

SHB 2545 - H AMD TO H AMD (H-4433.1/16) 721  
By Representative Short

NOT ADOPTED 02/15/2016

1 Beginning on page 1, after line 2 of the amendment, strike the  
2 remainder of the amendment and insert the following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires  
5 otherwise.

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

11 (2) "Children's product" has the same meaning as defined in RCW  
12 70.240.010.

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

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

19 (5) "High priority chemical" has the same meaning as defined in  
20 RCW 70.240.010, but only includes chemicals that are: (a) Used as  
21 flame retardants; and (b) in any product component of a children's  
22 product or residential upholstered furniture, as defined in RCW  
23 70.76.010.

24 (6) "Inaccessible electronic component" means:

25 (a) An inaccessible component part located inside an electronic  
26 product and not capable of being touched or mouthed, whether or not  
27 such part is visible to a user of the product; and

28 (b) An inaccessible component that may be enclosed in any type of  
29 material including, but not limited to, hard or soft plastic, rubber,  
30 or metal.

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

1 (8) "Manufacturer" has the same meaning as defined in RCW  
2 70.240.010 and also includes a manufacturer of residential  
3 upholstered furniture, as defined in RCW 70.76.010.

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

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

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

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

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

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

22 NEW SECTION. **Sec. 2.** Beginning July 1, 2017, no manufacturer,  
23 wholesaler, or retailer may manufacture, knowingly sell, offer for  
24 sale, distribute for sale, or distribute for use in this state  
25 children's products or residential upholstered furniture, as defined  
26 in RCW 70.76.010, containing any of the following flame retardants in  
27 amounts greater than one thousand parts per million in any product  
28 component, except an inaccessible electronic component:

- 29 (1) TDCPP;
- 30 (2) TCEP;
- 31 (3) Decabromodiphenyl ether;
- 32 (4) HBCD; or
- 33 (5) Additive TBBPA.

34 NEW SECTION. **Sec. 3.** (1) Consistent with the process and  
35 evaluative criteria adopted by the department of ecology by rule  
36 under chapter 70.240 RCW, the department of ecology must make a  
37 decision regarding whether a flame retardant listed in (a) through  
38 (e) of this subsection meets the criteria of a high priority chemical

1 of high concern for children. If the department of ecology decides a  
2 flame retardant meets the criteria, the department of ecology must  
3 propose a rule to list a flame retardant under this subsection as a  
4 high priority chemical of high concern for children by December 1st  
5 of any year. If the department of ecology proposes a rule to add a  
6 flame retardant listed in this section to the list of high priority  
7 chemicals of high concern for children, the rule may not be adopted  
8 and take effect until after the conclusion of the regular legislative  
9 session in the following year. Under this subsection (1), the  
10 department of ecology must make a separate decision and propose a  
11 separate rule for each flame retardant chemical identified by a  
12 specific chemical abstracts service number.

- 13 (a) IPTPP;
- 14 (b) TBB;
- 15 (c) TBPH;
- 16 (d) TCPP; and
- 17 (e) TPP.

18 (2) If the department of ecology, in consultation with the  
19 department of health, proposes a rule to add a flame retardant  
20 chemical to the list of high priority chemicals of high concern for  
21 children pursuant to subsection (1) of this section, the department  
22 of ecology must also submit a report to the legislature by December  
23 1st of that year. The report to the legislature must contain:

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

- 29 (i) Chemical name, properties, manufacturers, and production  
30 volumes;
- 31 (ii) Levels of the flame retardants in consumer products;
- 32 (iii) Migration of the flame retardants out of products during  
33 and after use;
- 34 (iv) Levels of the flame retardants in humans and the  
35 environment, including but not limited to the home environment;
- 36 (v) Quantitative estimates of the potential human and  
37 environmental exposures associated with the use and release of the  
38 chemical; and

1 (vi) An assessment of the potential impacts on human health and  
2 the environment resulting from the quantitative exposure estimates  
3 referred to in (a)(v) of this subsection;

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

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

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

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

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

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

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

35 (5) If the department of ecology, in consultation with the  
36 department of health, submits a report under subsection (2) of this  
37 section to the legislature recommending restricting a flame retardant  
38 chemical listed in subsection (1)(a) through (e) of this section, the  
39 rule-making process under section 4 of this act may not commence

1 prior to the end of the regular legislative session following  
2 adoption of the rule under subsection (1) of this section.

