
SUBSTITUTE SENATE BILL 5515

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Regala, Esser, Kline, Poulsen, Rockefeller, Brandland, Fraser, Kohl-Welles, Brown, Keiser, Pridemore and Shin)

READ FIRST TIME 03/02/05.

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, 2006, 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 that contain polybrominated diphenyl ethers;

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

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

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

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

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

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

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

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

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

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

36 (6) The governor may, by executive order, allow for the
37 manufacture, sale, and distribution of products containing the
38 polybrominated diphenyl ether deca-bde between July 1, 2006, and July

1 1, 2008, if the governor finds that a technically feasible alternative
2 to the use of decabromodiphenylether is not available at reasonable
3 cost or that the potential harm to public health and the environment
4 directly posed by a technically feasible and available alternative is
5 greater than the potential harm posed by decabromodiphenylether.

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

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

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

22 (a) Establishing a timeline for a ban on the use of
23 decabromodiphenylether in transportation vehicles based on an
24 evaluation of the availability of safer alternatives;

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

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

33 (2) The department and the department of health shall report the
34 findings and recommendations of the stakeholder process regarding the
35 ban on the use of decabromodiphenylether and the education and
36 assistance for retailers to the appropriate committees of the
37 legislature by December 15, 2005. The department and the department of

1 health shall report the findings and recommendations of the stakeholder
2 process regarding the ban or management of used and recycled products
3 to the appropriate committees of the legislature by June 30, 2006. The
4 preparation of the reports required in this subsection is subject to
5 available funding.

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

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

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

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

22 (2) The department of general administration shall, by January 1,
23 2006, revise its rules, policies, and guidelines to implement the
24 purposes of this chapter.

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

33 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute

1 a new chapter in Title 70 RCW.

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