

SENATE BILL REPORT

SB 5515

As Reported By Senate Committee On:
Water, Energy & Environment, March 2, 2005
Ways & Means, April 18, 2005

Title: An act relating to brominated flame retardants.

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

Sponsors: Senators Regala, Esser, Kline, Poulsen, Rockefeller, Brandland, Fraser, Kohl-Welles, Brown, Keiser, Pridemore and Shin.

Brief History:

Committee Activity: Water, Energy & Environment: 2/17/05, 3/2/05 [DPS-WM, w/oRec].
Ways & Means: 3/7/05, 4/18/05 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5515 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: That it be referred without recommendation.

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

Staff: Sam Thompson (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5515 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair; Fairley, Kohl-Welles, Pridemore, Rasmussen, Regala, Rockefeller and Thibaudeau.

Minority Report: Do not pass.

Signed by Senators Brandland, Hewitt, Parlette and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Pflug and Roach.

Staff: Paula Faas (786-7449)

Background: Polybrominated diphenyl ethers (PBDEs), are members of a broader class of brominated chemicals used as flame retardants. They are often added to computers, TVs, furniture, and carpet pads to reduce risk of fire if a product is exposed to heat or flame. There

are three main types of PBDEs used in consumer products: Penta-BDE, Octa-BDE, and Deca-BDE. PBDEs have been measured in humans, and there is concern about potential health effects.

In January 2004, Governor Locke ordered the Department of Ecology (DOE) to, in consultation with the Department of Health (DOH), develop a chemical action plan reducing threats posed by PBDEs. At the end of 2004, DOE and DOH released an interim PBDE action plan specifying several standards and recommendations, some of which have been proposed in legislation.

Summary of Second Substitute Bill: After July 1, 2007, no one may manufacture, knowingly sell, offer or distribute for sale or use noncomestible (non-edible) products containing polybrominated diphenyl ethers (PBDE). A manufacturer of products containing restricted PBDE must notify sellers about the restrictions.

Exemptions are provided for: (1) manufacturing, selling, repairing, or distributing raw materials or parts used in vehicles or any new vehicles with parts containing deca-BDE; (2) selling or distributing used vehicles with parts containing PBDE; (3) selling used vehicle parts containing PBDE; (4) using deca-BDE in maintaining, refurbishing, or modifying transportation equipment; (5) manufacturing, selling, distributing, maintaining, refurbishing, or modifying equipment containing PBDE and used primarily in military or federally funded space programs (not including consumer-based goods with broad applicability); (6) selling of used products containing PBDE by businesses, charities, or private parties; or (7) manufacturing, selling, or distributing new products or components consisting of recycled or used materials containing deca-BDE (not including products containing any new PBDE).

The ban does not restrict a manufacturer, importer, or distributor from transporting products containing PBDE through the state or from storing products for later distribution outside the state.

In addition, a manufacturer or user of a product containing Deca-BDE may apply in writing to the Department of Ecology (DOE) for an exemption. DOE may issue an exemption for up to three years if an alternative is not available at reasonable cost or if potential harm from the alternative is greater than using Deca-BDE.

A manufacturer or user of a Federal Aviation Authority-required safety system may apply to DOE for an exemption for a specific use of penta-BDE or octa-BDE; DOE may grant an exemption for up to 18 months, with renewal if DOE finds that the specific use continues to meet exemption criteria and any conditions are complied with.

DOE may grant an exemption for a specified use of penta-BDE or octa-BDE upon finding that a petitioner has demonstrated that a technically feasible alternative (i.e., available at cost and in sufficient quantity to maintain an economically viable product) to use of penta-BDE or octa-BDE is not available, or that potential public health and environmental harm posed by the alternative is greater than the potential harm posed by penta-BDE or octa-BDE.

The Governor may allow for manufacture, sale, and distribution of products containing deca-BDE between July 1, 2007, and July 1, 2008, if the Governor finds that technically feasible alternative (i.e., available at cost and in sufficient quantity to maintain an economically viable product) to use of deca-BDE is not available or that potential public

health and environmental harm posed by the alternative is greater than potential harm posed by deca-BDE.

Subject to available funding, DOE and the Department of Health (DOH) must conduct two separate stakeholder processes to develop proposals for ban on use of deca-BDE in vehicles and ban or management of used and recycled products containing PBDEs. Processes must study ways to assist retailers in identifying products containing PBDEs in their inventory. DOE and DOH must report stakeholder findings and recommendations regarding: (1) the ban on deca-BDE and assistance to retailers to Legislature by December 15, 2005; and (2) the ban or management of used and recycled products to Legislature by June 30, 2006.

By January 1, 2006, the Department of General Administration must give preference to state purchase of products not containing PBDEs and make only products not containing PBDEs available for purchase and use by all state agencies.

