

ESHB 1294 - S AMD 334
By Senator Nelson

NOT CONSIDERED

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

3 "Sec. 1. RCW 70.240.020 and 2008 c 288 s 3 are each amended to
4 read as follows:

5 (1) Beginning July 1, 2009, no manufacturer, wholesaler, or
6 retailer may manufacture, knowingly sell, offer for sale, distribute
7 for sale, or distribute for use in this state a children's product or
8 product component containing the following:

9 (a) Except as provided in subsection (~~((2))~~) (3) of this section,
10 lead at more than .009 percent by weight (ninety parts per million);

11 (b) Cadmium at more than .004 percent by weight (forty parts per
12 million); or

13 (c) Phthalates, individually or in combination, at more than 0.10
14 percent by weight (one thousand parts per million).

15 (2) Beginning July 1, 2015, no manufacturer, wholesaler, or
16 retailer may manufacture, knowingly sell, offer for sale, distribute
17 for sale, or distribute for use in this state children's products or
18 residential upholstered furniture, as defined in RCW 70.76.010,
19 containing TDCPP or TCEP in amounts greater than one hundred parts per
20 million in any product component.

21 (3) If determined feasible for manufacturers to achieve and
22 necessary to protect children's health, the department, in consultation
23 with the department of health, may by rule require that no
24 manufacturer, wholesaler, or retailer may manufacture, knowingly sell,
25 offer for sale, distribute for sale, or distribute for use in this
26 state a children's product or product component containing lead at more
27 than .004 percent by weight (forty parts per million).

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.240 RCW
29 to read as follows:

1 (1) Beginning July 1, 2015, no manufacturer, wholesaler, or
2 retailer may manufacture, knowingly sell, offer for sale, distribute
3 for sale, or distribute for use in this state, residential upholstered
4 furniture as defined in RCW 70.76.010, or children's products,
5 containing flame retardants tetrabromobisphenol A, chemical abstracts
6 service number 79-94-7, decabromodiphenyl ether, chemical abstracts
7 service number 1163-19-5, antimony, chemical abstracts service number
8 7440-36-0, and hexabromocyclododecane, chemical abstracts service
9 number 25637-99-4 in any product component in amounts greater than one
10 hundred parts per million.

11 (2) Beginning July 1, 2015, at the request of the department, a
12 manufacturer of residential upholstered furniture or children's
13 products shall, within sixty days of the request, submit a certificate
14 of compliance stating that the product or product component meets the
15 requirements of subsection (1) of this section. A manufacturer
16 required under any other state statute to provide a certificate of
17 compliance may develop one certificate containing all required
18 information.

19 (3) The certificate of compliance must include the following:

20 (a) Chemical names and chemical abstracts service registry numbers
21 for all chemicals present in the product or product component that act
22 as flame retardants; and

23 (b) The signature of an authorized official of the manufacturing
24 company.

25 (4) A manufacturer completing a certificate of compliance shall
26 keep a copy of the certificate on file for as long as the product or
27 product component contains flame retardants. If a manufacturer ceases
28 to sell or distribute products or product components containing flame
29 retardants, the manufacturer must retain the certificate on file for
30 three years from the date of the last sale or distribution.

31 **Sec. 3.** RCW 70.240.010 and 2008 c 288 s 2 are each amended to read
32 as follows:

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

35 (1) "Children's cosmetics" means cosmetics that are made for,
36 marketed for use by, or marketed to children under the age of twelve.

1 "Children's cosmetics" includes cosmetics that meet any of the
2 following conditions:

3 (a) Represented in its packaging, display, or advertising as
4 appropriate for use by children;

5 (b) Sold in conjunction with, attached to, or packaged together
6 with other products that are packaged, displayed, or advertised as
7 appropriate for use by children; or

8 (c) Sold in any of the following:

9 (i) Retail store, catalogue, or online web site, in which a person
10 exclusively offers for sale products that are packaged, displayed, or
11 advertised as appropriate for use by children; or

12 (ii) A discrete portion of a retail store, catalogue, or online web
13 site, in which a person offers for sale products that are packaged,
14 displayed, or advertised as appropriate for use by children.

