
SUBSTITUTE SENATE BILL 6131

State of Washington 64th Legislature 2015 2nd Special Session

By Senate Energy, Environment & Telecommunications (originally sponsored by Senator Ericksen)

READ FIRST TIME 06/27/15.

1 AN ACT Relating to requiring safer chemicals in Washington;
2 amending RCW 43.21B.110, 43.21B.110, 70.240.010, and 70.240.050;
3 adding a new section to chapter 39.26 RCW; adding a new section to
4 chapter 70.240 RCW; adding a new chapter to Title 70 RCW; creating
5 new sections; prescribing penalties; providing an effective date; and
6 providing expiration dates.

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

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

11 (1) "Alternatives assessment" means a process for identifying and
12 comparing chemical and nonchemical alternatives currently in
13 existence that can be practicably and economically used to replace
14 the use of a chemical or, if a safer alternative is not identified,
15 to reduce the amount of or exposure to that chemical.

16 (2) "Biomonitoring" means assessment of human exposures to
17 chemicals by measuring the chemicals or their metabolites in human
18 tissues or specimens, such as blood, breast milk, and urine.

19 (3) "Chemical" means a substance, including metals, with a
20 distinct molecular composition or a group of structurally related
21 substances, and includes the breakdown products of the substance or

1 substances that form through decomposition, degradation, or
2 metabolism.

3 (4) "Chemical action plan" means a report that identifies,
4 characterizes, and evaluates current and legacy uses and releases of
5 a specific chemical or group of chemicals and identifies actions
6 needed to protect human health and the environment.

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

8 (6) "Director" means the director of the department of ecology or
9 the director's designee.

10 (7) "Emerging chemicals" means chemicals that meet the criteria
11 of a high priority chemical as defined in RCW 70.240.010 and either:

12 (a) Meet the criteria for a high priority chemical of high
13 concern for children as described in RCW 70.240.030(1) (a) through
14 (c); or

15 (b) Have been shown through environmental monitoring studies to
16 be present in fish, wildlife, air, water, soil, or sediment.

17 (8)(a) "Manufacturer" means any person or entity that produces a
18 product or is an importer or domestic distributor of a product sold
19 or offered for sale in or into the state.

20 (b) "Manufacturer" does not include:

21 (i) Small businesses as defined in RCW 19.85.020; or

22 (ii) A person or entity that provides documentation demonstrating
23 that it does not exercise direct control over the process by which a
24 product was formulated.

25 (9)(a) "Product" means any item sold for residential or
26 commercial use, including any component or product packaging.

27 (b) "Product" does not include the following items:

28 (i) Food or beverage and food or beverage packaging, regulated by
29 the United States food and drug administration or the United States
30 department of agriculture;

31 (ii) Tobacco products;

32 (iii) Drug or biological products and packaging regulated by the
33 United States food and drug administration;

34 (iv) Products and components produced under military
35 specifications;

36 (v) Products and components regulated by the federal aviation
37 administration;

38 (vi) Products registered for distribution in the state under
39 chapter 15.54 or 15.58 RCW; and

1 (vii) Any previously owned product sold in casual or isolated
2 sales as defined in RCW 82.04.040 or products sold by nonprofit
3 organizations.

4 (10) "Product component" means a uniquely identifiable part,
5 material, or coating that is included as a part of a finished
6 product.

7 (11) "Safer alternative" means an alternative, demonstrated by an
8 alternatives assessment, that meets improved hazard and exposure
9 considerations, exhibits lower risk, and can be practicably and
10 economically substituted for the original chemical.

11 (12) "Unsuitable alternative" means an alternative identified
12 through the alternatives assessment process that does not meet the
13 hazard, exposure, cost, performance, and availability criteria of a
14 safer alternative.

15 (13) This section expires June 30, 2025.

16 NEW SECTION. **Sec. 2.** (1) Beginning January 1, 2016, and every
17 two years thereafter, the department, in consultation with the
18 department of health, must select up to two chemicals for the
19 development of chemical action plans, as provided in section 4 of
20 this act, from the following:

21 (a) Chemicals regulated by the department under human health
22 criteria for water quality standards in the proposed rule published
23 by the department on February 4, 2015, in the Washington State
24 Register, as WSR 15-03-015;

25 (b) Chemicals that are persistent bioaccumulative toxins as
26 defined in chapter 173-333 WAC, as of the effective date of this
27 section, that affect water quality; or

28 (c) Emerging chemicals.

