
SUBSTITUTE HOUSE BILL 2545

State of Washington

64th Legislature

2016 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Van De Wege, Taylor, DeBolt, Cody, Rodne, Kochmar, Stambaugh, Riccelli, Johnson, Jinkins, Kagi, Harris, Smith, Stokesbary, Caldier, Zeiger, Tharinger, Hickel, Fitzgibbon, Muri, Reykdal, Frame, Rossetti, S. Hunt, Hudgins, McBride, Ormsby, Appleton, Walkinshaw, Senn, Ryu, Gregerson, Sells, Harmsworth, Tarleton, Pollet, Bergquist, Stanford, and Scott)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to reducing public health threats that
2 particularly impact highly exposed populations, including children
3 and firefighters, by establishing a process for the department of
4 health to restrict the use of toxic flame retardant chemicals in
5 certain types of consumer products; amending RCW 70.240.050; adding a
6 new chapter to Title 70 RCW; prescribing penalties; and providing an
7 expiration date.

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

9 NEW SECTION. **Sec. 1.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires
11 otherwise.

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

17 (2) "Children's product" has the same meaning as defined in RCW
18 70.240.010.

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

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

4 (5) "High priority chemical" has the same meaning as defined in
5 RCW 70.240.010, but only includes chemicals that are: (a) Used as
6 flame retardants; and (b) in any product component of a children's
7 product or residential upholstered furniture, as defined in RCW
8 70.76.010.

9 (6) "Manufacturer" has the same meaning as defined in RCW
10 70.240.010 and also includes a manufacturer of residential
11 upholstered furniture, as defined in RCW 70.76.010.

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

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

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

- 25 (1) TDCPP;
- 26 (2) TCEP;
- 27 (3) Decabromodiphenyl ether;
- 28 (4) HBCD; or
- 29 (5) Additive TBBPA.

30 NEW SECTION. **Sec. 3.** (1) By rule, the secretary of the
31 department of health may prohibit the manufacture, sale, distribution
32 for sale, or distribution for use in this state of residential
33 upholstered furniture, as defined in RCW 70.76.010, or children's
34 products containing a chemical used as a flame retardant in any
35 product component in amounts greater than one thousand parts per
36 million that meets the criteria of a high priority chemical of high
37 concern for children under RCW 70.240.030(1).

1 (2) The department of health must create an external advisory
2 committee for the rule development to provide early stakeholder
3 input, expertise, and additional information. All advisory meetings
4 must be open to the public. The advisory committee membership must
5 include, but not be limited to, representatives from: Large and small
6 business sectors; community, environmental, and public health
7 advocacy groups; local governments; affected and interested
8 businesses; groups representing firefighters; and public health
9 agencies. State agencies and technical experts may be requested to
10 participate.

11 (3) After January 1, 2016, a rule that restricts a flame
12 retardant under subsection (1) of this section must be adopted prior
13 to December 1st of any year and the restrictions under subsection (1)
14 of this section do not take effect before the end of the regular
15 legislative session in the next year.

16 (4) Before the secretary of the department of health may adopt a
17 rule to restrict a flame retardant, the department of health must
18 submit a report to the legislature no later than at the time of
19 publication of the notice of a rule-making hearing required under RCW
20 34.05.320. The report to the legislature must contain:

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

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

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

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

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

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

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

1 (5) The department of health must identify the sources of
2 information it relied upon in making the determination required in
3 subsection (4) of this section, including peer-reviewed science.

4 (6) Violations of rules adopted pursuant to this chapter are
5 subject to the penalties provided in RCW 70.240.050.

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

8 (8) This section expires July 1, 2022.

9 **Sec. 4.** RCW 70.240.050 and 2008 c 288 s 7 are each amended to
10 read as follows:

11 (1) A manufacturer of products that are restricted under this
12 chapter or chapter 70.--- RCW (the new chapter created in section 5
13 of this act) must notify persons that sell the manufacturer's
14 products in this state about the provisions of this chapter no less
15 than ninety days prior to the effective date of the restrictions.

16 (2) A manufacturer that produces, sells, or distributes a product
17 prohibited from manufacture, sale, or distribution in this state
18 under this chapter or chapter 70.--- RCW (the new chapter created in
19 section 5 of this act) shall recall the product and reimburse the
20 retailer or any other purchaser for the product.

21 (3) A manufacturer of (~~children's~~) products in violation of
22 this chapter or chapter 70.--- RCW (the new chapter created in
23 section 5 of this act) is subject to a civil penalty not to exceed
24 five thousand dollars for each violation in the case of a first
25 offense. Manufacturers who are repeat violators are subject to a
26 civil penalty not to exceed ten thousand dollars for each repeat
27 offense. Penalties collected under this section must be deposited in
28 the state toxics control account created in RCW 70.105D.070.

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

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

1 NEW SECTION. **Sec. 5.** Sections 1 through 3 of this act
2 constitute a new chapter in Title 70 RCW.

--- END ---