15 (2) "Children's jewelry" means jewelry that is made for, marketed
16 for use by, or marketed to children under the age of twelve.
17 "Children's jewelry" includes jewelry that meets any of the following
18 conditions:

19 (a) Represented in its packaging, display, or advertising as
20 appropriate for use by children under the age of twelve;

21 (b) Sold in conjunction with, attached to, or packaged together
22 with other products that are packaged, displayed, or advertised as
23 appropriate for use by children;

24 (c) Sized for children and not intended for use by adults; or

25 (d) Sold in any of the following:

26 (i) A vending machine;

27 (ii) Retail store, catalogue, or online web site, in which a person
28 exclusively offers for sale products that are packaged, displayed, or
29 advertised as appropriate for use by children; or

30 (iii) A discrete portion of a retail store, catalogue, or online
31 web site, in which a person offers for sale products that are packaged,
32 displayed, or advertised as appropriate for use by children.

33 (3)(a) "Children's product" includes any of the following:

34 (i) Toys;

35 (ii) Children's cosmetics;

36 (iii) Children's jewelry;

37 (iv) A product designed or intended by the manufacturer to help a

1 child with sucking or teething, to facilitate sleep, relaxation, or the
2 feeding of a child, or to be worn as clothing by children; or
3 (v) Child car seats.
4 (b) "Children's product" does not include the following:
5 (i) Batteries;
6 (ii) Slings and catapults;
7 (iii) Sets of darts with metallic points;
8 (iv) Toy steam engines;
9 (v) Bicycles and tricycles;
10 (vi) Video toys that can be connected to a video screen and are
11 operated at a nominal voltage exceeding twenty-four volts;
12 (vii) Chemistry sets;
13 (viii) Consumer electronic products, including but not limited to
14 personal computers, audio and video equipment, calculators, wireless
15 phones, game consoles, and handheld devices incorporating a video
16 screen, used to access interactive software and their associated
17 peripherals;
18 (ix) Interactive software, intended for leisure and entertainment,
19 such as computer games, and their storage media, such as compact disks;
20 (x) BB guns, pellet guns, and air rifles;
21 (xi) Snow sporting equipment, including skis, poles, boots, snow
22 boards, sleds, and bindings;
23 (xii) Sporting equipment, including, but not limited to bats,
24 balls, gloves, sticks, pucks, and pads;
25 (xiii) Roller skates;
26 (xiv) Scooters;
27 (xv) Model rockets;
28 (xvi) Athletic shoes with cleats or spikes; and
29 (xvii) Pocket knives and multitools.
30 (4) "Cosmetics" includes articles intended to be rubbed, poured,
31 sprinkled, or sprayed on, introduced into, or otherwise applied to the
32 human body or any part thereof for cleansing, beautifying, promoting
33 attractiveness, or altering the appearance, and articles intended for
34 use as a component of such an article. "Cosmetics" does not include
35 soap, dietary supplements, or food and drugs approved by the United
36 States food and drug administration.
37 (5) "Department" means the department of ecology.

1 (6) "High priority chemical" means a chemical identified by a state
2 agency, federal agency, or accredited research university, or other
3 scientific evidence deemed authoritative by the department on the basis
4 of credible scientific evidence as known to do one or more of the
5 following:

6 (a) Harm the normal development of a fetus or child or cause other
7 developmental toxicity;

8 (b) Cause cancer, genetic damage, or reproductive harm;

9 (c) Disrupt the endocrine system;

10 (d) Damage the nervous system, immune system, or organs or cause
11 other systemic toxicity;

12 (e) Be persistent, bioaccumulative, and toxic; or

13 (f) Be very persistent and very bioaccumulative.

14 (7) "Manufacturer" includes any person, firm, association,
15 partnership, corporation, governmental entity, organization, or joint
16 venture that produces a children's product or an importer or domestic
17 distributor of a children's product. For the purposes of this
18 subsection, "importer" means the owner of the children's product.

19 (8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl
20 phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl phthalate
21 (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

22 (9) "Toy" means a product designed or intended by the manufacturer
23 to be used by a child at play.

