

**E2SHB 2647** - S AMD TO WET COMM AMD (S5756.6) **321**

By Senators Hatfield, Hobbs, McAuliffe, Berkey, Shin, and Sheldon

NOT ADOPTED 03/07/2008

1 Beginning on page 1, after line 2 of the amendment, strike all  
2 material through "void." on page 8, line 15, and insert the following:

3 NEW SECTION. **Sec. 1.** Research shows that many toys and other  
4 children's products contain toxic chemicals, such as lead, cadmium, and  
5 phthalates that have been shown to cause harm to children's health and  
6 the environment. These chemicals, and others like them, have been  
7 linked to long-term health impacts such as birth defects, reproductive  
8 harm, impaired learning, liver toxicity, and cancer. Because  
9 children's bodies are growing and developing, they are especially  
10 vulnerable to the effects of toxic chemicals. Regulation of toxic  
11 chemicals in children's toys and other products is woefully inadequate.  
12 To protect children's health, it is important to phase out the use of  
13 lead, cadmium, and phthalates in children's toys and other products and  
14 to begin collecting information on other chemicals that are present in  
15 toys and other products to determine whether further action is  
16 required.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires otherwise.

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

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

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

28 (c) Sold in any of the following:

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

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

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

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

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

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

17 (d) Sold in any of the following:

18 (i) A vending machine;

19 (ii) A retail store, catalogue, or online web site, in which a  
20 person exclusively offers for sale products that are packaged,  
21 displayed, or advertised as appropriate for use by children in this  
22 state; or

23 (iii) A discrete portion of a retail store, catalogue, or online  
24 web site in which a person offers for sale products that are packaged,  
25 displayed, or advertised as appropriate for use by children in this  
26 state.

27 (3)(a) "Children's product" includes any of the following:

28 (i) Toys;

29 (ii) Children's cosmetics;

30 (iii) Children's jewelry;

31 (iv) A product designed or intended by the manufacturer to help a  
32 child with sucking or teething, to facilitate sleep, relaxation, or the  
33 feeding of a child, or to be worn as clothing by children; or

34 (v) Car seats.

35 (b) "Children's product" does not include the following:

36 (i) Batteries;

37 (ii) Slings and catapults;

38 (iii) Sets of darts with metallic points;

- 1 (iv) Toy steam engines;
- 2 (v) Bicycles, tricycles, roller skates, scooters, skateboards, or  
3 sporting equipment;
- 4 (vi) Video toys that can be connected to a video screen and are  
5 operated at a nominal voltage not exceeding twenty-four volts;
- 6 (vii) Chemistry sets;
- 7 (viii) Consumer electronic products, including but not limited to  
8 personal computers, audio and video equipment, calculators, wireless  
9 phones, game consoles, and handheld devices incorporating a video  
10 screen, used to access interactive software and their associated  
11 peripherals;
- 12 (ix) Interactive software, intended for leisure and entertainment,  
13 such as computer games, and their storage media, such as compact disks;
- 14 (x) Toy components through which electrical current is transmitted,  
15 including but not limited to: Circuit boards, wiring, connectors,  
16 power jacks, lights, and switches;
- 17 (xi) Components used for product or child safety; and
- 18 (xii) Any component part of a product that is not accessible to a  
19 child through normal and reasonably foreseeable use and abuse of such  
20 a product. A component part is not accessible under this subsection  
21 (3)(a)(xii) if such a component part is not physically exposed by  
22 reason of a sealed covering or casing and does not become physically  
23 exposed through reasonably foreseeable use and abuse of the product.
- 24 (4) "Cosmetics" includes articles intended to be rubbed, poured,  
25 sprinkled, or sprayed on, introduced into, or otherwise applied to the  
26 human body or any part thereof for cleansing, beautifying, promoting  
27 attractiveness, or altering the appearance, and articles intended for  
28 use as a component of such article. "Cosmetics" does not include soap,  
29 dietary supplements, or food and drugs approved by the United States  
30 food and drug administration.
- 31 (5) "Department" means the department of ecology.
- 32 (6) "High priority chemical" means a chemical identified by a state  
33 agency, federal agency, or accredited research university or other  
34 scientific evidence deemed authoritative by the department on the basis  
35 of credible scientific evidence as known to do one or more of the  
36 following:
- 37 (a) Harm the normal development of a fetus or child or cause other  
38 developmental toxicity;

- 1 (b) Cause cancer, genetic damage, or reproductive harm;
- 2 (c) Disrupt the endocrine system;
- 3 (d) Damage the nervous system, immune system, or organs or cause
- 4 other systemic toxicity;
- 5 (e) Be persistent, bioaccumulative, and toxic; or
- 6 (f) Be very persistent and bioaccumulative.

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

9 (8) "Manufacturer" includes any person, firm, association,  
10 partnership, corporation, governmental entity, organization, or joint  
11 venture that produces a children's product or an importer or domestic  
12 distributor of a children's product. For purposes of this subsection,  
13 "importer" means the owner of the children's product.

