

**E2SHB 2647** - S AMD TO WET COMM AMD (S5756.6) **226**

By Senators Hatfield, Sheldon, Hobbs, and Berkey

PULLED 03/07/2008

1 Strike everything after the enacting clause and insert the  
2 following:

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

5 (1) "Children's cosmetics" means cosmetics that are made for,  
6 marketed for use by, or marketed to children under the age of twelve.  
7 Children's cosmetics includes cosmetics that meet any of the following  
8 conditions:

9 (a) Represented in its packaging, display, or advertising as  
10 appropriate for use by children;

11 (b) Sold in conjunction with, attached to, or packaged together  
12 with other products that are packaged, displayed, or advertised as  
13 appropriate for use by children; or

14 (c) Sold in any of the following:

15 (i) A retail store, catalogue, or online web site, in which a  
16 person exclusively offers for sale products that are packaged,  
17 displayed, or advertised as appropriate for use by children; or

18 (ii) A discrete portion of a retail store, catalogue, or online web  
19 site, in which a person offers for sale products that are packaged,  
20 displayed, or advertised as appropriate for use by children.

21 (2) "Children's jewelry" means jewelry that is made for, marketed  
22 for use by, or marketed to children under the age of twelve.  
23 Children's jewelry includes jewelry that meets any of the following  
24 conditions:

25 (a) Represented in its packaging, display, or advertising as  
26 appropriate for use by children under the age of twelve;

27 (b) Sold in conjunction with, attached to, or packaged together  
28 with other products that are packaged, displayed, or advertised as  
29 appropriate for use by children;

30 (c) Sized for children and not intended for use by adults; or

1 (d) Sold in any of the following:  
2 (i) A vending machine;  
3 (ii) A retail store, catalogue, or online web site, in which a  
4 person exclusively offers for sale products that are packaged,  
5 displayed, or advertised as appropriate for use by children in this  
6 state; or  
7 (iii) A discrete portion of a retail store, catalogue, or online  
8 web site in which a person offers for sale products that are packaged,  
9 displayed, or advertised as appropriate for use by children in this  
10 state.  
11 (3)(a) "Children's product" includes any of the following:  
12 (i) Toys;  
13 (ii) Children's cosmetics;  
14 (iii) Children's jewelry;  
15 (iv) A product designed or intended by the manufacturer to help a  
16 child with sucking or teething, to facilitate sleep, relaxation, or the  
17 feeding of a child, or to be worn as clothing by children; or  
18 (v) Car seats.  
19 (b) "Children's product" does not include the following:  
20 (i) Batteries;  
21 (ii) Slings and catapults;  
22 (iii) Sets of darts with metallic points;  
23 (iv) Toy steam engines;  
24 (v) Bicycles, tricycles, roller skates, scooters, skateboards, or  
25 sporting equipment;  
26 (vi) Video toys that can be connected to a video screen and are  
27 operated at a nominal voltage not exceeding twenty-four volts;  
28 (vii) Chemistry sets;  
29 (viii) Consumer electronic products, including but not limited to  
30 personal computers, audio and video equipment, calculators, wireless  
31 phones, game consoles, and handheld devices incorporating a video  
32 screen, used to access interactive software and their associated  
33 peripherals;  
34 (ix) Interactive software, intended for leisure and entertainment,  
35 such as computer games, and their storage media, such as compact disks;  
36 (x) Toy components through which electrical current is transmitted,  
37 including but not limited to: Circuit boards, wiring, connectors,  
38 power jacks, lights, and switches;

1 (xi) Components used for product or child safety; and

2 (xii) Any component part of a product that is not accessible to a  
3 child through normal and reasonably foreseeable use and abuse of such  
4 a product. A component part is not accessible under this subsection  
5 (3)(a)(xii) if such a component part is not physically exposed by  
6 reason of a sealed covering or casing and does not become physically  
7 exposed through reasonably foreseeable use and abuse of the product.

8 (4) "Cosmetics" includes articles intended to be rubbed, poured,  
9 sprinkled, or sprayed on, introduced into, or otherwise applied to the  
10 human body or any part thereof for cleansing, beautifying, promoting  
11 attractiveness, or altering the appearance, and articles intended for  
12 use as a component of such article. "Cosmetics" does not include soap,  
13 dietary supplements, or food and drugs approved by the United States  
14 food and drug administration.

15 (5) "Department" means the department of ecology.

16 (6) "High priority chemical" means a chemical identified by a state  
17 agency, federal agency, or accredited research university or other  
18 scientific evidence deemed authoritative by the department on the basis  
19 of credible scientific evidence as known to do one or more of the  
20 following:

21 (a) Harm the normal development of a fetus or child or cause other  
22 developmental toxicity;

23 (b) Cause cancer, genetic damage, or reproductive harm;

24 (c) Disrupt the endocrine system;

25 (d) Damage the nervous system, immune system, or organs or cause  
26 other systemic toxicity;

27 (e) Be persistent, bioaccumulative, and toxic; or

28 (f) Be very persistent and bioaccumulative.

29 (7) "Manufacture" means to create and introduce a product into the  
30 stream of commerce.

31 (8) "Manufacturer" includes any person, firm, association,  
32 partnership, corporation, governmental entity, organization, or joint  
33 venture that produces a children's product or an importer or domestic  
34 distributor of a children's product. For purposes of this subsection,  
35 "importer" means the owner of the children's product.

36 (9) "Toy" means a product designed or intended by the manufacturer  
37 to be used by a child at play.

1 (10) "Trade association" means a membership organization of persons  
2 engaging in a similar or related line of commerce, organized to promote  
3 and improve business conditions in that line of commerce and not to  
4 engage in a regular business of a kind ordinarily carried on for  
5 profit.

