for children, as
27 determined under RCW 70.240.030;

28 (b) A safer alternative is available if the sale of the product
29 containing bisphenol A has been banned by another state within the
30 United States;

31 (c) A safer alternative is available if the alternative is sold in
32 the United States.

33 NEW SECTION. **Sec. 5.** (1) The manufacturer of a product described
34 in section 4 of this act containing bisphenol A must provide the

1 following information if requested by the department as part of its
2 alternatives assessment:

3 (a) Information on bisphenol A and alternatives to the use of
4 bisphenol A;

5 (b) Information on the hazard characteristics of the alternative
6 chemicals; and

7 (c) An assessment of the availability, cost, feasibility, and
8 performance, including potential for harm to human health and the
9 environment, of alternatives to bisphenol A and the reason the chemical
10 is used in the manufacture of the product in lieu of identified
11 alternatives.

12 (2) If a manufacturer fails to provide the requested information
13 within three months of the date requested, the department may impose a
14 penalty on the manufacturer. The amount of the penalty must be
15 calculated based on the cost of obtaining the information on the
16 availability of safer alternatives from another source.

17 NEW SECTION. **Sec. 6.** (1) If the department finds, after
18 consideration of the alternatives assessment conducted under section 4
19 of this act and other relevant information submitted to or obtained by
20 the department, that one or more safer alternatives to bisphenol A are
21 available, the department must seek public input on their findings and
22 present them in a report to the appropriate committees of the
23 legislature by December 31st of the year in which the findings are
24 made.

25 (2)(a) Before the department submits its report on its findings to
26 the legislature under subsection (1) of this section, it must publish
27 its findings in the Washington State Register and provide notice of its
28 findings by other means designed to inform those most likely to have an
29 interest in the findings.

30 (b) After the legislative session that follows the submission of
31 the report on findings, the department shall adopt rules that prohibit
32 the manufacture, sale, or distribution of products found to contain
33 bisphenol A.

34 NEW SECTION. **Sec. 7.** (1) A manufacturer of products that are
35 restricted under this chapter must notify persons that sell the

1 manufacturer's products in this state about the provisions of this
2 chapter no less than ninety days prior to the effective date of the
3 restrictions.

4 (2) A manufacturer that produces, sells, or distributes a product
5 prohibited from manufacture, sale, or distribution in this state under
6 this chapter shall recall the product and reimburse the retailer or any
7 other purchaser for the product.

8 NEW SECTION. **Sec. 8.** (1) A manufacturer, wholesaler, or retailer
9 that manufacturers, knowingly sells, or distributes products in
10 violation of this chapter is subject to a civil penalty not to exceed
11 five thousand dollars for each violation in the case of a first
12 offense. Manufacturers, wholesalers, or retailers who are repeat
13 violators are subject to a civil penalty not to exceed ten thousand
14 dollars for each repeat offense. Penalties collected under this
15 section must be deposited in the state toxics control account created
16 in RCW 70.105D.070.

17 (2) Retailers who unknowingly sell products that are restricted
18 from sale under this chapter are not subject to the civil penalties
19 under this chapter.

20 NEW SECTION. **Sec. 9.** Expenses to cover the cost of administering
21 this chapter shall be paid from the toxics control account under RCW
22 70.150D.070.

23 **Sec. 10.** RCW 70.105D.070 and 2008 c 329 s 921, 2008 c 329 s 920,
24 2008 c 329 s 919, and 2008 c 328 s 6009 are each reenacted and amended
25 to read as follows:

26 (1) The state toxics control account and the local toxics control
27 account are hereby created in the state treasury.

28 (2) The following moneys shall be deposited into the state toxics
29 control account: (a) Those revenues which are raised by the tax
30 imposed under RCW 82.21.030 and which are attributable to that portion
31 of the rate equal to thirty-three one-hundredths of one percent; (b)
32 the costs of remedial actions recovered under this chapter or chapter
33 70.105A RCW; (c) penalties collected or recovered under this chapter;
34 and (d) any other money appropriated or transferred to the account by

1 the legislature. Moneys in the account may be used only to carry out
2 the purposes of this chapter, including but not limited to the
3 following activities:

4 (i) The state's responsibility for hazardous waste planning,
5 management, regulation, enforcement, technical assistance, and public
6 education required under chapter 70.105 RCW;

7 (ii) The state's responsibility for solid waste planning,
8 management, regulation, enforcement, technical assistance, and public
9 education required under chapter 70.95 RCW;

10 (iii) The hazardous waste cleanup program required under this
11 chapter;

12 (iv) State matching funds required under the federal cleanup law;

13 (v) Financial assistance for local programs in accordance with
14 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

15 (vi) State government programs for the safe reduction, recycling,
16 or disposal of hazardous wastes from households, small businesses, and
17 agriculture;

18 (vii) Hazardous materials emergency response training;

19 (viii) Water and environmental health protection and monitoring
20 programs;

21 (ix) Programs authorized under chapter 70.146 RCW;

22 (x) A public participation program, including regional citizen
23 advisory committees;

24 (xi) Public funding to assist potentially liable persons to pay for
25 the costs of remedial action in compliance with cleanup standards under
26 RCW 70.105D.030(2)(e) but only when the amount and terms of such
27 funding are established under a settlement agreement under RCW
28 70.105D.040(4) and when the director has found that the funding will
29 achieve both (A) a substantially more expeditious or enhanced cleanup
30 than would otherwise occur, and (B) the prevention or mitigation of
31 unfair economic hardship; (~~and~~))

32 (xii) Development and demonstration of alternative management
33 technologies designed to carry out the hazardous waste management
34 priorities of RCW 70.105.150; and

35 (xiii) Expenses to cover the cost of administering chapter 70.--
36 RCW (the new chapter created in section 11 of this act).

