

SHB 1024 - H AMD 14

By Representative Hunter

WITHDRAWN 02/16/2007

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

3 "NEW SECTION. **Sec. 1.** Polybrominated diphenyl ethers (PBDEs) have
4 been used extensively as flame retardants in a large number of common
5 household products for the past thirty years. Studies on animals show
6 that PBDEs can impact the developing brain, affecting behavior and
7 learning after birth and into adulthood, making exposure to fetuses and
8 children a particular concern. Levels of PBDEs are increasing in
9 people, and in the environment, particularly in North America. Because
10 people can be exposed to these chemicals through house dust and indoor
11 air as well as through food, it is important to phase out their use in
12 common household products, provided that effective flame retardants
13 that are safer and technically feasible are available at a reasonable
14 cost.

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

17 (1) "Comestible" means edible.

18 (2) "Commercial decabromo diphenyl ether" or "commercial deca-bde"
19 means the chemical mixture of decabromo diphenyl ether, including
20 associated polybrominated diphenyl ether impurities not intentionally
21 added.

22 (3) "Department" means the department of ecology.

23 (4) "Electronic enclosure" means the plastic housing that encloses
24 the components of electronic products, including but not limited to
25 televisions and computers.

26 (5) "Manufacturer" means any person, firm, association,
27 partnership, corporation, governmental entity, organization, or joint
28 venture that produces a product containing polybrominated diphenyl

1 ethers or an importer or domestic distributor of a noncombustible
2 product containing polybrominated diphenyl ethers. A manufacturer does
3 not include a retailer who:

4 (a) Adds a private label brand or co-brands a product for sale; or
5 (b) Assembles components to create a single noncombustible product
6 based on an individual consumer preference.

7 (6) "Mattress" has the same meaning as defined by the United States
8 consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it
9 existed on the effective date of this section, and includes mattress
10 sets, box springs, futons, crib mattresses, and youth mattresses.
11 "Mattress" includes mattress pads.

12 (7) "Medical device" means an instrument, machine, implant, or
13 diagnostic test used to help diagnose a disease or other condition or
14 to cure, treat, or prevent disease.

15 (8) "Polybrominated diphenyl ethers" or "PBDEs" means chemical
16 forms that consist of diphenyl ethers bound with bromine atoms.
17 Polybrominated diphenyl ethers include, but are not limited to, the
18 three primary forms of the commercial mixtures known as pentabromo
19 diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and
20 decabromo diphenyl ether (deca-bde).

21 (9) "Residential upholstered furniture" means residential seating
22 products intended for indoor use in a home or other dwelling intended
23 for residential occupancy that consists in whole or in part of
24 resilient cushioning materials enclosed within a covering consisting of
25 fabric or related materials, if the resilient cushioning materials are
26 sold with the item of upholstered furniture and the upholstered
27 furniture is constructed with a contiguous upholstered seat and back
28 that may include arms.

29 (10) "Retailer" means a person who offers a product for sale at
30 retail through any means including, but not limited to, remote
31 offerings such as sales outlets, catalogs, or the internet, but does
32 not include a sale that is a wholesale transaction with a distributor
33 or a retailer. A retailer does not include a person, firm,
34 association, partnership, corporation, governmental entity,
35 organization, or joint venture that both manufactures and sells a
36 product at retail.

37 (11) "Technically feasible" means an alternative that is available

1 at a cost and in sufficient quantity to permit the manufacturer to
2 produce an economically viable product.

3 (12) "Transportation vehicle" means a mechanized vehicle that is
4 used to transport goods or people including, but not limited to,
5 airplanes, automobiles, motorcycles, trucks, buses, trains, boats,
6 ships, streetcars, or monorail cars.

7 NEW SECTION. **Sec. 3.** After January 1, 2008, no person may
8 manufacture, knowingly sell, offer for sale, distribute for sale, or
9 distribute for use in this state noncombustible products containing
10 PBDEs. Exemptions from the prohibition in this section are limited to
11 the following:

12 (1) Products containing deca-bde, except as provided in section 4
13 of this act;

14 (2) The sale or distribution of any used transportation vehicle
15 manufactured before January 1, 2008, with component parts containing
16 PBDEs;

17 (3) The sale or distribution of any used transportation vehicle
18 parts or new transportation vehicle parts manufactured before January
19 1, 2008, that contain PBDEs;

20 (4) The manufacture, sale, repair, distribution, maintenance,
21 refurbishment, or modification of equipment containing PBDEs and used
22 primarily for military or federally funded space program applications.
23 The exemption in this subsection (4) does not cover consumer-based
24 goods with broad applicability;

25 (5) Federal aviation administration fire worthiness requirements
26 and recommendations;