29 (2) The department may conduct environmental monitoring or,
30 subject to the availability of amounts appropriated for this specific
31 purpose, may request the department of health to conduct
32 biomonitoring of a chemical, to verify the chemical is present in the
33 state's environment or population or to better understand
34 environmental or human exposure in the state. Environmental
35 monitoring and biomonitoring conducted pursuant to this chapter must
36 be of a minimum scope necessary to adequately inform a chemical
37 action plan.

1 (3)(a) The first five chemicals selected for a chemical action
2 plan must be chosen from the chemicals identified in subsection
3 (1)(a) or (b) of this section.

4 (b) The director shall notify the public of the selection of a
5 chemical for the development of a chemical action plan. The notice
6 must state the basis for the selection, and include a draft schedule
7 for completing the chemical action plan. The notice must be published
8 in the Washington State Register. The department shall provide an
9 opportunity for public review and comment before finalizing the
10 schedule.

11 (c) When selecting chemicals for the development of chemical
12 action plans, the department must consider:

13 (i) Opportunities for reducing or phasing out uses, production,
14 or releases of a chemical;

15 (ii) Current scientific evidence on the combined effects of
16 exposure to a chemical and other substances commonly present in the
17 Washington environment;

18 (iii) Current scientific evidence on the susceptibility of
19 sensitive population groups and environmental media from exposure to
20 a chemical, as well as the cumulative effects of multiple exposures;

21 (iv) The relative ranking assigned to a chemical by the
22 department based on information applicable to Washington about a
23 chemical's properties, uses of a chemical, releases of a chemical,
24 and levels of a chemical present in the environment and in residents;

25 (v) Whether a chemical has been determined to impact Washington
26 state waters through identification under section 303(d) of the
27 federal clean water act;

28 (vi) The potential for an emerging chemical to impair water
29 quality; and

30 (vii) Existing plans or regulatory requirements to reduce or
31 phase out the uses and releases of a chemical.

32 (d) The department must identify the sources of information it
33 relied upon in selecting chemicals for the development of chemical
34 action plans under this section, including peer-reviewed science.

35 (4) This section expires June 30, 2025.

36 NEW SECTION. **Sec. 3.** (1) The department may request information
37 from manufacturers about products or product components that contain
38 a chemical selected for a chemical action plan under section 2 of
39 this act. Prior to requesting information from a manufacturer under

1 this subsection, the department must consult with a chemical action
2 plan external advisory committee to evaluate the chemical that is the
3 subject of the information request. Requests for information must be
4 reasonable in scope and frequency and focused on:

5 (a) The most common and prevalent uses of the chemical, product,
6 or product components that contain the chemical, based on the
7 department's existing knowledge about the chemical;

8 (b) Areas where there is an identified gap in public or
9 department knowledge about the chemical; and

10 (c) Uses of the chemical, product, or product components that the
11 department has reason to believe are likely to be responsible for or
12 associated with a significant portion of chemical releases into the
13 environment or public health exposures.

14 (2) Within twelve months of a request by the department,
15 manufacturers shall report the following:

16 (a) The name and address of the manufacturer and the contact
17 information of the person responsible for responding to the
18 department's requests on behalf of the manufacturer;

19 (b) The chemical abstracts service registry number of the
20 chemical for which information is being requested;

21 (c) A brief description of the manufacturer's product or product
22 component categories containing the chemical;

23 (d) A description of the function or functions of the chemical in
24 the manufacturer's product or product components;

25 (e) The amount of the chemical used in each unit of the
26 manufacturer's product or product components, which may be reported
27 in ranges rather than the exact amount; and

28 (f) Any other information the manufacturer deems relevant to the
29 appropriate use of the chemical, product, or product components.

30 (3) In response to an information request from the department
31 under this section, a manufacturer may extrapolate amounts and
32 estimates from the manufacturer's national data, or data compiled by
33 federal agencies, other states, nations, or other sources. In
34 addition, multiple manufacturers, or a business association, may
35 collaborate and prepare a single submission on behalf of multiple
36 manufacturers for a chemical found in similar products or product
37 components in response to the department's request for information.
38 All submissions in response to the department's information request
39 must include the information required in subsection (2)(a) of this
40 section for each manufacturer. However, the information required in

1 subsection (2)(b) through (f) of this section is not required to be
2 provided in a manner that attributes product or chemical use data or
3 information to individual manufacturers.

