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**SENATE BILL 5426**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Mullet, Palumbo, Rivers, Nguyen, Dhingra, and Rolfes

AN ACT Relating to reducing greenhouse gas emissions from hydrofluorocarbons; amending RCW 70.235.010, 70.94.430, 70.94.431, and 70.94.015; adding a new section to chapter 70.235 RCW; adding a new section to chapter 19.27 RCW; adding a new section to chapter 39.26 RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. **Sec.**  (1) The legislature finds that hydrofluorocarbons are air pollutants that pose significant threats to our environment and that safer alternatives for the most damaging hydrofluorocarbons are readily available and cost-effective.

(2) Hydrofluorocarbons came into widespread commercial use as an United States environmental protection agency approved replacement for ozone-depleting substances that were being phased out under an international agreement. However, under a 2017 federal appeals court ruling, while the environmental protection agency had been given the power to originally designate hydrofluorocarbons as a suitable replacement for the ozone-depleting substances, the environmental protection agency did not have clear authority to require the replacement of hydrofluorocarbons once the replacement of the original ozone-depleting substances had already occurred.

(3) Because the impacts of climate change will not wait until congress acts to clarify the scope of the environmental protection agency's authority, it falls to the states to provide leadership on phasing out hydrofluorocarbons. Doing so will not only help the climate, but will help American businesses retain their positions as global leaders in air conditioning and refrigerant technologies. Although hydrofluorocarbons represent a small proportion of the state greenhouse gas emissions, emissions of hydrofluorocarbons have been rapidly increasing in the United States and worldwide, and they are thousands of times more potent than carbon dioxide. However, hydrofluorocarbons are also a segment of the state's emissions that will be comparatively easy to reduce and eliminate without widespread implications for the way that power is produced, heavy industries operate, or people transport themselves. Phasing out the use of hydrofluorocarbons will provide a significant boost to the state's efforts to reduce its greenhouse gas emissions to the limits established in RCW 70.235.020.

(4) Therefore, it is the intent of the legislature to phase out the use of hydrofluorocarbons in various applications in Washington, in a manner similar to the regulations that were adopted by the environmental protection agency, and that have been subsequently adopted or will be adopted in several other states around the country.

**Sec.**  RCW 70.235.010 and 2010 c 146 s 1 are each amended to read as follows:

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

(1) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(2) "Climate advisory team" means the stakeholder group formed in response to executive order 07-02.

(3) "Climate impacts group" means the University of Washington's climate impacts group.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department.

(6) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by the department by rule.

(7) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

(8) "Program" means the department's climate change program.

(9) "Western climate initiative" means the collaboration of states, Canadian provinces, Mexican states, and tribes to design a multisector market-based mechanism as directed under the western regional climate action initiative signed by the governor on February 22, 2007.

(10) "Class I substance" and "class II substance" means those substances listed in 42 U.S.C. Sec. 7671a, as it read on November 15, 1990, or those substances listed in Appendix A or B of Subpart A of 40 C.F.R. Part 82, as those read on January 3, 2017.

(11) "Hydrofluorocarbons" means a class of greenhouse gases that are saturated organic compounds containing hydrogen, fluorine, and carbon.

(12) "Residential consumer refrigeration products" has the same meaning as defined in section 430.2 of Subpart A of 10 C.F.R. Part 430 (2017).

(13) "Substitute" means a chemical, product substitute, or alternative manufacturing process, whether existing or new, that is used to perform a function previously performed by a class I substance or class II substance and any substitute subsequently adopted to perform that function, including, but not limited to, hydrofluorocarbons.

NEW SECTION. **Sec.**  A new section is added to chapter 70.235 RCW to read as follows:

(1) A person may not use, sell, install, or offer for lease, rent, or otherwise cause any equipment or product to enter into commerce in Washington if that equipment or product consists of, uses, or will use a substitute, as set forth in Appendix U and Appendix V of Subpart G of 40 C.F.R. Part 82, and the portion of Appendix B of Subpart G of 40 C.F.R Part 82 pertaining to motor vehicle air conditioning, as those read on January 3, 2017, for the applications or end uses restricted by the federal regulation, consistent with the deadlines established in subsection (2) of this section.

(2) The restrictions under subsection (1) of this section for the following products and equipment identified in Appendix B, Appendix U, and Appendix V of Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017, take effect beginning:

(a) January 1, 2020, for:

(i) Propellants;

(ii) Rigid polyurethane applications and spray foam, flexible polyurethane, integral skin polyurethane, polystyrene applications, polyolefin, phenolic insulation board, and bunstock;

(iii) Supermarket systems, remote condensing units, stand-alone units, and vending machines;

(b) January 1, 2021, for refrigerated food processing and dispensing equipment;

(c) January 1, 2022, for residential consumer refrigeration products other than built-in residential consumer refrigeration products;

(d) January 1, 2023, for cold storage warehouses;

(e) January 1, 2023, for built-in residential consumer refrigeration products;

(f) January 1, 2024, for centrifugal chillers and positive displacement chillers;

(g) Model year 2021 for light duty vehicles; and

(h) On either January 1, 2020, or the effective date of the restrictions identified in Appendix B, Appendix U, and Appendix V of Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017, whichever comes later, for all other applications and end uses for substitutes not covered by the categories listed in (a) through (g) of this subsection.

