

FINAL BILL REPORT

ESHB 1024

C 65 L 07

Synopsis as Enacted

Brief Description: Phasing out the use of polybrominated diphenyl ethers.

Sponsors: By House Committee on Select Committee on Environmental Health (originally sponsored by Representatives Hunter, Priest, Kessler, B. Sullivan, Dickerson, Jarrett, Hasegawa, Campbell, Rodne, Rolfes, McDermott, McIntire, Chase, Green, Hudgins, Upthegrove, Quall, Conway, Clibborn, Sommers, Morrell, Sells, Kenney, Haigh, Cody, Hunt, Lantz, McCoy, Appleton, Pettigrew, Schual-Berke, Roberts, Fromhold, Takko, Simpson, P. Sullivan, Lovick, Flannigan, Moeller, Miloscia, Williams, Blake, O'Brien, Linville, Wood, Goodman, Seaquist, Springer, Ericks, Kagi, Darneille, Dunshee, Strow, Pedersen, Eickmeyer, McCune and Ormsby; by request of Department of Ecology).

House Select Committee on Environmental Health
Senate Committee on Water, Energy & Telecommunications

Background:

Polybrominated diphenyl ethers (PBDEs) are members of a broader class of brominated chemicals used as flame retardants. They are often added to products such as computers, televisions, furniture, and carpet pads to reduce the risk of fire if a product is exposed to heat or flame. There are three main types of PBDEs used in consumer products: Penta-BDE, Octa-BDE, and Deca-BDE. Polybrominated diphenyl ethers have been measured in blood, fat, and breast milk in people around the world.

In general, animal toxicity studies indicate that the PBDEs in Penta-BDE commercial products are more toxic than PBDEs in Octa- or Deca-BDE. Deca-BDE is the least toxic, but several new studies indicate that Deca-BDE is likely to degrade into the more toxic PBDEs found in Penta- or Octa-BDE products.

On January 28, 2004, Governor Locke signed Executive Order 04-01 directing state agencies to take certain actions regarding persistent toxic chemicals. The Department of Ecology (DOE), in consultation with the Department of Health (DOH), was directed to move forward immediately in developing a chemical action plan that identifies actions the state may take to reduce threats posed by PBDEs, and to recommend actions by December 1, 2004.

On December 31, 2004, the DOE and the DOH released the *Washington State Polybrominated Diphenyl Ether (PBDE) Chemical Action Plan: Interim Plan* (Interim Plan). The Interim Plan recommended that:

- the Legislature should prohibit the manufacture, distribution, or sale of new products containing Penta-BDE and Octa-BDE by July 2006;

- the prohibition may include an exemption for new products that contain recycled material from products containing Penta-BDE and Octa-BDE;
- the DOE and the DOH should develop a proposal for a prohibition on appropriate products containing Deca-BDE by December 2005;
- by July 2006 the DOE should establish appropriate disposal and recycling practices for products containing PBDEs;
- restrictions should apply to the state's purchase of PBDE products;
- educational materials should be developed; and
- the Department of Labor and Industries should develop ways for employers and employees to minimize exposure to PBDEs.

In January 2006, the agencies issued a Final PBDE Chemical Action Plan (Chemical Action Plan) recommending that the Legislature prohibit Penta-BDE and Octa-BDE. The sole U.S. manufacturer of Penta-BDE and Octa-BDE voluntarily ceased producing the chemicals in December 2004, and production of Penta-BDE and Octa-BDE has ended in most international markets.

The Chemical Action Plan further recommended that use of Deca-BDE be prohibited, provided that safer, effective, affordable alternatives are identified, or upon finding additional evidence of harm caused by Deca-BDE.

Summary:

After January 1, 2008, no person may manufacture, knowingly sell, or distribute for in-state use non-edible products containing polybrominated diphenyl ethers (PBDEs).

