

SHB 1024 - H AMD  
By Representative Hunter

ADOPTED 02/16/2007

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** Polybrominated diphenyl ethers (PBDEs) have  
4 been used extensively as flame retardants in a large number of common  
5 household products for the past thirty years. Studies on animals show  
6 that PBDEs can impact the developing brain, affecting behavior and  
7 learning after birth and into adulthood, making exposure to fetuses and  
8 children a particular concern. Levels of PBDEs are increasing in  
9 people, and in the environment, particularly in North America. Because  
10 people can be exposed to these chemicals through house dust and indoor  
11 air as well as through food, it is important to phase out their use in  
12 common household products, provided that effective flame retardants  
13 that are safer and technically feasible are available at a reasonable  
14 cost.

15 NEW SECTION. **Sec. 2.** The definitions in this section apply  
16 throughout this chapter unless the context clearly requires otherwise.

17 (1) "Comestible" means edible.

18 (2) "Commercial decabromo diphenyl ether" or "commercial deca-bde"  
19 means the chemical mixture of decabromo diphenyl ether, including  
20 associated polybrominated diphenyl ether impurities not intentionally  
21 added.

22 (3) "Department" means the department of ecology.

23 (4) "Electronic enclosure" means the plastic housing that encloses  
24 the components of electronic products, including but not limited to  
25 televisions and computers.

26 (5) "Manufacturer" means any person, firm, association,  
27 partnership, corporation, governmental entity, organization, or joint  
28 venture that produces a product containing polybrominated diphenyl

1 ethers or an importer or domestic distributor of a noncombustible  
2 product containing polybrominated diphenyl ethers. A manufacturer does  
3 not include a retailer who:

4 (a) Adds a private label brand or cobrands a product for sale; or  
5 (b) Assembles components to create a single noncombustible product  
6 based on an individual consumer preference.

7 (6) "Mattress" has the same meaning as defined by the United States  
8 consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it  
9 existed on the effective date of this section, and includes mattress  
10 sets, box springs, futons, crib mattresses, and youth mattresses.  
11 "Mattress" includes mattress pads.

12 (7) "Medical device" means an instrument, machine, implant, or  
13 diagnostic test used to help diagnose a disease or other condition or  
14 to cure, treat, or prevent disease.

15 (8) "Polybrominated diphenyl ethers" or "PBDEs" means chemical  
16 forms that consist of diphenyl ethers bound with bromine atoms.  
17 Polybrominated diphenyl ethers include, but are not limited to, the  
18 three primary forms of the commercial mixtures known as pentabromo  
19 diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and  
20 decabromo diphenyl ether (deca-bde).

21 (9) "Residential upholstered furniture" means residential seating  
22 products intended for indoor use in a home or other dwelling intended  
23 for residential occupancy that consists in whole or in part of  
24 resilient cushioning materials enclosed within a covering consisting of  
25 fabric or related materials, if the resilient cushioning materials are  
26 sold with the item of upholstered furniture and the upholstered  
27 furniture is constructed with a contiguous upholstered seat and back  
28 that may include arms.

29 (10) "Retailer" means a person who offers a product for sale at  
30 retail through any means including, but not limited to, remote  
31 offerings such as sales outlets, catalogs, or the internet, but does  
32 not include a sale that is a wholesale transaction with a distributor  
33 or a retailer. A retailer does not include a person, firm,  
34 association, partnership, corporation, governmental entity,  
35 organization, or joint venture that both manufactures and sells a  
36 product at retail.

37 (11) "Technically feasible" means an alternative that is available

1 at a cost and in sufficient quantity to permit the manufacturer to  
2 produce an economically viable product.

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

7 NEW SECTION. **Sec. 3.** After January 1, 2008, no person may  
8 manufacture, knowingly sell, offer for sale, distribute for sale, or  
9 distribute for use in this state noncombustible products containing  
10 PBDEs. Exemptions from the prohibition in this section are limited to  
11 the following:

12 (1) Products containing deca-bde, except as provided in section 4  
13 of this act;

14 (2) The sale or distribution of any used transportation vehicle  
15 manufactured before January 1, 2008, with component parts containing  
16 PBDEs;

17 (3) The sale or distribution of any used transportation vehicle  
18 parts or new transportation vehicle parts manufactured before January  
19 1, 2008, that contain PBDEs;

20 (4) The manufacture, sale, repair, distribution, maintenance,  
21 refurbishment, or modification of equipment containing PBDEs and used  
22 primarily for military or federally funded space program applications.  
23 The exemption in this subsection (4) does not cover consumer-based  
24 goods with broad applicability;

25 (5) Federal aviation administration fire worthiness requirements  
26 and recommendations;

27 (6) The manufacture, sale, repair, distribution, maintenance,  
28 refurbishment, or modification of any new raw material or component  
29 part used in a transportation vehicle with component parts, including  
30 original spare parts, containing deca-bde;

31 (7) The use of commercial deca-bde in the maintenance,  
32 refurbishment, or modification of transportation equipment;

33 (8) The sale or distribution of any product containing PBDEs that  
34 has been previously owned, purchased, or sold in commerce, provided it  
35 was manufactured before the effective date of the prohibition;

36 (9) The manufacture, sale, or distribution of any new product or

1 product component consisting of recycled or used materials containing  
2 deca-bde;

3 (10) The sale or purchase of any previously owned product  
4 containing PBDEs made in casual or isolated sales as defined in RCW  
5 82.04.040 and to sales by nonprofit organizations;

6 (11) The manufacture, sale, or distribution of new carpet cushion  
7 made from recycled foam containing less than one-tenth of one percent  
8 penta-bde; and

9 (12) Medical devices.

