**2545-S.E AMS HLTH S4930.1 - NOT FOR FLOOR USE**

**ESHB 2545** - S COMM AMD

By Committee on Health Care

**NOT ADOPTED 03/04/2016**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Additive TBBPA" means the chemical tetrabromobisphenol A, chemical abstracts service number 79-94-7, as of the effective date of this section, in a form that has not undergone a reactive process and is not covalently bonded to a polymer in a product or product component.

(2) "Children's product" has the same meaning as defined in RCW 70.240.010. For the purposes of this chapter, children's product does not include an inaccessible electronic component part located inside a children's electronic product and not capable of being touched or mouthed, whether or not such part is visible to a user of the product.

(3) "Decabromodiphenyl ether" means the chemical decabromodiphenyl ether, chemical abstracts service number 1163-19-5, as of the effective date of this section.

(4) "HBCD" means the chemical hexabromocyclododecane, chemical abstracts service number 25637-99-4, as of the effective date of this section.

(5) "High priority chemical" has the same meaning as defined in RCW 70.240.010, but only includes chemicals that are: (a) Used as flame retardants; and (b) in any product component of a children's product or residential upholstered furniture, as defined in RCW 70.76.010.

(6) "IPTPP" means the chemical isopropylated triphenyl phosphate, chemical abstracts service number 68937-41-7, as of the effective date of this section.

(7) "Manufacturer" has the same meaning as defined in RCW 70.240.010 and also includes a manufacturer of residential upholstered furniture, as defined in RCW 70.76.010.

(8) "TBB" means the chemical (2-ethylhexyl)-2,3,4,5-tetrabromobenzoate, chemical abstracts service number 183658-27-7, as of the effective date of this section.

(9) "TBPH" means the chemical bis (2-ethylhexyl)-2,3,4,5-tetrabromophthalate, chemical abstracts service number 26040-51-7, as of the effective date of this section.

(10) "TCEP" means the chemical (tris(2-chloroethyl)phosphate), chemical abstracts service number 115-96-8, as of the effective date of this section.

(11) "TCPP" means the chemical tris (1-chloro-2-propyl) phosphate, chemical abstracts service number 13674-84-5, as of the effective date of this section.

(12) "TDCPP" means the chemical (tris(1,3-dichloro-2- propyl)phosphate), chemical abstracts service number 13674-87-8, as of the effective date of this section.

(13) "TPP" means the chemical triphenyl phosphate, chemical abstracts service number 115-86-6, as of the effective date of this section.

(14) "V6" means the chemical bis(chloromethyl)propane-1,3-diyltetrakis (2-chloroethyl) bisphosphate, chemical abstracts service number 385051-10-4, as of the effective date of this section.

NEW SECTION. **Sec.**  Beginning July 1, 2017, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state children's products or residential upholstered furniture, as defined in RCW 70.76.010, containing any of the following flame retardants in amounts greater than one thousand parts per million in any product component:

(1) TDCPP;

(2) TCEP;

(3) Decabromodiphenyl ether;

(4) HBCD; or

(5) Additive TBBPA.

NEW SECTION. **Sec.**  (1) Consistent with the process and evaluative criteria adopted by the department of ecology by rule under chapter 70.240 RCW, the department of ecology, in consultation with the department of health, must make a determination regarding whether a flame retardant listed in (a) through (f) of this subsection meets the criteria of a high priority chemical of high concern for children:

(a) IPTPP;

(b) TBB;

(c) TBPH;

(d) TCPP;

(e) TPP; and

(f) V6.

(2) If a flame retardant listed in subsection (1)(a) through (f) meets the criteria of a high priority chemical of high concern for children, then the department of ecology, in consultation with the department of health, shall determine whether additional manufacturer data on use in children's products is needed in order to further evaluate the flame retardant. If additional manufacturer data is deemed necessary, the department of ecology may initiate rule making to add the flame retardant according to the process and criteria adopted in rule by the department of ecology under chapter 70.240 RCW.

(3) If the department of ecology, in consultation with the department of health, determines that a flame retardant chemical in subsection (1)(a) through (f) of this section meets the criteria of a chemical of high concern for children and there is available information on use of the flame retardant chemical in children's products, then the department of ecology shall submit a report to the legislature by December 1, 2016. The report to the legislature must contain:

(a) A determination by the department of health as to whether children or vulnerable populations are likely to be exposed to the chemical directly or indirectly from its use in products. The determination of the department of health must be made after an evaluation of available information on:

(i) Chemical name, properties, manufacturers, and production volumes;

(ii) Levels of the flame retardants in consumer products;

(iii) Migration of the flame retardants out of products during and after use;

(iv) Levels of the flame retardants in humans and the environment, including but not limited to the home environment; and

(v) Quantitative estimates of the potential human and environmental exposures;

(b) A review of available toxicity data to evaluate the health concerns for children or vulnerable populations;

(c) A determination of whether a safer alternative has been identified to meet applicable fire safety standards for residential furniture and children's products by evaluating existing chemical action plans and assessments of safer alternatives that have been completed for flame retardant chemicals; and

(d) Recommendations regarding whether the legislature should restrict the use of the flame retardants listed in subsection (1)(a) through (f) of this section in children's products or residential upholstered furniture, as defined in RCW 70.76.010, or both. This recommendation must address:

(i) Allowable levels of any restricted flame retardant chemicals in a product, which may not be less than one thousand parts per million; and

(ii) The date when any restrictions should take effect.

