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SENATE BILL 5231

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Nelson, Swecker, Rockefeller, Ranker, Chase, Regala, Kohl-Welles, and Kline; by request of Department of Ecology

Read first time 01/18/11. Referred to Committee on Environment, Water & Energy.

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~~) means a consumer product  
26 intended for use by children, including but not limited to any of the  
27 following:

28 (i) Toys;

29 (ii) Children's cosmetics;

30 (iii) Children's jewelry;

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

34 (v) Child car seats.

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

36 (i) Batteries;

37 (ii) Slings and catapults;

38 (iii) Sets of darts with metallic points;

- 1 (iv) Toy steam engines;
- 2 (v) Bicycles and tricycles;
- 3 (vi) Video toys that can be connected to a video screen and are
- 4 operated at a nominal voltage exceeding twenty-four volts;
- 5 (vii) Chemistry sets;
- 6 (viii) Consumer electronic products, including but not limited to
- 7 personal computers, audio and video equipment, calculators, wireless
- 8 phones, game consoles, and handheld devices incorporating a video
- 9 screen, used to access interactive software and their associated
- 10 peripherals;
- 11 (ix) Interactive software, intended for leisure and entertainment,
- 12 such as computer games, and their storage media, such as compact disks;
- 13 (x) BB guns, pellet guns, and air rifles;
- 14 (xi) Snow sporting equipment, including skis, poles, boots, snow
- 15 boards, sleds, and bindings;
- 16 (xii) Sporting equipment, including, but not limited to bats,
- 17 balls, gloves, sticks, pucks, and pads;
- 18 (xiii) Roller skates;
- 19 (xiv) Scooters;
- 20 (xv) Model rockets;
- 21 (xvi) Athletic shoes with cleats or spikes; (~~and~~)
- 22 (xvii) Pocket knives and multitools; and
- 23 (xviii) Used products.

24 (4) "Cosmetics" includes articles intended to be rubbed, poured,

25 sprinkled, or sprayed on, introduced into, or otherwise applied to the

26 human body or any part thereof for cleansing, beautifying, promoting

27 attractiveness, or altering the appearance, and articles intended for

28 use as a component of such an article. "Cosmetics" does not include

29 soap, dietary supplements, or food and drugs approved by the United

30 States food and drug administration.

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

32 (6) "High priority chemical" means a chemical identified by a state

33 agency, federal agency, or accredited research university, or other

34 scientific evidence deemed authoritative by the department on the basis

35 of credible scientific evidence as known to do one or more of the

36 following:

37 (a) Harm the normal development of a fetus or child or cause other

38 developmental toxicity;

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

2 (c) Disrupt the endocrine system;

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

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

6 (f) Be very persistent and very bioaccumulative.

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

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

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

17 (10) "Trade association" means a membership organization of persons  
18 engaging in a similar or related line of commerce, organized to promote  
19 and improve business conditions in that line of commerce and not to  
20 engage in a regular business of a kind ordinarily carried on for  
21 profit.

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

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

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

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

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

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

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

37 (16) "Product component" means a uniquely identifiable part, piece,  
38 substrate, or coating (including ink or dye) that is intended to be

1 included as a part of a finished children's product or performs a  
2 distinctive and necessary function in the operation of a product. For  
3 formulated products, the homogenous mixture is considered a single  
4 component.

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

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

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

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

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

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

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

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

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

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

33 NEW SECTION. **Sec. 3.** (1) Using information submitted by October  
34 2012 by manufacturers in compliance with RCW 70.240.040, the department  
35 shall review and evaluate the information submitted as well as other  
36 relevant information, and develop a draft list of products to be

1 considered for alternatives assessments. The department shall repeat  
2 this review using additional information submitted in compliance with  
3 RCW 70.240.040 by April 2014 and no more frequently than every two  
4 years thereafter. Such products must be identified based on the  
5 following criteria:

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

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

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

12 (ii) Presence of a chemical of high concern for children in high  
13 concentrations relative to other products, product categories, or  
14 product components;

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

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

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

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

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

26 (2) The department shall submit its draft list of products to be  
27 considered for alternatives assessment to the department of health for  
28 prioritization.

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

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

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

37 (c) The number of units of the product sold in Washington or  
38 nationally.

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

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

13 (6) The department may identify priority products to be considered  
14 for alternatives assessment consistent with the department of health  
15 prioritization and in consideration of public comment.