10 NEW SECTION. **Sec. 4.** (1) Except as provided in section 10 of this  
11 act, no person may manufacture, knowingly sell, offer for sale,  
12 distribute for sale, or distribute for use in this state mattresses  
13 containing commercial deca-bde after January 1, 2008.

14 (2) Except as provided in section 10 of this act, no person may  
15 manufacture, knowingly sell, offer for sale, distribute for sale, or  
16 distribute for use in this state residential upholstered furniture that  
17 contains commercial deca-bde, or any television or computer that has an  
18 electronic enclosure that contains commercial deca-bde after the  
19 effective date established in subsection (3) of this section. This  
20 prohibition may not take effect until the department and the department  
21 of health identify that a safer and technically feasible alternative is  
22 available, and the fire safety committee, created in section 5 of this  
23 act, determines that the identified alternative meets applicable fire  
24 safety standards. The effective date of the prohibition must be  
25 established according to the following process:

26 (a) The department and the department of health shall review risk  
27 assessments, scientific studies, and other relevant findings regarding  
28 alternatives to the use of commercial deca-bde in residential  
29 upholstered furniture, televisions, and computers.

30 (b) If the department and the department of health jointly find  
31 that safer and technically feasible alternatives are available for any  
32 of these uses, the department shall convene the fire safety committee  
33 created in section 5 of this act to determine whether the identified  
34 alternatives meet applicable fire safety standards.

35 (c) By majority vote, the fire safety committee created in section  
36 5 of this act shall make a finding whether an alternative identified  
37 under (b) of this subsection meets applicable fire safety standards.

1 The fire safety committee shall report their finding to the state fire  
2 marshal. After reviewing the finding of the fire safety committee, the  
3 state fire marshal shall determine whether an alternative identified  
4 under (b) of this subsection meets applicable fire safety standards.  
5 The determination of the fire marshal must be based upon the finding of  
6 the fire safety committee. The state fire marshal shall report the  
7 determination to the department.

8 (d) The department shall seek public input on their findings, the  
9 findings of the fire safety committee, and the determination by the  
10 state fire marshal. The department shall publish these findings in the  
11 Washington State Register, and submit them in a report to the  
12 appropriate committees of the legislature. The department shall  
13 initially report these findings by December 31, 2008.

14 (3) The effective date of the prohibition is as follows:

15 (a) If the December 31, 2008, report required in subsection (2)(d)  
16 of this section finds that a safer and technically feasible alternative  
17 that meets applicable fire safety standards is available, the  
18 prohibition takes effect January 1, 2011;

19 (b) If the December 31, 2008, report required in subsection (2)(d)  
20 of this section does not find that a safer and technically feasible  
21 alternative that meets applicable fire safety standards is available,  
22 the prohibition does not take effect January 1, 2011. Beginning in  
23 2009, by December 31st of each year, the department shall review and  
24 report on alternatives as described in subsection (2) of this section.  
25 The prohibition in subsection (2) of this section takes effect two  
26 years after a report submitted to the legislature required under  
27 subsection (2)(d) of this section finds that a safer and technically  
28 feasible alternative that meets applicable fire safety standards is  
29 available.

30 NEW SECTION. **Sec. 5.** (1) The fire safety committee is created for  
31 the exclusive purpose of finding whether an alternative identified  
32 under section 4(2)(b) of this act meets applicable fire safety  
33 standards.

34 (2) A majority vote of the members of the fire safety committee  
35 constitutes a finding that an alternative meets applicable fire safety  
36 standards.

37 (3) The fire safety committee consists of the following members:

1 (a) A representative from the department, who shall chair the fire  
2 safety committee, and serve as an ex officio nonvoting member.

3 (b) Five voting members, appointed by the governor, as follows:

4 (i) A representative of the office of the state fire marshal;

5 (ii) A representative of a statewide association representing the  
6 interests of fire chiefs;

7 (iii) A representative of a statewide association representing the  
8 interests of fire commissioners;

9 (iv) A representative of a recognized statewide council, affiliated  
10 with an international association representing the interests of  
11 firefighters; and

12 (v) A representative of a statewide association representing the  
13 interests of volunteer firefighters.

