

ENGROSSED SUBSTITUTE HOUSE BILL 2545

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 1168-19-5,
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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