4 (4) The department shall specify the required format for
5 submission of the information required under subsection (2) of this
6 section. The format must be generally consistent with the format
7 specified by other states or federal agencies with substantially
8 similar reporting requirements.

9 (5) Where information submitted by a manufacturer under chapter
10 70.240 RCW is the same as the information required to be submitted by
11 the manufacturer in subsection (2) of this section, the manufacturer
12 is not required to submit the same information more than once.

13 (6) The department may, by order, require a manufacturer subject
14 to the reporting requirement in subsection (2) of this section to
15 provide additional information that is relevant to the development of
16 a chemical action plan under section 4 of this act. Prior to an order
17 under this subsection, the department must consult with the external
18 advisory committee formed for the chemical action plan. An order by
19 the department must also meet the reasonableness criteria of
20 subsection (1) of this section.

21 (7) A manufacturer may request information submitted under this
22 section be held confidential as provided under section 7 of this act.

23 (8) This section expires June 30, 2025.

24 NEW SECTION. **Sec. 4.** (1) When developing a chemical action
25 plan, the department shall convene an external advisory committee to
26 hold meetings and provide input, expertise, and additional
27 information. All external advisory committee meetings must be open to
28 the public. The department must invite representatives from, at
29 minimum, the following organizations and entities to serve as
30 external advisory committee members: Large and small business
31 sectors; a statewide business association with over one thousand
32 total members and that represents multiple business sectors;
33 community, environmental, and public health advocacy groups; local
34 governments; affected and interested businesses; and public health
35 agencies. State agencies and technical experts may be requested to
36 participate.

37 (2) All chemical action plans must include the following:

38 (a) The chemical name and a description of its properties, uses,
39 and products or product components in which the chemical is found;

1 (b) An analysis of the available information on the production,
2 unintentional production, current and legacy uses, and disposal of
3 the chemical;

4 (c) Information on the known, potential, or proven impacts on
5 human health and the environment associated with the use and release
6 of the chemical;

7 (d) An evaluation of regulatory and nonregulatory activities that
8 influence production, uses, releases, and management of the chemical;

9 (e) Identification of actions that, if needed, would eliminate,
10 reduce, or manage exposures to the chemical;

11 (f) A prioritization of sources of exposures and releases of the
12 chemical into the environment. The prioritization must be based on
13 impacts to human health and the environment, the potential to affect
14 water quality, and the feasibility and cost of actions that could be
15 taken to address exposures or releases;

16 (g) A determination as to whether an alternatives assessment is
17 recommended, which must address the prioritization of sources as
18 required under (f) of this subsection; and

19 (h) A determination of the persons or entities responsible for
20 completing an alternatives assessment, if recommended.

21 (3) All recommendations in a chemical action plan may be included
22 only after consideration of the following criteria:

23 (a) Opportunity for environmental and human health benefits in
24 the state of Washington;

25 (b) Economic and social impacts;

26 (c) Feasibility;

27 (d) Availability and effectiveness of safer alternatives, if
28 known; and

29 (e) Consistency with existing federal and state regulatory
30 requirements.

31 (4) The department must include in the chemical action plan a
32 summary of all views, including dissenting views, held by external
33 advisory committee members regarding the recommendations contained in
34 the plan.

35 (5) The department must identify the sources of information it
36 relied upon in completing a chemical action plan under this section,
37 including peer-reviewed science.

38 (6) This section expires June 30, 2025.

1 NEW SECTION. **Sec. 5.** (1) The department may require, by order,
2 manufacturers to conduct two alternatives assessments, each of which
3 must be consistent with recommendations from chemical action plans
4 completed for the chemicals that are the subject of the alternatives
5 assessments. However, the department may not require manufacturers to
6 conduct more than one alternatives assessment for a chemical under
7 section 2(1)(b) of this act.

8 (a) If the department orders a manufacturer to conduct an
9 alternatives assessment for a chemical under section 2(1) (a) or (b)
10 of this act, the department may not require the alternatives
11 assessment to be conducted for a greater breadth of uses, products,
12 or manufacturers than is necessary to address sources of
13 environmental or human exposure to the chemical.

