

ESHB 2545 - S COMM AMD
By Committee on Health Care

NOT ADOPTED 03/04/2016

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
5 otherwise.

6 (1) "Additive TBBPA" means the chemical tetrabromobisphenol A,
7 chemical abstracts service number 79-94-7, as of the effective date
8 of this section, in a form that has not undergone a reactive process
9 and is not covalently bonded to a polymer in a product or product
10 component.

11 (2) "Children's product" has the same meaning as defined in RCW
12 70.240.010. For the purposes of this chapter, children's product does
13 not include an inaccessible electronic component part located inside
14 a children's electronic product and not capable of being touched or
15 mouthed, whether or not such part is visible to a user of the
16 product.

17 (3) "Decabromodiphenyl ether" means the chemical
18 decabromodiphenyl ether, chemical abstracts service number 1163-19-5,
19 as of the effective date of this section.

20 (4) "HBCD" means the chemical hexabromocyclododecane, chemical
21 abstracts service number 25637-99-4, as of the effective date of this
22 section.

23 (5) "High priority chemical" has the same meaning as defined in
24 RCW 70.240.010, but only includes chemicals that are: (a) Used as
25 flame retardants; and (b) in any product component of a children's
26 product or residential upholstered furniture, as defined in RCW
27 70.76.010.

28 (6) "IPTPP" means the chemical isopropylated triphenyl phosphate,
29 chemical abstracts service number 68937-41-7, as of the effective
30 date of this section.

1 (7) "Manufacturer" has the same meaning as defined in RCW
2 70.240.010 and also includes a manufacturer of residential
3 upholstered furniture, as defined in RCW 70.76.010.

4 (8) "TBB" means the chemical (2-ethylhexyl)-2,3,4,5-
5 tetrabromobenzoate, chemical abstracts service number 183658-27-7, as
6 of the effective date of this section.

7 (9) "TBPH" means the chemical bis (2-ethylhexyl)-2,3,4,5-
8 tetrabromophthalate, chemical abstracts service number 26040-51-7, as
9 of the effective date of this section.

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

13 (11) "TCPP" means the chemical tris (1-chloro-2-propyl)
14 phosphate, chemical abstracts service number 13674-84-5, as of the
15 effective date of this section.

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

19 (13) "TPP" means the chemical triphenyl phosphate, chemical
20 abstracts service number 115-86-6, as of the effective date of this
21 section.

22 (14) "V6" means the chemical bis(chloromethyl)propane-1,3-
23 diyltetraakis (2-chloroethyl) bisphosphate, chemical abstracts service
24 number 385051-10-4, as of the effective date of this section.

25 NEW SECTION. **Sec. 2.** Beginning July 1, 2017, no manufacturer,
26 wholesaler, or retailer may manufacture, knowingly sell, offer for
27 sale, distribute for sale, or distribute for use in this state
28 children's products or residential upholstered furniture, as defined
29 in RCW 70.76.010, containing any of the following flame retardants in
30 amounts greater than one thousand parts per million in any product
31 component:

- 32 (1) TDCPP;
- 33 (2) TCEP;
- 34 (3) Decabromodiphenyl ether;
- 35 (4) HBCD; or
- 36 (5) Additive TBBPA.

37 NEW SECTION. **Sec. 3.** (1) Consistent with the process and
38 evaluative criteria adopted by the department of ecology by rule

1 under chapter 70.240 RCW, the department of ecology, in consultation
2 with the department of health, must make a determination regarding
3 whether a flame retardant listed in (a) through (f) of this
4 subsection meets the criteria of a high priority chemical of high
5 concern for children:

- 6 (a) IPTPP;
- 7 (b) TBB;
- 8 (c) TBPH;
- 9 (d) TCPP;
- 10 (e) TPP; and
- 11 (f) V6.

12 (2) If a flame retardant listed in subsection (1)(a) through (f)
13 meets the criteria of a high priority chemical of high concern for
14 children, then the department of ecology, in consultation with the
15 department of health, shall determine whether additional manufacturer
16 data on use in children's products is needed in order to further
17 evaluate the flame retardant. If additional manufacturer data is
18 deemed necessary, the department of ecology may initiate rule making
19 to add the flame retardant according to the process and criteria
20 adopted in rule by the department of ecology under chapter 70.240
21 RCW.

22 (3) If the department of ecology, in consultation with the
23 department of health, determines that a flame retardant chemical in
24 subsection (1)(a) through (f) of this section meets the criteria of a
25 chemical of high concern for children and there is available
26 information on use of the flame retardant chemical in children's
27 products, then the department of ecology shall submit a report to the
28 legislature by December 1, 2016. The report to the legislature must
29 contain:

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

- 35 (i) Chemical name, properties, manufacturers, and production
36 volumes;
- 37 (ii) Levels of the flame retardants in consumer products;
- 38 (iii) Migration of the flame retardants out of products during
39 and after use;

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

3 (v) Quantitative estimates of the potential human and
4 environmental exposures;

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

7 (c) A determination of whether a safer alternative has been
8 identified to meet applicable fire safety standards for residential
9 furniture and children's products by evaluating existing chemical
10 action plans and assessments of safer alternatives that have been
11 completed for flame retardant chemicals; and

12 (d) Recommendations regarding whether the legislature should
13 restrict the use of the flame retardants listed in subsection (1)(a)
14 through (f) of this section in children's products or residential
15 upholstered furniture, as defined in RCW 70.76.010, or both. This
16 recommendation must address:

17 (i) Allowable levels of any restricted flame retardant chemicals
18 in a product, which may not be less than one thousand parts per
19 million; and

20 (ii) The date when any restrictions should take effect.