3 NEW SECTION. **Sec. 4.** (1) Before December 1st of any year until  
4 December 1, 2021, the secretary of the department of health may  
5 propose a rule to restrict a flame retardant consistent with the  
6 department of ecology's recommendations under section 3(2) of this  
7 act. A rule may not restrict flame retardants in inaccessible  
8 electronic components of a product. This rule may not be finalized  
9 and adopted before the end of the regular legislative session in the  
10 year following the rule proposal under this section and may not be  
11 finalized and adopted if the legislature takes action during that  
12 following regular legislative session to implement protective  
13 measures relating to a flame retardant listed in section 3(1) (a)  
14 through (e) of this act. Any final rule adopted by the department of  
15 health under this section must be identical to the rule proposed by  
16 the department of health on December 1st of the previous year.

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

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

21 (4) This section expires July 1, 2022.

22 **Sec. 5.** RCW 70.240.050 and 2008 c 288 s 7 are each amended to  
23 read as follows:

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

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

34 (3) A manufacturer of (~~children's~~) products in violation of  
35 this chapter or chapter 70.--- RCW (the new chapter created in  
36 section 6 of this act) is subject to a civil penalty not to exceed  
37 five thousand dollars for each violation in the case of a first  
38 offense. Manufacturers who are repeat violators are subject to a

1 civil penalty not to exceed ten thousand dollars for each repeat  
2 offense. Penalties collected under this section must be deposited in  
3 the state toxics control account created in RCW 70.105D.070.

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

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

13 NEW SECTION. Sec. 6. Sections 1 through 4 of this act  
14 constitute a new chapter in Title 70 RCW."

15 Correct the title.

EFFECT: (1) Provides that the manufacture, sale, or distribution  
of children's products or residential upholstered furniture  
containing specified flame retardants in amounts greater than one  
thousand parts per million in any product component is prohibited,  
except in an inaccessible electronic component.

(2)(a) Requires the department of ecology (DOE) to make a  
decision regarding whether IPTPP, TBB, TBPH, TCPP, and TPP meet the  
criteria of a high priority chemical of high concern for children.

(b) Provides that if the DOE decides that a flame retardant meets  
this criteria, then DOE must propose a rule to list the flame  
retardant as a high priority chemical of high concern for children by  
December 1st of any year.

(c) Requires that the rule may not be adopted and take effect  
until after the conclusion of the regular legislative session in the  
following year.

(d) Requires that the DOE must make a separate decision and  
propose a separate rule for each flame retardant chemical identified  
by a specific chemical abstracts service number.

(3)(a) Requires the DOE, in consultation with the department of  
health (DOH) to report to the legislature by no later than December  
1st of that year if the DOE proposes a rule to add a flame retardant  
to the list of chemicals of high concern for children.

(b) Requires, as part of the report to the legislature:

(i) Quantitative estimates of the potential human and  
environmental exposures associated with the use and release of the  
chemical; and

(ii) An assessment of the potential impacts on human health and  
the environment resulting from the quantitative exposure estimates.

(c) Requires that the report include recommendations regarding  
whether the legislature should restrict the use of the flame  
retardants, including allowable levels of any restricted flame

retardant chemicals and the date when any restrictions should take effect.

(d) Provides that, if the DOE, in consultation with the DOH, submits a report to the legislature recommending restricting IPTPP, TBB, TBPH, TCPP, or TPP, the rule-making process by the DOH may not commence prior to the end of the regular legislative session following the adoption of the DOE rule to list the chemical as a high priority chemical of high concern for children.

(4)(a) Authorizes the DOH, until December 1, 2021, to propose a rule to restrict a flame retardant consistent with the DOE's recommendations in the DOE's report to the legislature, before December 1st of any given year.

(b) Requires that the rule may not be finalized and adopted before the end of the regular legislative session in the year following the rule proposal and may not be finalized and adopted if the legislature takes action during that following regular legislative session to implement protective measures related to the chemicals IPTPP, TBB, TBPH, TCPP, and TPP.

(c) Requires that any final rule adopted by the DOH must be identical to the rule proposed by the DOH on December 1st of the previous year.

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