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**SUBSTITUTE HOUSE BILL 1785**

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**State of Washington**                      **62nd Legislature**                      **2011 Regular Session**

**By** House Environment (originally sponsored by Representatives  
Upthegrove and Hudgins)

READ FIRST TIME 02/17/11.

1            AN ACT Relating to limiting the use of certain antifouling paints;  
2 adding a new chapter to Title 70 RCW; creating a new section; and  
3 prescribing penalties.

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

5            NEW SECTION.    **Sec. 1.** The legislature intends to phase out the use  
6 of copper-based antifouling paints used on recreational water vessels.

7            NEW SECTION.    **Sec. 2.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires otherwise.

9            (1) "Alternative antifouling paint" means a pesticide, adjuvant,  
10 solvent, resin, or pigment containing coating or compound applied to  
11 the submerged portion of a recreational water vessel's hull to prevent  
12 growth of marine organisms. Alternative antifouling paints must use  
13 active ingredients other than copper-based pesticides to control  
14 biofouling.

15            (2) "Antifouling paint" means a pesticide, adjuvant, solvent,  
16 resin, or pigment containing copper coating or a copper-based compound  
17 applied to the submerged portion of a recreational water vessel's hull  
18 to prevent growth of marine organisms.

1 (3) "Department" means the department of ecology.

2 (4) "Director" means the director of the department of ecology.

3 (5) "Recreational water vessel" means a watercraft intended for use  
4 on the water for recreational purposes that is sixty-five feet in  
5 length or less and includes chartered recreational watercraft.

6 NEW SECTION. **Sec. 3.** Beginning January 1, 2017, no manufacturer,  
7 wholesaler, retailer, or distributor may sell or offer for sale in this  
8 state any new recreational water vessel with antifouling paint  
9 containing copper.

10 NEW SECTION. **Sec. 4.** Beginning January 1, 2027, no manufacturer,  
11 wholesaler, retailer, or distributor may sell or offer for sale in this  
12 state any new or used recreational water vessel with antifouling paint  
13 containing copper.

14 NEW SECTION. **Sec. 5.** (1) The department shall enforce the  
15 requirements of this chapter.

16 (2) Enforcement of this chapter by the department must rely on  
17 notification and information exchange between the department and  
18 manufacturers, wholesalers, retailers, and distributors of recreational  
19 water vessels. The department shall issue one warning letter by  
20 certified mail to a manufacturer, wholesaler, retailer, or distributor  
21 that sells or offers for sale a recreational water vessel with  
22 antifouling paint in violation of this chapter. The department shall  
23 offer information or other appropriate assistance regarding compliance  
24 with this chapter. Once a warning letter has been issued to a  
25 manufacturer, wholesaler, retailer, or distributor for violations under  
26 subsection (3) of this section, the department need not provide warning  
27 letters for subsequent violations by that manufacturer, wholesaler,  
28 retailer, or distributor. If compliance is not achieved, the  
29 department may assess penalties under this section.

30 (3) A recreational water vessel manufacturer, wholesaler, retailer,  
31 or distributor that violates this chapter is subject to a civil penalty  
32 not to exceed ten thousand dollars for each violation.

33 (4)(a) A recreational water vessel manufacturer, wholesaler,  
34 retailer, or distributor that violates this chapter must notify the  
35 registered owner of the recreational water vessel, if any, within six

1 months of knowledge of the violation and must replace at no cost to the  
2 owner the noncompliant antifouling paint with an alternative  
3 antifouling paint that complies with this chapter.

4 (b) A recreational water vessel manufacturer, wholesaler, retailer,  
5 or distributor that fails to provide the required notification under  
6 (a) of this subsection within six months of knowledge of the violation  
7 is subject to a civil penalty not to exceed one hundred thousand  
8 dollars.

9 (c) A recreational water vessel manufacturer, wholesaler, retailer,  
10 or distributor that fails to provide the required notification under  
11 (a) of this subsection after twelve months of knowledge of the  
12 violation is subject to a civil penalty not to exceed ten thousand  
13 dollars per recreational water vessel.

14 (5) Before the effective date of the prohibitions in sections 3 and  
15 4 of this act, the department shall prepare and distribute information  
16 about the prohibitions to manufacturers, wholesalers, retailers, and  
17 distributors to the maximum extent practicable.

18 (6) All penalties collected under this chapter must be deposited in  
19 the state toxics control account created in RCW 70.105D.070.

20 NEW SECTION. **Sec. 6.** (1) On or after January 1, 2016, the  
21 director may establish and maintain a statewide advisory committee to  
22 assist the department in implementing the requirements of this chapter.

23 (2) If a statewide advisory committee is established by the  
24 director, the director shall appoint a balanced representation of  
25 interests on the committee.

26 (3) Participation on the statewide advisory committee is voluntary  
27 and members are not eligible for any form of compensation, including  
28 reimbursement for expenses incurred as a result of participating on the  
29 committee.

30 (4)(a) The department shall review available scientific studies and  
31 other relevant information to determine how antifouling paints and  
32 alternative antifouling paints are affecting marine organisms and water  
33 quality. The department shall report its findings to the legislature,  
34 consistent with RCW 43.01.036, by December 31, 2016.

35 (b) If the statewide advisory committee is established, the  
36 department may consult with the committee to prepare the report  
37 required under (a) of this subsection.

1        NEW SECTION.    **Sec. 7.**    Beginning January 1, 2024, no antifouling  
2    paint containing more than 0.5 percent of copper may be offered for  
3    sale in this state.

4        NEW SECTION.    **Sec. 8.**    The department may adopt rules necessary to  
5    implement this chapter.

6        NEW SECTION.    **Sec. 9.**    Sections 2 through 8 of this act constitute  
7    a new chapter in Title 70 RCW.

8        NEW SECTION.    **Sec. 10.**    If any provision of this act or its  
9    application to any person or circumstance is held invalid, the  
10   remainder of the act or the application of the provision to other  
11   persons or circumstances is not affected.

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