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**ENGROSSED SUBSTITUTE HOUSE BILL 1024**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**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)

READ FIRST TIME 01/16/07.

1       AN ACT Relating to phasing out the use of polybrominated diphenyl  
2 ethers; adding a new chapter to Title 70 RCW; and prescribing  
3 penalties.

4       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

- 1 (1) "Comestible" means edible.
- 2 (2) "Commercial decabromo diphenyl ether" or "commercial deca-bde"  
3 means the chemical mixture of decabromo diphenyl ether, including  
4 associated polybrominated diphenyl ether impurities not intentionally  
5 added.
- 6 (3) "Department" means the department of ecology.
- 7 (4) "Electronic enclosure" means the plastic housing that encloses  
8 the components of electronic products, including but not limited to  
9 televisions and computers.
- 10 (5) "Manufacturer" means any person, firm, association,  
11 partnership, corporation, governmental entity, organization, or joint  
12 venture that produces a product containing polybrominated diphenyl  
13 ethers or an importer or domestic distributor of a noncomestible  
14 product containing polybrominated diphenyl ethers. A manufacturer does  
15 not include a retailer who:
- 16 (a) Adds a private label brand or cobrands a product for sale; or  
17 (b) Assembles components to create a single noncomestible product  
18 based on an individual consumer preference.
- 19 (6) "Mattress" has the same meaning as defined by the United States  
20 consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it  
21 existed on the effective date of this section, and includes mattress  
22 sets, box springs, futons, crib mattresses, and youth mattresses.  
23 "Mattress" includes mattress pads.
- 24 (7) "Medical device" means an instrument, machine, implant, or  
25 diagnostic test used to help diagnose a disease or other condition or  
26 to cure, treat, or prevent disease.
- 27 (8) "Polybrominated diphenyl ethers" or "PBDEs" means chemical  
28 forms that consist of diphenyl ethers bound with bromine atoms.  
29 Polybrominated diphenyl ethers include, but are not limited to, the  
30 three primary forms of the commercial mixtures known as pentabromo  
31 diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and  
32 decabromo diphenyl ether (deca-bde).
- 33 (9) "Residential upholstered furniture" means residential seating  
34 products intended for indoor use in a home or other dwelling intended  
35 for residential occupancy that consists in whole or in part of  
36 resilient cushioning materials enclosed within a covering consisting of  
37 fabric or related materials, if the resilient cushioning materials are

1 sold with the item of upholstered furniture and the upholstered  
2 furniture is constructed with a contiguous upholstered seat and back  
3 that may include arms.

4 (10) "Retailer" means a person who offers a product for sale at  
5 retail through any means including, but not limited to, remote  
6 offerings such as sales outlets, catalogs, or the internet, but does  
7 not include a sale that is a wholesale transaction with a distributor  
8 or a retailer. A retailer does not include a person, firm,  
9 association, partnership, corporation, governmental entity,  
10 organization, or joint venture that both manufactures and sells a  
11 product at retail.

12 (11) "Technically feasible" means an alternative that is available  
13 at a cost and in sufficient quantity to permit the manufacturer to  
14 produce an economically viable product.

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

19 NEW SECTION. **Sec. 3.** After January 1, 2008, no person may  
20 manufacture, knowingly sell, offer for sale, distribute for sale, or  
21 distribute for use in this state noncomestible products containing  
22 PDBEs. Exemptions from the prohibition in this section are limited to  
23 the following:

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

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

29 (3) The sale or distribution of any used transportation vehicle  
30 parts or new transportation vehicle parts manufactured before January  
31 1, 2008, that contain PBDEs;

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

- 1 (5) Federal aviation administration fire worthiness requirements  
2 and recommendations;
- 3 (6) The manufacture, sale, repair, distribution, maintenance,  
4 refurbishment, or modification of any new raw material or component  
5 part used in a transportation vehicle with component parts, including  
6 original spare parts, containing deca-bde;
- 7 (7) The use of commercial deca-bde in the maintenance,  
8 refurbishment, or modification of transportation equipment;
- 9 (8) The sale or distribution of any product containing PBDEs that  
10 has been previously owned, purchased, or sold in commerce, provided it  
11 was manufactured before the effective date of the prohibition;
- 12 (9) The manufacture, sale, or distribution of any new product or  
13 product component consisting of recycled or used materials containing  
14 deca-bde;
- 15 (10) The sale or purchase of any previously owned product  
16 containing PBDEs made in casual or isolated sales as defined in RCW  
17 82.04.040 and to sales by nonprofit organizations;
- 18 (11) The manufacture, sale, or distribution of new carpet cushion  
19 made from recycled foam containing less than one-tenth of one percent  
20 penta-bde; and
- 21 (12) Medical devices.

