

HOUSE BILL REPORT

ESHB 1024

As Passed House:

February 16, 2007

Title: An act relating to phasing out the use of polybrominated diphenyl ethers.

Brief Description: Phasing out the use of polybrominated diphenyl ethers.

Sponsors: By House Committee on Select Committee on Environmental Health (originally sponsored by Representatives Hunter, Priest, Kessler, B. Sullivan, Dickerson, Jarrett, Hasegawa, Campbell, Rodne, Rolfes, McDermott, McIntire, Chase, Green, Hudgins, Uptegrove, Quall, Conway, Clibborn, Sommers, Morrell, Sells, Kenney, Haigh, Cody, Hunt, Lantz, McCoy, Appleton, Pettigrew, Schual-Berke, Roberts, Fromhold, Takko, Simpson, P. Sullivan, Lovick, Flannigan, Moeller, Miloscia, Williams, Blake, O'Brien, Linville, Wood, Goodman, Seaquist, Springer, Ericks, Kagi, Darneille, Dunshee, Strow, Pedersen, Eickmeyer, McCune and Ormsby; by request of Department of Ecology).

Brief History:

Committee Activity:

Select Committee on Environmental Health: 1/9/07, 1/11/07 [DPS].

Floor Activity:

Passed House: 2/19/07, 71-24.

Brief Summary of Engrossed Substitute Bill

- Prohibits the manufacture, sale, or distribution of products containing polybrominated diphenyl ethers (PBDEs) after January 1, 2008, with certain exceptions.
- Exempts Deca-BDE from the prohibition except for mattresses; and provisionally except for residential upholstered furniture containing Deca-BDE, and televisions and computers with electronic enclosures that contain Deca-BDE.
- Directs the Department of Ecology to report findings to the Legislature on the availability of alternatives to Deca-BDE to include input from the: Department of Health, public, state fire marshal, and newly created fire safety committee.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE SELECT COMMITTEE ON ENVIRONMENTAL HEALTH

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Campbell, Chair; Hudgins, Vice Chair; Chase, Hunt, Morrell and Wood.

Minority Report: Do not pass. Signed by 3 members: Representatives Newhouse, Ranking Minority Member; Sump, Assistant Ranking Minority Member and Hailey.

Staff: Brad Avy (786-7289).

Background:

Polybrominated diphenyl ethers (PBDEs) are members of a broader class of brominated chemicals used as flame retardants. They are often added to products such as computers, televisions, furniture, and carpet pads to reduce the risk of fire if a product is exposed to heat or flame. There are three main types of PBDEs used in consumer products; Penta-BDE, Octa-BDE, and Deca-BDE. Polybrominated diphenyl ethers have been measured in blood, fat, and breast milk in people around the world.

In general, animal toxicity studies indicate that the PBDEs in Penta-BDE commercial products are more toxic than PBDEs in Octa- or Deca-BDE. Deca-BDE is the least toxic, but there is growing concern based on several new studies that indicate Deca-BDE is likely to degrade into the more toxic PBDEs found in Penta- or Octa-BDE products.

On January 28, 2004, Governor Locke signed Executive Order 04-01 directing state agencies to take certain actions regarding persistent toxic chemicals. The Department of Ecology (DOE), in consultation with the Department of Health (DOH), was directed to move forward immediately in developing a chemical action plan that identifies actions the state may take to reduce threats posed by PBDEs, and to recommend actions by December 1, 2004.

On December 31, 2004, the DOE and the DOH released the *Washington State Polybrominated Diphenyl Ether (PBDE) Chemical Action Plan: Interim Plan*, (Interim Plan).

The Interim Plan recommended:

- that the Legislature should prohibit the manufacture, distribution, or sale of new products containing Penta-BDE and Octa-BDE by July 2006;
- the prohibition may include an exemption for products that contain recycled material for products containing Penta-BDE and Octa-BDE;
- the DOE and the DOH must develop a proposal for a prohibition on appropriate products containing Deca-BDE by December 2005;
- by July 2006 the DOE must establish appropriate disposal and recycling practices for products containing PBDEs;
- restrictions for the state's purchase of PBDE products;
- development of educational materials; and
- direction for the Department of Labor and Industries to develop ways for employers and employees to minimize exposure to PBDEs.

