

ESHB 2545 - S AMD 730

By Senator Ericksen

ADOPTED 03/04/2016

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

3 "Sec. 1. RCW 70.240.010 and 2008 c 288 s 2 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "Children's cosmetics" means cosmetics that are made for,  
8 marketed for use by, or marketed to children under the age of twelve.  
9 "Children's cosmetics" includes cosmetics that meet any of the  
10 following conditions:

11 (a) Represented in its packaging, display, or advertising as  
12 appropriate for use by children;

13 (b) Sold in conjunction with, attached to, or packaged together  
14 with other products that are packaged, displayed, or advertised as  
15 appropriate for use by children; or

16 (c) Sold in any of the following:

17 (i) Retail store, catalogue, or online web site, in which a  
18 person exclusively offers for sale products that are packaged,  
19 displayed, or advertised as appropriate for use by children; or

20 (ii) A discrete portion of a retail store, catalogue, or online  
21 web site, in which a person offers for sale products that are  
22 packaged, displayed, or advertised as appropriate for use by  
23 children.

24 (2) "Children's jewelry" means jewelry that is made for, marketed  
25 for use by, or marketed to children under the age of twelve.  
26 "Children's jewelry" includes jewelry that meets any of the following  
27 conditions:

28 (a) Represented in its packaging, display, or advertising as  
29 appropriate for use by children under the age of twelve;

30 (b) Sold in conjunction with, attached to, or packaged together  
31 with other products that are packaged, displayed, or advertised as  
32 appropriate for use by children;

- 1 (c) Sized for children and not intended for use by adults; or  
2 (d) Sold in any of the following:  
3 (i) A vending machine;  
4 (ii) Retail store, catalogue, or online web site, in which a  
5 person exclusively offers for sale products that are packaged,  
6 displayed, or advertised as appropriate for use by children; or  
7 (iii) A discrete portion of a retail store, catalogue, or online  
8 web site, in which a person offers for sale products that are  
9 packaged, displayed, or advertised as appropriate for use by  
10 children.
- 11 (3)(a) "Children's product" includes any of the following:  
12 (i) Toys;  
13 (ii) Children's cosmetics;  
14 (iii) Children's jewelry;  
15 (iv) A product designed or intended by the manufacturer to help a  
16 child with sucking or teething, to facilitate sleep, relaxation, or  
17 the feeding of a child, or to be worn as clothing by children; or  
18 (v) (~~Child car seats~~) Portable infant or child safety seat  
19 designed to attach to an automobile seat.
- 20 (b) "Children's product" does not include the following:  
21 (i) Batteries;  
22 (ii) Slings and catapults;  
23 (iii) Sets of darts with metallic points;  
24 (iv) Toy steam engines;  
25 (v) Bicycles and tricycles;  
26 (vi) Video toys that can be connected to a video screen and are  
27 operated at a nominal voltage exceeding twenty-four volts;  
28 (vii) Chemistry sets;  
29 (viii) Consumer and children's electronic products, including but  
30 not limited to personal computers, audio and video equipment,  
31 calculators, wireless phones, game consoles, and hand-held devices  
32 incorporating a video screen, used to access interactive software and  
33 their associated peripherals;  
34 (ix) Interactive software, intended for leisure and  
35 entertainment, such as computer games, and their storage media, such  
36 as compact disks;  
37 (x) BB guns, pellet guns, and air rifles;  
38 (xi) Snow sporting equipment, including skis, poles, boots, snow  
39 boards, sleds, and bindings;

- 1 (xii) Sporting equipment, including, but not limited to bats,  
2 balls, gloves, sticks, pucks, and pads;  
3 (xiii) Roller skates;  
4 (xiv) Scooters;  
5 (xv) Model rockets;  
6 (xvi) Athletic shoes with cleats or spikes; and  
7 (xvii) Pocket knives and multitools.

8 (4) "Cosmetics" includes articles intended to be rubbed, poured,  
9 sprinkled, or sprayed on, introduced into, or otherwise applied to  
10 the human body or any part thereof for cleansing, beautifying,  
11 promoting attractiveness, or altering the appearance, and articles  
12 intended for use as a component of such an article. "Cosmetics" does  
13 not include soap, dietary supplements, or food and drugs approved by  
14 the United States food and drug administration.

15 (5) "Department" means the department of ecology.

16 (6) "High priority chemical" means a chemical identified by a  
17 state agency, federal agency, or accredited research university, or  
18 other scientific evidence deemed authoritative by the department on  
19 the basis of credible scientific evidence as known to do one or more  
20 of the following:

21 (a) Harm the normal development of a fetus or child or cause  
22 other developmental toxicity;

23 (b) Cause cancer, genetic damage, or reproductive harm;

24 (c) Disrupt the endocrine system;

25 (d) Damage the nervous system, immune system, or organs or cause  
26 other systemic toxicity;

27 (e) Be persistent, bioaccumulative, and toxic; or

28 (f) Be very persistent and very bioaccumulative.

