

E2SHB 2647 - S AMD TO WET COMM AMD (S5756.6) **250**

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

PULLED 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.** 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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