14 NEW SECTION. **Sec. 6.** The department and the department of health  
15 shall review risk assessments, scientific studies, and other relevant  
16 findings regarding alternatives to the use of commercial deca-bde in  
17 products not directly addressed in this chapter. If a flame retardant  
18 that is safer and technically feasible becomes available, the  
19 department shall convene the fire safety committee created in section  
20 5 of this act. The fire safety committee and the state fire marshal  
21 shall proceed as required in section 4(2)(c) of this act to determine  
22 if the identified alternative meets applicable fire safety standards.  
23 The department and the department of health shall also review risk  
24 assessments, scientific studies, and other findings regarding the  
25 potential effect of PBDEs in the waste stream. By December 31st of the  
26 year in which the finding is made, the department must publish the  
27 information required by this subsection in the Washington State  
28 Register and present it in a report to the appropriate committees of  
29 the legislature.

30 NEW SECTION. **Sec. 7.** Nothing in this chapter restricts the  
31 ability of a manufacturer, importer, or distributor from transporting  
32 products containing PBDEs through the state or storing the products in  
33 the state for later distribution outside the state.

34 NEW SECTION. **Sec. 8.** A manufacturer of products containing PBDEs  
35 that are restricted under this chapter must notify persons that sell

1 the manufacturer's products in this state about the provisions of this  
2 chapter no less than ninety days prior to the effective date of the  
3 restrictions.

4 NEW SECTION. **Sec. 9.** The department shall assist state agencies  
5 to give priority and preference to the purchase of equipment, supplies,  
6 and other products that do not contain PBDEs.

7 NEW SECTION. **Sec. 10.** (1) Retailers who unknowingly sell products  
8 prohibited under section 3 or 4 of this act are not liable under this  
9 chapter.

10 (2) In-state retailers in possession of products on the date that  
11 restrictions on the sale of the products become effective under section  
12 3 or 4 of this act may exhaust their existing stock through sales to  
13 the public.

14 (3) The department must assist in-state retailers in identifying  
15 potential products containing PBDEs.

16 (4) If a retailer unknowingly possesses products that are  
17 prohibited for sale under section 3 or 4 of this act and the  
18 manufacturer does not recall the products as required under section  
19 11(2) of this act, the retailer may exhaust its existing stock through  
20 sales to the public. However, no additional prohibited stock may be  
21 sold or offered for sale.

22 NEW SECTION. **Sec. 11.** (1) Enforcement of this chapter must rely  
23 on notification and information exchange between the department and  
24 manufacturers. The department shall achieve compliance with this  
25 chapter using the following enforcement sequence:

26 (a) Before the effective date of the product prohibition in section  
27 3 or 4 of this act, the department shall prepare and distribute  
28 information to in-state manufacturers and out-of-state manufacturers,  
29 to the maximum extent practicable, to assist them in identifying  
30 products prohibited for manufacture, sale, or distribution under this  
31 chapter.

32 (b) The department may request a certificate of compliance from a  
33 manufacturer. A certificate of compliance attests that a  
34 manufacturer's product or products meets the requirements of this  
35 chapter.

1 (c) The department may issue a warning letter to a manufacturer  
2 that produces, sells, or distributes prohibited products in violation  
3 of this chapter. The department shall offer information or other  
4 appropriate assistance to the manufacturer in complying with this  
5 chapter. If, after one year, compliance is not achieved, penalties may  
6 be assessed under subsection (3) of this section.

7 (2) A manufacturer that knowingly produces, sells, or distributes  
8 a product prohibited from manufacture, sale, or distribution in this  
9 state under this chapter shall recall the product and reimburse the  
10 retailer or any other purchaser for the product and any applicable  
11 shipping and handling for returning the products.

12 (3) A manufacturer of products containing PBDEs in violation of  
13 this chapter is subject to a civil penalty not to exceed one thousand  
14 dollars for each violation in the case of a first offense.  
15 Manufacturers who are repeat violators are subject to a civil penalty  
16 not to exceed five thousand dollars for each repeat offense. Penalties  
17 collected under this section must be deposited in the state toxics  
18 control account created in RCW 70.105D.070.

19 NEW SECTION. **Sec. 12.** The department may adopt rules to fully  
20 implement this chapter.

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

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**ADOPTED 02/16/2007**

23 On page 1, line 2 of the title, after "ethers;" strike the  
24 remainder of the title and insert "adding a new chapter to Title 70  
25 RCW; and prescribing penalties."

EFFECT: Specifies that the chapter does not apply to the sale or



purchase of any previously owned product containing PBDEs made in casual or isolated sales and to sales by nonprofit organizations. Clarifies language that describes when a prohibition of deca-bde would take effect. Refines the role and composition of the fire safety committee. Requires public input on the findings of the Department of Ecology (DOE) and the fire safety committee. Requires that findings be published in the Washington State Register. Removes the requirement for DOE to grant an exemption by rule to allow for the manufacture, sale, or distribution of certain products prior to the prohibition's commencement. Requires DOE and the Department of Health to also review risk assessments, scientific studies, and other findings regarding the potential effect of PBDEs in the waste stream. Makes a technical change to substitute the word "prohibit" for the word "ban" throughout the document.

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