

Chapter 70A.425 RCW
POISON PREVENTION—LABELING AND PACKAGING

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Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

RCW 70A.425.010 Purpose. The purpose of this chapter is to provide for special packaging to protect children from personal injury, serious illness or death resulting from handling, using or ingesting household substances, and to provide penalties. [1974 ex.s. c 49 s 1. Formerly RCW 70.106.010.]

RCW 70A.425.020 Short title. This chapter shall be cited as the Washington Poison Prevention Act of 1974. [1974 ex.s. c 49 s 2. Formerly RCW 70.106.020.]

RCW 70A.425.030 Definitions—Construction. The definitions in RCW 70A.425.040 through 70A.425.090 unless the context otherwise requires shall govern the construction of this chapter. [2020 c 20 s 1322; 1974 ex.s. c 49 s 3. Formerly RCW 70.106.030.]

RCW 70A.425.040 "Director" defined. "Director" means the director of the department of agriculture of the state of Washington, or his or her duly authorized representative. [2012 c 117 s 418; 1974 ex.s. c 49 s 4. Formerly RCW 70.106.040.]

RCW 70A.425.050 "Sale" defined. "Sale" means to sell, offer for sale, hold for sale, handle or use as an inducement in the promotion of a household substance or the sale of another article or product. [1974 ex.s. c 49 s 5. Formerly RCW 70.106.050.]

RCW 70A.425.060 "Household substance" defined. "Household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(1) A "hazardous substance", which means (a) any substance or mixture of substances or product which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; (b) any substances which the director by regulation finds to meet the requirements of subsection (1)(a) of this section; (c) any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health, safety or welfare; and (d) any toy or other article intended for use by children which the director by regulation determines presents an electrical, mechanical or thermal hazard.

(2) A pesticide as defined in the Washington Pesticide Control Act, chapter 15.58 RCW as now or hereafter amended;

(3) A food, drug, or cosmetic as those terms are defined in the Uniform Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW as now or hereafter amended; or

(4) A substance intended for use as fuel when stored in portable containers and used in the heating, cooking, or refrigeration system of a house; or

(5) Any other substance which the director may declare to be a household substance subsequent to a hearing as provided for under the provisions of chapter 34.05 RCW, Administrative Procedure Act, for the adoption of rules. [1974 ex.s. c 49 s 6. Formerly RCW 70.106.060.]

RCW 70A.425.070 "Package" defined. "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of RCW 70A.425.110(1)(b), also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include:

(1) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping. [2020 c 20 s 1323; 1974 ex.s. c 49 s 7. Formerly RCW 70.106.070.]

RCW 70A.425.080 "Special packaging" defined. "Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use

properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time. [1974 ex.s. c 49 s 8. Formerly RCW 70.106.080.]

RCW 70A.425.090 "Labeling" defined. "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance. [1974 ex.s. c 49 s 9. Formerly RCW 70.106.090.]

RCW 70A.425.100 Standards for packaging. (1) The director may establish in accordance with the provisions of this chapter, by regulation, standards for the special packaging of any household substance if he or she finds that:

(a) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and

(b) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(2) In establishing a standard under this section, the director shall consider:

(a) The reasonableness of such standard;

(b) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(c) The manufacturing practices of industries affected by this chapter; and

(d) The nature and use of the household substance.

(3) In carrying out the provisions of this chapter, the director shall publish his or her findings, his or her reasons therefor, and citation of the sections of statutes which authorize his or her action.

(4) Nothing in this chapter authorizes the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in RCW 70A.425.110(1)(b), labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the director may in such regulation prohibit the packaging of such substance in packages which he or she determines are unnecessarily attractive to children.

(5) The director shall cause the regulations promulgated under this chapter to conform with the requirements or exemptions of the federal hazardous substances act and with the regulations or interpretations promulgated pursuant thereto. [2020 c 20 s 1324; 2012 c 117 s 419; 1974 ex.s. c 49 s 10. Formerly RCW 70.106.100.]

RCW 70A.425.110 Exceptions from packaging standards. (1) For the purpose of making any household substance which is subject to a standard established under RCW 70A.425.100 readily available to elderly persons or persons with disabilities unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household

substance, subject to such a standard, in packaging of a single size which does not comply with such standard if:

(a) The manufacturer or packer also supplies such substance in packages which comply with such standard; and

(b) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(2) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(3) In the case of a household substance subject to such a standard which is packaged under subsection (1) of this section in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he or she may, after giving the manufacturer or packer an opportunity to comply with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he or she finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter. [2020 c 20 s 1325; 2012 c 117 s 420; 1974 ex.s. c 49 s 11. Formerly RCW 70.106.110.]

RCW 70A.425.120 Adoption of rules and regulations under federal poison prevention packaging act. One of the purposes of this chapter is to promote uniformity with the Poison Prevention Packaging Act of 1970 and rules and regulations adopted thereunder. In accordance with such declared purpose, all of the special packaging rules and regulations adopted under the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; 7 U.S.C. Sec. 135; 15 U.S.C. Sec. 1261, 1471-1476; 21 U.S.C. Sec. 343, 352, 353, 362) on July 24, 1974, are hereby adopted as rules and regulations applicable to this chapter. In addition, any rule or regulation adopted hereafter under said Federal Poison Prevention Act of 1970 concerning special packaging and published in the federal register shall be deemed to have been adopted under the provisions of this chapter. The director may, however, within thirty days of the publication of the adoption of any such rule or regulation under the Federal Poison Prevention Packaging Act of 1970, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be conducted in accord with the provisions of chapter 34.05 RCW, Administrative Procedure Act, as now enacted or hereafter amended. [1974 ex.s. c 49 s 12. Formerly RCW 70.106.120.]

RCW 70A.425.130 Penalties. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation of the provisions of this chapter or rules adopted under this chapter is a gross misdemeanor. Any offense committed more than five years after a previous conviction

shall be considered a first offense. [2003 c 53 s 358; 1974 ex.s. c 49 s 16. Formerly RCW 70.106.140.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

RCW 70A.425.140 Authority to adopt regulations—Delegation of authority to pharmacy quality assurance commission. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director. However, the director shall designate the pharmacy quality assurance commission to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [2013 c 19 s 124; 1987 c 236 s 1. Formerly RCW 70.106.150.]

RCW 70A.425.900 Saving—1974 ex.s. c 49. The enactment of this 1974 act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 24, 1974. [1974 ex.s. c 49 s 15. Formerly RCW 70.106.905.]

RCW 70A.425.901 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1974 ex.s. c 49 s 17. Formerly RCW 70.106.910.]