

ESHB 1024 - S AMD 352

By Senator Honeyford

NOT ADOPTED 04/03/2007

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) "Commercial decabromo diphenyl ether" or "commercial deca-bde"  
6 means the chemical mixture of decabromo diphenyl ether, including  
7 associated polybrominated diphenyl ether impurities not intentionally  
8 added.

9 (2) "Department" means the department of ecology.

10 (3) "Electronic enclosure" means the plastic housing that encloses  
11 the components of electronic products, including but not limited to  
12 televisions and computers.

13 (4) "Manufacturer" means any person, firm, association,  
14 partnership, corporation, governmental entity, organization, or joint  
15 venture that produces a product containing polybrominated diphenyl  
16 ethers. A manufacturer does not include a retailer who:

17 (a) Adds a private label brand or cobrands a product for sale; or

18 (b) Assembles components to create a single noncomestible product  
19 based on an individual consumer preference.

20 (5) "Mattress" has the same meaning as defined by the United States  
21 consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it  
22 existed on the effective date of this act, and includes mattress pads,  
23 mattress sets, box springs, futons, crib mattresses, and youth  
24 mattresses.

25 (6) "Medical device" means an instrument, machine, implant, or  
26 diagnostic test used to help diagnose a disease or other condition or  
27 to cure, treat, or prevent disease.

28 (7) "Polybrominated diphenyl ethers" or "PBDEs" means chemical  
29 forms that consist of diphenyl ethers bound with bromine atoms.  
30 "Polybrominated diphenyl ethers" include, but are not limited to, the

1 three primary forms of the commercial mixtures known as pentabromo  
2 diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and  
3 decabromo diphenyl ether (deca-bde).

4 (8) "Residential upholstered furniture" means residential seating  
5 products intended for indoor use in a home or other dwelling intended  
6 for residential occupancy that consists in whole or in part of  
7 resilient cushioning materials enclosed within a covering consisting of  
8 fabric or related materials, if the resilient cushioning materials are  
9 sold with the item of upholstered furniture and the upholstered  
10 furniture is constructed with a contiguous upholstered seat and back  
11 that may include arms.

12 (9) "Safer and technically feasible alternative" means an  
13 alternative that:

14 (a) Is available at a cost and in sufficient quantity to permit the  
15 manufacturer or user to maintain an economically viable product;

16 (b) Provides a level of ignition resistance equivalent to or  
17 greater than that provided by the product it is intended to replace;

18 (c) Has been found to have a lower toxicity profile and less  
19 environmental impact than the product it is intended to replace.

20 NEW SECTION. **Sec. 2.** The department is authorized to adopt rules  
21 prohibiting the use of polybrominated diphenyl ethers subject to the  
22 conditions of this chapter.

23 NEW SECTION. **Sec. 3.** (1) The department and the department of  
24 health shall review risk assessments, scientific studies, and other  
25 relevant findings regarding alternatives to the use of commercial deca-  
26 bde in mattresses, residential upholstered furniture, televisions, and  
27 computers.

28 (2) If the department and the department of health jointly find  
29 that safer and technically feasible alternatives are available for any  
30 of the uses under subsection (1) of this section, the department shall  
31 convene the fire safety committee created in subsection (3) of this  
32 section to determine if the identified alternatives meet applicable  
33 fire safety standards.

34 (3) The fire safety committee is created for the exclusive purpose  
35 of determining whether an alternative identified under subsection (2)  
36 of this section meets applicable fire safety standards.

1 (a) A representative from the department shall chair the fire  
2 safety committee and serve as an ex officio nonvoting member.

3 (b) A majority vote of the fire safety committee members  
4 constitutes a finding that an alternative meets applicable fire safety  
5 standards.

6 (c) The fire safety committee shall also include five voting  
7 members, appointed by the governor, as follows:

8 (i) A representative of the office of the state director of fire  
9 protection;

10 (ii) A representative of a statewide association representing the  
11 interests of fire chiefs;

12 (iii) A representative of a statewide association representing the  
13 interests of fire commissioners;

14 (iv) A representative of a statewide association representing the  
15 interests of firefighters as defined in chapter 41.26 RCW; and

16 (v) A representative of a statewide association representing the  
17 interests of volunteer firefighters.