21 (4) The departments of health and ecology must identify the
22 sources of information they reviewed and ultimately relied upon in
23 making the determinations required in subsection (2) of this section,
24 including peer-reviewed science.

25 (5) The department of ecology, in consultation with the
26 department of health, must create an external advisory committee to
27 provide early stakeholder input, expertise, and additional
28 information for the report to the legislature required under
29 subsection (2) of this section and any rule making carried out under
30 section 4 of this act. All advisory meetings must be open to the
31 public. The advisory committee membership must include, but not be
32 limited to, representatives from: Large and small business sectors;
33 community, environmental, and public health advocacy groups; local
34 governments; affected and interested businesses; groups representing
35 firefighters; and public health agencies. State agencies and
36 technical experts may be requested to participate.

37 (6) If the department of ecology, in consultation with the
38 department of health, submits a report under subsection (2) of this
39 section to the legislature recommending restricting a flame retardant
40 chemical listed in subsection (1)(a) through (f) of this section, the

1 rule-making process under section 4 of this act may not commence
2 prior to the end of the 2017 regular legislative session.

3 NEW SECTION. **Sec. 4.** (1) Before December 1st of any year until
4 December 1, 2021, the secretary of the department of health may
5 propose a rule to restrict flame retardants consistent with the
6 department of ecology's recommendations under section 3(2) of this
7 act to restrict a flame retardant. This rule may not be finalized and
8 adopted before the end of the regular legislative session in the year
9 following the rule proposal under this section and may not be
10 finalized and adopted if the legislature takes action during that
11 following regular legislative session to implement restrictions on
12 flame retardants listed in section 3(1) (a) through (f) of this act
13 consistent with the department of ecology's recommendations under
14 section 3(2) of this act.

15 (2) A violation of rules adopted pursuant to this chapter is
16 subject to the penalties provided in RCW 70.240.050.

17 (3) The department of health may adopt rules as necessary for the
18 purpose of implementing, administering, and enforcing this chapter.

19 (4) This section expires July 1, 2022.

20 **Sec. 5.** RCW 70.240.050 and 2008 c 288 s 7 are each amended to
21 read as follows:

22 (1) A manufacturer of products that are restricted under this
23 chapter or chapter 70.--- RCW (the new chapter created in section 6
24 of this act) must notify persons that sell the manufacturer's
25 products in this state about the provisions of this chapter no less
26 than ninety days prior to the effective date of the restrictions.

27 (2) A manufacturer that produces, sells, or distributes a product
28 prohibited from manufacture, sale, or distribution in this state
29 under this chapter or chapter 70.--- RCW (the new chapter created in
30 section 6 of this act) shall recall the product and reimburse the
31 retailer or any other purchaser for the product.

32 (3) A manufacturer of (~~children's~~) products in violation of
33 this chapter or chapter 70.--- RCW (the new chapter created in
34 section 6 of this act) is subject to a civil penalty not to exceed
35 five thousand dollars for each violation in the case of a first
36 offense. Manufacturers who are repeat violators are subject to a
37 civil penalty not to exceed ten thousand dollars for each repeat

1 offense. Penalties collected under this section must be deposited in
2 the state toxics control account created in RCW 70.105D.070.

3 (4) Retailers who unknowingly sell products that are restricted
4 from sale under this chapter or chapter 70.--- RCW (the new chapter
5 created in section 6 of this act) are not liable under this chapter.

6 (5) The sale or purchase of any previously owned products
7 containing a chemical restricted under this chapter or chapter 70.---
8 RCW (the new chapter created in section 6 of this act) made in casual
9 or isolated sales as defined in RCW 82.04.040, or by a nonprofit
10 organization, is exempt from this chapter and chapter 70.--- RCW (the
11 new chapter created in section 6 of this act).

12 NEW SECTION. Sec. 6. Sections 1 through 4 of this act
13 constitute a new chapter in Title 70 RCW."

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14 On page 1, line 5 of the title, after "products;" strike the
15 remainder of the title and insert "; amending RCW 70.240.050; adding
16 a new chapter to Title 70 RCW; and providing an expiration date."

EFFECT: (1) The definition of children's product is modified to
exclude an inaccessible electronic component part located inside a
children's electronic product and is not capable of being touched or
mouthed.

(2) The ban on the five listed flame retardants is retained.

(3) The Department of Health rule-making process is modified.

(4) The Department of Ecology, in consultation with the
Department of Health, must make a determination regarding whether a
listed chemical meets the criteria of a high priority chemical of
high concern for children: (Includes IPTPP; TBB; TBPH; TCPP; TPP; and
V6).

(5) If the Departments determine a chemical is of high priority,
they must determine whether additional manufacturer data on use in
children's products is needed in order to further evaluate the flame
retardant. If additional data is needed, the department may initiate
rule making to add the flame retardant according to the process and
criteria adopted by DOE.

(6) If the Departments determine that a flame retardant meets the
high priority and there is available information on use of the
chemical in children's products, then DOE must report to the
Legislature by December 1, 2016, with identified items.

(7) The Departments must create an external advisory committee to
provide stakeholder input, expertise, and additional information for
the report and any rule making. All advisory meetings must be open to

the public, and membership must include representatives from large and small business, community, environmental and public health advocacy groups, local governments, affected business, groups representing firefighters, and public agencies.

(8) Before December 1st of each year DOH may propose a rule to restrict only listed flame retardants consistent with DOE's recommendations. The rule may not be finalized before the end of the regular session.

(9) Penalties are retained.

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