24 (10) "Trade association" means a membership organization of persons
25 engaging in a similar or related line of commerce, organized to promote
26 and improve business conditions in that line of commerce and not to
27 engage in a regular business of a kind ordinarily carried on for
28 profit.

29 (11) "Very bioaccumulative" means having a bioconcentration factor
30 or bioaccumulation factor greater than or equal to five thousand, or if
31 neither are available, having a log Kow greater than 5.0.

32 (12) "Very persistent" means having a half-life greater than or
33 equal to one of the following:

34 (a) A half-life in soil or sediment of greater than one hundred
35 eighty days;

36 (b) A half-life greater than or equal to sixty days in water or
37 evidence of long-range transport.

1 (13) "TDCPP" means the chemical (tris(1,3-dichloro-2-
2 propyl)phosphate); chemical abstracts service number 13674-87-8, as of
3 the effective date of this section.

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

7 **Sec. 4.** RCW 70.240.050 and 2008 c 288 s 7 are each amended to read
8 as follows:

9 (1) A manufacturer of products that are restricted under this
10 chapter must notify persons that sell the manufacturer's products in
11 this state about the provisions of this chapter no less than ninety
12 days prior to the effective date of the restrictions.

13 (2) A manufacturer that produces, sells, or distributes a product
14 prohibited from manufacture, sale, or distribution in this state under
15 this chapter shall recall the product and reimburse the retailer or any
16 other purchaser for the product.

17 (3) A manufacturer of children's products in violation of this
18 chapter is subject to a civil penalty not to exceed five thousand
19 dollars for each violation in the case of a first offense.
20 Manufacturers who are repeat violators are subject to a civil penalty
21 not to exceed ten thousand dollars for each repeat offense. Penalties
22 collected under this section must be deposited in the state toxics
23 control account created in RCW 70.105D.070.

24 (4) Retailers who unknowingly sell products that are restricted
25 from sale under this chapter are not liable under this chapter.

26 (5) The sale or purchase of any previously owned product containing
27 a chemical restricted under this chapter made in casual or isolated
28 sales as defined in RCW 82.04.040, or by a nonprofit organization, is
29 exempt from this chapter.

30 NEW SECTION. **Sec. 5.** (1) The department of ecology, in
31 coordination with the department of health, must convene a work group
32 of stakeholders to determine the process for banning or restricting
33 chemicals of high concern for children. The work group must include,
34 but not be limited to: Manufacturers of consumer products;
35 nongovernmental organizations concerned with environmental health or
36 consumer protection; and children's health specialists.

1 (2) By December 1, 2013, in accordance with reporting requirements
2 under RCW 43.01.036, the department of ecology must make
3 recommendations, based on stakeholder input as required under
4 subsection (1) of this section, to the appropriate committees of the
5 legislature on a process to determine bans or restrictions on the use
6 of chemicals of high concern for children; the appropriate entity to
7 determine the bans or restrictions on chemicals of high concern for
8 children; and the appropriate roles and responsibilities of state
9 agencies with mandates to protect public health and the environment."

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10 On page 1, beginning on line 1 of the title, after "retardants;"
11 strike the remainder of the title and insert "amending RCW 70.240.020,
12 70.240.010, and 70.240.050; adding a new section to chapter 70.240 RCW;
13 and creating a new section."

EFFECT: Bans the use of TCEP and TDCPP in residential upholstered furniture and children's products.

Prohibits the use of tetrabromobisphenol A, chemical abstracts service number 79-94-7, decabromodiphenyl ether, chemical abstracts service number 1163-19-5, antimony, chemical abstracts service number 7440-36-0, and hexabromocyclododecane, chemical abstracts service number 25637-99-4 in residential upholstered furniture and children's products.

Allows the department of ecology to request a certificate of compliance for residential upholstered furniture and children's products.

Adds an exemption for used products sold in isolated or casual sales or by nonprofit organizations.

Adds a stakeholder process to work with the departments of ecology and health to make recommendations on determining how to ban or restrict chemicals of high concern.

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