In January 2006, the agencies issued a Final PBDE Chemical Action Plan (Chemical Action Plan) recommending that the Legislature immediately prohibit Penta-BDE and Octa-BDE. The U.S. manufacturers of Penta-BDE and Octa-BDE voluntarily ceased producing the chemicals in December 2004, and production of Penta-BDE and Octa-BDE has ended in most international markets.

The Chemical Action Plan further recommended that use of Deca-BDE, be prohibited, provided that safer, effective alternatives are identified, or upon finding additional evidence of harm caused by Deca-BDE.

Summary of Engrossed Substitute Bill:

After January 1, 2008, no person may manufacture, knowingly sell, or distribute for in-state use non-edible products containing polybrominated diphenyl ethers (PBDEs).

Exceptions to this prohibition include:

- products containing Deca-BDE except for mattresses (prohibition effective January 1, 2008), except for residential upholstered furniture, and televisions or computers with electronic enclosures containing commercial Deca-BDE (prohibition effective January 1, 2011 if a safer and technically feasible alternative that meets applicable fire safety standards is available);
- used transportation vehicles and used or new parts manufactured before January 1, 2008 containing PBDEs;
- equipment containing PBDEs used primarily for military or federally funded space program applications;
- Federal Aviation Administration fire worthiness requirements and recommendations;
- new raw material or parts used in transportation vehicles containing Deca-BDE;
- use of Deca-BDE in transportation equipment;
- sale or distribution of any used product containing PBDEs;
- any new product with recycled or used materials containing Deca-BDE;
- sale or purchase of any previously owned product containing PBDEs made in casual or isolated sales and to sales by nonprofit organizations;
- new carpet cushion made from recycled foam with less than one-tenth of 1 percent Penta-BDE; and
- medical devices.

The prohibition does not restrict the ability of a manufacturer, importer, or distributor from transporting products containing PBDEs through the state, or storing products for later distribution outside the state.

An assessment process is established to identify alternatives to Deca-BDE products. Steps in the assessment process include:

- the DOE and the DOH first identify a safer and technically feasible alternative to Deca-BDE products;

- the newly created fire safety committee reports their finding to the state fire marshal if the identified alternative meets applicable fire safety standards;
- a determination is made by the state fire marshal whether the alternative meets applicable fire safety standards;
- public input is sought;
- findings are published in the Washington State Register;
- a report is submitted to the Legislature by the DOE; and
- two years after the report is submitted, the prohibition takes effect.

The fire safety committee is created for the exclusive purpose of finding whether a potential alternative meets applicable fire safety standards.

It consists of a representative from the DOE as an ex officio nonvoting member that chairs the committee and five voting members, appointed by the Governor, as a representative of:

- the office of the state fire marshal;
- a statewide association representing the interests of fire chiefs;
- a statewide association representing the interests of fire commissioners;
- a recognized statewide council, affiliated with an international association representing the interests of firefighters; and
- a statewide association representing the interests of volunteer firefighters.

By majority vote, the fire safety committee makes a finding whether a potential alternative meets applicable fire safety standards. The fire safety committee must report their finding to the state fire marshal.

After reviewing the finding of the fire safety committee, the state fire marshal must determine whether an alternative identified meets applicable fire safety standards. The determination of the fire marshal must be based upon the finding of the fire safety committee. The state fire marshal must report the determination to the DOE.

The DOE must seek public input on their findings, the findings of the fire safety committee, and the determination by the state fire marshal. The DOE must publish these findings in the Washington State Register, and submit them in a report to the appropriate committees of the Legislature by December 31, 2008.

