

Contents

Section 1. FINDINGS.....	1
Section 2. DEFINITIONS.....	2
Section 3. PRIORITY WASHINGTON CHEMICALS.....	3
Section 4. INFORMATION TO SUPPORT CHEMICAL ACTION PLANS	4
Section 5. CHEMICAL ACTION PLANS.....	4
Section 6. ALTERNATIVES ASSESSMENTS.....	5
Section 7. SUMMARY REPORT	5
Section 8. PROHIBITION OF SALE, DISTRIBUTION, OR USE.....	6
Section 9. PENALTIES AND APPEALS	6
Section 10. RULEMAKING AUTHORITY.....	7
Section 11. STATE PURCHASING	7
Section 12. SEVERABILITY.....	7
Section 13. CODIFICATION	7
Section 14. SHORT TITLE	7

AN ACT relating to safer chemicals in Washington; adding a new section to chapter 39.26 RCW; and prescribing penalties.

Section 1. FINDINGS

The legislature finds:

(1) Biomonitoring studies reveal adults, children, and even fetuses carry a body burden of toxic chemicals. These include chemicals linked to cancer, brain and nervous system damage, birth defects, developmental delays, and reproductive harm.

(2) A growing body of scientific evidence demonstrates that these toxic chemical exposures are taking a toll on public health and playing a role in the incidence and prevalence of many diseases and disorders, including learning and behavioral problems, asthma, reproductive problems, birth defects, obesity, and cancer.

(3) An emerging concern is the uncontrolled release of chemical pollutants that come from the diffuse, largely unregulated source of products containing those chemicals.

(4) It is the policy of the state to protect public health and the environment by eliminating or reducing exposure of its residents to toxic chemicals of concern, especially children and other sensitive or high exposure populations.

Section 2. DEFINITIONS

The definitions in the section apply throughout sections 1 through 11 of this act unless the context clearly requires otherwise.

(1) **“Agricultural chemicals”** means chemicals used to produce an agricultural commodity. An **“agricultural commodity”** means any plant or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) **“Alternatives assessment”** means a process for identifying and comparing potential chemical and non-chemical alternatives currently in existence that can be used to replace the use of Priority Washington Chemicals. The objective of an alternatives assessment is to select less toxic chemicals or non-chemical alternatives to replace the use of a Priority Washington Chemical in a product and to avoid the unintended consequence of switching to a substitute that presents an equivalent or greater concern. An alternatives assessment follows the guidelines issued by the Interstate Chemicals Clearinghouse, the National Academy of Sciences or equivalent methodology. At a minimum, an alternatives assessment includes an evaluation of chemical hazard, exposure, performance, and cost and availability, information for each alternative considered and identifies alternatives.

(3) **“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.

(4) **“Chemical”** means a substance 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.

(5) **“Chemical action plan”** or **“CAP”** means a plan that identifies, characterizes and evaluates uses and releases of a specific chemical or group of chemicals and identifies actions needed to protect human health and the environment. CAPs consider information on chemistry, production uses and releases, human health and environmental impacts, and current regulatory approaches.

(6) **“Chemical hazard assessment”** means an evaluation of the hazards posed by the chemical of concern in a product or a manufacturing process. Chemical hazard assessments follow the guidelines issued by the Interstate Chemicals Clearinghouse, National Academy of Sciences, or equivalent methodology.

(7) **“Department”** means the department of ecology.

(8) **“Director”** means the director of the department of ecology or the director’s designee.

(9) **“Manufacturer”** means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product or is an importer or domestic distributor of a product sold or offered for sale in or into the state. Manufacturer does not include small businesses as defined by chapter 19.85 RCW.

(10) **“Product”** means any item sold for residential or commercial use including any component or product packaging. “Product” does not include the following items, but does include their packaging:

- (a) Food or beverage;
- (b) Tobacco product;
- (c) Drug or biological products regulated by the federal Food and Drug Administration;
- (d) Products produced under military specifications;
- (e) Finished products regulated by the Federal Aviation Administration; and
- (f) Agricultural chemicals.

(11) **“Product component”** means a uniquely identifiable material or coating that is intended to be included as a part of a finished product.