14 (b) If the department orders a manufacturer to conduct an
15 alternatives assessment for a chemical under section 2(1)(c) of this
16 act, the alternatives assessment must be limited to a single type of
17 use of a chemical or a single type of product or product component in
18 which the chemical is found.

19 (2) In addition to the two alternatives assessments authorized in
20 subsection (1) of this section, the department may require, by order,
21 manufacturers to conduct: An alternatives assessment for
22 polychlorinated biphenyls in pigments and dyes.

23 (3)(a) When ordered by the department to conduct an alternatives
24 assessment, a manufacturer must submit:

25 (i) An alternatives assessment as required under subsection (6)
26 of this section to the department for each use of the chemical
27 specified by the department; or

28 (ii) A peer-reviewed alternatives assessment completed by an
29 authoritative entity, including the United States environmental
30 protection agency, the federal food and drug administration, or other
31 nations or states, that meets the requirements of subsection (6) of
32 this section.

33 (b) A manufacturer must submit the alternatives assessment to the
34 department within eighteen months from the date the alternatives
35 assessment is ordered. However, the department may grant an extension
36 on a case-by-case basis for good cause if the manufacturer shows that
37 additional time is necessary to complete the alternatives assessment
38 or to substantially improve the quality of the alternatives
39 assessment.

1 (c) A manufacturer may meet its obligation under this section by
2 collaborating with other manufacturers or business associations of
3 similar products to conduct and complete the alternatives assessment.
4 A manufacturer complying with this subsection (3)(c) is not in
5 violation of this chapter.

6 (4) A manufacturer is not required to submit an alternatives
7 assessment when the manufacturer provides the department, within
8 thirty days of receipt of an order to conduct an alternatives
9 assessment, a certificate of compliance.

10 (a) A certificate of compliance must include the following:

11 (i) Documentation demonstrating that the manufacturer has: (A)
12 Ceased using the chemical for which it would be required to conduct
13 an alternatives assessment; or (B) committed resources in pursuit of
14 a plan to phase out, within a reasonable time, the chemical for which
15 the manufacturer would be required to conduct an alternatives
16 assessment;

17 (ii) Chemical names and chemical abstracts service registry
18 numbers for all of the chemicals that currently contribute to the
19 specific function previously served by the chemical for which an
20 alternatives assessment has been ordered;

21 (iii) How the manufacturer is using a safer alternative to meet
22 the function of a chemical for which an alternatives assessment has
23 been ordered; and

24 (iv) The signature of an authorized official of the manufacturer.

25 (b) A manufacturer that is not required to conduct an
26 alternatives assessment under this subsection (4) is not in violation
27 of this chapter.

28 (5)(a) The department, in consultation with the chemical action
29 plan external advisory committee, may contract with an independent,
30 qualified third party to conduct an alternatives assessment when:

31 (i) A manufacturer is not required to conduct an alternatives
32 assessment under this section; or

33 (ii) The department determines that an alternatives assessment
34 submitted by a manufacturer does not meet the definition or required
35 objectives of an alternatives assessment.

36 (b) The department must ensure an alternatives assessment
37 completed by an independent, qualified third party is peer-reviewed
38 and meets the requirements under subsection (6) of this section.

39 (c) The department may by order require a manufacturer,
40 consistent with recommendations in a chemical action plan, to provide

1 additional information that is relevant to the development of a
2 department-conducted alternatives assessment.

3 (6) An alternatives assessment must:

4 (a) Meet the objective of assessing less toxic chemicals and
5 nonchemical alternatives to replace the use of a chemical or, if a
6 safer alternative is not identified, to reduce the amount of or
7 exposure to chemicals in products and product components and to avoid
8 the unintended consequence of switching to a substitute that presents
9 an equivalent or greater concern;

10 (b) Follow the guidelines issued by the interstate chemicals
11 clearinghouse, the national academy of sciences, or equivalent
12 methodology; and

13 (c) Include, at a minimum: (i) An evaluation of chemical hazard,
14 exposure, performance, consumer acceptance, cost, and availability;
15 (ii) equivalent information, as required under (c)(i) of this
16 subsection, for each alternative considered; and (iii) the
17 identification of alternatives and unsuitable alternatives.

18 (7) If the department determines, based on an alternatives
19 assessment, that a safer alternative exists, the department may
20 submit agency request legislation recommending the prohibition of
21 certain uses of a chemical or other actions determined appropriate,
22 including restrictions on the use of unsuitable alternatives.

