

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 4949

By Delegates Rohrbach, Fehrenbacher, Hornby, Hott,
Leavitt, and Zatezalo

[Introduced January 29, 2026; referred to the
Committee on Energy and Public Works]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §29A-3-21, relating to legislative rules regarding chemicals of emerging
3 concern; defining terms; providing that certain legislative rules shall not be more stringent
4 or extensive in scope, coverage, or effect than any federal law or regulation on the same or
5 a substantially similar topic; providing that certain legislative rules proposed in the absence
6 of a federal law or regulation on the same or a substantially similar topic shall be based on
7 the best available science and the weight of scientific evidence; providing exceptions; and
8 providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. RULE MAKING.

§29A-3-21. Proposal of legislative rules regarding chemicals of emerging concern..

1 (a) For purposes of this section, the term:

2 (1) "Best available science" means science that:

3 (A) Is reliable, unbiased, subject to independent verification, and applies to the agency's
4 proposed legislative rule;

5 (B) Maximizes the quality, objectivity, relevance, completeness, and integrity of
6 information, including statistical information; human, animal, and other relevant scientific studies;
7 and, if applicable, human health risk-based assessments; and

8 (C) Involves the use of scientifically defensible and quality-assured supporting studies
9 conducted in accordance with generally accepted scientific or technical practices utilizing data
10 collected by generally accepted methods or best available methods and that are:

11 (i) Site-specific studies, including area-wide or statewide studies.

12 (ii) Studies published in a refereed journal; and

13 (iii) External peer-reviewed studies contained in a federal government report published for
14 a purpose other than development of a regulation.

15 (2) "Chemical of emerging concern" means any substance or microorganism, including

16 manufactured or naturally occurring physical, chemical, biological, radiological, or nuclear
17 materials, which are known or anticipated in the environment, that may pose newly identified or re-
18 emerging potential risks to human health, aquatic life, or the environment, including, but not limited
19 to, any of the following:

20 (A) Any fluorinated organic chemical, substance or compound containing at least one fully
21 fluorinated carbon atom, including perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid
22 (PFOA), for purposes of this section, notwithstanding any other provision of this code to the
23 contrary;

24 (B) Any material or chemical substance with at least one dimension less than 100
25 nanometers, commonly referred to as nanoscale materials or nanoscale substances;

26 (C) Plastic particles less than 5 millimeters in size, commonly referred to as microplastics;
27 (D) 1,4-Dioxane;

28 (E) 6PPD and 6PPD-quinone;
29 (F) Perchlorate; and
30 (G) 1,2,3-Trichloropropane.

31 (3) "Generally accepted scientific or technical practices" means scientific methods,
32 principles, or protocols that:

33 (A) Are broadly acknowledged and routinely applied by the relevant scientific community;
34 (B) Are consistent with refereed journal literature or established technical standards; and
35 (C) Have been tested for reliability and validity.

36 (4) "Manifest bodily harm" means a physical disease or injury that is:

37 (A) Presently existing and diagnosable;
38 (B) Not based solely on the presence or detection of a substance in the human body; and
39 (C) Not based solely on an increased risk of disease.

40 (5) "Refereed journal" means a publication that:

41 (A) Uses an editorial board or critical review panel of subject matter experts in the relevant

42 scientific or technical disciplines who critically and objectively assess the methodology and
43 analysis of submitted scientific studies in a nonpartisan fashion and provide editorial services prior
44 to publication; and

45 (B) Takes meaningful steps to avoid biases in its scientific review process.

46 (6) "Weight of scientific evidence" means an approach to scientific evaluation in which
47 each piece of relevant information is considered based on its quality and relevance, which, at a
48 minimum, should include consideration of study design, fitness for purpose, replicability, peer
49 review, and transparency and reliability of data, and then transparently integrated with other
50 relevant information to inform the scientific evaluation prior to making a judgment about the
51 scientific evaluation.

52 (b) No legislative rule proposed by an agency to establish numeric criteria or numeric
53 limitations applicable to a chemical of emerging concern that relates to drinking water, water
54 pollution control, hazardous substances, contaminated site remediation, air quality, solid waste
55 handling, or hazardous waste handling shall be more stringent or extensive in scope, coverage, or
56 effect than any federal law or regulation setting a standard regarding the same or a substantially
57 similar topic.

58 (c) In the absence of any federal law or regulation setting a standard regarding the same or
59 a substantially similar topic, no legislative rule, including any agency proposed modification to an
60 existing legislative rule, shall be proposed by an agency to establish numeric criteria or numeric
61 limitations applicable to a chemical of emerging concern that relates to drinking water, water
62 pollution control, hazardous substances, contaminated site remediation, air quality, solid waste
63 handling, or hazardous waste handling unless, for each individual chemical of emerging concern
64 to which the legislative rule applies, all scientific and technical information relied on to support the
65 legislative rule is based upon the best available science and the weight of scientific evidence.

66 (d) For any legislative rule subject to subsection (c) that is proposed by an agency to
67 protect human health, the following additional requirements shall apply:

68 (1) The best available science must establish a direct causal link between exposure at or
69 above the numeric criteria or numeric limits in the legislative rule and manifest bodily harm in
70 humans, based on generally accepted scientific or technical practices; and

71 (2) In the absence of data from voluntary scientific studies on humans, best available
72 science can be based on tests performed on experimental animal species or human and animal
73 cells establishing a direct causal link, based on generally accepted scientific or technical practices,
74 between exposure at or above any numeric criteria or numeric limits in the legislative rule and
75 manifest bodily harm in humans, provided the harm can be extrapolated to humans based upon
76 the best available science and the weight of scientific evidence.

77 (e) This section does not apply to:

78 (1) Any legislative rule that is required by federal law or regulation, including legislative
79 rules adopted to comply with, and in furtherance of, federal agency authorization or primacy
80 requirements;

81 (2) Any legislative rule that is less stringent or extensive in scope, coverage, or effect than
82 any federal law or regulation setting a standard regarding the same or a substantially similar topic
83 or that is substantively equivalent to a federal law or regulation as provided in § 22-1-3(c) of this
84 code;

85 (3) Any legislative rule that would repeal or modify an existing legislative rule to be less
86 stringent or extensive in scope, coverage, or effect; or

87 (4) Any emergency legislative rule promulgated pursuant to § 29A-3-15 of this code.

88 (f) This section applies to any legislative rule that is proposed or adopted on or after the
89 effective date of this section.

NOTE: The purpose of this bill is to establish that certain legislative rules proposed by state agencies regarding chemicals of emerging concern shall be based upon the best available science and the weight of the scientific evidence.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.