(12) **“Safer alternative”** means an alternative that is less hazardous to humans and the environment than the existing chemical or chemical process. A safer alternative to a particular chemical may include a chemical substitute or a change in materials or design that eliminates the need for a chemical alternative.

(13) **“Summary report”** means a report prepared by the department summarizing available alternatives assessments and includes a determination regarding the existence of a safer alternative. The summary report also includes a determination of the completeness of the alternatives assessments reviewed and identifies unsuitable alternatives.

(14) **“Unsuitable alternative”** means an alternative identified through the alternatives assessment process that is not a safer alternative.

Section 3. PRIORITY WASHINGTON CHEMICALS

(1) By Jan 1, 2018 and periodically thereafter, the department, in consultation with the department of health, shall designate, in rule, a list of not more than 150 Priority Washington Chemicals.

(2) Chemicals designated as Priority Washington Chemicals must meet the criteria of a high priority chemical as defined in RCW 70.240.010(6) as applied to humans, plants, and wildlife, and must either:

- (a) meet the criteria for a high priority chemical of high concern for children as described in RCW 70.240.030(1)(a-c); or
- (b) have been shown through environmental monitoring studies to be present in fish, wildlife, air, water, soil or sediment.

(3) The department may conduct environmental monitoring or request the department of health to conduct biomonitoring of a Priority Washington Chemical to verify the chemical is present in the state’s environment or population or to better understand environmental or human exposures in the state.

Section 4. INFORMATION TO SUPPORT CHEMICAL ACTION PLANS

(1) By January 1, 2018, the director shall, by rule, select up to twenty of the Priority Washington Chemicals for potential chemical action plan development.

(2) The department may require information from manufacturers of products that contain a Priority Washington Chemical selected pursuant to subsection (1) of this section, as necessary to develop chemical action plans under section 5 of this act. Manufacturers shall report the following:

- (a) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer;
- (b) The name of the chemical used or produced and its chemical abstracts service registry number;
- (c) A brief description of the product or product component containing the substance;
- (d) A description of the function of the chemical in the product;
- (e) The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount;
- (f) An estimate of the number of products units containing the chemical that the manufacturer sells in and into Washington each year; and
- (g) Any other information the manufacturer deems relevant to the appropriate use of the product.

(3) The department shall specify the required format for submission of the information required under subsection (2) of this section. The format should be generally consistent with the format specified in other states with substantially similar reporting requirements.

(4) Multiple businesses, or a business association, may collaborate and submit a single submission on a chemical found in similar products.

(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, that manufacturer is not required to submit the same information again.

(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 5 of this act.

Section 5. CHEMICAL ACTION PLANS

(1) Beginning on July 1, 2018, and biennially thereafter, the director shall select up to four Priority Washington Chemicals identified under section 4 of this act, for development of a chemical action plan by the department and the department of health.

(2) When selecting a Priority Washington Chemical for development of a chemical action plan, the director shall notify the public of the selection, the basis for the selection, and a draft schedule. The notice must be posted in the State Register. The department shall provide the public with an opportunity for review and comment before finalizing the schedule.

(3) When developing a chemical action plan, the department shall convene an external advisory committee to provide stakeholder input and expertise.

(4) A chemical action plan shall identify actions needed to eliminate or reduce threats to human health and the environment and which uses, if any, of the chemical under consideration should be restricted.

(5) The director may add a chemical to the Priority Washington Chemical list for the development of a chemical action plan based on new and emerging evidence of concern to human health and the environment provided that the list of Priority Washington Chemicals does not exceed 150.

Section 6. ALTERNATIVES ASSESSMENTS

(1) The Department is authorized to require manufacturers, by order, to conduct alternatives assessments, as detailed in this section, consistent with actions identified in the chemical action plan needed to reduce or eliminate threats to human health and the environment.

(2) If ordered by the department, a manufacturer of a product that contains a Priority Washington Chemical for which a chemical action plan has been completed under Section 5 must submit to the department an alternatives assessment for each use of the chemical specified by the department. The manufacturer must submit the alternatives assessment to the department within one year of receipt of the department's order. Multiple businesses, or a business association, may collaborate and submit a single alternatives assessment on a chemical found in similar products.

