

# SENATE BILL REPORT

## E2SHB 1488

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As Reported By Senate Committee On:  
Water, Energy & Environment, February 21, 2006

**Title:** An act relating to brominated flame retardants.

**Brief Description:** Prohibiting the sale of products that contain polybrominated diphenyl ethers.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Hunter, Priest, Dickerson, Tom, Upthegrove, Jarrett, Springer, McCoy, B. Sullivan, Conway, Simpson, Flannigan, McIntire, Moeller, Chase, Williams, Kenney, Sells, Murray, Fromhold, Pettigrew, Darneille, Lantz, Clibborn, Kagi, Hasegawa, Morrell, McDermott, Hunt, Blake, Campbell, Cody, Hudgins, Ericks, O'Brien and Nixon).

**Brief History:** Passed House: 2/14/06, 97-0.

**Committee Activity:** Water, Energy & Environment: 2/16/06, 2/21/06 [DPA, DNP].

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### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Majority Report:** Do pass as amended.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

**Minority Report:** Do not pass.

Signed by Senators Morton, Ranking Minority Member; Delvin, Honeyford, and Mulliken.

**Staff:** Sam Thompson (786-7413)

**Background:** In 2004, former Governor Locke directed the Department of Ecology (DOE) to, in consultation with the Department of Health (DOH), investigate and recommend options to reduce the threat of PBDEs (polybrominated diphenyl ethers) in the environment. PBDEs are chemical flame retardants used in various consumer goods. Concern has arisen regarding potential adverse public health and environmental effects caused by these chemicals.

In January 2006, the agencies issued a PBDE Chemical Action Plan recommending that the legislature immediately ban two forms of PBDEs known as pentabromodiphenylether (penta) and octabromodiphenylether (octa). U.S. manufacturers of penta and octa voluntarily ceased producing the chemicals in December 2004, and production of penta and octa has ended in most international markets, as well.

DOE and DOH further recommended that use of a third form of PBDE, decabromodiphenylether (deca), be banned, provided that safer, effective alternatives were identified, or upon finding additional evidence of harm caused by deca. Deca is used in textile coatings and plastics in housings for television sets, computers, stereos and other electronics.

**Summary of Amended Bill:** After January 1, 2007, no person may manufacture, knowingly sell, offer or distribute for sale or use in Washington products containing PBDEs. This prohibition does not apply to:

- Edible products;
- Products containing deca, except for television and computer housings (effective July 1, 2010) and upholstered furniture and mattresses (effective July 1, 2012);
- Sale or distribution of any used vehicle with parts containing PBDEs and sale of any used or new parts manufactured before 2007 containing PBDEs;
- Manufacture, sale, repair, distribution, maintenance, refurbishment or modification of equipment containing PBDEs used primarily for military or federally funded space program applications (excluding consumer-based goods with broad applicability);
- Sale or distribution by a business, charity, or private party of any used product containing PBDEs; or
- Medical devices.

Affected Manufacturers; Liability. Manufacturers subject to the prohibitions include producers, importers or domestic distributors of products containing PBDEs, but not retailers of private label brands or cobrands or assemblers of components creating single electronic products based on individual consumer preferences.

Manufacturers must notify retailers of banned products, recall products and reimburse retailers or other purchasers. Manufacturers, importers, or distributors are not prohibited from transporting products containing PBDEs through Washington or storing them for later distribution outside the state.

Manufacturers violating prohibitions are punishable by civil penalties of up to \$1,000 for a first offense and up to \$5,000 for subsequent offenses. Prior to imposing penalties against manufacturers, DOE will, in order: (1) send them information, (2) request certificates of compliance, and (3) issue warning letters. Penalties will be deposited in the state toxics control account.

Affected Retailers. Retailers subject to the prohibition include catalog and internet sellers but not wholesalers or entities both manufacturing and selling a product at retail. Retailers who unknowingly sell banned products are not subject to penalties, and in-state retailers unknowingly possessing banned products that are not recalled by the manufacturer may exhaust their stock through sales to the public.

