
SECOND SUBSTITUTE SENATE BILL 5426

State of Washington

66th Legislature

2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Mullet, Palumbo, Rivers, Nguyen, Dhingra, and Rolfes)

READ FIRST TIME 02/28/19.

1 AN ACT Relating to reducing greenhouse gas emissions from
2 hydrofluorocarbons; amending RCW 70.235.010, 70.94.430, 70.94.431,
3 and 70.94.015; adding a new section to chapter 70.235 RCW; adding a
4 new section to chapter 19.27 RCW; adding a new section to chapter
5 39.26 RCW; creating new sections; and prescribing penalties.

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

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

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

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

18 (4) Therefore, it is the intent of the legislature to transition
19 to the use of less damaging hydrofluorocarbons or suitable
20 substitutes in various applications in Washington, in a manner
21 similar to the regulations that were adopted by the environmental
22 protection agency, and that have been subsequently adopted or will be
23 adopted in several other states around the country.

24 **Sec. 2.** RCW 70.235.010 and 2010 c 146 s 1 are each amended to
25 read as follows:

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

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

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

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

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

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

37 (6) "Greenhouse gas" and "greenhouse gases" includes carbon
38 dioxide, methane, nitrous oxide, hydrofluorocarbons,

1 perfluorocarbons, sulfur hexafluoride, and any other gas or gases
2 designated by the department by rule.

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

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

7 (9) "Western climate initiative" means the collaboration of
8 states, Canadian provinces, Mexican states, and tribes to design a
9 multisector market-based mechanism as directed under the western
10 regional climate action initiative signed by the governor on February
11 22, 2007.

12 (10) "Class I substance" and "class II substance" means those
13 substances listed in 42 U.S.C. Sec. 7671a, as it read on November 15,
14 1990, or those substances listed in Appendix A or B of Subpart A of
15 40 C.F.R. Part 82, as those read on January 3, 2017.

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

19 (12) "Manufacturer" includes any person, firm, association,
20 partnership, corporation, governmental entity, organization, or joint
21 venture that produces any product that contains or uses
22 hydrofluorocarbons or is an importer or domestic distributor of such
23 a product.

24 (13) "Residential consumer refrigeration products" has the same
25 meaning as defined in section 430.2 of Subpart A of 10 C.F.R. Part
26 430 (2017).

27 (14) "Retrofit" has the same meaning as defined in section 152 of
28 Subpart F of 40 C.F.R. Part 82, as that section existed as of January
29 3, 2017.

30 (15) "Substitute" means a chemical, product substitute, or
31 alternative manufacturing process, whether existing or new, that is
32 used to perform a function previously performed by a class I
33 substance or class II substance and any substitute subsequently
34 adopted to perform that function, including, but not limited to,
35 hydrofluorocarbons. "Substitute" does not include 2-BTP or any
36 compound as applied to its use in aerospace fire extinguishing
37 systems.

38 NEW SECTION. Sec. 3. A new section is added to chapter 70.235
39 RCW to read as follows:

1 (1) A person may not offer any product or equipment for sale,
2 lease, or rent, or install or otherwise cause any equipment or
3 product to enter into commerce in Washington if that equipment or
4 product consists of, uses, or will use a substitute, as set forth in
5 appendix U and V, Subpart G of 40 C.F.R. Part 82, as those read on
6 January 3, 2017, for the applications or end uses restricted by
7 appendix U or V of the federal regulation, as those read on January
8 3, 2017, consistent with the deadlines established in subsection (2)
9 of this section. Except where existing equipment is retrofit, nothing
10 in this subsection requires a person that acquired a restricted
11 product or equipment prior to the effective date of the restrictions
12 in subsection (2) of this section to cease use of that product or
13 equipment. Products or equipment manufactured prior to the applicable
14 effective date of the restrictions specified in subsection (2) of
15 this section may be sold, imported, exported, distributed, installed,
16 and used after the specified effective date.

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

21 (a) January 1, 2020, for:

22 (i) Propellants;

23 (ii) Rigid polyurethane applications and spray foam, flexible
24 polyurethane, integral skin polyurethane, flexible polyurethane foam,
25 polystyrene extruded sheet, polyolefin, phenolic insulation board,
26 and bunstock;

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

29 (b) January 1, 2021, for:

30 (i) Refrigerated food processing and dispensing equipment;

31 (ii) Compact residential consumer refrigeration products;

32 (iii) Polystyrene extruded boardstock and billet, and rigid
33 polyurethane low-pressure two component spray foam;

34 (c) January 1, 2022, for residential consumer refrigeration
35 products other than compact and built-in residential consumer
36 refrigeration products;

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

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

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

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

8 (3) The department may by rule:

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

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

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

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

24 (d) Designate acceptable uses of hydrofluorocarbons for medical
25 uses that are exempt from the requirements of subsection (2) of this
26 section.

