
SENATE BILL 5181

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By Senators Nelson, Billig, Hargrove, Harper, Schlicher, Kline, Frockt, Chase, Hasegawa, Tom, Mullet, Fraser, Rolfes, Litzow, McAuliffe, Keiser, Murray, Ranker, and Shin

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1 AN ACT Relating to flame retardants; amending RCW 70.76.010,
2 70.76.070, 70.76.100, and 70.240.030; and adding new sections to
3 chapter 70.76 RCW.

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

5 **Sec. 1.** RCW 70.76.010 and 2007 c 65 s 2 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Comestible" means edible.

10 (2) "Commercial decabromo diphenyl ether" or "commercial deca-bde"
11 means the chemical mixture of decabromo diphenyl ether, including
12 associated polybrominated diphenyl ether impurities not intentionally
13 added.

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

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

18 (5) "Manufacturer" means any person, firm, association,

1 partnership, corporation, governmental entity, organization, or joint
2 venture that produces a product containing:

3 (a) A flame retardant or an importer or domestic distributor of a
4 product containing a flame retardant; or

5 (b) Polybrominated diphenyl ethers or an importer or domestic
6 distributor of a noncombustible product containing polybrominated
7 diphenyl ethers. A manufacturer does not include a retailer who:

8 ~~((a))~~ (i) Adds a private label brand or cobrands a product for
9 sale; or

10 ~~((b))~~ (ii) Assembles components to create a single noncombustible
11 product based on an individual consumer preference.

12 (6) "Mattress" has the same meaning as defined by the United States
13 consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it
14 existed on July 22, 2007, and includes mattress sets, box springs,
15 futons, crib mattresses, and youth mattresses. "Mattress" includes
16 mattress pads.

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

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

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

34 (10) "Retailer" means a person who offers a product for sale at
35 retail through any means including, but not limited to, remote
36 offerings such as sales outlets, catalogs, or the internet, but does
37 not include a sale that is a wholesale transaction with a distributor
38 or a retailer. A retailer does not include a person, firm,

1 association, partnership, corporation, governmental entity,
2 organization, or joint venture that both manufactures and sells a
3 product at retail.

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

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

11 (13) "TRIS" means either TDCPP (tris(1,3-dichloro-2-
12 propyl)phosphate), chemical abstracts service number 13674-87-8, as of
13 the effective date of this section, or TCEP (tris(2-chloroethyl)
14 phosphate), chemical abstracts service number 115-96-8, as of the
15 effective date of this section, or both.

16 (14) "Alternative" means a substitute process, product, material,
17 chemical, strategy, or combination of these that serve a functionally
18 equivalent purpose to a chemical in a children's product or residential
19 upholstered furniture.

20 (15) "Flame retardant" means a chemical or chemicals intentionally
21 added to a product or product component where the functional use is to
22 inhibit or resist the spread of fire.

23 (16) "Product component" means a uniquely identifiable material or
24 coating, including ink or dye, that is intended to be included as part
25 of a finished product.

26 (17) "Greenscreen" means a method for comparative chemical hazard
27 assessment, version 1.2 as of 2012 and benchmarks version 1.2 as of
28 October 2011, developed by clean production action.

29 NEW SECTION. Sec. 2. A new section is added to chapter 70.76 RCW
30 to read as follows:

31 Beginning July 1, 2014, no manufacturer, wholesaler, or retailer
32 may manufacture, knowingly sell, offer for sale, distribute for sale,
33 or distribute for use in this state residential upholstered furniture
34 or children's products, as regulated under chapter 70.240 RCW,
35 containing TRIS in amounts greater than fifty parts per million in any
36 product component.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.76 RCW
2 to read as follows:

3 Beginning July 1, 2015, no manufacturer, wholesaler, or retailer
4 may manufacture, knowingly sell, offer for sale, distribute for sale or
5 distribute for use in this state, residential upholstered furniture or
6 children's products, as regulated under chapter 70.240 RCW, containing
7 a flame retardant in amounts greater than fifty parts per million
8 identified by the department as a high priority chemical of high
9 concern for children as required under RCW 70.240.030.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.76 RCW
11 to read as follows:

12 (1) Except for TRIS or PBDEs restricted under this chapter, the
13 department shall grant an exemption to restrictions under section 3 of
14 this act for a length of time requested by the manufacturer, but not to
15 exceed two years, if the manufacturer of residential upholstered
16 furniture or children's products demonstrates that there is no
17 technically feasible safer alternative to meet applicable Washington
18 state or federal fire safety standards.

19 (2) A manufacturer of residential upholstered furniture or
20 children's products may request an exemption to the restrictions of
21 using high priority chemicals of high concern for children when the
22 manufacturer demonstrates there is no technically feasible safer
23 alternative to meet applicable Washington state or federal fire safety
24 standards. A technically feasible safer alternative may not include
25 any unspecified or benchmark 1 chemicals as identified by greenscreen.
26 The request for exemption must include:

27 (a) Information on the specific chemical, including the chemical
28 abstracts service number, and nonchemical alternatives considered in
29 lieu of the use of the high priority chemical of high concern for
30 children;

31 (b) A description of why the high priority chemical of high concern
32 for children must be used;

33 (c) A description of why there is no technically feasible
34 alternative to meet fire safety standards; and

35 (d) An evaluation of alternatives using greenscreen.

36 (3) The department shall provide technical assistance to

1 manufacturers requesting assistance with completing an evaluation of
2 alternatives as required under subsection (2)(d) of this section.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.76 RCW
4 to read as follows:

5 (1) Beginning July 1, 2015, at the request of the department, a
6 manufacturer of residential upholstered furniture or children's
7 products shall, within sixty days of the request, submit a certificate
8 of compliance stating that the product or product component meets the
9 requirements of section 3 of this act. A manufacturer required under
10 any other state statute to provide a certificate of compliance may
11 develop one certificate containing all required information.