(4) The departments of health and ecology must identify the sources of information they reviewed and ultimately relied upon in making the determinations required in subsection (2) of this section, including peer-reviewed science.

(5) The department of ecology, in consultation with the department of health, must create an external advisory committee to provide early stakeholder input, expertise, and additional information for the report to the legislature required under subsection (2) of this section and any rule making carried out under section 4 of this act. All advisory meetings must be open to the public. The advisory committee membership must include, but not be limited to, representatives from: Large and small business sectors; community, environmental, and public health advocacy groups; local governments; affected and interested businesses; groups representing firefighters; and public health agencies. State agencies and technical experts may be requested to participate.

(6) If the department of ecology, in consultation with the department of health, submits a report under subsection (2) of this section to the legislature recommending restricting a flame retardant chemical listed in subsection (1)(a) through (f) of this section, the rule-making process under section 4 of this act may not commence prior to the end of the 2017 regular legislative session.

NEW SECTION. **Sec.**  (1) Before December 1st of any year until December 1, 2021, the secretary of the department of health may propose a rule to restrict flame retardants consistent with the department of ecology's recommendations under section 3(2) of this act to restrict a flame retardant. This rule may not be finalized and adopted before the end of the regular legislative session in the year following the rule proposal under this section and may not be finalized and adopted if the legislature takes action during that following regular legislative session to implement restrictions on flame retardants listed in section 3(1) (a) through (f) of this act consistent with the department of ecology's recommendations under section 3(2) of this act.

(2) A violation of rules adopted pursuant to this chapter is subject to the penalties provided in RCW 70.240.050.

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

(4) This section expires July 1, 2022.

**Sec.**  RCW 70.240.050 and 2008 c 288 s 7 are each amended to read as follows:

(1) A manufacturer of products that are restricted under this chapter or chapter 70.--- RCW (the new chapter created in section 6 of this act) must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter or chapter 70.--- RCW (the new chapter created in section 6 of this act) shall recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of ((~~children's~~)) products in violation of this chapter or chapter 70.--- RCW (the new chapter created in section 6 of 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. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.l05D.070.

(4) Retailers who unknowingly sell products that are restricted from sale under this chapter or chapter 70.--- RCW (the new chapter created in section 6 of this act) are not liable under this chapter.

(5) The sale or purchase of any previously owned products containing a chemical restricted under this chapter or chapter 70.--- RCW (the new chapter created in section 6 of this act) made in casual or isolated sales as defined in RCW 82.04.040, or by a nonprofit organization, is exempt from this chapter and chapter 70.--- RCW (the new chapter created in section 6 of this act).

NEW SECTION. **Sec.**  Sections 1 through 4 of this act constitute a new chapter in Title 70 RCW."

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On page 1, line 5 of the title, after "products;" strike the remainder of the title and insert "; amending RCW 70.240.050; adding a new chapter to Title 70 RCW; and providing an expiration date."

EFFECT: (1) The definition of children's product is modified to exclude an inaccessible electronic component part located inside a children's electronic product and is not capable of being touched or mouthed.

(2) The ban on the five listed flame retardants is retained.

(3) The Department of Health rule-making process is modified.

(4) The Department of Ecology, in consultation with the Department of Health, must make a determination regarding whether a listed chemical meets the criteria of a high priority chemical of high concern for children: (Includes IPTPP; TBB; TBPH; TCPP; TPP; and V6).

(5) If the Departments determine a chemical is of high priority, they must determine whether additional manufacturer data on use in children's products is needed in order to further evaluate the flame retardant. If additional data is needed, the department may initiate rule making to add the flame retardant according to the process and criteria adopted by DOE.

(6) If the Departments determine that a flame retardant meets the high priority and there is available information on use of the chemical in children's products, then DOE must report to the Legislature by December 1, 2016, with identified items.

(7) The Departments must create an external advisory committee to provide stakeholder input, expertise, and additional information for the report and any rule making. All advisory meetings must be open to the public, and membership must include representatives from large and small business, community, environmental and public health advocacy groups, local governments, affected business, groups representing firefighters, and public agencies.

(8) Before December 1st of each year DOH may propose a rule to restrict only listed flame retardants consistent with DOE's recommendations. The rule may not be finalized before the end of the regular session.

(9) Penalties are retained.