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

16 (10) "Trade association" means a membership organization of persons  
17 engaging in a similar or related line of commerce, organized to promote  
18 and improve business conditions in that line of commerce and not to  
19 engage in a regular business of a kind ordinarily carried on for  
20 profit.

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

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

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

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

30 NEW SECTION. **Sec. 3.** (1) Beginning July 1, 2009, a manufacturer,  
31 wholesaler, or retailer may not manufacture for sale in this state a  
32 children's product containing lead or cadmium at more than .025 percent  
33 total weight (two hundred fifty parts per million). This requirement  
34 does not apply to children's products with a date of manufacture prior  
35 to July 1, 2009.

36 (2) Beginning July 1, 2011, a manufacturer, wholesaler, or retailer  
37 may not manufacture for sale in this state a children's product

1 containing lead or cadmium at more than .010 percent total weight (one  
2 hundred parts per million). This subsection does not apply to  
3 children's products with a date of manufacture prior to July 1, 2011.

4 (3) Beginning July 1, 2009, a manufacturer, wholesaler, or retailer  
5 may not manufacture for sale in this state a children's product  
6 containing lead or cadmium in paint at more than .009 percent total  
7 weight (ninety parts per million). This subsection does not apply to  
8 children's products with a date of manufacture prior to July 1, 2009.

9 (4) Beginning July 1, 2012, the department of health may specify  
10 lower limits for lead or cadmium than those contained in this section.  
11 In making a determination to adopt lower limits, the department of  
12 health shall consider whether practical technologies are available to  
13 make lower limits feasible, whether lead or cadmium is likely to be  
14 bioavailable from materials used in a specific children's product, and  
15 whether these children's products provide a safety benefit to the user.

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

19 NEW SECTION. **Sec. 4.** (1) Beginning January 1, 2009, a  
20 manufacturer, wholesaler, or retailer may not manufacture for use in  
21 this state a children's product that contains di-(2-ethylhexyl)  
22 phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate  
23 (BBP) in concentrations exceeding 0.1 percent.

24 (2) Beginning January 1, 2009, a manufacturer, wholesaler, or  
25 retailer may not manufacture a children's product intended for use by  
26 a child under three years of age if that product can be placed in the  
27 child's mouth and contains diisononyl phthalate (DINP), diisodecyl  
28 phthalate (DIDP), or di-n-octyl phthalate (DnOP), in concentrations  
29 exceeding 0.1 percent.

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

32 (4) Manufacturers may not replace phthalates with carcinogens rated  
33 by the United States environmental protection agency as A, B, or C  
34 carcinogens, or substances listed as known or likely carcinogens, known  
35 to be human carcinogens, likely to be human carcinogens, or suggestive  
36 of being human carcinogens, as described in "List of Chemicals

1 Evaluated for Carcinogenic Potential," or known to the state of  
2 California to cause cancer as listed in the California safe drinking  
3 water act.

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

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

10 NEW SECTION. **Sec. 5.** The department of ecology and the department  
11 of health shall convene an advisory committee by May 1, 2008.

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

16 (2) The advisory committee shall review:

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

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

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

24 (d) Effective mechanisms to educate the public and retailers about  
25 the safety of children's products and the materials used to manufacture  
26 those products.

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

31 NEW SECTION. **Sec. 6.** (1) A manufacturer of children's products in  
32 violation of this chapter is subject to a civil penalty not to exceed  
33 five thousand dollars for each violation in the case of the first  
34 offense, with a total aggregate fine not to exceed twenty-five thousand  
35 dollars per event. Manufacturers who are repeat violators are subject  
36 to a civil penalty not to exceed ten thousand dollars for each repeat

1 offense, with a total aggregate fine not to exceed fifty thousand  
2 dollars per event. Penalties collected under this section must be  
3 deposited in the state toxics control account created in RCW  
4 70.105D.070.

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

7 NEW SECTION. **Sec. 7.** (1) Before the prohibitions under this  
8 chapter take effect, the department shall prepare and distribute  
9 information to in-state and out-of-state manufacturers, to the maximum  
10 extent practicable, to assist them in identifying products prohibited  
11 from manufacture, sale, or distribution under this chapter.

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

14 NEW SECTION. **Sec. 8.** Sections 1 through 4, 6, and 7 of this act  
15 constitute a new chapter in Title 70 RCW.

16 NEW SECTION. **Sec. 9.** If specific funding for the purposes of this  
17 act, referencing this act by bill or chapter number, is not provided by  
18 June 30, 2008, in the omnibus appropriations act, this act is null and  
19 void."

**E2SHB 2647** - S AMD TO WET COMM AMD (S5756.6)  
By Senators Hatfield, Hobbs, McAuliffe, Berkey, Shin, and Sheldon

**NOT ADOPTED 03/07/2008**

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

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

--- END ---