29 (7) "Manufacturer" includes any person, firm, association,  
30 partnership, corporation, governmental entity, organization, or joint  
31 venture that produces ((a)) residential upholstered furniture as  
32 defined in RCW 70.76.010 or children's product or an importer or  
33 domestic distributor of ((a)) residential upholstered furniture as  
34 defined in RCW 70.76.010 or children's product. For the purposes of  
35 this subsection, "importer" means the owner of the residential  
36 upholstered furniture as defined in RCW 70.76.010 or children's  
37 product.

38 (8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP),  
39 dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl

1 phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl  
2 phthalate (DnOP).

3 (9) "Toy" means a product designed or intended by the  
4 manufacturer to be used by a child at play.

5 (10) "Trade association" means a membership organization of  
6 persons engaging in a similar or related line of commerce, organized  
7 to promote and improve business conditions in that line of commerce  
8 and not to engage in a regular business of a kind ordinarily carried  
9 on for profit.

10 (11) "Very bioaccumulative" means having a bioconcentration  
11 factor or bioaccumulation factor greater than or equal to five  
12 thousand, or if neither are available, having a log Kow greater than  
13 5.0.

14 (12) "Very persistent" means having a half-life greater than or  
15 equal to one of the following:

16 (a) A half-life in soil or sediment of greater than one hundred  
17 eighty days;

18 (b) A half-life greater than or equal to sixty days in water or  
19 evidence of long-range transport.

20 (13) "Additive TBBPA" means the chemical tetrabromobisphenol A,  
21 chemical abstracts service number 79-94-7, as of the effective date  
22 of this section, in a form that has not undergone a reactive process  
23 and is not covalently bonded to a polymer in a product or product  
24 component.

25 (14) "Decabromodiphenyl ether" means the chemical  
26 decabromodiphenyl ether, chemical abstracts service number 1163-19-5,  
27 as of the effective date of this section.

28 (15) "HBCD" means the chemical hexabromocyclododecane, chemical  
29 abstracts service number 25637-99-4, as of the effective date of this  
30 section.

31 (16) "IPTPP" means the chemical isopropylated triphenyl  
32 phosphate, chemical abstracts service number 68937-41-7, as of the  
33 effective date of this section.

34 (17) "TBB" means the chemical (2-ethylhexyl)-2,3,4,5-  
35 tetrabromobenzoate, chemical abstracts service number 183658-27-7, as  
36 of the effective date of this section.

37 (18) "TBPH" means the chemical bis (2-ethylhexyl)-2,3,4,5-  
38 tetrabromophthalate, chemical abstracts service number 26040-51-7, as  
39 of the effective date of this section.

1 (19) "TCEP" means the chemical (tris(2-chloroethyl)phosphate);  
2 chemical abstracts service number 115-96-8, as of the effective date  
3 of this section.

4 (20) "TCPP" means the chemical tris (1-chloro-2-propyl)  
5 phosphate); chemical abstracts service number 13674-84-5, as of the  
6 effective date of this section.

7 (21) "TDCPP" means the chemical (tris(1,3-dichloro-2-  
8 propyl)phosphate); chemical abstracts service number 13674-87-8, as  
9 of the effective date of this section.

10 (22) "TPP" means the chemical triphenyl phosphate, chemical  
11 abstracts service number 115-86-6, as of the effective date of this  
12 section.

13 (23) "V6" means the chemical bis(chloromethyl) propane-1,3-  
14 diyltetraakis (2-chloroethyl) bisphosphate, chemical abstracts service  
15 number 385051-10-4, as of the effective date of this section.

16 NEW SECTION. Sec. 2. A new section is added to chapter 70.240  
17 RCW to read as follows:

18 Beginning July 1, 2017, no manufacturer, wholesaler, or retailer  
19 may manufacture, knowingly sell, offer for sale, distribute for sale,  
20 or distribute for use in this state children's products or  
21 residential upholstered furniture, as defined in RCW 70.76.010,  
22 containing any of the following flame retardants in amounts greater  
23 than one thousand parts per million in any product component:

- 24 (1) TDCPP;
- 25 (2) TCEP;
- 26 (3) Decabromodiphenyl ether;
- 27 (4) HBCD; or
- 28 (5) Additive TBBPA.

29 NEW SECTION. Sec. 3. A new section is added to chapter 70.240  
30 RCW to read as follows:

31 (1) The department shall consider whether the following flame  
32 retardants meet the criteria of a chemical of high concern for  
33 children:

- 34 (a) IPTPP;
- 35 (b) TBB;
- 36 (c) TBPH;
- 37 (d) TCPP;
- 38 (e) TPP;

1 (f) V6.

