
SECOND SUBSTITUTE HOUSE BILL 1488

State of Washington

59th Legislature

2005 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) "Brominated flame retardant" means any chemical containing the
7 element bromine that may be added to a plastic, foam, or textile to
8 inhibit flame formation. Brominated flame retardant includes, but is
9 not limited to, a chemical or group of chemicals known as
10 polybrominated biphenyls, polybrominated diphenyl ethers,
11 tetrabromobisphenol-A, and hexabromocyclododecane.

12 (2) "Department" means the department of ecology.

13 (3) "Manufacturer" includes any person, firm, association,
14 partnership, corporation, governmental entity, organization, or joint
15 venture that produces a product containing polybrominated diphenyl
16 ethers or an importer or domestic distributor of a product containing
17 polybrominated diphenyl ethers.

18 (4) "Polybrominated diphenyl ethers" means chemical forms that
19 consist of diphenyl ethers bound with bromine atoms. Polybrominated

1 diphenyl ethers include, but are not limited to, the three primary
2 forms of the commercial mixtures known as pentabromodiphenylether
3 (penta-bde), octabromodiphenylether (octa-bde), and
4 decabromodiphenylether (deca-bde).

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

9 (6) "Used product" means any product that has been previously
10 owned, purchased, or sold in commerce. "Used product" does not include
11 any product manufactured after July 1, 2006.

12 NEW SECTION. **Sec. 2.** (1) Except as provided in subsections (3)
13 through (6) of this section, after July 1, 2007, no person may
14 manufacture, knowingly sell, offer for sale, or distribute for sale or
15 use in this state products containing polybrominated diphenyl ethers.

16 (2) A manufacturer of products containing a polybrominated diphenyl
17 ether that has been restricted under this section must, once the
18 restriction takes effect, notify persons that sell the manufacturer's
19 products about the provisions of this section.

20 (3) Subsections (1) and (2) of this section do not apply to:

21 (a) The manufacture, sale, repair, or distribution of any raw
22 material or component part used in a transportation vehicle or any new
23 transportation vehicle with component parts, including original parts
24 and spare parts, containing decabromodiphenylether;

25 (b) The sale or distribution of any used transportation vehicle
26 with component parts containing polybrominated diphenyl ethers;

27 (c) The sale of any used transportation vehicle replacement parts,
28 or new transportation vehicle parts manufactured prior to the effective
29 date of this act, that contain polybrominated diphenyl ethers;

30 (d) The use of decabromodiphenylether in the maintenance,
31 refurbishment, or modification of transportation equipment;

32 (e) The manufacture, sale, distribution, maintenance,
33 refurbishment, or modification of equipment containing polybrominated
34 diphenyl ethers and used primarily for military or federally funded
35 space program applications. This exemption does not cover consumer-
36 based goods with broad applicability;

1 (f) The sale by a business, charity, or private party of any used
2 product containing polybrominated diphenyl ethers; or

3 (g) The manufacture, sale, or distribution of any new product or
4 product component consisting of recycled or used materials containing
5 decabromodiphenylether. Products containing any new polybrominated
6 diphenyl ethers do not qualify for this exemption.

7 (4) A manufacturer or user of a decabromodiphenylether product may
8 apply for an exemption for a specific use of decabromodiphenylether by
9 filing a written petition with the department. An exemption may be
10 granted for a term not to exceed three years and may be renewed upon
11 written application if the department finds that the specific use of
12 decabromodiphenylether continues to meet the criteria of this section
13 and the manufacturer or other persons comply with the conditions of its
14 original approval. The department may grant an exemption for a
15 specified use of decabromodiphenylether with or without conditions upon
16 finding that the petitioner has demonstrated that:

17 (a) A technically feasible alternative to the use of
18 decabromodiphenylether is not available at reasonable cost; or

19 (b) The potential harm to public health and the environment
20 directly posed by a technically feasible and available alternative is
21 greater than the potential harm posed by decabromodiphenylether.

