

SSB 5231 - S AMD 121
By Senator Hargrove

NOT CONSIDERED 05/25/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. 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 person
18 exclusively offers for sale products that are packaged, displayed, or
19 advertised as appropriate for use by children; or

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

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

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

29 (b) Sold in conjunction with, attached to, or packaged together

1 with other products that are packaged, displayed, or advertised as
2 appropriate for use by children;

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

4 (d) Sold in any of the following:

5 (i) A vending machine;

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

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

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

13 (i) Toys;

14 (ii) Children's cosmetics;

15 (iii) Children's jewelry;

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

19 (v) Child car seats.

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

21 (i) Batteries;

22 (ii) Slings and catapults;

23 (iii) Sets of darts with metallic points;

24 (iv) Toy steam engines;

25 (v) Bicycles and tricycles;

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

28 (vii) Chemistry sets and science kits;

29 (viii) Consumer electronic products, including but not limited to
30 personal computers, audio and video equipment, calculators, wireless
31 phones, game consoles, and handheld devices incorporating a video
32 screen, used to access interactive software and their associated
33 peripherals;

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

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

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

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

3 (xiii) Roller skates;

4 (xiv) Scooters;

5 (xv) Model rockets;

6 (xvi) Athletic shoes with cleats or spikes; (~~and~~)

7 (xvii) Pocket knives and multitools;

8 (xviii) Used products;

9 (xix) Food and food packaging, over-the-counter drugs,
10 prescriptions drugs, and dietary supplements regulated by the United
11 States food and drug administration;

12 (xx) Medical devices regulated by the United States food and drug
13 administration; and

14 (xxi) Paper or forest products.

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

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

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

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

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

31 (c) Disrupt the endocrine system;

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

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

35 (f) Be very persistent and very bioaccumulative.

36 (7) "Manufacturer" includes any person, firm, association,
37 partnership, corporation, governmental entity, organization, or joint

1 venture that produces a children's product or an importer or domestic
2 distributor of a children's product. For the purposes of this
3 subsection, "importer" means the owner of the children's product.

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

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

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

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

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

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

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

23 (13) "Children" means persons under twelve years old.

24 (14) "Priority product" means a product that requires an
25 alternatives assessment under section 3(6) of this act.

26 (15) "Product category" means a classification standard that
27 identifies products that serve a common purpose, are of similar form
28 and material, and share the same set of category attributes.

29 (16) "Product component" means a uniquely identifiable part, piece,
30 substrate, or coating (including ink or dye) that is intended to be
31 included as a part of a finished children's product or performs a
32 distinctive and necessary function in the operation of a product. For
33 formulated products, the homogenous mixture is considered a single
34 component.

35 (17) "Used product" means a previously owned product containing
36 chemicals of high concern for children that is: Sold in casual or
37 isolated sales as defined in RCW 82.04.040; sold by nonprofit
38 organizations; or sold through consignment shops.

1 **Sec. 2.** RCW 70.240.040 and 2008 c 288 s 5 are each amended to read
2 as follows:

3 Beginning six months after the department has adopted rules (~~under~~
4 ~~section 8(5) of this act~~) identifying chemicals of high concern for
5 children, a manufacturer of a children's product, or a trade
6 organization on behalf of its member manufacturers, shall provide
7 notice to the department that the manufacturer's product contains a
8 high priority chemical. The notice must be filed annually with the
9 department and must include the following information:

10 (1) The name of the chemical used or produced and its chemical
11 abstracts service registry number;

12 (2) A brief description of the product or product component
13 containing the substance;

14 (3) A description of the function of the chemical in the product or
15 product component;

16 (4) The amount of the chemical used in each unit of the product or
17 product component. The amount may be reported in ranges, rather than
18 the exact amount;

19 (5) The name and address of the manufacturer and the name, address,
20 and phone number of a contact person for the manufacturer; and

21 (6) Any other information the manufacturer deems relevant to the
22 appropriate use of the product.

23 NEW SECTION. **Sec. 3.** (1) Using information submitted by October
24 2012 by manufacturers in compliance with RCW 70.240.040, the department
25 shall review and evaluate the information submitted as well as other
26 relevant information, and develop a draft list of products to be
27 considered for alternatives assessments. The department shall repeat
28 this review using additional information submitted in compliance with
29 RCW 70.240.040 by April 2014 and no more frequently than every two
30 years thereafter. Such products must be identified based on the
31 following criteria:

32 (a) Degree of toxicity of a chemical of high concern for children
33 present in the product, product category, or product component;

34 (b) Extent of individual and population exposure to chemicals of
35 high concern for children based on the following:

36 (i) Presence of a chemical of high concern for children in multiple
37 products, product categories, or product components;

1 (ii) Presence of a chemical of high concern for children in high
2 concentrations relative to other products, product categories, or
3 product components;

4 (iii) Presence of multiple chemicals of high concern for children
5 in a single product, product category, or product component;

6 (iv) Presence of multiple potential routes of exposure to a
7 chemical of high concern for children from the product, product
8 category, or product component; and

9 (v) Evidence of children's exposure to chemicals of high concern
10 for children from sources other than children's products;

11 (c) Evidence of the availability of safer alternatives to the
12 chemical of high concern for children for the product; and

13 (d) Whether the sale of the product has been banned or limited by
14 another state.