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

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

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

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

29 NEW SECTION. **Sec. 4.** (1) The department, in consultation with the  
30 department of health, shall consult with technical experts to develop  
31 guidelines for conducting alternatives assessments consistent with  
32 subsection (3) of this section. The department shall seek to develop  
33 alternatives assessment guidance consistent with existing guidance from  
34 other jurisdictions. Technical experts to be consulted may include,  
35 but not be limited to:

36 (a) Manufacturers of fabricated products;

37 (b) Manufacturers of formulated products;

- 1 (c) Small manufacturers of children's products;
- 2 (d) Manufacturers of children's product components;
- 3 (e) Nongovernmental organizations concerned with the environment;
- 4 (f) Nongovernmental organizations concerned with consumer
- 5 protection;
- 6 (g) Toxicologists;
- 7 (h) Children's health specialists; and
- 8 (i) Epidemiologists.

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

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

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

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

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

26 (c) Information relevant to determining the potential hazard to  
27 children's health including, but not limited to, toxicity of  
28 alternative chemicals, potential for children's exposure to those  
29 chemicals, and potential hazards from those chemicals as they may be  
30 used in the product.

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

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

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



1 (2) The department, in consultation with the department of health,  
2 shall review alternatives assessments and other relevant information,  
3 including any public comments on alternatives assessments and determine  
4 if additional actions are required to protect children's health.

5 (3) The department, in consultation with the department of health,  
6 shall prepare a report of the review conducted under subsection (2) of  
7 this section and submit these findings to the appropriate committees of  
8 the legislature.

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

14 (2) Manufacturers of children's products that have a current label  
15 from the United States environmental protection agency design for the  
16 environment program are exempt from the requirements established in RCW  
17 70.240.040 and section 3 of this act for as long as the label remains  
18 current. This exemption applies only to those children's products that  
19 carry a current design for the environment label.

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

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

29 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
30 70.105.080, 70.107.050, 70.240.050, 76.09.170, 77.55.291, 78.44.250,  
31 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
32 90.64.102.

33 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
34 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 3 of this act,  
35 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

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

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

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

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

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

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

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

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

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

5 (2) The following hearings shall not be conducted by the hearings  
6 board:

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

9 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
10 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

11 (c) Appeals of decisions by the department under RCW 90.03.110 and  
12 90.44.220.

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

15 ~~((e) Appeals of decisions by the department as provided in chapter  
16 43.21B RCW.))~~

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

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

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

29 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
30 70.105.080, 70.107.050, 70.240.050, 76.09.170, 77.55.291, 78.44.250,  
31 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
32 90.64.102.

33 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
34 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 3 of this act,  
35 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

36 (c) Except as provided in RCW 90.03.210(2), the issuance,  
37 modification, or termination of any permit, certificate, or license by

1 the department or any air authority in the exercise of its  
2 jurisdiction, including the issuance or termination of a waste disposal  
3 permit, the denial of an application for a waste disposal permit, the  
4 modification of the conditions or the terms of a waste disposal permit,  
5 or a decision to approve or deny an application for a solid waste  
6 permit exemption under RCW 70.95.300.

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

9 (e) Decisions of local health departments regarding the issuance  
10 and enforcement of permits to use or dispose of biosolids under RCW  
11 70.95J.080.

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

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

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

24 (i) Decisions of the department of natural resources, the  
25 department of fish and wildlife, and the department that are reviewable  
26 under chapter 76.09 RCW, and the department of natural resources'  
27 appeals of county, city, or town objections under RCW 76.09.050(7).

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

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

33 (l) Decisions of the department of natural resources that are  
34 reviewable under RCW 78.44.270.

35 (m) Decisions of a state agency that is an authorized public entity  
36 under RCW 79.100.010 to take temporary possession or custody of a  
37 vessel or to contest the amount of reimbursement owed that are  
38 reviewable under RCW 79.100.120.

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

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

5 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
6 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

7 (c) Appeals of decisions by the department under RCW 90.03.110 and  
8 90.44.220.

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

11 ~~((e) Appeals of decisions by the department as provided in chapter  
12 43.211 RCW.))~~

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

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

18 NEW SECTION. **Sec. 10.** Section 7 of this act expires June 30,  
19 2019.

20 NEW SECTION. **Sec. 11.** Section 8 of this act takes effect June 30,  
21 2019.

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