DOE must develop a program to assist retailers in identifying potential products containing PBDEs in their inventory. Retailers selling banned products on January 1, 2007, may exhaust their stock through sales to the public.

Agency-Granted Exemptions. DOE and DOH are authorized, in consultation with the Director of Fire Protection (DFP), to jointly grant exemptions to the deca ban between July 1, 2010, and July 1, 2012, with optional two-year extensions. The Governor must review and approve proposed exemptions to ensure that safer, feasible alternatives are not available at reasonable cost.

A manufacturer or user of FAA-required safety systems may petition DOE for an exemption for a specific use of penta or octa. DOE may grant an exemption for up to 18 months,

renewable if original exemption conditions are followed and DOE finds that a technically feasible alternative is not available at reasonable cost, or potential harm posed by a technically feasible and available alternative exceeds potential harm.

State Purchasing Policy. By 2009, the Department of General Administration must give preference to products not containing PBDEs, and make available for purchase and use by state agencies products that do not contain PBDEs.

Reports to Legislature. DOE and DOH must report to the Legislature by mid-December 2007 on additional uses of deca, with recommendations. DOE, DFP and DOH must report to the Legislature by mid-December 2008 on the availability of safer, feasible alternatives to banned deca products.

**Amended Bill Compared to Original Bill:** The following are added: bans on products containing deca, with exemption provisions; manufacturer duties; restrictions on sales of banned products by retailers; procedural requirements DOE must follow prior to imposing penalties against manufacturers; and state purchasing policy. Provisions concerning legislative report requirements are modified.

**Appropriation:** None.

**Fiscal Note:** Available for first substitute bill.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The study called for in the bill passed by the House is necessary to determine deca dosage levels that may cause concern. The European Union opted not to ban deca, which is an important and effective fire retardant that saves lives. A recent study indicates that mattresses need the fire retardant protection that deca affords. Plastics treated with deca are more easily recyclable than plastics not treated with deca. Alternatives to deca have not been sufficiently studied. An acceptable, cost-effective alternative to deca is not available; proposed alternatives are less fire retardant than deca, risking lives of consumers and firefighters.

**Testimony Other:** The proposed striking amendment should be adopted. That amendment, narrower in scope than previous proposals, provides a reasoned, gradual approach to banning PBDEs, with several exemptions specified and others potentially granted. The proposed bans are based on the preponderance of recent research indicating health and environmental concerns with deca, including evidence that it breaks down into octa and penta, which have been banned in Europe and other states. Every year, 50 million pounds of deca is used in the U.S.; about one million pounds a year is used in products sold in or into Washington. By eventually banning deca in TVs, computers and mattresses, this legislation relieves 80 percent of health and environmental problems. This legislation is a priority for environmental groups; firefighter organizations and the state fire marshal also supports the measure. Some European nations will soon ban deca and several states are considering doing so. The legislation reduces exposure to PBDEs without compromising fire safety. Over fifty percent of prior deca users have switched to alternative fire retardants.

There is no need for the provision in the striking amendment mandating gubernatorial review of proposed ban exemptions; DOE and DOH review is sufficient.

**Who Testified:** PRO: Brad Tower and Glade Squires, Bromine Science and Environmental Forum; Ryan Spiller, Washington Fire Commissioners Association; Mike Brown, Washington Fire Chiefs Association.

OTHER: Rep. Hunter, prime sponsor; Cliff Traisman, Washington Environmental Council and Washington Conservation Voters; Ann Tan Piazza, Washington Nurses Association; Laurie Lippold, Academy of Pediatrics, Washington Chapter; Greg Sorlie, Department of Ecology; Rob Duff, Department of Health.

Signed in, Unable to Testify & Submitted Written Testimony: PRO: Grant Nelson, Association of Washington Business.