23 (8) This section expires June 30, 2025.

24 NEW SECTION. **Sec. 6.** (1) A manufacturer violating this chapter
25 is subject to a civil penalty not to exceed five thousand dollars for
26 each violation in the case of a first offense. Manufacturers who are
27 repeat violators are subject to a civil penalty not to exceed ten
28 thousand dollars for each repeat offense.

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

32 (3) All penalties collected under this chapter shall be deposited
33 in the state toxics control account created in RCW 70.105D.070.

34 (4) This section expires June 30, 2025.

35 NEW SECTION. **Sec. 7.** (1) Manufacturers submitting information
36 or records to the department may request that the information or
37 records be made available only for the confidential use of the

1 director, the department, or the appropriate division of the
2 department.

3 (2)(a) A manufacturer requesting confidentiality for information
4 submitted under this act must demonstrate to the department how the
5 records relate to processes of production unique to the manufacturer
6 or how releasing the records to the public may adversely affect the
7 manufacturer's competitive position.

8 (b)(i) The director shall give consideration to the request for
9 confidentiality and if such action would not be detrimental to the
10 public interest and is otherwise within accord with the policies and
11 purposes of chapter 43.21A RCW, the director must grant the request
12 for the information to remain confidential as authorized in RCW
13 43.21A.160.

14 (ii) The department must respond to a manufacturer's request
15 within fourteen days of receipt of the request. The department must
16 inform the manufacturer regarding its determination of whether the
17 submitted information should be kept confidential under this section
18 and RCW 43.21A.160 and its reasons for the determination.

19 (iii) The department must keep confidential any records furnished
20 by a manufacturer under this chapter that relate to proprietary
21 manufacturing processes or chemical formulations used in products or
22 manufacturing processes.

23 (3) If the director denies the request of a manufacturer to keep
24 submitted information or records confidential under this section, the
25 manufacturer may appeal the denial to a court of competent
26 jurisdiction. In a review of whether the submitted information or
27 records meet the criteria of RCW 43.21A.160 and this section, a court
28 must examine submitted information or records in camera.

29 (4) This section expires June 30, 2025.

30 NEW SECTION. **Sec. 8.** (1) The department may adopt rules as
31 necessary for the purpose of implementing, administering, and
32 enforcing this chapter. Rules adopted to require manufacturers to
33 conduct alternatives assessments must be consistent with section 5 of
34 this act.

35 (2) This section expires June 30, 2025.

36 NEW SECTION. **Sec. 9.** A new section is added to chapter 39.26
37 RCW to read as follows:

1 (1) The department shall establish purchasing and procurement
2 policies that provide a preference for products and products in
3 packaging that do not contain:

4 (a) Persistent bioaccumulative toxins, as defined in chapter
5 173-333 WAC as of the effective date of this section; and

6 (b) Chemicals that have been addressed by a completed chemical
7 action plan that has included a recommendation that the state adopt a
8 purchasing and procurement policy for products and products in
9 packaging that do not contain the chemical.

10 (2) No agency may knowingly purchase products or products in
11 packaging containing chemicals identified in subsection (1) of this
12 section unless there is no cost-effective and technologically
13 feasible alternative. When all available products contain a chemical
14 identified in subsection (1) of this section, a preference must be
15 given to alternative products that contain lesser amounts of
16 chemicals identified in subsection (1) of this section.

17 (3) Nothing in this section requires the department or any other
18 state agency to breach an existing contract or dispose of stock that
19 has been ordered or is in the possession of the department or other
20 state agency as of the effective date of this section.

21 (4) This section does not require the department or any other
22 agency to test every product procured.

23 (5) The department or any other agency may request suppliers of
24 products to provide testing data from an accredited laboratory or
25 testing facility documenting levels of a chemical identified in
26 subsection (1) of this section in products or product packaging.
27 Requested or voluntarily received testing data from businesses,
28 manufacturers, organizations, and individuals must be submitted for
29 review to the department of ecology.

30 **Sec. 10.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to
31 read as follows:

32 (1) The hearings board shall only have jurisdiction to hear and
33 decide appeals from the following decisions of the department, the
34 director, local conservation districts, the air pollution control
35 boards or authorities as established pursuant to chapter 70.94 RCW,
36 local health departments, the department of natural resources, the
37 department of fish and wildlife, the parks and recreation commission,
38 and authorized public entities described in chapter 79.100 RCW:

1 (a) Civil penalties imposed pursuant to RCW 18.104.155,
2 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,
3 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
4 90.64.102.