2 (2)(a) Within one year of the department adopting a rule that  
3 identifies a flame retardant in subsection (1) of this section as a  
4 chemical of high concern for children, the department of health, in  
5 consultation with the department, must create a stakeholder advisory  
6 committee for each flame retardant chemical to provide stakeholder  
7 input, expertise, and additional information in the development of  
8 recommendations as provided under subsection (4) of this section. All  
9 advisory committee meetings must be open to the public.

10 (b) The advisory committee membership must include, but is not  
11 limited to, representatives from: Large and small business sectors;  
12 community, environmental, and public health advocacy groups; local  
13 governments; affected and interested businesses; and public health  
14 agencies.

15 (c) The department may request state agencies and technical  
16 experts to participate. The department of health shall provide  
17 technical expertise on human health impacts including: Early  
18 childhood and fetal exposure, exposure reduction, and safer  
19 substitutes.

20 (3) When developing policy options and recommendations consistent  
21 with subsection (4) of this section, the department must rely on  
22 credible scientific evidence and consider information relevant to the  
23 hazards based on the quantitative extent of exposures to the chemical  
24 under its intended or reasonably anticipated conditions of use. The  
25 department of health, in consultation with the department, must  
26 include the following:

27 (a) Chemical name, properties, uses, and manufacturers;

28 (b) An analysis of available information on the production,  
29 unintentional production, uses, and disposal of the chemical;

30 (c) Quantitative estimates of the potential human and  
31 environmental exposures associated with the use and release of the  
32 chemical;

33 (d) An assessment of the potential impacts on human health and  
34 the environment resulting from the quantitative exposure estimates  
35 referred to in (c) of this subsection;

36 (e) An evaluation of:

37 (i) Environmental and human health benefits;

38 (ii) Economic and social impacts;

39 (iii) Feasibility;

1 (iv) Availability and effectiveness of safer substitutes for uses  
2 of the chemical;

3 (v) Consistency with existing federal and state regulatory  
4 requirements; and

5 (f) Recommendations for:

6 (i) Managing, reducing, and phasing out the different uses and  
7 releases of the chemical;

8 (ii) Minimizing exposure to the chemical;

9 (iii) Using safer substitutes; and

10 (iv) Encouraging the development of safer alternatives.

11 (4)(a) The department of health must submit to the legislature  
12 recommendations on policy options for reducing exposure, designating  
13 and developing safer substitutes, and restricting or prohibiting the  
14 use of the flame retardant chemicals identified in subsection (1) of  
15 this section as a chemical of high concern for children.

16 (b) When the department of health, in consultation with the  
17 department, determines that flame retardant chemicals identified in  
18 subsection (1) of this section as a chemical of high concern for  
19 children should be restricted or prohibited from use in children's  
20 products, residential upholstered furniture as defined in RCW  
21 70.76.010, or other commercial products or processes, the department  
22 of health must include citations of the peer-reviewed science and  
23 other sources of information reviewed and ultimately relied upon in  
24 support of the recommendation to restrict or prohibit the chemical.

25 **Sec. 4.** RCW 70.240.050 and 2008 c 288 s 7 are each amended to  
26 read as follows:

27 (1) A manufacturer of products that are restricted under this  
28 chapter must notify persons that sell the manufacturer's products in  
29 this state about the provisions of this chapter no less than ninety  
30 days prior to the effective date of the restrictions.

31 (2) A manufacturer that produces, sells, or distributes a product  
32 prohibited from manufacture, sale, or distribution in this state  
33 under this chapter shall recall the product and reimburse the  
34 retailer or any other purchaser for the product.

35 (3) A manufacturer of (~~children's~~) products in violation of  
36 this chapter is subject to a civil penalty not to exceed five  
37 thousand dollars for each violation in the case of a first offense.  
38 Manufacturers who are repeat violators are subject to a civil penalty  
39 not to exceed ten thousand dollars for each repeat offense. Penalties

1 collected under this section must be deposited in the state toxics  
2 control account created in RCW 70.105D.070.

3 (4) Retailers who unknowingly sell products that are restricted  
4 from sale under this chapter are not liable under this chapter.

5 (5) The sale or purchase of any previously owned products  
6 containing a chemical restricted under this chapter made in casual or  
7 isolated sales as defined in RCW 82.04.040, or by a nonprofit  
8 organization, is exempt from this chapter."

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9 On page 1, line 5 of the title, after "products;" strike the  
10 remainder of the title and insert "amending RCW 70.240.010 and  
11 70.240.050; and adding new sections to chapter 70.240 RCW."

EFFECT: Adds V6 as a chemical to be considered by the department of ecology; clarifies language for identifying the listed flame retardants as a chemical of high concern for children; clarifies the role of the stakeholder committee; clarifies the process for and development of recommendations to the legislature; and revises the current statutory definitions instead of creating a new definitions section.

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