6 (11) "Very bioaccumulative" means having a bioconcentration factor  
7 or bioaccumulation factor greater than or equal to five thousand, or if  
8 neither are available, having a log Kow of greater than 5.0.

9 (12) "Very persistent" means having a half-life greater than or  
10 equal to one of the following:

11 (a) A half-life in soil or sediment of greater than one hundred  
12 eighty days;

13 (b) A half-life greater than or equal to sixty days in water or  
14 evidence of long-range transport.

15 NEW SECTION. **Sec. 2.** (1) Beginning July 1, 2009, a manufacturer,  
16 wholesaler, or retailer may not manufacture for use in this state a  
17 children's product containing lead or cadmium at more than .025 percent  
18 total weight (250 parts per million). This requirement does not apply  
19 to children's products with a date of manufacture prior to July 1,  
20 2009.

21 (2) Beginning July 1, 2011, a manufacturer, wholesaler, or retailer  
22 may not manufacture for use in this state a children's product  
23 containing lead or cadmium at more than .010 percent total weight (100  
24 parts per million). This requirement does not apply to children's  
25 products with a date of manufacture prior to July 1, 2011.

26 (3) This section does not apply to any product or material in which  
27 lead or cadmium is not bioavailable or will not have any adverse impact  
28 on public health and safety, such as lead crystal.

29 NEW SECTION. **Sec. 3.** (1) Beginning January 1, 2009, a  
30 manufacturer, wholesaler, or retailer may not manufacture for use in  
31 this state a children's product that contains di-(2-ethylhexyl)  
32 phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate  
33 (BBP) in concentrations exceeding 0.1 percent.

34 (2) Beginning January 1, 2009, a manufacturer, wholesaler, or  
35 retailer may not manufacture a children's product intended for use by  
36 a child under three years of age if that product can be placed in the

1 child's mouth and contains diisononyl phthalate (DINP), diisodecyl  
2 phthalate (DIDP), or di-n-octyl phthalate (DnOP), in concentrations  
3 exceeding 0.1 percent.

4 (3) Manufacturers must use the least toxic alternative when  
5 replacing phthalates in accordance with this chapter.

6 (4) Manufacturers may not replace phthalates with carcinogens rated  
7 by the United States environmental protection agency as A, B, or C  
8 carcinogens, or substances listed as known or likely carcinogens, known  
9 to be human carcinogens, likely to be human carcinogens, or suggestive  
10 of being human carcinogens, as described in "List of Chemicals  
11 Evaluated for Carcinogenic Potential," or known to the state of  
12 California to cause cancer as listed in the California safe drinking  
13 water act.

14 (5) Manufacturers may not replace phthalates with reproductive  
15 toxicants that cause birth defects, reproductive harm, or developmental  
16 harm as identified by the United States environmental protection agency  
17 or listed in the California safe drinking water act.

18 (6) The requirements of this section do not apply to children's  
19 products with a date of manufacture prior to January 1, 2009.

20 NEW SECTION. **Sec. 4.** The department of ecology and the department  
21 of health shall convene an advisory committee by May 1, 2008.

22 (1) The advisory committee must be composed of representatives of  
23 children's product manufacturers, retailers, physicians, public health  
24 experts, toxic reduction advocates, and any other parties the  
25 department of ecology deems necessary.

26 (2) The advisory committee shall review:

27 (a) Any material of high priority used in children's products;

28 (b) The feasibility and mechanisms for manufacturers to report to  
29 the department of ecology regarding high priority materials used in  
30 children's products;

31 (c) Statutory and regulatory actions taken to promote safety in  
32 children's products by other states, the federal government, and other  
33 countries; and

34 (d) Effective mechanisms to educate the public and retailers about  
35 the safety of children's products and the materials used to manufacture  
36 those products.

1 (3) The departments of ecology shall report to the legislature by  
2 December 15, 2008, and shall include recommendations for statutory or  
3 regulatory revisions and funding necessary to carry out these  
4 recommendations.

5 NEW SECTION. **Sec. 5.** (1) A manufacturer of children's products in  
6 violation of this chapter is subject to a civil penalty not to exceed  
7 five thousand dollars for each violation in the case of the first  
8 offense, with a total aggregate fine not to exceed twenty-five thousand  
9 dollars per event. Manufacturers who are repeat violators are subject  
10 to a civil penalty not to exceed ten thousand dollars for each repeat  
11 offense, with a total aggregate fine not to exceed fifty thousand  
12 dollars per event. Penalties collected under this section must be  
13 deposited in the state toxics control account created in RCW  
14 70.105D.070.

15 (2) Retailers who unknowingly sell products that are restricted  
16 from sale under this chapter are not liable under this chapter.

17 NEW SECTION. **Sec. 6.** (1) Before the prohibitions under this  
18 chapter take effect, the department shall prepare and distribute  
19 information to in-state and out-of-state manufacturers, to the maximum  
20 extent practicable, to assist them in identifying products prohibited  
21 from manufacture, sale, or distribution under this chapter.

22 (2) The department must assist in-state retailers in identifying  
23 products restricted under this chapter.

24 NEW SECTION. **Sec. 7.** Sections 1 through 3, 5, and 6 of this act  
25 constitute a new chapter in Title 70 RCW.

26 NEW SECTION. **Sec. 8.** If specific funding for the purposes of this  
27 act, referencing this act by bill or chapter number, is not provided by  
28 June 30, 2008, in the omnibus appropriations act, this act is null and  
29 void."

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1       On page 8, beginning on line 16, strike the title amendment and  
2 insert the following:

3       "On page 1, line 1 of the title, after "act;" strike the remainder  
4 of the title and insert "adding a new chapter to Title 70 RCW; creating  
5 new sections; and prescribing penalties."

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