27 (6) The manufacture, sale, repair, distribution, maintenance,
28 refurbishment, or modification of any new raw material or component
29 part used in a transportation vehicle with component parts, including
30 original spare parts, containing deca-bde;

31 (7) The use of commercial deca-bde in the maintenance,
32 refurbishment, or modification of transportation equipment;

33 (8) The sale or distribution of any product containing PBDEs that
34 has been previously owned, purchased, or sold in commerce, provided it
35 was manufactured before the effective date of the ban;

36 (9) The manufacture, sale, or distribution of any new product or

1 product component consisting of recycled or used materials containing
2 deca-bde;

3 (10) The sale or purchase of any previously owned product
4 containing PBDEs made in casual or isolated sales as defined in RCW
5 82.04.040 and to sales by nonprofit organizations;

6 (11) The manufacture, sale, or distribution of new carpet cushion
7 made from recycled foam containing less than one-tenth of one percent
8 penta-bde; and

9 (12) Medical devices.

10 NEW SECTION. **Sec. 4.** (1) Except as provided in section 10 of this
11 act, no person may manufacture, knowingly sell, offer for sale,
12 distribute for sale, or distribute for use in this state mattresses
13 containing commercial deca-bde after January 1, 2008.

14 (2) Except as provided in section 10 of this act, no person may
15 manufacture, knowingly sell, offer for sale, distribute for sale, or
16 distribute for use in this state residential upholstered furniture that
17 contains commercial deca-bde, or any television or computer that has an
18 electronic enclosure that contains commercial deca-bde after the
19 effective date established in subsection (3) of this section. This
20 prohibition may not take effect until the department and the department
21 of health identify that a safer and technically feasible alternative is
22 available, and the fire safety committee, created in section 5 of this
23 act, determines that the identified alternative meets applicable fire
24 safety standards. The effective date of the prohibition must be
25 established according to the following process:

26 (a) The department and the department of health shall review risk
27 assessments, scientific studies, and other relevant findings regarding
28 alternatives to the use of commercial deca-bde in residential
29 upholstered furniture, televisions, and computers.

30 (b) If the department and the department of health jointly find
31 that safer and technically feasible alternatives are available for any
32 of these uses, the department shall convene the fire safety committee
33 created in section 5 of this act to determine whether the identified
34 alternatives meet applicable fire safety standards.

35 (c) The fire safety committee created in section 5 of this act
36 shall determine whether an alternative identified under (b) of this
37 subsection meets applicable fire safety standards. A majority vote of

1 the voting members of the fire safety committee determines whether an
2 alternative identified under (b) of this subsection meets applicable
3 fire safety standards. The state fire marshal shall report the
4 determination to the department.

5 (d) The department shall seek public input on their findings and
6 the findings of the fire safety committee, publish these findings in
7 the Washington State Register, and submit them in a report to the
8 appropriate committees of the legislature. The department shall
9 initially report these findings by December 31, 2008.

10 (3) The effective date of the prohibition is as follows:

11 (a) If the December 31, 2008, report required in subsection (2)(d)
12 of this section finds that a safer and technically feasible alternative
13 that meets applicable fire safety standards is available, the
14 prohibition takes effect January 1, 2011;

15 (b) If the December 31, 2008, report required in subsection (2)(d)
16 of this section does not find that a safer and technically feasible
17 alternative that meets applicable fire safety standards is available,
18 the prohibition does not take effect January 1, 2011. Beginning in
19 2009, by December 31st of each year, the department shall review and
20 report on alternatives as described in subsection (2) of this section.
21 The prohibition in subsection (2) of this section takes effect two
22 years after a report submitted to the legislature required under
23 subsection (2)(d) of this section finds that a safer and technically
24 feasible alternative that meets applicable fire safety standards is
25 available.

26 NEW SECTION. **Sec. 5.** (1) The fire safety committee is created for
27 the exclusive purpose of determining whether an alternative identified
28 under section 4(2)(b) of this act meets applicable fire safety
29 standards.

30 (2) A majority vote of the members of the fire safety committee
31 constitutes a finding that an alternative meets applicable fire safety
32 standards.

33 (3) The fire safety committee consists of the following members:

34 (a) A representative from the department, who shall chair the fire
35 safety committee, and serve as an ex officio nonvoting member.

36 (b) Five voting members, appointed by the governor, as follows:

37 (i) A representative of the office of the state fire marshal;

1 (ii) A representative of a statewide association representing the
2 interests of fire chiefs;

3 (iii) A representative of a statewide association representing the
4 interests of fire commissioners;

5 (iv) A representative of a recognized statewide council, affiliated
6 with an international association representing the interests of
7 firefighters; and

8 (v) A representative of a statewide association representing the
9 interests of volunteer firefighters.