12 (2) The certificate of compliance must include the following:

13 (a) Chemical names and chemical abstracts service registry numbers
14 for all chemicals present in the product or product component that act
15 as flame retardants;

16 (b) The specific basis upon which an exemption, if applicable, is
17 claimed; and

18 (c) The signature of an authorized official of the manufacturing
19 company.

20 (3) A manufacturer completing a certificate of compliance shall
21 keep a copy of the certificate on file for as long as the product or
22 product component contains flame retardants. If a manufacturer ceases
23 to sell or distribute products or product components containing flame
24 retardants, the manufacturer must retain the certificate on file for
25 three years from the date of the last sale or distribution.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.76 RCW
27 to read as follows:

28 (1) In submitting data required by this chapter, a manufacturer of
29 residential upholstered furniture or children's products may:

30 (a) Mark clearly any portions that, in the manufacturer's opinion,
31 are trade secrets or commercial or financial information; and

32 (b) Submit these marked materials separately from other material
33 required to be submitted under section 4 or 5 of this act.

34 (2) Upon the director's determination that the information is
35 privileged or confidential, the department must follow procedures for
36 release of information as provided under RCW 43.21A.160.

1 **Sec. 7.** RCW 70.76.070 and 2007 c 65 s 8 are each amended to read
2 as follows:

3 A manufacturer of products containing PBDEs (~~(that are)~~), TRIS, or
4 flame retardants restricted under this chapter must notify persons that
5 sell the manufacturer's products in this state about the provisions of
6 this chapter no less than ninety days prior to the effective date of
7 the restrictions.

8 **Sec. 8.** RCW 70.76.100 and 2007 c 65 s 11 are each amended to read
9 as follows:

10 (1) Enforcement of this chapter must rely on notification and
11 information exchange between the department and manufacturers. The
12 department shall achieve compliance with this chapter using the
13 following enforcement sequence: (~~(a)~~) Before the effective date of
14 the product prohibition in RCW 70.76.020 (~~(or)~~), 70.76.030, or section
15 2 of this act, the department shall prepare and distribute information
16 to in-state manufacturers and out-of-state manufacturers, to the
17 maximum extent practicable, to assist them in identifying products
18 prohibited for manufacture, sale, or distribution under this chapter.

19 (~~(b) The department may request a certificate of compliance from~~
20 ~~a manufacturer. A certificate of compliance attests that a~~
21 ~~manufacturer's product or products meets the requirements of this~~
22 ~~chapter.)) (2)(a) Beginning January 1, 2015, the department may require
23 a manufacturer to provide a certificate of compliance stating the
24 product is in compliance with the requirements of this chapter.~~

25 (b) The department must provide manufacturers sixty days to submit
26 a certificate of compliance.

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

33 (~~(2)~~) (3) A manufacturer that knowingly produces, sells, or
34 distributes a product prohibited from manufacture, sale, or
35 distribution in this state under this chapter shall recall the product
36 and reimburse the retailer or any other purchaser for the product and
37 any applicable shipping and handling for returning the products.

1 ~~((3))~~ (4) A manufacturer of products containing ~~((PBDEs))~~ flame
2 retardants in violation of this chapter is subject to a civil penalty
3 not to exceed one thousand dollars for each violation in the case of a
4 first offense. Manufacturers who are repeat violators are subject to
5 a civil penalty not to exceed five thousand dollars for each repeat
6 offense. Penalties collected under this section must be deposited in
7 the state toxics control account created in RCW 70.105D.070.

8 (5) Retailers who unknowingly sell products that are restricted
9 from sale under this chapter are not liable under this chapter.

10 (6) The sale or purchase of any previously owned product containing
11 a chemical restricted under this chapter made in casual or isolated
12 sales as defined in RCW 82.04.040, or by a nonprofit organization, is
13 exempt from sections 2 and 3 of this act.

14 **Sec. 9.** RCW 70.240.030 and 2008 c 288 s 4 are each amended to read
15 as follows:

16 ~~((1) By January 1, 2009,)~~ The department, in consultation with
17 the department of health, shall identify high priority chemicals that
18 are of high concern for children after considering a child's or
19 developing fetus's potential for exposure to each chemical. ~~((In~~
20 ~~identifying the chemicals,))~~ The department may add chemicals to or
21 delete chemicals from the list of high priority chemicals of high
22 concern for children using the procedures of chapter 34.05 RCW. When
23 making a determination regarding a chemical, the department shall
24 include chemicals that meet one or more of the following criteria:

25 ~~((a))~~ (1) The chemical has been found through biomonitoring
26 studies that demonstrate the presence of the chemical in human
27 umbilical cord blood, human breast milk, human urine, or other bodily
28 tissues or fluids;

29 ~~((b))~~ (2) The chemical has been found through sampling and
30 analysis to be present in household dust, indoor air, drinking water,
31 or elsewhere in the home environment; or

32 ~~((c))~~ (3) The chemical has been added to or is present in a
33 consumer product used or present in the home.

34 ~~((2) By January 1, 2009, the department shall identify children's~~
35 ~~products or product categories that may contain chemicals identified~~
36 ~~under subsection (1) of this section.~~

1 ~~(3) By January 1, 2009, the department shall submit a report on the~~
2 ~~chemicals of high concern to children and the children's products or~~
3 ~~product categories they identify to the appropriate standing committees~~
4 ~~of the legislature. The report shall include policy options for~~
5 ~~addressing children's products that contain chemicals of high concern~~
6 ~~for children, including recommendations for additional ways to inform~~
7 ~~consumers about toxic chemicals in products, such as labeling.)~~)

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