(3) The department shall review alternatives assessments submitted to the department in compliance with an order issued by the department under subsection (2) of this section to determine if the assessment(s) meet the definition and objective of an alternatives assessment.

(4) If the department determines that an alternatives assessment submitted to it in response to an order issued under subsection (2) of this section is incomplete, the department may require the manufacturer or association to submit a revised alternatives assessment within an additional three months to correct deficiencies identified by the department.

(5) If the department determines that the revised alternatives assessment still does not meet the definition or objectives of an alternatives assessment, the department may prepare an independent assessment. When the department prepares an independent assessment, it may recover its costs from the manufacturers whose products are covered by the alternatives assessment. Costs shall be apportioned among manufacturers according to the amount of the chemical used in each manufacturer's product and the estimated number of units of each manufacturer's product sold in Washington. Any alternatives assessment conducted by the department shall include a process to involve interested parties.

(6) The department may rely on existing information indicating that a safer alternative for a chemical exists if that information is equivalent to an alternatives assessment.

Section 7. SUMMARY REPORT

(1) The department, in consultation with the department of health, shall prepare a summary report of all reviewed alternatives assessments and other relevant information assembled by the department for

a Priority Washington Chemical under section 6. The summary report shall include a determination of whether a safer alternative exists and identify unsuitable alternatives.

(2) The department shall seek public input on its determination, including a notice in the Washington State Register and shall submit the final report to the appropriate committees of the legislature.

(3) Any manufacturer that would be adversely affected by a restriction on the use of the chemical in question may appeal the department's determination to the Pollution Control Hearings Board. Any such appeal must be filed within 30 days of final publication of Ecology's determination.

(4) If the department determines that a safer alternative does not exist then the department may reevaluate information on the availability of safer alternatives not more often than once every five years.

Section 8. PROHIBITION OF SALE, DISTRIBUTION, OR USE

(1) If the department determines that a safer alternative exists, based on a completed alternatives assessment(s) or equivalent information, the department shall, by rule, prohibit specific uses of the chemical, or prohibit the sale, offer for sale, or distribution of a specific product or products containing the chemical. Manufacturers may not use a chemical determined by the department to be an unsuitable alternative to replace a chemical restricted under this section.

(2) The department shall establish reasonable deadlines for manufacturers to comply with any prohibition adopted under subsection (1) of this section. No prohibition may take effect sooner than twelve months after rule adoption.

(3) Manufacturers of a product that is subject to a chemical content prohibition shall develop, maintain, and upon request, make available a certificate of compliance stating that the product meets the requirements of the prohibition adopted under subsection (1) of this section. A certificate of compliance must include the following:

- (a) Chemical names and chemical abstracts service registry numbers for all chemicals that contribute to the specific function previously served by the prohibited chemical;
- (b) How the manufacturer is meeting the function of the prohibited chemical with a safer alternative; and
- (c) The signature of an authorized official of the manufacturer or chemical user.

Section 9. PENALTIES AND APPEALS

(1) A manufacturer violating a requirement of this act, a rule adopted under this act, or an order issued under this act, 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 act shall be deposited in the state toxics control account created in chapter 70.105D RCW.

Section 10. RULEMAKING AUTHORITY

The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

Section 11. STATE PURCHASING

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 Priority Washington Chemicals.

(2) No agency may knowingly purchase products or products in packaging containing Priority Washington Chemicals except when it is not cost-effective or technically feasible to do so. When all available products contain a Priority Washington Chemical, a preference must be given to alternative products that contain lesser amounts of Priority Washington Chemicals.

(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 chapter 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 Priority Washington Chemicals in products or product packaging. Requested or voluntarily received testing data from businesses, manufacturers, organizations, and individuals shall be submitted for review to the department of ecology.

Section 12. SEVERABILITY

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.

Section 13. CODIFICATION

Sections 1 through 10 of this act constitute a new chapter in Title 70 RCW.

Section 14. SHORT TITLE

This act may be known and cited as the toxics reduction act.