The prohibition may not take effect for Deca-BDE in upholstered furniture, televisions, or computers until the DOE and the DOH identify that a safer and technically feasible alternative is available, and the state fire marshal determines that the alternative meets applicable fire safety standards.

The DOE and the DOH are directed to review risk assessments, scientific studies, and other relevant findings on alternatives to the use of commercial Deca-BDE in products not directly addressed in the bill and on the potential effect of PBDEs in the waste stream. If a safer and technically feasible alternative becomes available, the DOE must convene the fire safety committee to make a finding whether the alternative meets applicable fire safety standards. If it is found that the alternative meets applicable fire safety standards, the state fire marshal must then make a determination whether the alternative meets applicable fire safety

standards. Findings must be published in the Washington State Register and report to the Legislature by December 31 of the year they are made.

The DOE is to assist state agencies to give priority and preference to purchases that do not contain PBDEs.

The DOE is to assist manufacturers and retailers to achieve compliance. Retailers who unknowingly sell prohibited products are not liable under the bill. Manufacturers must notify sellers about the provisions in the bill no less than 90 days prior to the effective date of the restrictions. A manufacturer that knowingly produces, sells, or distributes a product prohibited from manufacture, sale, or distribution must recall the product and reimburse the retailer or other purchaser for the product and any shipping and handling.

Enforcement must rely on notification and information exchange between the DOE and manufacturers. A warning letter may be issued to a manufacturer that violates provisions of this bill. If after one year compliance is not achieved, penalties may be assessed.

Manufacturers in violation of provisions in the bill are subject to civil penalties of up to \$1,000 for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty up to \$5,000 for each repeat offense. Penalties collected must be deposited in the State Toxic Control Account.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Polybrominated diphenyl ethers levels are increasing in people and the environment and action is needed now to protect our most vulnerable populations, including pregnant women and children. Studies on animals show harmful effects of PBDEs, raising concern over human exposure. Prohibiting products containing PBDEs, as proposed in the bill, will help protect human health and at the same time meet applicable fire safety standards.

(In support with amendment) The bill needs to address the broader PBDE issues associated with landfill and biosolids management and the affect on marine life.

(Opposed) Deca-BDE is a proven and effective flame retardant that saves lives. Available research does not support limiting the use of Deca-BDE. Alternatives to Deca-BDE need to be identified in advance of a preemptive prohibition. An unintended consequence of this bill may be that Deca-BDE will become less available without an alternative in place and consequently compromise fire safety.

Persons Testifying: (In support) Representative Hunter, prime sponsor; Ted Sturdevant, Department of Ecology; Rob Duff, Department of Health; Anne Criss, Puget Sound Action Team; Karen Bowman, Washington State Nurses Association; Erika Schreder, Toxic Free Legacy Coalition; Ricky Grady, Washington Physicians of Social Responsible; Steve Robinson, Northwest Indian Fisheries Commission; Naki Stevens, People for Puget Sound; Cliff Traisman, Washington Conservation Voters and Washington Environmental Council; Nick Federici, Washington Toxics Coalition; Bill Laborde, WashPirg; and Mike Brown, Washington Fire Chiefs Association.

(In support with amendment) Randy Ray, Pacific Seafood Processors Association.

(Opposed) Glade Squires, National Fallen Firefighters Foundation; Tom Brace, Former Director of Washington State Fire Marshalls; Laura Ruiz, American Fire Safety Council; William Archer; Jorge and Marsela Chavez; Susan Landry, Albemarle Corporation; and Ray Dawson and Brad Tower, Bromine Science and Environmental Forum.

Persons Signed In To Testify But Not Testifying: (In support) Ruth W. Shearer, Toxicologist, Senior Lobby; Laurie Lippold, Washington Chapter American Academy of Pediatrics; and Aimee Boulanger, Institute for Children's Environmental Health.

(With concerns) Ryan Spiller, Washington Fire Commissioners' Association.

(Opposed) Grant Nelson, Association of Washington Business.