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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1488

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State of Washington

59th Legislature

2006 Regular Session

**By** 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)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to brominated flame retardants; adding a new  
2 chapter to Title 70 RCW; and prescribing penalties.

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

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

6 (1) "Department" means the department of ecology.

7 (2) "Electronic enclosure" means the plastic housing that encloses  
8 the components of electronic products, including but not limited to  
9 televisions and computers.

10 (3) "Manufacturer" includes any person, firm, association,  
11 partnership, corporation, governmental entity, organization, or joint  
12 venture that produces a product containing polybrominated diphenyl  
13 ethers or an importer or domestic distributor of a noncomestible  
14 product containing polybrominated diphenyl ethers. A manufacturer does  
15 not include a retailer:

16 (a) Of a private label brand or cobranding; or

17 (b) Who assembles components to create a single electronic product  
18 based on an individual consumer preference.

1 (4) "Polybrominated diphenyl ethers" means chemical forms that  
2 consist of diphenyl ethers bound with bromine atoms. Polybrominated  
3 diphenyl ethers include, but are not limited to, the three primary  
4 forms of the commercial mixtures known as pentabromodiphenylether  
5 (penta-bde), octabromodiphenylether (octa-bde), and  
6 decabromodiphenylether (deca-bde).

7 (5) "Retailer" means a person who offers a product for sale at  
8 retail through any means including, but not limited to, remote  
9 offerings such as sales outlets, catalogs, or the internet, but does  
10 not include a sale that is a wholesale transaction with a distributor  
11 or a retailer. A retailer does not include a person, firm,  
12 association, partnership, corporation, governmental entity,  
13 organization, or joint venture that both manufactures and sells a  
14 product at retail.

15 (6) "Safer alternative" means an alternative that has undergone the  
16 same level of study as the product it is meant to replace and has been  
17 found to have a better toxicity profile and less impact for human  
18 health or the environment.

19 (7) "Technically feasible alternative that is available at a  
20 reasonable cost" means an alternative that is available at a cost and  
21 in sufficient quantity to permit the manufacturer or user to maintain  
22 an economically viable product.

23 (8) "Transportation vehicle" means any mechanized vehicle that is  
24 used to transport goods or people including, but not limited to,  
25 airplanes, automobiles, motorcycles, trucks, buses, trains, boats,  
26 ships, streetcars, or monorail cars.

27 (9) "Used product" means any product that has been previously  
28 owned, purchased, or sold in commerce. "Used product" does not include  
29 any product manufactured after January 1, 2007.

30 NEW SECTION. **Sec. 2.** (1) Except as provided in subsection (2) of  
31 this section and section 3 of this act, after January 1, 2007, no  
32 person may manufacture, knowingly sell, offer for sale, distribute for  
33 sale, or distribute for use in this state noncomestible products  
34 containing more than one percent of pentabromodiphenylether or  
35 octabromodiphenylether.

36 (2) Subsection (1) of this section does not apply to:

37 (a) Products containing decabromodiphenylether;

1 (b) Original equipment manufacturer replacement parts;

2 (c) The processing and disposal of recyclables containing penta-bde  
3 or octa-bde in compliance with applicable federal, state, and local  
4 laws;

5 (d) A manufacturer or user of safety systems required by the  
6 federal aviation administration;

7 (e) The manufacture, sale, repair, distribution, maintenance,  
8 refurbishment, or modification of any raw material or component part  
9 used in a transportation vehicle or any new or used transportation  
10 vehicle with component parts, including original parts and spare parts;

11 (f) The manufacture, sale, repair, distribution, maintenance,  
12 refurbishment, or modification of equipment used primarily for military  
13 or federally funded space program applications. This exemption does  
14 not cover consumer-based goods with broad applicability;

15 (g) The sale or distribution by a business, charity, or private  
16 party of any used product containing polybrominated diphenyl ethers; or

17 (h) Medical monitoring and control instruments and systems, medical  
18 devices, and products as defined in the federal food, drug, and  
19 cosmetic act (21 U.S.C. Sec. 301 et seq.).

20 (3) In-state retailers in possession of products on January 1,  
21 2007, that are banned for sale under subsection (1) of this section may  
22 exhaust their stock through sales to the public.

23 NEW SECTION. **Sec. 3.** A manufacturer or user of safety systems  
24 required by the federal aviation administration may apply for an  
25 exemption for a specific use of penta-bde or octa-bde by filing a  
26 written petition with the department. The exemption may be granted for  
27 a term not to exceed eighteen months and may be renewed upon written  
28 application if the department finds that the specific use of penta-bde  
29 or octa-bde continues to meet the criteria of this section and the  
30 manufacturer or other persons comply with the conditions of its  
31 original approval. The department may grant an exemption for a  
32 specified use of penta-bde or octa-bde with or without conditions upon  
33 finding that the petitioner has demonstrated that:

34 (1) A technically feasible alternative to the use of penta-bde or  
35 octa-bde is not available at reasonable cost; or

36 (2) The potential harm to public health and the environment

1 directly posed by a technically feasible and available alternative is  
2 greater than the potential harm posed by penta-bde or octa-bde.

3 NEW SECTION. **Sec. 4.** On or about December 15, 2007, the  
4 department and the department of health shall submit to the appropriate  
5 committees of the legislature a report that reviews and updates the  
6 available scientific research on deca-bde, including relevant risk  
7 assessments and relevant findings and rulings by the United States  
8 environmental protection agency and the European commission, to address  
9 the following issues:

- 10 (1) The use of deca-bde in products sold in the state;
- 11 (2) What human health effects could result from exposure to deca-  
12 bde, and are current levels of exposure at levels that could produce  
13 these effects;
- 14 (3) Any data available on the human body burden or environmental  
15 occurrence of deca-bde;
- 16 (4) Whether deca-bde breaks down into other chemicals that could  
17 pose public health concerns;
- 18 (5) The availability of safer, technically feasible alternatives  
19 for deca-bde.

20 NEW SECTION. **Sec. 5.** Nothing in this chapter restricts the  
21 ability of a manufacturer, importer, or distributor from transporting  
22 products containing polybrominated diphenyl ethers through the state,  
23 or storing such products in the state for later distribution outside  
24 the state.

25 NEW SECTION. **Sec. 6.** The department shall develop a program to  
26 assist retailers in identifying potential products containing penta-bde  
27 and octa-bde in their inventory.

28 NEW SECTION. **Sec. 7.** A manufacturer of products containing penta-  
29 bde and octa-bde in violation of this chapter is punishable by a civil  
30 penalty not to exceed one thousand dollars for each violation in the  
31 case of a first offense. Manufacturers who are repeat violators are  
32 liable for a civil penalty not to exceed five thousand dollars for each  
33 repeat offense. Penalties collected under this section must be

1 deposited in the state toxics control account created in RCW  
2 70.105D.070.

3 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute  
4 a new chapter in Title 70 RCW.

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