18 (4) If a majority of the voting members of the fire safety  
19 committee determines that an alternative identified under subsection  
20 (2) of this section meets applicable fire safety standards, the  
21 department shall seek public input on their findings, the findings of  
22 the fire safety committee, and any evidence of the potential harm posed  
23 by deca-bde. By December 15th of the year in which the finding is  
24 made, the department must publish the information required by this  
25 subsection in the Washington State Register and present it in a report  
26 to the appropriate committees of the legislature.

27 (5) If the department adopts a rule to prohibit the use of  
28 polybrominated diphenyl ethers pursuant to section 2 of this act, the  
29 effective date of the prohibition shall be two years after the final  
30 adoption of the rule.

31 (6) Before the effective date of the product prohibition, the  
32 department shall prepare and distribute information to in-state  
33 manufacturers and out-of-state manufacturers, to the maximum extent  
34 practicable, to assist them in identifying products prohibited for  
35 manufacture, sale, or distribution under this chapter.

36 NEW SECTION. **Sec. 4.** The department and the department of health  
37 shall review risk assessments, scientific studies, and other relevant

1 findings regarding alternatives to the use of commercial deca-bde in  
2 products not directly addressed in this chapter. If a flame retardant  
3 that is safer and technically feasible becomes available, the  
4 department shall convene the fire safety committee created in section  
5 3 of this act. The fire safety committee shall proceed as required in  
6 section 3(2) of this act to determine if the identified alternative  
7 meets applicable fire safety standards. The department and the  
8 department of health shall also review risk assessments, scientific  
9 studies, and other findings regarding the potential effect of PBDEs in  
10 the waste stream. By December 31st of the year in which the finding is  
11 made, the department must publish the information required by this  
12 section in the Washington State Register and present it in a report to  
13 the appropriate committees of the legislature.

14 NEW SECTION. **Sec. 5.** (1) The department may issue a warning  
15 letter to a manufacturer that produces, sells, or distributes  
16 prohibited products in violation of this chapter. The department shall  
17 offer information or other appropriate assistance to the manufacturer  
18 in complying with this chapter. If, after one year, compliance is not  
19 achieved, penalties may be assessed under subsection (2) of this  
20 section.

21 (2) A manufacturer of products containing PBDEs in violation of  
22 this chapter is punishable by a civil penalty not to exceed one  
23 thousand dollars for each violation in the case of a first offense.  
24 Manufacturers who are repeat violators are liable for a civil penalty  
25 not to exceed five thousand dollars for each repeat offense. Penalties  
26 collected under this section must be deposited in the state toxics  
27 control account created in RCW 70.105D.070.

28 NEW SECTION. **Sec. 6.** The department shall adopt rules prohibiting  
29 the use of pentabromo diphenyl ether and octabromo diphenyl ether with  
30 appropriate exemptions to ensure continued public safety on or before  
31 July 1, 2008.

32 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute  
33 a new chapter in Title 70 RCW."

NOT ADOPTED 04/03/2007

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

EFFECT: Authorizes the Department of Ecology to adopt rules to prohibit PBDEs. The effective date of a prohibition cannot take place until two years after the rule is adopted. Ecology must adopt rules prohibiting the use of penta and octa-bdes with exemptions to ensure continued public safety by July 1, 2008. Prior to the prohibition, Ecology must prepare and distribute information to manufacturers to assist them in identifying prohibited products. Requires Ecology and DOH to review risk assessments, studies, and other relevant information for alternatives to deca for mattresses, TVs, computers, and residential upholstered furniture. If the departments determine a safer and technically feasible alternative exists, the fire safety committee must determine the alternative meets applicable fire safety standards. Ecology must seek public input on the findings and any potential harm posed by deca. Ecology must publish required information about alternatives in the Washington State Register. Ecology may issue warning letters to manufacturers in violation of this chapter. Ecology must offer assistance to manufacturers to help them comply. For manufacturers not in compliance after one year, a penalty of not more than \$1000 may be assessed for each violation. For subsequent violations a manufacturer may be fined up to \$5000 for each violation.

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