37 (3) The following moneys shall be deposited into the local toxics

1 control account: Those revenues which are raised by the tax imposed
2 under RCW 82.21.030 and which are attributable to that portion of the
3 rate equal to thirty-seven one-hundredths of one percent.

4 (a) Moneys deposited in the local toxics control account shall be
5 used by the department for grants or loans to local governments for the
6 following purposes in descending order of priority:

7 (i) Remedial actions;

8 (ii) Hazardous waste plans and programs under chapter 70.105 RCW;

9 (iii) Solid waste plans and programs under chapters 70.95, 70.95C,
10 70.95I, and 70.105 RCW;

11 (iv) Funds for a program to assist in the assessment and cleanup of
12 sites of methamphetamine production, but not to be used for the initial
13 containment of such sites, consistent with the responsibilities and
14 intent of RCW 69.50.511; and

15 (v) Cleanup and disposal of hazardous substances from abandoned or
16 derelict vessels, defined for the purposes of this section as vessels
17 that have little or no value and either have no identified owner or
18 have an identified owner lacking financial resources to clean up and
19 dispose of the vessel, that pose a threat to human health or the
20 environment.

21 (b) Funds for plans and programs shall be allocated consistent with
22 the priorities and matching requirements established in chapters
23 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that
24 is a Puget Sound partner, as defined in RCW 90.71.010, along with any
25 project that is referenced in the action agenda developed by the Puget
26 Sound partnership under RCW 90.71.310, shall, except as conditioned by
27 RCW 70.105D.120, receive priority for any available funding for any
28 grant or funding programs or sources that use a competitive bidding
29 process. During the 2007-2009 fiscal biennium, moneys in the account
30 may also be used for grants to local governments to retrofit public
31 sector diesel equipment and for storm water planning and implementation
32 activities.

33 (c) Funds may also be appropriated to the department of health to
34 implement programs to reduce testing requirements under the federal
35 safe drinking water act for public water systems. The department of
36 health shall reimburse the account from fees assessed under RCW
37 70.119A.115 by June 30, 1995.

1 (d) To expedite cleanups throughout the state, the department shall
2 partner with local communities and liable parties for cleanups. The
3 department is authorized to use the following additional strategies in
4 order to ensure a healthful environment for future generations:

5 (i) The director may alter grant-matching requirements to create
6 incentives for local governments to expedite cleanups when one of the
7 following conditions exists:

8 (A) Funding would prevent or mitigate unfair economic hardship
9 imposed by the clean-up liability;

10 (B) Funding would create new substantial economic development,
11 public recreational, or habitat restoration opportunities that would
12 not otherwise occur; or

13 (C) Funding would create an opportunity for acquisition and
14 redevelopment of vacant, orphaned, or abandoned property under RCW
15 70.105D.040(5) that would not otherwise occur;

16 (ii) The use of outside contracts to conduct necessary studies;

17 (iii) The purchase of remedial action cost-cap insurance, when
18 necessary to expedite multiparty clean-up efforts.

19 (4) Except for unanticipated receipts under RCW 43.79.260 through
20 43.79.282, moneys in the state and local toxics control accounts may be
21 spent only after appropriation by statute.

22 (5) One percent of the moneys deposited into the state and local
23 toxics control accounts shall be allocated only for public
24 participation grants to persons who may be adversely affected by a
25 release or threatened release of a hazardous substance and to not-for-
26 profit public interest organizations. The primary purpose of these
27 grants is to facilitate the participation by persons and organizations
28 in the investigation and remedying of releases or threatened releases
29 of hazardous substances and to implement the state's solid and
30 hazardous waste management priorities. However, during the 1999-2001
31 fiscal biennium, funding may not be granted to entities engaged in
32 lobbying activities, and applicants may not be awarded grants if their
33 cumulative grant awards under this section exceed two hundred thousand
34 dollars. No grant may exceed sixty thousand dollars. Grants may be
35 renewed annually. Moneys appropriated for public participation from
36 either account which are not expended at the close of any biennium
37 shall revert to the state toxics control account.

1 (6) No moneys deposited into either the state or local toxics
2 control account may be used for solid waste incinerator feasibility
3 studies, construction, maintenance, or operation, or, after January 1,
4 2010, for projects designed to address the restoration of Puget Sound,
5 funded in a competitive grant process, that are in conflict with the
6 action agenda developed by the Puget Sound partnership under RCW
7 90.71.310.

8 (7) The department shall adopt rules for grant or loan issuance and
9 performance.

10 (8) During the 2007-2009 fiscal biennium, the legislature may
11 transfer from the local toxics control account to the state toxics
12 control account such amounts as reflect excess fund balance in the
13 account.

14 (9) During the 2007-2009 fiscal biennium, the local toxics control
15 account may also be used for a standby rescue tug at Neah Bay.

16 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act constitute
17 a new chapter in Title 70 RCW.

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