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**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1174**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Van De Wege, Taylor, Fitzgibbon, Senn, Shea, Magendanz, Springer, Tarleton, Ortiz-Self, Gregerson, Ormsby, Hunter, Ryu, S. Hunt, Riccelli, Stanford, Tharinger, Jinkins, Walkinshaw, Fey, Clibborn, Farrell, and Goodman)

AN ACT Relating to flame retardants; amending RCW 70.240.020, 70.240.010, and 70.240.050; and adding new sections to chapter 70.240 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

(2) Beginning July 1, 2016, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state children's products or residential upholstered furniture, as defined in RCW 70.76.010, containing TDCPP or TCEP in amounts greater than one thousand parts per million in any product component.

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

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

(1) Beginning July 1, 2016, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state residential upholstered furniture, as defined in RCW 70.76.010, or children's products containing a flame retardant in any product component in amounts greater than one thousand parts per million identified by the department as a high priority chemical of high concern for children as required under RCW 70.240.030.

(2) TBBPA, chemical abstracts service number 79-94-7 as of the effective date of the section, that has undergone a reactive process and is covalently bonded to a polymer in a product or product component is not subject to the restrictions in subsection (1) of this section.

(3) Antimony and antimony compounds, chemical abstracts service number 7440-36-0 as of the effective date of this section, are not flame retardants for purposes of this section and are not subject to the restrictions of subsection (1) of this section.

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

(1) By rule, the department may identify a high priority chemical, as defined in RCW 70.240.010, as a chemical of high concern for children only if it meets one or more of the criteria of RCW 70.240.030(1) (a) through (c). The adoption of a rule to identify a flame retardant as a high priority chemical of high concern for children after January 1, 2015, must be completed prior to December 1st of any year, and the restrictions under section 2 of this act shall take effect at the end of the regular legislative session in the following year.

(2) In addition to the requirements of subsection (1) of this section, before a flame retardant may be identified as a high priority chemical of high concern for children after January 1, 2015, the department must also submit a report to the legislature no later than at the time of publication of the notice of a rule-making hearing required under RCW 34.05.320. The report to the legislature must contain:

(a) A determination whether children or vulnerable populations are likely to be exposed to the chemical directly or indirectly from its use in products. The determination of the department must be made after an evaluation of available information on:

(i) Levels of the flame retardants in consumer products;

(ii) Migration of the flame retardants out of products during and after use; and

(iii) Levels of the flame retardants in humans and the environment, including but not limited to the home environment;

(b) A review of available toxicity data to evaluate the health concerns for children or vulnerable populations; and

(c) A determination of whether a safer alternative has been identified to meet applicable fire safety standards for residential furniture and children's products by evaluating existing chemical action plans and assessments of safer alternatives.

(3) The department must identify the sources of information it relied upon in making the determination required in subsection (2) of this section, including peer-reviewed science.

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

(1) Beginning July 1, 2016, at the request of the department, a manufacturer of residential upholstered furniture or children's products shall, within sixty days of the request, submit a certificate of compliance stating that the product or product component meets the requirements of section 2 of this act. A manufacturer required under any other state statute to provide a certificate of compliance may develop one certificate containing all required information.

(2) The certificate of compliance must include the following:

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

(b) The specific basis upon which an exemption, if applicable, is claimed; and

(c) The signature of an authorized official of the manufacturing company.

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

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

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

(1) "Children's cosmetics" means cosmetics that are made for, marketed for use by, or marketed to children under the age of twelve. "Children's cosmetics" includes cosmetics that meet any of the following conditions:

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

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

(c) Sold in any of the following:

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

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

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

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

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

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

(d) Sold in any of the following:

(i) A vending machine;

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

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

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

(i) Toys;

(ii) Children's cosmetics;

(iii) Children's jewelry;

(iv) A product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or

(v) ((~~Child car seats~~)) A portable infant or child safety seat designed to attach to an automobile seat.

(b) "Children's product" does not include the following:

(i) Batteries;

(ii) Slings and catapults;

(iii) Sets of darts with metallic points;

(iv) Toy steam engines;

(v) Bicycles and tricycles;

(vi) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding twenty-four volts;

(vii) Chemistry sets;

(viii) Consumer electronic products, including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals;

(ix) Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks;

(x) BB guns, pellet guns, and air rifles;

(xi) Snow sporting equipment, including skis, poles, boots, snow boards, sleds, and bindings;

(xii) Sporting equipment, including, but not limited to bats, balls, gloves, sticks, pucks, and pads;

(xiii) Roller skates;

(xiv) Scooters;

(xv) Model rockets;

(xvi) Athletic shoes with cleats or spikes; and

(xvii) Pocket knives and multitools.

(4) "Cosmetics" includes articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of such an article. "Cosmetics" does not include soap, dietary supplements, or food and drugs approved by the United States food and drug administration.

(5) "Department" means the department of ecology.

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

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

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

(c) Disrupt the endocrine system;

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

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

(f) Be very persistent and very bioaccumulative.

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

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

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

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

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

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

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

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

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

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

(15) "Technically feasible" means an alternative that is available at a cost and in sufficient quantity to permit the manufacturer to produce an economically viable product.

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

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

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

(3) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.l05D.070.

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

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

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