

SHB 1024 - H AMD TO H AMD (H-2099.1/07) 19
By Representative Grant

FAILED 02/16/2007

1 Beginning on page 1, after line 2 of the amendment, strike all
2 material through "70 RCW." on page 8, line 22, and insert the
3 following:

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

6 (1) "Commercial decabromo diphenyl ether" or "commercial deca-bde"
7 means the chemical mixture of decabromo diphenyl ether, including
8 associated polybrominated diphenyl ether impurities not intentionally
9 added.

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

11 (3) "Electronic enclosure" means the plastic housing that encloses
12 the components of electronic products, including but not limited to
13 televisions and computers.

14 (4) "Manufacturer" means any person, firm, association,
15 partnership, corporation, governmental entity, organization, or joint
16 venture that produces a product containing polybrominated diphenyl
17 ethers. A manufacturer does not include a retailer who:

18 (a) Adds a private label brand or cobrands a product for sale; or

19 (b) Assembles components to create a single noncomestible product
20 based on an individual consumer preference.

21 (5) "Mattress" has the same meaning as defined by the United States
22 consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it
23 existed on the effective date of this act, and includes mattress pads,
24 mattress sets, box springs, futons, crib mattresses, and youth
25 mattresses.

26 (6) "Medical device" means an instrument, machine, implant, or
27 diagnostic test used to help diagnose a disease or other condition or
28 to cure, treat, or prevent disease.

29 (7) "Polybrominated diphenyl ethers" or "PBDEs" means chemical
30 forms that consist of diphenyl ethers bound with bromine atoms.

1 "Polybrominated diphenyl ethers" include, but are not limited to, the
2 three primary forms of the commercial mixtures known as pentabromo
3 diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and
4 decabromo diphenyl ether (deca-bde).

5 (8) "Residential upholstered furniture" means residential seating
6 products intended for indoor use in a home or other dwelling intended
7 for residential occupancy that consists in whole or in part of
8 resilient cushioning materials enclosed within a covering consisting of
9 fabric or related materials, if the resilient cushioning materials are
10 sold with the item of upholstered furniture and the upholstered
11 furniture is constructed with a contiguous upholstered seat and back
12 that may include arms.

13 (9) "Safer and technically feasible alternative" means an
14 alternative that:

15 (a) Is available at a cost and in sufficient quantity to permit the
16 manufacturer or user to maintain an economically viable product;

17 (b) Provides a level of ignition resistance equivalent to or
18 greater than that provided by the product it is intended to replace;

19 (c) Has been found to have a lower toxicity profile and less
20 environmental impact than the product it is intended to replace.

21 NEW SECTION. **Sec. 2.** The department is authorized to adopt rules
22 prohibiting the use of polybrominated diphenyl ethers subject to the
23 conditions of this chapter.

24 NEW SECTION. **Sec. 3.** (1) The department and the department of
25 health shall review risk assessments, scientific studies, and other
26 relevant findings regarding alternatives to the use of commercial deca-
27 bde in mattresses, residential upholstered furniture, televisions, and
28 computers.

29 (2) If the department and the department of health jointly find
30 that safer and technically feasible alternatives are available for any
31 of the uses under subsection (1) of this section, the department shall
32 convene the fire safety committee created in subsection (3) of this
33 section to determine if the identified alternatives meet applicable
34 fire safety standards.

35 (3) The fire safety committee is created for the exclusive purpose

1 of determining whether an alternative identified under subsection (2)
2 of this section meets applicable fire safety standards.

3 (a) A representative from the department shall chair the fire
4 safety committee and serve as an ex officio nonvoting member.

5 (b) A majority vote of the fire safety committee members
6 constitutes a finding that an alternative meets applicable fire safety
7 standards.

8 (c) The fire safety committee shall also include five voting
9 members, appointed by the governor, as follows:

10 (i) A representative of the office of the state director of fire
11 protection;

12 (ii) A representative of a statewide association representing the
13 interests of fire chiefs;

14 (iii) A representative of a statewide association representing the
15 interests of fire commissioners;

16 (iv) A representative of a statewide association representing the
17 interests of firefighters as defined in chapter 41.26 RCW; and

18 (v) A representative of a statewide association representing the
19 interests of volunteer firefighters.

