**2545-S AMH SHOR H4439.2 - NOT FOR FLOOR USE**

**SHB 2545** - H AMD TO H AMD (H-4433.1/16) **721**

By Representative Short

**NOT ADOPTED 02/15/2016**

Beginning on page 1, after line 2 of the amendment, strike the remainder of the amendment 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.

(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) "Inaccessible electronic component" means:

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

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

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

(8) "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.

(9) "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.

(10) "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.

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

(12) "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.

(13) "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.

(14) "TPP" means the chemical triphenyl phosphate, chemical abstracts service number 115-86-6, 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, except an inaccessible electronic 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 must make a decision regarding whether a flame retardant listed in (a) through (e) of this subsection meets the criteria of a high priority chemical of high concern for children. If the department of ecology decides a flame retardant meets the criteria, the department of ecology must propose a rule to list a flame retardant under this subsection as a high priority chemical of high concern for children by December 1st of any year. If the department of ecology proposes a rule to add a flame retardant listed in this section to the list of high priority chemicals of high concern for children, the rule may not be adopted and take effect until after the conclusion of the regular legislative session in the following year. Under this subsection (1), the department of ecology must make a separate decision and propose a separate rule for each flame retardant chemical identified by a specific chemical abstracts service number.

(a) IPTPP;

(b) TBB;

(c) TBPH;

(d) TCPP; and

(e) TPP.

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

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

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

(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 (e) 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.

(3) 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.

(4) 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. 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.

(5) 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 (e) of this section, the rule-making process under section 4 of this act may not commence prior to the end of the regular legislative session following adoption of the rule under subsection (1) of this section.

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 a flame retardant consistent with the department of ecology's recommendations under section 3(2) of this act. A rule may not restrict flame retardants in inaccessible electronic components of a product. 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 protective measures relating to a flame retardant listed in section 3(1) (a) through (e) of this act. Any final rule adopted by the department of health under this section must be identical to the rule proposed by the department of health on December 1st of the previous year.

(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."

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.