S-3291.2

SUBSTITUTE SENATE BILL 6131

State of Washington 64th Legislature 2015 2nd Special Session

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

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

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

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

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

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

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

substances that form through decomposition, degradation, or metabolism.

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

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

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

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

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

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

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

(b) "Manufacturer" does not include:

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

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

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

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

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

(ii) Tobacco products;

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

(iv) Products and components produced under military specifications;

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

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

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

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

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

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

(13) This section expires June 30, 2025.

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

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

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

(c) Emerging chemicals.

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

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

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

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

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

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

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

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

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

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

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

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

(4) This section expires June 30, 2025.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) This section expires June 30, 2025.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Economic and social impacts;

(c) Feasibility;

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

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

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

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

(6) This section expires June 30, 2025.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) An alternatives assessment must:

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

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

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

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

(8) This section expires June 30, 2025.

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

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

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

(4) This section expires June 30, 2025.

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

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

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

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

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

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

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

(4) This section expires June 30, 2025.

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

(2) This section expires June 30, 2025.

NEW SECTION. **Sec. 9.** 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 and products in packaging that do not contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) This section expires June 30, 2025.

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

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

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

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

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

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

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

(c) Sold in any of the following:

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

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

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

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

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

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

(d) Sold in any of the following:

(i) A vending machine;

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

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

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

(i) Toys;

(ii) Children's cosmetics;

(iii) Children's jewelry;

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

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

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

(i) Batteries;

(ii) Slings and catapults;

(iii) Sets of darts with metallic points;

(iv) Toy steam engines;

(v) Bicycles and tricycles;

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

(vii) Chemistry sets;

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

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

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

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

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

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

(xiii) Roller skates;

(xiv) Scooters;

(xv) Model rockets;

(xvi) Athletic shoes with cleats or spikes; and

(xvii) Pocket knives and multitools.

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

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

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

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

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

(c) Disrupt the endocrine system;

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

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

(f) Be very persistent and very bioaccumulative.

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

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

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

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

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

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

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

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

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

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

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

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

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

collected under this section must be deposited in the state toxics control account created in RCW 70.l05D.070.

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

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

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

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

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

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

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

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

NEW SECTION. **Sec. 21.** 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.

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