20 (4) If a majority of the voting members of the fire safety
21 committee determines that an alternative identified under subsection
22 (2) of this section meets applicable fire safety standards, the
23 department shall seek public input on their findings, the findings of
24 the fire safety committee, and any evidence of the potential harm posed
25 by deca-bde. By December 15th of the year in which the finding is
26 made, the department must publish the information required by this
27 subsection in the Washington State Register and present it in a report
28 to the appropriate committees of the legislature.

29 (5) If the department adopts a rule to prohibit the use of
30 polybrominated diphenyl ethers pursuant to section 2 of this act, the
31 effective date of the prohibition shall be two years after the final
32 adoption of the rule.

33 (6) Before the effective date of the product prohibition, the
34 department shall prepare and distribute information to in-state
35 manufacturers and out-of-state manufacturers, to the maximum extent
36 practicable, to assist them in identifying products prohibited for
37 manufacture, sale, or distribution under this chapter.

1 NEW SECTION. **Sec. 4.** The department and the department of health
2 shall review risk assessments, scientific studies, and other relevant
3 findings regarding alternatives to the use of commercial deca-bde in
4 products not directly addressed in this chapter. If a flame retardant
5 that is safer and technically feasible becomes available, the
6 department shall convene the fire safety committee created in section
7 3 of this act. The fire safety committee shall proceed as required in
8 section 3(2) of this act to determine if the identified alternative
9 meets applicable fire safety standards. The department and the
10 department of health shall also review risk assessments, scientific
11 studies, and other findings regarding the potential effect of PBDEs in
12 the waste stream. By December 31st of the year in which the finding is
13 made, the department must publish the information required by this
14 section in the Washington State Register and present it in a report to
15 the appropriate committees of the legislature.

16 NEW SECTION. **Sec. 5.** (1) The department may issue a warning
17 letter to a manufacturer that produces, sells, or distributes
18 prohibited products in violation of this chapter. The department shall
19 offer information or other appropriate assistance to the manufacturer
20 in complying with this chapter. If, after one year, compliance is not
21 achieved, penalties may be assessed under subsection (2) of this
22 section.

23 (2) A manufacturer of products containing PBDEs in violation of
24 this chapter is punishable by a civil penalty not to exceed one
25 thousand dollars for each violation in the case of a first offense.
26 Manufacturers who are repeat violators are liable for a civil penalty
27 not to exceed five thousand dollars for each repeat offense. Penalties
28 collected under this section must be deposited in the state toxics
29 control account created in RCW 70.105D.070.

30 NEW SECTION. **Sec. 6.** The department shall adopt rules prohibiting
31 the use of pentabromo diphenyl ether and octabromo diphenyl ether with
32 appropriate exemptions to ensure continued public safety on or before
33 July 1, 2008.

34 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
35 a new chapter in Title 70 RCW."

EFFECT: Authorizes the Department of Ecology (DOE) to adopt rules prohibiting the use of polybrominated diphenyl ethers. Refines the role and composition of the fire safety committee. Requires public input on any evidence of the potential harm posed by deca-bde. Requires DOE to adopt rules prohibiting the use of pentabromo diphenyl ether and octabromo diphenyl ether with appropriate exemptions to ensure continued public safety on or before July 1, 2008. Modifies the enforcement requirements. Revises the definitions.

Removes the listing of deca-bde exemptions. Removes the ban on mattresses containing deca-bde. Removes the provisional ban for furniture, televisions, and computers that contain deca-bde. Removes the statement that nothing in the chapter restricts the transport or storage of PBDE products. Removes the requirement for manufacturers to notify persons that sell products about the chapter. Removes the requirement for DOE to assist state agencies to give priority and preference to the purchase of non-PBDE products. Removes provisions related to retailers. Removes the background discussion.

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