5 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
6 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
7 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

20 (f) Decisions of local health departments regarding the issuance
21 and enforcement of permits to use or dispose of biosolids under RCW
22 70.95J.080.

23 (g) Decisions of the department regarding waste-derived
24 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
25 decisions of the department regarding waste-derived soil amendments
26 under RCW 70.95.205.

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

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

36 (j) Decisions of the department of natural resources, the
37 department of fish and wildlife, and the department that are
38 reviewable under chapter 76.09 RCW, and the department of natural
39 resources' appeals of county, city, or town objections under RCW
40 76.09.050(7).

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

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

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

8 (n) Decisions of an authorized public entity under RCW 79.100.010
9 to take temporary possession or custody of a vessel or to contest the
10 amount of reimbursement owed that are reviewable by the hearings
11 board under RCW 79.100.120.

12 (o) Decisions regarding a restriction, order, or penalty issued
13 under chapter 70.--- RCW (the new chapter created in section 16 of
14 this act).

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

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

19 (b) Hearings conducted by the department pursuant to RCW
20 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
21 90.44.180.

22 (c) Appeals of decisions by the department under RCW 90.03.110
23 and 90.44.220.

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

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

29 **Sec. 11.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
30 read as follows:

31 (1) The hearings board shall only have jurisdiction to hear and
32 decide appeals from the following decisions of the department, the
33 director, local conservation districts, the air pollution control
34 boards or authorities as established pursuant to chapter 70.94 RCW,
35 local health departments, the department of natural resources, the
36 department of fish and wildlife, the parks and recreation commission,
37 and authorized public entities described in chapter 79.100 RCW:

38 (a) Civil penalties imposed pursuant to RCW 18.104.155,
39 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250,

1 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
2 90.64.102.

3 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
4 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
5 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

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

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

32 (i) Decisions of the department of natural resources, the
33 department of fish and wildlife, and the department that are
34 reviewable under chapter 76.09 RCW, and the department of natural
35 resources' appeals of county, city, or town objections under RCW
36 76.09.050(7).

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

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

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

6 (m) Decisions of an authorized public entity under RCW 79.100.010
7 to take temporary possession or custody of a vessel or to contest the
8 amount of reimbursement owed that are reviewable by the hearings
9 board under RCW 79.100.120.

10 (n) Decisions regarding a restriction, order, or penalty issued
11 under chapter 70.--- RCW (the new chapter created in section 16 of
12 this act).

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

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

17 (b) Hearings conducted by the department pursuant to RCW
18 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
19 90.44.180.

20 (c) Appeals of decisions by the department under RCW 90.03.110
21 and 90.44.220.

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

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

27 NEW SECTION. Sec. 12. (1) By June 30, 2024, the department must
28 provide a report to the appropriate committees of the legislature to
29 review and evaluate the processes for chemical action plans and
30 alternatives assessments provided in this act.

31 (2) The report must include recommendations for changes to
32 developing chemical action plans and alternatives assessments;
33 necessary legislative actions to improve the processes; and whether
34 the department should continue developing chemical actions plans and
35 alternatives assessments.

36 (3) This section expires June 30, 2025.

37 NEW SECTION. Sec. 13. A new section is added to chapter 70.240
38 RCW to read as follows:

1 Beginning July 1, 2016, no manufacturer, wholesaler, or retailer
2 may manufacture, knowingly sell, offer for sale, distribute for sale,
3 or distribute for use in this state children's products or
4 residential upholstered furniture, as defined in RCW 70.76.010,
5 containing TDCPP (tris(1,3-dichloro-2-propyl)phosphate), chemical
6 abstracts service number 13674-87-8, as of the effective date of this
7 section, TCEP (tris(2-chloroethyl)phosphate), chemical abstracts
8 service number 115-96-8, as of the effective date of this section,
9 decabromodiphenyl ether, chemical abstracts service number 1163-19-5,
10 as of the effective date of this section, hexabromocyclododecane,
11 chemical abstracts service number 25637-99-4, as of the effective
12 date of this section, or TBBPA (tetrabromobisphenol A), the form that
13 has not undergone a reactive process and is not covalently bonded to
14 a polymer in a product or product component, chemical abstracts
15 service number 79-94-7, as of the effective date of this section, in
16 amounts greater than one thousand parts per million in any product
17 component.