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

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

35 (b) The potential harm to public health and the environment
36 directly posed by a technically feasible and available alternative is
37 greater than the potential harm posed by penta-bde or octa-bde.

1 (6) The governor may, by executive order, allow for the
2 manufacture, sale, and distribution of products containing
3 decabromodiphenylether between July 1, 2007, and July 1, 2008, if the
4 governor finds that a technically feasible alternative to the use of
5 decabromodiphenylether is not available at reasonable cost or that the
6 potential harm to public health and the environment directly posed by
7 a technically feasible and available alternative is greater than the
8 potential harm posed by decabromodiphenylether.

9 (7) For the purposes of this section, a "technically feasible
10 alternative that is available at a reasonable cost" means an
11 alternative that is available at a cost and in sufficient quantity to
12 permit the manufacturer or user to maintain an economically viable
13 product.

14 (8) Nothing in this section restricts the ability of a
15 manufacturer, importer, or distributor from transporting products
16 containing polybrominated diphenyl ethers through the state, or storing
17 such products in the state for later distribution outside the state.

18 NEW SECTION. **Sec. 3.** (1) Subject to available funding, the
19 department and the department of health shall conduct two separate
20 stakeholder processes to develop a proposal for a ban on the use of
21 decabromodiphenylether in transportation vehicles, and to develop a
22 proposal for the ban or management of used and recycled products
23 containing polybrominated diphenyl ethers. These stakeholder processes
24 shall include:

25 (a) Establishing a timeline for a ban on the use of
26 decabromodiphenylether in transportation vehicles based on an
27 evaluation of the availability of safer alternatives;

28 (b) An examination of problems related to the reuse and recycling
29 of products containing polybrominated diphenyl ethers and methods of
30 management or disposal that will result in the lowest potential for
31 polybrominated diphenyl ethers entering the environment, the food
32 chain, or a person's body; and

33 (c) An examination of approaches to education under this chapter
34 that would assist retailers in identifying products containing
35 polybrominated diphenyl ethers in their inventory.

36 (2) The department and the department of health shall report the
37 findings and recommendations of the stakeholder process regarding the

1 ban on the use of decabromodiphenylether and the education and
2 assistance for retailers to the appropriate committees of the
3 legislature by December 15, 2005. The department and the department of
4 health shall report the findings and recommendations of the stakeholder
5 process regarding the ban or management of used and recycled products
6 to the appropriate committees of the legislature by June 30, 2006. The
7 preparation of the reports required in this subsection is subject to
8 available funding.

9 (3) The department and the department of health shall conduct a
10 review of the issues and the potential timeline for a requirement to
11 label brominated flame retardants sold in Washington. The review shall
12 include the type of information required on the label, including
13 guidance on proper waste management of the product in accordance with
14 state and federal law. The department and the department of health
15 shall report the findings and recommendations to the appropriate
16 committees of the legislature by December 15, 2006.

17 NEW SECTION. **Sec. 4.** (1) By January 1, 2006, the department of
18 general administration shall:

19 (a) Give priority and preference to the purchase of equipment,
20 supplies, and other products that do not contain polybrominated
21 diphenyl ethers; and

22 (b) Make available for purchase and use by all state agencies only
23 equipment, supplies, and other products that do not contain
24 polybrominated diphenyl ethers.

25 (2) The department of general administration shall, by January 1,
26 2006, revise its rules, policies, and guidelines to implement the
27 purposes of this chapter.

28 NEW SECTION. **Sec. 5.** A manufacturer of products containing
29 polybrominated diphenyl ethers in violation of this chapter is
30 punishable by a civil penalty not to exceed one thousand dollars for
31 each violation in the case of a first offense. Manufacturers who are
32 repeat violators are liable for a civil penalty not to exceed five
33 thousand dollars for each repeat offense. Penalties collected under
34 this section must be deposited in the state toxics control account
35 created in RCW 70.105D.070.

1 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
2 a new chapter in Title 70 RCW.

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