27 (4)(a) Within twelve months of another state's enactment or
28 adoption of restrictions on substitutes applicable to new light duty
29 vehicles, the department must adopt restrictions applicable to the
30 sale, lease, rental, or other introduction into commerce by a
31 manufacturer of new light duty vehicles consistent with the
32 restrictions identified in appendix B, Subpart G of 40 C.F.R. Part
33 82, as it read on January 3, 2017. The department may not adopt
34 restrictions that take effect prior to the effective date of
35 restrictions adopted or enacted in at least one other state.

36 (b) If the United States environmental protection agency approves
37 a previously prohibited hydrofluorocarbon blend with a global warming
38 potential of seven hundred fifty or less for foam blowing of
39 polystyrene extruded boardstock and billet and rigid polyurethane
40 low-pressure two-component spray foam pursuant to the significant new

1 alternatives policy program under section 7671(k) of the federal
2 clean air act (42 U.S.C. Sec. 7401 et seq.), the department must
3 expeditiously propose a rule consistent with RCW 34.05.320 to conform
4 the requirements established under this section with that federal
5 action.

6 (5) A manufacturer must disclose the substitutes used in its
7 products or equipment. That disclosure must take the form of:

8 (a) A label on the equipment or product. The label must meet
9 requirements designated by the department by rule. To the extent
10 feasible, the department must recognize existing labeling that
11 provides sufficient disclosure of the use of substitutes in the
12 product or equipment.

13 (i) The department must consider labels required by state
14 building codes and other safety standards in its rule making; and

15 (ii) The department may not require labeling of aircraft and
16 aircraft components subject to certification requirements of the
17 federal aviation administration.

18 (b) Submitting information about the use of substitutes to the
19 department, upon request.

20 (i) By December 31, 2019, all manufacturers must notify the
21 department of the status of each product class utilizing
22 hydrofluorocarbons or other substitutes restricted under subsection
23 (1) of this section that the manufacturer sells, offers for sale,
24 leases, installs, or rents in Washington state. This status
25 notification must identify the substitutes used by products or
26 equipment in each product or equipment class in a manner determined
27 by rule by the department.

28 (ii) Within one hundred twenty days after the date of a
29 restriction put in place under this section, any manufacturer
30 affected by the restriction must provide an updated status
31 notification. This notification must indicate whether the
32 manufacturer has ceased the use of hydrofluorocarbons or substitutes
33 restricted under this section within each product class and, if not,
34 what hydrofluorocarbons or other restricted substitutes remain in
35 use.

36 (iii) After the effective date of a restriction put in place
37 under this section, any manufacturer must provide an updated status
38 notification when the manufacturer introduces a new or modified
39 product or piece of equipment that uses hydrofluorocarbons or changes
40 the type of hydrofluorocarbons utilized within a product class

1 affected by a restriction. Such a notification must occur within one
2 hundred twenty days of the introduction into commerce in Washington
3 of the product or equipment triggering this notification requirement.

4 (6) The department may adopt rules to administer, implement, and
5 enforce this section. If the department elects to adopt rules, the
6 department must seek, where feasible and appropriate, to adopt rules,
7 including rules under subsection (4) of this section, that are the
8 same or consistent with the regulatory standards, exemptions,
9 reporting obligations, disclosure requirements, and other compliance
10 requirements of other states or the federal government that have
11 adopted restrictions on the use of hydrofluorocarbons and other
12 substitutes. Prior to the adoption or update of a rule under this
13 section, the department must identify the sources of information it
14 relied upon, including peer-reviewed science.

15 (7) For the purposes of implementing the restrictions specified
16 in appendix U of Subpart G of 40 C.F.R. Part 82, as it read on
17 January 3, 2017, consistent with this section, the department must
18 interpret the term "aircraft maintenance" to mean activities to
19 support the production, fabrication, manufacture, rework, inspection,
20 maintenance, overhaul, or repair of commercial, civil, or military
21 aircraft, aircraft parts, aerospace vehicles, or aerospace
22 components.

23 (8) The authority granted by this section to the department for
24 restricting the use of substitutes is supplementary to the
25 department's authority to control air pollution pursuant to chapter
26 70.94 RCW. Nothing in this section limits the authority of the
27 department under chapter 70.94 RCW.

28 (9) Except where existing equipment is retrofit, the restrictions
29 of this section do not apply to or limit any use of commercial
30 refrigeration equipment that was installed or in use prior to the
31 effective date of the restrictions established in this section.

