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**SUBSTITUTE SENATE BILL 5056**

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**State of Washington                      64th Legislature                      2015 Regular Session**

**By Senate Energy, Environment & Telecommunications (originally sponsored by Senators Ericksen and Chase)**

READ FIRST TIME 02/19/15.

1            AN ACT Relating to the use of chemical action plans; amending RCW  
2 70.240.010 and 70.240.050; adding new sections to chapter 70.240 RCW;  
3 adding a new section to chapter 90.48 RCW; adding a new section to  
4 chapter 43.21A RCW; creating a new section; and making an  
5 appropriation.

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

7            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 70.240  
8 RCW to read as follows:

9            Beginning July 1, 2016, no manufacturer, wholesaler, or retailer  
10 may manufacture, knowingly sell, offer for sale, distribute for sale,  
11 or distribute for use in this state children's products or  
12 residential upholstered furniture, as defined in RCW 70.76.010,  
13 containing TDCPP (tris(1,3-dichloro-2-propyl)phosphate), chemical  
14 abstracts service number 13674-87-8, as of the effective date of this  
15 section, TCEP (tris(2-chloroethyl)phosphate), chemical abstracts  
16 service number 115-96-8, as of the effective date of this section,  
17 decabromodiphenyl ether, chemical abstracts service number 1163-19-5,  
18 as of the effective date of this section, hexabromocyclododecane,  
19 chemical abstracts service number 25637-99-4, as of the effective  
20 date of this section, or the additive form of TBBPA, chemical  
21 abstracts service number 79-94-7, as of the effective date of this

1 section, in amounts greater than one thousand parts per million in  
2 any product component.

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

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

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

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

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

16 (c) Sold in any of the following:

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

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

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

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

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

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

34 (d) Sold in any of the following:

35 (i) A vending machine;

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

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

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

6 (i) Toys;

7 (ii) Children's cosmetics;

8 (iii) Children's jewelry;

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

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

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

15 (i) Batteries;

16 (ii) Slings and catapults;

17 (iii) Sets of darts with metallic points;

18 (iv) Toy steam engines;

19 (v) Bicycles and tricycles;

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

22 (vii) Chemistry sets;

23 (viii) Consumer and children's electronic products, including but  
24 not limited to personal computers, audio and video equipment,  
25 calculators, wireless phones, game consoles, and handheld devices  
26 incorporating a video screen, used to access interactive software and  
27 their associated peripherals;

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

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

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

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

36 (xiii) Roller skates;

37 (xiv) Scooters;

38 (xv) Model rockets;

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

40 (xvii) Pocket knives and multitools.

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

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

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

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

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

17 (c) Disrupt the endocrine system;

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

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

21 (f) Be very persistent and very bioaccumulative.

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

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

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

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

38 (11) "Very bioaccumulative" means having a bioconcentration  
39 factor or bioaccumulation factor greater than or equal to five

1 thousand, or if neither are available, having a log Kow greater than  
2 5.0.

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

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

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

9 **Sec. 3.** RCW 70.240.050 and 2008 c 288 s 7 are each amended to  
10 read as follows:

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

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

19 (3) A manufacturer of children's products in violation of this  
20 chapter is subject to a civil penalty not to exceed five thousand  
21 dollars for each violation in the case of a first offense.  
22 Manufacturers who are repeat violators are subject to a civil penalty  
23 not to exceed ten thousand dollars for each repeat offense. Penalties  
24 collected under this section must be deposited in the state toxics  
25 control account created in RCW 70.105D.070.

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

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

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.240  
33 RCW to read as follows:

34 After January 1, 2015, the department must complete and publish a  
35 chemical action plan as provided in section 6 of this act for any  
36 flame retardant identified as a chemical of high concern for children  
37 within two years of the adoption of the rule that identifies the  
38 flame retardant as a chemical of high concern for children.

1        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 90.48  
2    RCW to read as follows:

3        (1) The department must select substances, as identified by the  
4    United States environmental protection agency in section 304(a)(1) of  
5    the clean water act (water quality criteria for human health), that  
6    impact Washington state water bodies as identified under section  
7    303(d) of the clean water act, for development of a chemical action  
8    plan as specified under section 6 of this act.

9        (2) Beginning January 1, 2016, and every two years thereafter,  
10   the department, in consultation with the department of health, must  
11   complete and publish a chemical action plan for two substances as  
12   selected under subsection (1) of this section to identify,  
13   characterize, and evaluate uses and releases of the substances in  
14   Washington, the levels of the substances present in the environment,  
15   and the levels of the substances present in Washington water bodies  
16   as identified under section 303(d) of the clean water act.

17       NEW SECTION.    **Sec. 6.**    A new section is added to chapter 43.21A  
18    RCW to read as follows:

19        (1) When developing chemical action plans, the department must  
20    include the following types of information, evaluations, and  
21    recommendations:

22        (a) The name of the substance, its properties, uses, and  
23    manufacturers;

24        (b) An analysis of available information on the production,  
25    inadvertent production, uses, and disposal of the substance;

26        (c) Information on the potential impacts and risks to human  
27    health and the environment associated with the use and release of the  
28    substance;

29        (d) An evaluation of the regulatory and nonregulatory approaches  
30    that influence production, presence, uses, releases, and management  
31    of the substance;

32        (e) Recommendations for:

33        (i) Managing, reducing, and phasing out the different uses and  
34    releases of the substance;

35        (ii) Minimizing exposure to the substance;

36        (iii) Reducing risk of harm to human health and the environment;

37    and

38        (iv) The use of alternatives that reduce risk and exposure;

39        (f) Recommendations on an evaluation of the following factors:

1 (i) Environmental and human health risks and benefits;  
2 (ii) Economic and social impacts and benefits;  
3 (iii) Technical feasibility;  
4 (iv) Availability and effectiveness of alternatives that reduce  
5 risk and exposure; and  
6 (v) Consistency with existing federal and state regulatory  
7 requirements and information about restrictions or prohibitions by  
8 other states or nations.

9 (2) The department must create an external advisory committee for  
10 each chemical action plan developed to provide stakeholder input,  
11 expertise, and additional information. The advisory committee  
12 membership must include, but not be limited to, representatives from:  
13 The largest statewide business association; large and small business  
14 sectors, including retailers and manufacturers; community,  
15 environmental, and public health advocacy groups; local governments;  
16 affected and interested businesses; and public health agencies. The  
17 department must consult with the advisory committee on the  
18 development of a chemical action plan and may request state agencies  
19 and technical experts to participate. All advisory committee meetings  
20 must be open to the public.

21 (3) The department must provide recommendations to the  
22 legislature on policy options regarding: Reducing exposure;  
23 designating and developing alternative substances or processes that  
24 reduce risk and exposure; and restricting or prohibiting the use of  
25 substances for which chemical action plans have been completed.

26 NEW SECTION. **Sec. 7.** Sections 5 and 6 of this act do not apply  
27 to substances regulated under chapter 15.54 or 15.58 RCW.

28 NEW SECTION. **Sec. 8.** The sum of one million dollars, or as much  
29 thereof as may be necessary, is appropriated for the biennium ending  
30 June 30, 2017, from the model toxics control account to the  
31 department of ecology for the purposes of this act.

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