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SECOND SUBSTITUTE SENATE BILL 5515

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State of Washington

59th Legislature

2005 Regular Session

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

READ FIRST TIME 04/19/05.

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 noncombustible  
17 product containing 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) "Commercial decabromodiphenylether" means the chemical mixture  
6 of decabromodiphenylether, including associated polybrominated diphenyl  
7 ether impurities not intentionally added. No single polybrominated  
8 diphenyl ether impurity shall exceed one percent by mass of the mixture  
9 and the combination of all polybrominated diphenyl ether impurities  
10 shall not exceed four percent by mass of the mixture.

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

15 (7) "Used product" means any product that has been previously  
16 owned, purchased, or sold in commerce. "Used product" does not include  
17 any product manufactured after July 1, 2006.

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

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

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

28 (a) The manufacture, sale, repair, distribution, maintenance,  
29 refurbishment, or modification of any raw material or component part  
30 used in a transportation vehicle or any new transportation vehicle with  
31 component parts, including original parts and spare parts, containing  
32 commercial decabromodiphenylether;

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

35 (c) The sale of any used transportation vehicle parts, or new  
36 transportation vehicle parts manufactured prior to July 1, 2007, that  
37 contain polybrominated diphenyl ethers;

1 (d) The use of commercial decabromodiphenylether in the  
2 maintenance, refurbishment, or modification of transportation  
3 equipment;

4 (e) The manufacture, sale, repair, distribution, maintenance,  
5 refurbishment, or modification of equipment containing polybrominated  
6 diphenyl ethers and used primarily for military or federally funded  
7 space program applications. This exemption does not cover consumer-  
8 based goods with broad applicability;

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

11 (g) The manufacture, sale, or distribution of any new product or  
12 product component consisting of recycled or used materials containing  
13 commercial decabromodiphenylether. Products containing any new  
14 polybrominated diphenyl ethers do not qualify for this exemption.

15 (4) In addition to the specific exemptions authorized in this  
16 section, a manufacturer or user of a commercial decabromodiphenylether  
17 product may apply for an exemption for a specific use of commercial  
18 decabromodiphenylether by filing a written petition with the  
19 department. An exemption may be granted for a term not to exceed three  
20 years and may be renewed upon written application if the department  
21 finds that the specific use of commercial decabromodiphenylether  
22 continues to meet the criteria of this section and the manufacturer or  
23 other persons comply with the conditions of its original approval. The  
24 department may grant an exemption for a specified use of commercial  
25 decabromodiphenylether with or without conditions upon finding that the  
26 petitioner has demonstrated that:

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

29 (b) The potential harm to public health and the environment  
30 directly posed by a technically feasible and available alternative is  
31 greater than the potential harm posed by commercial  
32 decabromodiphenylether.

33 (5) A manufacturer or user of safety systems required by the  
34 federal aviation administration may apply for an exemption for a  
35 specific use of penta-bde or octa-bde by filing a written petition with  
36 the department. The exemption may be granted for a term not to exceed  
37 eighteen months and may be renewed upon written application if the  
38 department finds that the specific use of penta-bde or octa-bde

1 continues to meet the criteria of this section and the manufacturer or  
2 other persons comply with the conditions of its original approval. The  
3 department may grant an exemption for a specified use of penta-bde or  
4 octa-bde with or without conditions upon finding that the petitioner  
5 has demonstrated that:

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

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

11 (6) The governor may, by executive order, allow for the  
12 manufacture, sale, and distribution of products containing commercial  
13 decabromodiphenylether between July 1, 2007, and July 1, 2008, if the  
14 governor finds that a technically feasible alternative to the use of  
15 commercial decabromodiphenylether is not available at reasonable cost  
16 or that the potential harm to public health and the environment  
17 directly posed by a technically feasible and available alternative is  
18 greater than the potential harm posed by commercial  
19 decabromodiphenylether.

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

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

29 NEW SECTION. **Sec. 3.** (1) Subject to available funding, the  
30 department and the department of health shall conduct two separate  
31 stakeholder processes to develop a proposal for a ban or restrictions  
32 on the use of commercial decabromodiphenylether in transportation  
33 vehicles and to develop a proposal for the ban or management of used  
34 and recycled products containing polybrominated diphenyl ethers. These  
35 stakeholder processes shall include:

36 (a) Establishing a timeline for a ban or restrictions on the use of

1 commercial decabromodiphenylether in transportation vehicles based on  
2 an evaluation of the availability of safer alternatives;

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

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

11 (2) The department and the department of health shall report the  
12 findings and recommendations of the stakeholder process regarding the  
13 ban or restrictions on the use of commercial decabromodiphenylether and  
14 the education and assistance for retailers to the appropriate  
15 committees of the legislature by December 15, 2005. The department and  
16 the department of health shall report the findings and recommendations  
17 of the stakeholder process regarding the ban or management of used and  
18 recycled products to the appropriate committees of the legislature by  
19 June 30, 2006. The preparation of the reports required in this  
20 subsection is subject to available funding.

21 (3) The department and the department of health shall conduct a  
22 review of the issues and the potential timeline for a requirement to  
23 label brominated flame retardants sold in Washington. The review shall  
24 include the type of information required on the label, including  
25 guidance on proper waste management of the product in accordance with  
26 state and federal law. The department and the department of health  
27 shall report the findings and recommendations to the appropriate  
28 committees of the legislature by December 15, 2006.

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

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

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

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

4           NEW SECTION.   **Sec. 5.** A manufacturer of products containing  
5 polybrominated diphenyl ethers in violation of this chapter is  
6 punishable by a civil penalty not to exceed one thousand dollars for  
7 each violation in the case of a first offense. Manufacturers who are  
8 repeat violators are liable for a civil penalty not to exceed five  
9 thousand dollars for each repeat offense. Penalties collected under  
10 this section must be deposited in the state toxics control account  
11 created in RCW 70.105D.070.

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

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