A civil penalty of up to \$1,000 is established for manufacturers who violate these provisions. Repeat violators are subject to penalties of up to \$5,000 for each offense. Penalty proceeds will be deposited in the State Toxics Control Account.

Second Substitute Bill Compared to Substitute Bill: The ban on products containing PBDEs is delayed until July 1, 2007. The ban only applies to noncombustible (non-edible) products containing PBDEs. A definition for commercial deca-BDEs added and technical changes are made to references regarding the use of commercial deca-BDE.

Substitute Bill Compared to Original Bill: New provisions:

- clarify that retailers are not subject to civil penalties for violations;
- revises and limits the PBDE prohibition to specify an intent requirement--no person may "knowingly" sell, offer for sale, or distribute for sale or use products containing PBDEs;
- exempt: (1) sale, repair, or distribution of raw material or component parts used in vehicles with original and spare component parts containing deca-BDE; (2) used vehicles with component parts containing PBDEs; (3) sale of any used vehicle replacement parts contain PBDEs; (4) use of deca-BDE in maintenance, refurbishment, or modification of transportation equipment; (5) manufacture, sale, distribution, maintenance, refurbishment, or modification of equipment containing PBDEs used primarily for military or federally funded space program applications (not including consumer-based goods with broad applicability);
- specify that a manufacturer or user of a Federal Aviation Authority-required safety system may apply to DOE for an exemption for a specific use of penta-BDE or octa-BDE; DOE may grant an exemption for up to 18 months, with renewal if DOE finds that the specific use continues to meet exemption criteria and any conditions are complied with;
- provide that DOE may grant an exemption for a specified use of penta-BDE or octa-BDE upon finding that a petitioner has demonstrated that a technically feasible alternative (i.e., available at cost and in sufficient quantity to maintain an economically viable product) to use of penta-BDE or octa-BDE is not available, or that potential public health and environmental harm posed by the alternative is greater than the potential harm posed by penta-BDE or octa-BDE;
- authorize the Governor to allow for manufacture, sale, and distribution of products containing deca-BDE between July 1, 2006, and July 1, 2008, if the Governor finds that

technically feasible alternative (i.e., available at cost and in sufficient quantity to maintain an economically viable product) to use of deca-BDE is not available or that potential public health and environmental harm posed by the alternative is greater than potential harm posed by deca-BDE;

- require DOE to conduct two separate stakeholder processes, rather than one, to develop proposals for ban on use of deca-BDE in vehicles and ban or management of used and recycled products containing PBDEs. Processes must study ways to assist retailers in identifying products containing PBDEs in their inventory; and
- direct DOE and DOH to report stakeholder findings and recommendations regarding: (1) ban on deca-BDE and assistance to retailers to Legislature by December 15, 2005; and (2) ban or management of used and recycled products to Legislature by June 30, 2006.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: PBDEs are bioaccumulative, and high levels are now measured in humans, particularly children. There are serious health concerns regarding neurodevelopmental damage caused by Deca-BDE. In Europe, which has banned some PBDEs and is considering a ban on all PBDEs, 75 percent lower levels have been found in breast milk. Many medical organizations support this bill. Rather than waiting for irrefutable proof of a link between all PBDEs and health defects--as was done with chemically-related PCBs before they were banned--PBDEs should be banned now. Computer companies have recognized the hazard and are already phasing out use of PBDEs. Penta-BDE and Octa-BDE are being phased out now, but Deca-BDE remains a concern; all three should be banned. Feasible alternative flame retardants are available, and firefighters agree that PBDEs should be banned because of potentially dangerous health effects.

Testimony Against: In banning Deca-BDE, this bill goes farther than any other US legislation; it is not based on sound science and does not recognize the importance of Deca-BDE as a flame retardant that has saved many lives. Deca-BDE--which has not been linked by hard evidence to health defects, after extensive testing--should not be banned. Jurisdictions banning PBDEs have banned only Penta-BDE and Octa-BDE. Banning Deca-BDE could lead to eliminating fire retardants from electronic equipment or use of far less well-understood alternatives, raising risks and leading to unintended consequences. Banning use of PBDEs would place Washington retailers at a competitive disadvantage and reduce sales and B&O tax revenue. Offenses imposed for ban violations are extreme.

Who Testified: PRO: Senator Regala, prime sponsor; Dr. Kim Hooper, California Toxicology Laboratory; Erika Schroeder, Washington Toxics Coalition; Dr. Barry Lawson, Washington Chapter of the American Association of Pediatrics; Cliff Traisman, Washington Environmental Council and Washington Conservation Voters; Pam Johnson. OTHER: Greg Sorlie, Department of Ecology; Rob Duff, Department of Health.

CON: Brad Tower, Susan Landry, Ray Dawson and Dave Sanders, Bromine Science & Environmental Forum.

Signed in, Unable to Testify & Submitted Written Testimony: PRO: Pam Tazioli, Breast Cancer Fund. CON: Montie Barringer, Washington Retail Association.