(3) The department may by rule:

(a) Modify the effective date of a prohibition established in subsection (2) of this section, if the department determines that the rule reduces the overall risk to human health or the environment and reflects the earliest date that a substitute is currently or potentially available;

(b) Prohibit the use of a substitute if the department determines that the prohibition reduces the overall risk to human health or the environment and that a lower risk substitute is currently or potentially available;

(c)(i) Create a list of approved substitutes, use conditions, or use limits, if any; and

(ii) Add or remove substitutes, use conditions, or use limits to or from the list of approved substitutes if the department determines those substitutes reduce the overall risk to human health and the environment.

(4) A person that offers equipment or a product for sale for which the use of a substitute is restricted under subsection (2) or (3) of this section must retain records relating to the person's compliance with this chapter. The department may require a person that manufacturers or offers equipment or a product for sale that is subject to the restrictions on the use of substitutes under this section to fulfill the following, with respect to the use of substitutes associated with the equipment or product:

(a) Disclose the use of substitutes on the label of the equipment or product; and

(b) Submit information about the use of substitutes to the department, upon request.

(5) The department may adopt rules to administer, implement, and enforce this section. The department should seek, where feasible and appropriate, to adopt rules, including rules under subsection (4) of this section, that are consistent with the regulatory standards, exemptions, reporting obligations, and other compliance requirements of other states that have adopted restrictions on the use of hydrofluorocarbons and other substitutes.

(6) The authority granted by this section to the department for restricting the use of substitutes is supplementary to the department's authority to control air pollution pursuant to chapter 70.94 RCW. Nothing in this section limits the authority of the department under chapter 70.94 RCW.

**Sec.**  RCW 70.94.430 and 2011 c 96 s 49 are each amended to read as follows:

(1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, section 3 of this act, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for up to three hundred sixty-four days, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for up to three hundred sixty-four days, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars.

**Sec.**  RCW 70.94.431 and 2013 c 51 s 6 are each amended to read as follows:

(1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, and in addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of this chapter, chapter 70.120 ((~~RCW, chapter~~)) or 70.310 RCW, section 3 of this act, or any of the rules in force under such chapters or section may incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

(b) Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2)(a) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

(b) The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) ((~~By January 1, 1992,~~)) The department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan.

**Sec.**  RCW 70.94.015 and 1998 c 321 s 33 are each amended to read as follows:

(1) The air pollution control account is established in the state treasury. All receipts collected by or on behalf of the department from RCW 70.94.151(2), and receipts from nonpermit program sources under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW ((~~70.94.650, 70.94.660, 82.44.020(2), and 82.50.405~~)) 70.94.6528 and 70.94.6534 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of chapters 70.94 and 70.120 RCW and section 3 of this act.

(2) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

(a) The level and extent of air quality problems within such authority's jurisdiction;

(b) The costs associated with implementing air pollution regulatory programs by such authority; and

(c) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts collected by or on behalf of the department from permit program sources under RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the account. Expenditures from the account may be used only for the activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7). Moneys in the account may be spent only after appropriation.

NEW SECTION. **Sec.**  A new section is added to chapter 19.27 RCW to read as follows:

The building code council shall adopt rules that permit the use of allowed substitutes consistent with section 3 of this act and that do not require the use of substitutes that are restricted under section 3 of this act.

NEW SECTION. **Sec.**  The department of ecology, in consultation with the department of commerce and the utilities and transportation commission, must complete a study addressing how to increase the use of refrigerants with a low global warming potential in mobile sources, utility equipment, and consumer appliances, and how to reduce other uses of hydrofluorocarbons in Washington. The report must be submitted to the legislature consistent with RCW 43.01.036 by December 1, 2020, and must include recommendations for how to fund, structure, and prioritize a state program that incentivizes or provides grants to support the elimination of legacy uses of hydrofluorocarbons regulated under section 3 of this act or uses of hydrofluorocarbons not covered by section 3 of this act.

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

(1) The department shall establish purchasing and procurement policies that provide a preference for products that:

(a) Are not restricted under section 3 of this act;

(b) Do not contain hydrofluorocarbons;

(c) Are not designed to function only in conjunction with hydrofluorocarbons; and

(d) Were not manufactured using hydrofluorocarbons.

(2) No agency may knowingly purchase products identified in subsection (1) of this section unless there is no cost-effective and technologically feasible alternative. When all available products contain hydrofluorocarbons, are designed to function in conjunction with hydrofluorocarbons, or were manufactured using hydrofluorocarbons, a preference must be given to alternative products that use or are likely to be associated with the release of the lowest amount of or comparatively lower amounts of hydrofluorocarbons.

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

(4) By December 1, 2020, and each December 1st of even numbered years thereafter, the department must submit a status report to the appropriate committees of the house of representatives and senate regarding the implementation and compliance of the department and state agencies with this section.

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

**--- END ---**