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ENGROSSED SUBSTITUTE HOUSE BILL 2545

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State of Washington

64th Legislature

2016 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Van De Wege, Taylor, DeBolt, Cody, Rodne, Kochmar, Stambaugh, Riccelli, Johnson, Jinkins, Kagi, Harris, Smith, Stokesbary, Caldier, Zeiger, Tharinger, Hickel, Fitzgibbon, Muri, Reykdal, Frame, Rossetti, S. Hunt, Hudgins, McBride, Ormsby, Appleton, Walkinshaw, Senn, Ryu, Gregerson, Sells, Harmsworth, Tarleton, Pollet, Bergquist, Stanford, and Scott)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to reducing public health threats that  
2 particularly impact highly exposed populations, including children  
3 and firefighters, by establishing a process for the department of  
4 health to restrict the use of toxic flame retardant chemicals in  
5 certain types of consumer products; amending RCW 70.240.050; adding a  
6 new chapter to Title 70 RCW; prescribing penalties; and providing an  
7 expiration date.

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

9 NEW SECTION. **Sec. 1.** The definitions in this section apply  
10 throughout this chapter unless the context clearly requires  
11 otherwise.

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

17 (2) "Children's product" has the same meaning as defined in RCW  
18 70.240.010.

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

1 (4) "HBCD" means the chemical hexabromocyclododecane, chemical  
2 abstracts service number 25637-99-4, as of the effective date of this  
3 section.

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

7 (6) "Manufacturer" has the same meaning as defined in RCW  
8 70.240.010 and also includes a manufacturer of residential  
9 upholstered furniture.

10 (7) "Residential upholstered furniture" has the same meaning as  
11 defined in RCW 70.76.010.

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 tris (1,2-dichloro-2-propyl) phosphate, the  
22 chemical abstracts service number 13674-84-5, as of the effective  
23 date of this section.

24 (12) "TDCPP" means the chemical (tris (1,3-dichloro-2-propyl)  
25 phosphate), chemical abstracts service number 13674-87-8, as of the  
26 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) "V6" means the chemical bis(chloromethyl)propane-1,3-  
31 diyltetraakis (2-chloroethyl) bisphosphate, chemical abstracts service  
32 number 385051-10-4, as of the effective date of this section.

33 NEW SECTION. **Sec. 2.** Beginning July 1, 2017, no manufacturer,  
34 wholesaler, or retailer may manufacture, knowingly sell, offer for  
35 sale, distribute for sale, or distribute for use in this state  
36 children's products or residential upholstered furniture containing  
37 any of the following flame retardants in amounts greater than one  
38 thousand parts per million in any product component:

39 (1) TDCPP;

- 1 (2) TCEP;
- 2 (3) Decabromodiphenyl ether;
- 3 (4) HBCD; or
- 4 (5) Additive TBBPA.

5 NEW SECTION. **Sec. 3.** (1) By rule, the secretary of the  
6 department of health may prohibit the manufacture, sale, distribution  
7 for sale, or distribution for use in this state of residential  
8 upholstered furniture or children's products containing any of the  
9 following chemicals used as a flame retardant in any product  
10 component in amounts greater than one thousand parts per million:

- 11 (a) IPTPP;
- 12 (b) TBB;
- 13 (c) TBPH;
- 14 (d) TCPP;
- 15 (e) TPP; and
- 16 (f) V6.

17 (2) The department of health must create an external advisory  
18 committee for the rule development under subsection (1) of this  
19 section to provide early stakeholder input, expertise, and additional  
20 information. All advisory meetings must be open to the public. The  
21 advisory committee membership must include, but not be limited to,  
22 representatives from: Large and small business sectors; community,  
23 environmental, and public health advocacy groups; local governments;  
24 affected and interested businesses; groups representing firefighters;  
25 and public health agencies. State agencies and technical experts may  
26 be requested to participate.

27 (3) After January 1, 2016, a rule that restricts a flame  
28 retardant under subsection (1) of this section must be adopted prior  
29 to December 1st of any year and the restrictions under subsection (1)  
30 of this section do not take effect before the end of the regular  
31 legislative session in the next year.

32 (4) Before the secretary of the department of health may adopt a  
33 rule to restrict a flame retardant, the department of health must  
34 submit a report to the legislature no later than at the time of  
35 publication of the notice of a rule-making hearing required under RCW  
36 34.05.320. The report to the legislature must contain:

- 37 (a) A determination by the department of health as to whether  
38 children or vulnerable populations are likely to be exposed to the  
39 chemical directly or indirectly from its use in products. The

1 determination of the department of health must be made after an  
2 evaluation of available information on:

3 (i) Chemical name, properties, manufacturers, and production  
4 volumes;

5 (ii) Levels of the flame retardants in consumer products;

6 (iii) Migration of the flame retardants out of products during  
7 and after use; and

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

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

12 (c) A determination of whether a safer alternative has been  
13 identified to meet applicable fire safety standards for residential  
14 furniture and children's products by evaluating existing chemical  
15 action plans and assessments of safer alternatives that have been  
16 completed for flame retardant chemicals.

17 (5) The department of health must identify the sources of  
18 information it relied upon in making the determination required in  
19 subsection (4) of this section, including peer-reviewed science.

20 (6) Violations of rules adopted pursuant to this chapter are  
21 subject to the penalties provided in RCW 70.240.050.

22 (7) The department of health may adopt rules as necessary for the  
23 purpose of implementing, administering, and enforcing this chapter.

24 (8) This section expires July 1, 2022.

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

27 (1) A manufacturer of products that are restricted under this  
28 chapter or chapter 70.--- RCW (the new chapter created in section 5  
29 of this act) must notify persons that sell the manufacturer's  
30 products in this state about the provisions of this chapter no less  
31 than ninety days prior to the effective date of the restrictions.

32 (2) A manufacturer that produces, sells, or distributes a product  
33 prohibited from manufacture, sale, or distribution in this state  
34 under this chapter or chapter 70.--- RCW (the new chapter created in  
35 section 5 of this act) shall recall the product and reimburse the  
36 retailer or any other purchaser for the product.

37 (3) A manufacturer of (~~children's~~) products in violation of  
38 this chapter or chapter 70.--- RCW (the new chapter created in  
39 section 5 of this act) is subject to a civil penalty not to exceed

1 five thousand dollars for each violation in the case of a first  
2 offense. Manufacturers who are repeat violators are subject to a  
3 civil penalty not to exceed ten thousand dollars for each repeat  
4 offense. Penalties collected under this section must be deposited in  
5 the state toxics control account created in RCW 70.105D.070.

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

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

15 NEW SECTION. **Sec. 5.** Sections 1 through 3 of this act  
16 constitute a new chapter in Title 70 RCW.

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