18 **Sec. 14.** RCW 70.240.010 and 2008 c 288 s 2 are each amended to
19 read as follows:

20 The definitions in this section apply throughout this chapter
21 unless the context clearly requires otherwise.

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

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

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

31 (c) Sold in any of the following:

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

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

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

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

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

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

11 (d) Sold in any of the following:

12 (i) A vending machine;

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

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

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

21 (i) Toys;

22 (ii) Children's cosmetics;

23 (iii) Children's jewelry;

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

27 (v) (~~Child car seats~~) A portable infant or child safety seat
28 designed to attach to an automobile seat.

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

30 (i) Batteries;

31 (ii) Slings and catapults;

32 (iii) Sets of darts with metallic points;

33 (iv) Toy steam engines;

34 (v) Bicycles and tricycles;

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

37 (vii) Chemistry sets;

38 (viii) Consumer and children's electronic products, including but
39 not limited to personal computers, audio and video equipment,
40 calculators, wireless phones, game consoles, and handheld devices

1 incorporating a video screen, used to access interactive software and
2 their associated peripherals;

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

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

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

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

11 (xiii) Roller skates;

12 (xiv) Scooters;

13 (xv) Model rockets;

14 (xvi) Athletic shoes with cleats or spikes; and

15 (xvii) Pocket knives and multitools.

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

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

24 (6) "High priority chemical" means a chemical identified by a
25 state agency, federal agency, or accredited research university, or
26 other scientific evidence deemed authoritative by the department on
27 the basis of credible scientific evidence as known to do one or more
28 of the following:

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

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

32 (c) Disrupt the endocrine system;

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

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

36 (f) Be very persistent and very bioaccumulative.

37 (7) "Manufacturer" includes any person, firm, association,
38 partnership, corporation, governmental entity, organization, or joint
39 venture that produces residential upholstered furniture or a
40 children's product or an importer or domestic distributor of

1 residential upholstered furniture or a children's product. For the
2 purposes of this subsection, "importer" means the owner of the
3 residential upholstered furniture or children's product.

4 (8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP),
5 dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl
6 phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl
7 phthalate (DnOP).

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

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

15 (11) "Very bioaccumulative" means having a bioconcentration
16 factor or bioaccumulation factor greater than or equal to five
17 thousand, or if neither are available, having a log Kow greater than
18 5.0.

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

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

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

25 **Sec. 15.** RCW 70.240.050 and 2008 c 288 s 7 are each amended to
26 read as follows:

27 (1) A manufacturer of products that are restricted under this
28 chapter must notify persons that sell the manufacturer's products in
29 this state about the provisions of this chapter no less than ninety
30 days prior to the effective date of the restrictions.

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

35 (3) A manufacturer of (~~children's~~) products in violation of
36 this chapter is subject to a civil penalty not to exceed five
37 thousand dollars for each violation in the case of a first offense.
38 Manufacturers who are repeat violators are subject to a civil penalty
39 not to exceed ten thousand dollars for each repeat offense. Penalties

1 collected under this section must be deposited in the state toxics
2 control account created in RCW 70.105D.070.

3 (4) Retailers who unknowingly sell products that are restricted
4 from sale under this chapter are not liable under this chapter.

5 (5) The sale or purchase of any previously owned products
6 containing a chemical restricted under this chapter made in casual or
7 isolated sales as defined in RCW 82.04.040, or by a nonprofit
8 organization, is exempt from this chapter.

9 NEW SECTION. Sec. 16. Sections 1 through 8 and 12 of this act
10 constitute a new chapter in Title 70 RCW.

11 NEW SECTION. Sec. 17. This act may be known and cited as the
12 toxics reduction act.

13 NEW SECTION. Sec. 18. (1) Section 10 of this act expires June
14 30, 2019.

15 (2) Section 11 of this act expires June 30, 2025.

16 NEW SECTION. Sec. 19. Section 11 of this act takes effect June
17 30, 2019.

18 NEW SECTION. Sec. 20. If specific funding for the purposes of
19 this act, referencing this act by bill or chapter number, is not
20 provided by June 30, 2015, in the omnibus appropriations act, this
21 act is null and void.

22 NEW SECTION. Sec. 21. If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

--- END ---