10 NEW SECTION. **Sec. 6.** The department and the department of health
11 shall review risk assessments, scientific studies, and other relevant
12 findings regarding alternatives to the use of commercial deca-bde in
13 products not directly addressed in this chapter. If a flame retardant
14 that is safer and technically feasible becomes available, the
15 department shall convene the fire safety committee created in section
16 5 of this act to determine if the identified alternative meets
17 applicable fire safety standards. By December 31st of the year in
18 which the finding is made, the department must publish the information
19 required by this subsection in the Washington State Register and
20 present it in a report to the appropriate committees of the
21 legislature.

22 NEW SECTION. **Sec. 7.** Nothing in this chapter restricts the
23 ability of a manufacturer, importer, or distributor from transporting
24 products containing PBDEs through the state or storing the products in
25 the state for later distribution outside the state.

26 NEW SECTION. **Sec. 8.** A manufacturer of products containing PBDEs
27 that are restricted under this chapter must notify persons that sell
28 the manufacturer's products in this state about the provisions of this
29 chapter no less than ninety days prior to the effective date of the
30 restrictions.

31 NEW SECTION. **Sec. 9.** The department shall assist state agencies
32 to give priority and preference to the purchase of equipment, supplies,
33 and other products that do not contain PBDEs.

1 NEW SECTION. **Sec. 10.** (1) Retailers who unknowingly sell products
2 prohibited under section 3 or 4 of this act are not liable under this
3 chapter.

4 (2) In-state retailers in possession of products on the date that
5 restrictions on the sale of the products become effective under section
6 3 or 4 of this act may exhaust their existing stock through sales to
7 the public.

8 (3) The department must assist in-state retailers in identifying
9 potential products containing PBDEs.

10 (4) If a retailer unknowingly possesses products that are
11 prohibited for sale under section 3 or 4 of this act and the
12 manufacturer does not recall the products as required under section
13 11(2) of this act, the retailer may exhaust its existing stock through
14 sales to the public. However, no additional prohibited stock may be
15 sold or offered for sale.

16 NEW SECTION. **Sec. 11.** (1) Enforcement of this chapter must rely
17 on notification and information exchange between the department and
18 manufacturers. The department shall achieve compliance with this
19 chapter using the following enforcement sequence:

20 (a) Before the effective date of the product prohibition in section
21 3 or 4 of this act, the department shall prepare and distribute
22 information to in-state manufacturers and out-of-state manufacturers,
23 to the maximum extent practicable, to assist them in identifying
24 products prohibited for manufacture, sale, or distribution under this
25 chapter.

26 (b) The department may request a certificate of compliance from a
27 manufacturer. A certificate of compliance attests that a
28 manufacturer's product or products meets the requirements of this
29 chapter.

30 (c) The department may issue a warning letter to a manufacturer
31 that produces, sells, or distributes prohibited products in violation
32 of this chapter. The department shall offer information or other
33 appropriate assistance to the manufacturer in complying with this
34 chapter. If, after one year, compliance is not achieved, penalties may
35 be assessed under subsection (3) of this section.

36 (2) A manufacturer that knowingly produces, sells, or distributes
37 a product prohibited from manufacture, sale, or distribution in this

1 state under this chapter shall recall the product and reimburse the
2 retailer or any other purchaser for the product and any applicable
3 shipping and handling for returning the products.

4 (3) A manufacturer of products containing PBDEs in violation of
5 this chapter is subject to a civil penalty not to exceed one thousand
6 dollars for each violation in the case of a first offense.
7 Manufacturers who are repeat violators are subject to a civil penalty
8 not to exceed five thousand dollars for each repeat offense. Penalties
9 collected under this section must be deposited in the state toxics
10 control account created in RCW 70.105D.070.

11 NEW SECTION. **Sec. 12.** The department may adopt rules to fully
12 implement this chapter.

13 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
14 constitute a new chapter in Title 70 RCW."

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WITHDRAWN 02/16/2007

15 On page 1, line 2 of the title, after "ethers;" strike the
16 remainder of the title and insert "adding a new chapter to Title 70
17 RCW; and prescribing penalties."

EFFECT: Specifies that the chapter does not apply to the sale or
purchase of any previously owned product containing PBDEs made in
casual or isolated sales and to sales by nonprofit organizations.
Clarifies language that describes when a prohibition of deca-bde would
take effect. Refines the role and composition of the fire safety
committee. Requires public input on the findings of the department of
ecology and the fire safety committee. Requires that findings be
published in the Washington State Register. Removes the requirement
for the department of ecology to grant an exemption by rule to allow

for the manufacture, sale, or distribution of certain products prior to the prohibition's commencement. Makes a technical change to substitute the word "prohibit" for the word "ban" throughout the document.

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