

ESHB 2545 - S COMM AMD  
By Committee on Ways & Means

NOT ADOPTED 03/04/2016

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 70.240  
4 RCW to read as follows:

5 The definitions in this section apply throughout sections 1  
6 through 3 of this act unless the context clearly requires otherwise.

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

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

13 (i) Toys;

14 (ii) Children's cosmetics;

15 (iii) Children's jewelry;

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

19 (v) A portable infant or child safety seat designed to attach to  
20 an automobile seat.

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

22 (i) Batteries;

23 (ii) Slings and catapults;

24 (iii) Sets of darts with metallic points;

25 (iv) Toy steam engines;

26 (v) Bicycles and tricycles;

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

29 (vii) Chemistry sets;

30 (viii) Consumer and children's electronic products, including but  
31 not limited to personal computers, audio and video equipment,  
32 calculators, wireless phones, game consoles, and hand-held devices

1 incorporating a video screen, used to access interactive software and  
2 their associated peripherals;

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

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

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

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

11 (xiii) Roller skates;

12 (xiv) Scooters;

13 (xv) Model rockets;

14 (xvi) Athletic shoes with cleats or spikes; and

15 (xvii) Pocket knives and multitools.

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

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

22 (5) "High priority chemical" means a chemical used as a flame  
23 retardant in amounts greater than one thousand parts per million in  
24 any product component of residential upholstered furniture, as  
25 defined in RCW 70.76.010, or children's products and that meets the  
26 criteria of a high priority chemical of high concern for children  
27 under RCW 70.240.030(1) as identified by a state agency, federal  
28 agency, or accredited research university, or other scientific  
29 evidence deemed authoritative by the department of health on the  
30 basis of credible scientific evidence as known to do one or more of  
31 the following:

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

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

35 (c) Disrupt the endocrine system;

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

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

39 (f) Be very persistent and very bioaccumulative.

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

4 (7) "Manufacturer" includes any person, firm, association,  
5 partnership, corporation, governmental entity, organization, or joint  
6 venture that produces residential upholstered furniture as defined in  
7 RCW 70.76.010 or children's product or an importer or domestic  
8 distributor of residential upholstered furniture as defined in RCW  
9 70.76.010 or children's product. For the purposes of this subsection,  
10 "importer" means the owner of the residential upholstered furniture  
11 as defined in RCW 70.76.010 or children's product.

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

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

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

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

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

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

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

32 (15) "Very bioaccumulative" means having a bioconcentration  
33 factor or bioaccumulation factor greater than or equal to five  
34 thousand, or if neither are available, having a log Kow greater than  
35 5.0.

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

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

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

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

5 Beginning July 1, 2017, no manufacturer, wholesaler, or retailer  
6 may manufacture, knowingly sell, offer for sale, distribute for sale,  
7 or distribute for use in this state children's products or  
8 residential upholstered furniture, as defined in RCW 70.76.010,  
9 containing any of the following flame retardants in amounts greater  
10 than one thousand parts per million in any product component:

- 11 (1) TDCPP;
- 12 (2) TCEP;
- 13 (3) Decabromodiphenyl ether;
- 14 (4) HBCD; or
- 15 (5) Additive TBBPA.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.240  
17 RCW to read as follows:

18 (1) By rule, the department shall consider whether to add the  
19 following flame retardants to the list of chemicals of high concern  
20 for children:

- 21 (a) IPTPP;
- 22 (b) TBB;
- 23 (c) TBPH;
- 24 (d) TCPP;
- 25 (e) TPP.

26 (2) If after January 1, 2016, a flame retardant listed in  
27 subsection (1) of this section is identified as a chemical of high  
28 concern for children, the department of health, in consultation with  
29 the department, must create a stakeholder advisory committee for each  
30 flame retardant chemical within one year of the adoption of the rule  
31 that identifies the flame retardant chemical as a chemical of high  
32 concern for children. The stakeholder advisory committee is developed  
33 to provide stakeholder input, expertise, and additional information.  
34 All advisory committee meetings must be open to the public. The  
35 advisory committee membership must include, but not be limited to,  
36 representatives from: Large and small business sectors; community,  
37 environmental, and public health advocacy groups; local governments;  
38 affected and interested businesses; and public health agencies. State

1 agencies and technical experts may be requested to participate. In  
2 addition, the department of health shall provide technical expertise  
3 on human health impacts including: Early childhood and fetal  
4 exposure, exposure reduction, and safer substitutes.

5 (3) The department must conduct their analysis consistent with  
6 credible scientific evidence and take into consideration information  
7 relating to the hazards of and the quantitative extent of exposures  
8 to the chemical under its intended or reasonably anticipated  
9 conditions of use.

10 (4) When developing policy recommendations consistent with  
11 subsection (5) of this section, the department of health, in  
12 consultation with the department, must include the following types of  
13 information, and evaluation:

14 (a) Chemical name, properties, uses, and manufacturers;

15 (b) An analysis of available information on the production,  
16 unintentional production, uses, and disposal of the chemical;

17 (c) Quantitative estimates of the potential human and  
18 environmental exposures associated with the use and release of the  
19 chemical;

20 (d) An assessment of the potential impacts on human health and  
21 the environment resulting from the quantitative exposure estimates  
22 referred to in (c) of this subsection;

23 (e) Recommendations for:

24 (i) Managing, reducing, and phasing out the different uses and  
25 releases of the chemical;

26 (ii) Minimizing exposure to the chemical;

27 (iii) Using safer substitutes; and

28 (iv) Encouraging the development of safer alternatives;

29 (f) Recommendations on an evaluation of the following factors:

30 (i) Environmental and human health benefits;

31 (ii) Economic and social impacts;

32 (iii) Feasibility;

33 (iv) Availability and effectiveness of safer substitutes for uses  
34 of the chemical; and

35 (v) Consistency with existing federal and state regulatory  
36 requirements.

37 (5) The department of health must include recommendations on  
38 policy options for reducing exposure, designating and developing  
39 safer substitutes, and restricting or prohibiting the use of the  
40 chemicals in consumer products. If the department of health, in

1 consultation with the department, determines that a chemical should  
2 be restricted or prohibited from use in children's products,  
3 residential upholstered furniture as defined in RCW 70.76.010, or  
4 other commercial products or processes, the department of health, in  
5 consultation with the department, must submit a recommendation to the  
6 appropriate policy committees of the legislature. In conjunction with  
7 its recommendation to the legislature, the department of health, in  
8 consultation with the department, must cite the peer-reviewed science  
9 and other sources of information that the department reviewed and  
10 ultimately relied upon in support of the recommendation to restrict  
11 or prohibit the chemical.

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

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

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

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

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

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

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1        On page 1, line 5 of the title, after "products;" strike the  
2 remainder of the title and insert "amending RCW 70.240.050; and  
3 adding new sections to chapter 70.240 RCW."

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