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

26 (2) Except as provided in section 10 of this act, no person may  
27 manufacture, knowingly sell, offer for sale, distribute for sale, or  
28 distribute for use in this state residential upholstered furniture that  
29 contains commercial deca-bde, or any television or computer that has an  
30 electronic enclosure that contains commercial deca-bde after the  
31 effective date established in subsection (3) of this section. This  
32 prohibition may not take effect until the department and the department  
33 of health identify that a safer and technically feasible alternative is  
34 available, and the fire safety committee, created in section 5 of this  
35 act, determines that the identified alternative meets applicable fire  
36 safety standards. The effective date of the prohibition must be  
37 established according to the following process:

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

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

10 (c) By majority vote, the fire safety committee created in section  
11 5 of this act shall make a finding whether an alternative identified  
12 under (b) of this subsection meets applicable fire safety standards.  
13 The fire safety committee shall report their finding to the state fire  
14 marshal. After reviewing the finding of the fire safety committee, the  
15 state fire marshal shall determine whether an alternative identified  
16 under (b) of this subsection meets applicable fire safety standards.  
17 The determination of the fire marshal must be based upon the finding of  
18 the fire safety committee. The state fire marshal shall report the  
19 determination to the department.

20 (d) The department shall seek public input on their findings, the  
21 findings of the fire safety committee, and the determination by the  
22 state fire marshal. The department shall publish these findings in the  
23 Washington State Register, and submit them in a report to the  
24 appropriate committees of the legislature. The department shall  
25 initially report these findings by December 31, 2008.

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

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

31 (b) If the December 31, 2008, report required in subsection (2)(d)  
32 of this section does not find that a safer and technically feasible  
33 alternative that meets applicable fire safety standards is available,  
34 the prohibition does not take effect January 1, 2011. Beginning in  
35 2009, by December 31st of each year, the department shall review and  
36 report on alternatives as described in subsection (2) of this section.  
37 The prohibition in subsection (2) of this section takes effect two  
38 years after a report submitted to the legislature required under

1 subsection (2)(d) of this section finds that a safer and technically  
2 feasible alternative that meets applicable fire safety standards is  
3 available.

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

8 (2) A majority vote of the members of the fire safety committee  
9 constitutes a finding that an alternative meets applicable fire safety  
10 standards.

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

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

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

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

16 (ii) A representative of a statewide association representing the  
17 interests of fire chiefs;

18 (iii) A representative of a statewide association representing the  
19 interests of fire commissioners;

20 (iv) A representative of a recognized statewide council, affiliated  
21 with an international association representing the interests of  
22 firefighters; and

23 (v) A representative of a statewide association representing the  
24 interests of volunteer firefighters.

25 NEW SECTION. **Sec. 6.** The department and the department of health  
26 shall review risk assessments, scientific studies, and other relevant  
27 findings regarding alternatives to the use of commercial deca-bde in  
28 products not directly addressed in this chapter. If a flame retardant  
29 that is safer and technically feasible becomes available, the  
30 department shall convene the fire safety committee created in section  
31 5 of this act. The fire safety committee and the state fire marshal  
32 shall proceed as required in section 4(2)(c) of this act to determine  
33 if the identified alternative meets applicable fire safety standards.  
34 The department and the department of health shall also review risk  
35 assessments, scientific studies, and other findings regarding the  
36 potential effect of PBDEs in the waste stream. By December 31st of the

1 year in which the finding is made, the department must publish the  
2 information required by this subsection in the Washington State  
3 Register and present it in a report to the appropriate committees of  
4 the legislature.

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

9 NEW SECTION. **Sec. 8.** A manufacturer of products containing PBDEs  
10 that are restricted under this chapter must notify persons that sell  
11 the manufacturer's products in this state about the provisions of this  
12 chapter no less than ninety days prior to the effective date of the  
13 restrictions.

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

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

20 (2) In-state retailers in possession of products on the date that  
21 restrictions on the sale of the products become effective under section  
22 3 or 4 of this act may exhaust their existing stock through sales to  
23 the public.

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

26 (4) If a retailer unknowingly possesses products that are  
27 prohibited for sale under section 3 or 4 of this act and the  
28 manufacturer does not recall the products as required under section  
29 11(2) of this act, the retailer may exhaust its existing stock through  
30 sales to the public. However, no additional prohibited stock may be  
31 sold or offered for sale.

32 NEW SECTION. **Sec. 11.** (1) Enforcement of this chapter must rely

1 on notification and information exchange between the department and  
2 manufacturers. The department shall achieve compliance with this  
3 chapter using the following enforcement sequence:

4 (a) Before the effective date of the product prohibition in section  
5 3 or 4 of this act, the department shall prepare and distribute  
6 information to in-state manufacturers and out-of-state manufacturers,  
7 to the maximum extent practicable, to assist them in identifying  
8 products prohibited for manufacture, sale, or distribution under this  
9 chapter.

10 (b) The department may request a certificate of compliance from a  
11 manufacturer. A certificate of compliance attests that a  
12 manufacturer's product or products meets the requirements of this  
13 chapter.

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

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

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

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

34 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act



1 constitute a new chapter in Title 70 RCW.

--- **END** ---