15 (2) The department shall submit its draft list of products to be
16 considered for alternatives assessment to the department of health for
17 prioritization.

18 (3) Within twelve months of receiving the draft list of products to
19 be considered for alternatives assessment, the department of health
20 shall prioritize the draft list based on the following criteria:

21 (a) The potential for hazard to children from potential exposure to
22 the chemical of high concern for children through direct or indirect
23 contact with the product;

24 (b) The likelihood that a chemical of high concern for children
25 will be released from the product into a child's environment; and

26 (c) The number of units of the product sold in Washington or
27 nationally.

28 (4) If necessary to complete the prioritization process under
29 subsection (3) of this section, the department of health may request
30 the department to order manufacturers to submit additional information
31 such as, but not limited to: A detailed description or name of the
32 product; the universal product code of the product; the number of units
33 sold or distributed for sale in the state or nationally; the likelihood
34 that the chemical of high concern for children will be released from
35 the children's product to the environment during the children's product
36 life cycle; or the extent to which users of children's products are
37 likely to be exposed to the chemical of high concern for children.

1 (5) The department shall seek public input on the prioritized list
2 of products to be considered for alternatives assessment.

3 (6) The department may identify priority products for alternatives
4 assessment consistent with the department of health prioritization and
5 in consideration of public comment.

6 (7) The department may issue administrative orders to require
7 manufacturers of priority products to conduct alternatives assessments
8 consistent with section 4 of this act.

9 (a) The department shall provide any information it has gathered
10 from literature reviews, informal manufacture surveys, or the
11 interstate clearinghouse on chemicals that is relevant to the
12 assessment of alternatives to manufacturers required to conduct an
13 alternatives assessment.

14 (b) The department may not require any manufacturer to conduct an
15 alternatives assessment unless the department provides technical
16 assistance.

17 (8) Manufacturers of priority products shall submit alternatives
18 assessments to the department within the time frames established in the
19 administrative order for each priority product.

20 (9) Manufacturers required to conduct an alternatives assessment
21 under this section may work with other manufacturers of similar
22 children's products containing the same chemical to complete and submit
23 a single alternatives assessment.

24 (10) The department may apply the provisions of this section that
25 are applicable to children's products with equal effect to product
26 categories or product components.

27 NEW SECTION. **Sec. 4.** (1) The department, in consultation with the
28 department of health, shall consult with technical experts to develop
29 guidelines for conducting alternatives assessments consistent with
30 subsection (3) of this section. The department shall seek to develop
31 alternatives assessment guidance consistent with existing guidance from
32 other jurisdictions. Technical experts to be consulted may include,
33 but not be limited to:

34 (a) Manufacturers of fabricated products;

35 (b) Manufacturers of formulated products;

36 (c) Small manufacturers of children's products;

37 (d) Manufacturers of children's product components;

- 1 (e) Nongovernmental organizations concerned with the environment;
- 2 (f) Nongovernmental organizations concerned with consumer
3 protection;
- 4 (g) Toxicologists;
- 5 (h) Children's health specialists; and
- 6 (i) Epidemiologists.

7 (2) The department shall provide at least sixty days for public
8 input on the draft guidelines and shall consider all comments before
9 finalizing the guidelines.

10 (3) An alternatives assessment must, at a minimum, include the
11 following elements:

12 (a) Availability of alternatives to chemicals of high concern for
13 children in priority products identified under section 3 of this act
14 must be determined in consideration of the following:

- 15 (i) Cost;
- 16 (ii) Performance;
- 17 (iii) Opportunities for product reformulation, chemical
18 substitution, product redesign, and manufacturing process redesign;
- 19 (iv) Whether the sale of a priority product has been banned or
20 limited by another state; and
- 21 (v) Whether the alternative is sold in the United States.

22 (b) Information on the persistence of, and potential for
23 bioaccumulation of, any alternatives.

24 (c) Information relevant to determining the potential hazard to
25 children's health including, but not limited to, toxicity of
26 alternative chemicals, potential for children's exposure to those
27 chemicals, and potential hazards from those chemicals as they may be
28 used in the product.

29 (d) Information on the environmental impacts of any alternatives.

30 (e) Any additional information the manufacturer deems relevant to
31 the alternatives assessment for the priority product.

32 NEW SECTION. **Sec. 5.** (1) The department shall provide at least
33 sixty days for public input on all alternatives assessments submitted
34 under section 3 of this act.

35 (2) The department, in consultation with the department of health,
36 shall review alternatives assessments and other relevant information,

1 including any public comments on alternatives assessments and determine
2 if additional actions should be taken by the legislature to protect
3 children's health.

4 (3) By December 1, 2015, the department, in consultation with the
5 department of health, shall prepare a report of the review conducted
6 under subsection (2) of this section and submit these findings to the
7 appropriate committees of the legislature.