Exceptions to this prohibition include:

- products containing Deca-BDE, except for mattresses (prohibition effective January 1, 2008), and except for residential upholstered furniture, and televisions or computers with electronic enclosures containing commercial Deca-BDE (prohibition effective January 1, 2011, if a safer and technically feasible alternative that meets applicable fire safety standards is available);
- used transportation vehicles and used or new parts manufactured before January 1, 2008, containing PBDEs;
- equipment containing PBDEs used primarily for military or federally funded space program applications;
- Federal Aviation Administration fire worthiness requirements and recommendations;
- new raw material or parts used in transportation vehicles containing Deca-BDE;
- use of Deca-BDE in transportation equipment;
- sale or distribution of any used product containing PBDEs;
- any new product with recycled or used materials containing Deca-BDE;
- sale or purchase of any previously owned product containing PBDEs made in casual or isolated sales and to sales by nonprofit organizations;
- new carpet cushion made from recycled foam with less than one-tenth of 1 percent Penta-BDE; and
- medical devices.

The prohibition does not restrict the ability of a manufacturer, importer, or distributor from transporting products containing PBDEs through the state, or storing products for later distribution outside the state.

An assessment process is established to identify alternatives to Deca-BDE products. Steps in the assessment process include:

- the Department of Ecology (DOE) and the Department of Health (DOH) first identify a safer and technically feasible alternative to Deca-BDE products;
- the newly created Fire Safety Committee reports its finding to the State Fire Marshal on whether the identified alternative meets applicable fire safety standards;
- a determination is made by the State Fire Marshal on whether the alternative meets applicable fire safety standards;
- public input is sought;
- findings are published in the Washington State Register;
- a report is submitted to the Legislature by the DOE; and
- two years after the report is submitted, the prohibition takes effect.

The prohibition may not take effect for Deca-BDE in upholstered furniture, televisions, or computers until the DOE and the DOH identify that a safer and technically feasible alternative is available, and the State Fire Marshal determines that the alternative meets applicable fire safety standards.

The Fire Safety Committee is created for the exclusive purpose of finding whether a potential alternative meets applicable fire safety standards. It consists of a representative from the DOE as an ex officio nonvoting member that chairs the committee and five voting members, appointed by the Governor, representing:

- the Office of the State Fire Marshal;
- a statewide association representing the interests of fire chiefs;
- a statewide association representing the interests of fire commissioners;
- a recognized statewide council, affiliated with an international association representing the interests of firefighters; and
- a statewide association representing the interests of volunteer firefighters.

The DOE and the DOH are directed to review risk assessments, scientific studies, and other relevant findings on alternatives to the use of commercial Deca-BDE in products not directly addressed in the act and on the potential effect of PBDEs in the waste stream. If a safer and technically feasible alternative becomes available, the DOE must convene the Fire Safety Committee to make a finding on whether the alternative meets applicable fire safety standards. If it is found that the alternative meets applicable fire safety standards, the State Fire Marshal must then make a determination on whether the alternative meets applicable fire safety standards. Findings must be published in the Washington State Register and reported to the Legislature by December 31 of the year they are made.

The DOE is to assist state agencies to give priority and preference to purchases that do not contain PBDEs.

The DOE is to assist manufacturers and retailers to achieve compliance. Retailers who unknowingly sell prohibited products are not liable for violations. Manufacturers must notify sellers about the provisions in the act no less than 90 days prior to the effective date of the restrictions. A manufacturer that knowingly produces, sells, or distributes a product prohibited from manufacture, sale, or distribution must recall the product and reimburse the retailer or other purchaser for the product and any shipping and handling.

Enforcement must rely on notification and information exchange between the DOE and manufacturers. A warning letter may be issued to a manufacturer that violates provisions of the act. If after one year compliance is not achieved, penalties may be assessed.

Manufacturers in violation of provisions in the act are subject to civil penalties of up to \$1,000 for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty up to \$5,000 for each repeat offense. Penalties collected must be deposited in the State Toxic Control Account.

Votes on Final Passage:

House	71	24
Senate	41	8

Effective: July 22, 2007