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HOUSE BILL 2545

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State of Washington

64th Legislature

2016 Regular Session

**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 01/14/16. Referred to Committee on Health Care & Wellness.

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

- 18 (i) Toys;  
19 (ii) Children's cosmetics;  
20 (iii) Children's jewelry;

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

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

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

7 (i) Batteries;

8 (ii) Slings and catapults;

9 (iii) Sets of darts with metallic points;

10 (iv) Toy steam engines;

11 (v) Bicycles and tricycles;

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

14 (vii) Chemistry sets;

15 (viii) Consumer electronic products, including but not limited to  
16 personal computers, audio and video equipment, calculators, wireless  
17 phones, game consoles, and hand-held devices incorporating a video  
18 screen, used to access interactive software and their associated  
19 peripherals;

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

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

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

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

28 (xiii) Roller skates;

29 (xiv) Scooters;

30 (xv) Model rockets;

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

32 (xvii) Pocket knives and multitools.

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

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

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

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

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

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

15 (c) Disrupt the endocrine system;

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

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

19 (f) Be very persistent and very bioaccumulative.

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

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

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

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

33 (11) "Very bioaccumulative" means having a bioconcentration  
34 factor or bioaccumulation factor greater than or equal to five  
35 thousand, or if neither are available, having a log Kow greater than  
36 5.0.

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

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

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

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

15 NEW SECTION. **Sec. 3.** (1)(a) By rule, the secretary of the  
16 department of health may prohibit the manufacture, sale, distribution  
17 for sale, or distribution for use in this state of residential  
18 upholstered furniture, as defined in RCW 70.76.010, or children's  
19 products containing a flame retardant in any product component in  
20 amounts greater than one thousand parts per million that meets the  
21 criteria of a high priority chemical of high concern for children  
22 under RCW 70.240.030(1).

23 (b) After January 1, 2016, a rule that restricts a flame  
24 retardant under (a) of this subsection must be adopted prior to  
25 December 1st of any year and the restrictions under (a) of this  
26 subsection do not take effect before the end of the regular  
27 legislative session in the next year.

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

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

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

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

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

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

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.

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

15 (4) Violations of rules adopted pursuant to this chapter are  
16 subject to the penalties provided in RCW 70.240.050.

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

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

20 **Sec. 4.** 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 5  
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 5 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 5 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  
38 offense. Penalties collected under this section must be deposited in  
39 the state toxics control account created in RCW 70.105D.070.

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

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

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

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