8 NEW SECTION. **Sec. 6.** (1) Manufacturers of children's products
9 with annual gross sales, both within and outside of Washington, of less
10 than one million dollars, based on the manufacturer's most recent tax
11 year filing, are exempt from the requirements established in RCW
12 70.240.040 and section 3 of this act.

13 (2) Manufacturers of children's products that have a current label
14 from the United States environmental protection agency design for the
15 environment program are exempt from the requirements established in RCW
16 70.240.040 and section 3 of this act for as long as the label remains
17 current. This exemption applies only to those children's products that
18 carry a current design for the environment label.

19 **Sec. 7.** RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are
20 each reenacted and amended to read as follows:

21 (1) The hearings board shall only have jurisdiction to hear and
22 decide appeals from the following decisions of the department, the
23 director, local conservation districts, the air pollution control
24 boards or authorities as established pursuant to chapter 70.94 RCW,
25 local health departments, the department of natural resources, the
26 department of fish and wildlife, and the parks and recreation
27 commission:

28 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
29 70.105.080, 70.107.050, 70.240.050, 76.09.170, 77.55.291, 78.44.250,
30 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
31 90.64.102.

32 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
33 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 3 of this act,
34 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

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

11 (f) Decisions of local health departments regarding the issuance
12 and enforcement of permits to use or dispose of biosolids under RCW
13 70.95J.080.

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

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

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

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

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

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

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

37 (n) Decisions of a state agency that is an authorized public entity

1 under RCW 79.100.010 to take temporary possession or custody of a
2 vessel or to contest the amount of reimbursement owed that are
3 reviewable under RCW 79.100.120.

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

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

8 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
9 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

10 (c) Appeals of decisions by the department under RCW 90.03.110 and
11 90.44.220.

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

14 ~~((e) Appeals of decisions by the department as provided in chapter
15 43.21B RCW.))~~

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

19 **Sec. 8.** RCW 43.21B.110 and 2010 c 210 s 8 and 2010 c 84 s 3 are
20 each reenacted and amended to read as follows:

21 (1) The hearings board shall only have jurisdiction to hear and
22 decide appeals from the following decisions of the department, the
23 director, local conservation districts, the air pollution control
24 boards or authorities as established pursuant to chapter 70.94 RCW,
25 local health departments, the department of natural resources, the
26 department of fish and wildlife, and the parks and recreation
27 commission:

28 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
29 70.105.080, 70.107.050, 70.240.050, 76.09.170, 77.55.291, 78.44.250,
30 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
31 90.64.102.

32 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
33 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 3 of this act,
34 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

35 (c) Except as provided in RCW 90.03.210(2), the issuance,
36 modification, or termination of any permit, certificate, or license by
37 the department or any air authority in the exercise of its

1 jurisdiction, including the issuance or termination of a waste disposal
2 permit, the denial of an application for a waste disposal permit, the
3 modification of the conditions or the terms of a waste disposal permit,
4 or a decision to approve or deny an application for a solid waste
5 permit exemption under RCW 70.95.300.

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

8 (e) Decisions of local health departments regarding the issuance
9 and enforcement of permits to use or dispose of biosolids under RCW
10 70.95J.080.

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

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

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

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

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

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

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

34 (m) Decisions of a state agency that is an authorized public entity
35 under RCW 79.100.010 to take temporary possession or custody of a
36 vessel or to contest the amount of reimbursement owed that are
37 reviewable under RCW 79.100.120.

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

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

5 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
6 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

7 (c) Appeals of decisions by the department under RCW 90.03.110 and
8 90.44.220.

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

11 ~~((e) Appeals of decisions by the department as provided in chapter
12 43.21B RCW.))~~

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

16 NEW SECTION. **Sec. 9.** Sections 3 through 6 of this act are each
17 added to chapter 70.240 RCW.

18 NEW SECTION. **Sec. 10.** Section 7 of this act expires June 30,
19 2019.

20 NEW SECTION. **Sec. 11.** Section 8 of this act takes effect June 30,
21 2019."

SSB 5231 - S AMD
By Senator Hargrove

NOT CONSIDERED 05/25/2011

22 On page 1, line 1 of the title, after "products;" strike the
23 remainder of the title and insert "amending RCW 70.240.010 and
24 70.240.040; reenacting and amending RCW 43.21B.110 and 43.21B.110;
25 adding new sections to chapter 70.240 RCW; providing an effective date;
26 and providing an expiration date."

EFFECT: Retains the original definition of children's products; adds science kits, paper and forest products, and certain products such as food, drugs, and dietary supplements regulated by the federal food and drug administration as exempt; clarifies that, beyond alternatives assessments, any additional actions to protect children's health are undertaken by the legislature; and removes the provision that manufacturers may provide notification of products containing chemicals of high concern through a department of ecology-approved and certified third party.

Requires the department of ecology to:

- Provide any information it has gathered relevant to alternatives assessments to manufacturers required to conduct an alternatives assessment;

- Not require a manufacturer to conduct an alternatives assessment unless the department provides technical assistance; and

- Submit its report a year earlier (December 2015).

--- END ---