32 **Sec. 4.** RCW 70.94.430 and 2011 c 96 s 49 are each amended to
33 read as follows:

34 (1) Any person who knowingly violates any of the provisions of
35 chapter 70.94 or 70.120 RCW, section 3 of this act, or any ordinance,
36 resolution, or regulation in force pursuant thereto is guilty of a
37 gross misdemeanor and upon conviction thereof shall be punished by a
38 fine of not more than ten thousand dollars, or by imprisonment in the

1 county jail for up to three hundred sixty-four days, or by both for
2 each separate violation.

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

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

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

24 **Sec. 5.** RCW 70.94.431 and 2013 c 51 s 6 are each amended to read
25 as follows:

26 (1) (a) Except as provided in RCW 43.05.060 through 43.05.080 and
27 43.05.150, and in addition to or as an alternate to any other penalty
28 provided by law, any person who violates any of the provisions of
29 this chapter, chapter 70.120 (~~(RCW, chapter)~~) or 70.310 RCW, section
30 3 of this act, or any of the rules in force under such chapters or
31 section may incur a civil penalty in an amount not to exceed ten
32 thousand dollars per day for each violation. Each such violation
33 shall be a separate and distinct offense, and in case of a continuing
34 violation, each day's continuance shall be a separate and distinct
35 violation.

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

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

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

10 (3) Each act of commission or omission which procures, aids or
11 abets in the violation shall be considered a violation under the
12 provisions of this section and subject to the same penalty. The
13 penalties provided in this section shall be imposed pursuant to RCW
14 43.21B.300.

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

23 (5) To secure the penalty incurred under this section, the state
24 or the authority shall have a lien on any vessel used or operated in
25 violation of this chapter which shall be enforced as provided in RCW
26 60.36.050.

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

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

36 (8) (~~By January 1, 1992,~~) The department shall develop rules
37 for excusing excess emissions from enforcement action if such excess
38 emissions are unavoidable. The rules shall specify the criteria and
39 procedures for the department and local air authorities to determine

1 whether a period of excess emissions is excusable in accordance with
2 the state implementation plan.

3 **Sec. 6.** RCW 70.94.015 and 1998 c 321 s 33 are each amended to
4 read as follows:

5 (1) The air pollution control account is established in the state
6 treasury. All receipts collected by or on behalf of the department
7 from RCW 70.94.151(2), and receipts from nonpermit program sources
8 under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW
9 (~~70.94.650, 70.94.660, 82.44.020(2), and 82.50.405~~) 70.94.6528 and
10 70.94.6534 shall be deposited into the account. Moneys in the account
11 may be spent only after appropriation. Expenditures from the account
12 may be used only to develop and implement the provisions of chapters
13 70.94 and 70.120 RCW and section 3 of this act.

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

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

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

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

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

28 (3) The air operating permit account is created in the custody of
29 the state treasurer. All receipts collected by or on behalf of the
30 department from permit program sources under RCW 70.94.152(1),
31 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the
32 account. Expenditures from the account may be used only for the
33 activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and
34 70.94.154(7). Moneys in the account may be spent only after
35 appropriation.

36 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.27
37 RCW to read as follows:

1 The building code council shall adopt rules that permit the use
2 of substitutes approved under section 3 of this act and that do not
3 require the use of substitutes that are restricted under section 3 of
4 this act.

5 NEW SECTION. **Sec. 8.** The department of ecology, in consultation
6 with the department of commerce and the utilities and transportation
7 commission, must complete a report addressing how to increase the use
8 of refrigerants with a low global warming potential in mobile
9 sources, utility equipment, and consumer appliances, and how to
10 reduce other uses of hydrofluorocarbons in Washington. The report
11 must be submitted to the legislature consistent with RCW 43.01.036 by
12 December 1, 2020, and must include recommendations for how to fund,
13 structure, and prioritize a state program that incentivizes or
14 provides grants to support the elimination of legacy uses of
15 hydrofluorocarbons regulated under section 3 of this act or uses of
16 hydrofluorocarbons not covered by section 3 of this act.

17 NEW SECTION. **Sec. 9.** A new section is added to chapter 39.26
18 RCW to read as follows:

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

- 21 (a) Are not restricted under section 3 of this act;
- 22 (b) Do not contain hydrofluorocarbons or contain
23 hydrofluorocarbons with a comparatively low global warming potential;
- 24 (c) Are not designed to function only in conjunction with
25 hydrofluorocarbons characterized by a comparatively high global
26 warming potential; and
- 27 (d) Were not manufactured using hydrofluorocarbons or were
28 manufactured using hydrofluorocarbons with a low global warming
29 potential.

30 (2) No agency may knowingly purchase products that are not
31 accorded a preference in the purchasing and procurement policies
32 established by the department pursuant to subsection (1) of this
33 section, unless there is no cost-effective and technologically
34 feasible option that is accorded a preference.

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

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

6 NEW SECTION. **Sec. 10.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

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