

SSB 6440 - S AMD 609

By Senator Cleveland

1 On page 1, after line 17, insert the following:

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

5 (1) "Additive TBBPA" means the chemical tetrabromobisphenol A,
6 chemical abstracts service number 79-94-7, as of the effective date
7 of this section, in a form that has not undergone a reactive process
8 and is not covalently bonded to a polymer in a product or product
9 component.

10 (2)(a) "Children's product" includes any of the following:

11 (i) Toys;

12 (ii) Children's cosmetics;

13 (iii) Children's jewelry;

14 (iv) A product designed or intended by the manufacturer to help a
15 child with sucking or teething, to facilitate sleep, relaxation, or
16 the feeding of a child, or to be worn as clothing by children; or

17 (v) A portable infant or child safety seat designed to attach to
18 an automobile seat.

19 (b) "Children's product" does not include the following:

20 (i) Batteries;

21 (ii) Slings and catapults;

22 (iii) Sets of darts with metallic points;

23 (iv) Toy steam engines;

24 (v) Bicycles and tricycles;

25 (vi) Video toys that can be connected to a video screen and are
26 operated at a nominal voltage exceeding twenty-four volts;

27 (vii) Chemistry sets;

28 (viii) Consumer electronic products, including but not limited to
29 personal computers, audio and video equipment, calculators, wireless
30 phones, game consoles, and hand-held devices incorporating a video
31 screen, used to access interactive software and their associated
32 peripherals;

1 (ix) Interactive software, intended for leisure and
2 entertainment, such as computer games, and their storage media, such
3 as compact discs;

4 (x) BB guns, pellet guns, and air rifles;

5 (xi) Snow sporting equipment, including skis, poles, boots, snow
6 boards, sleds, and bindings;

7 (xii) Sporting equipment, including but not limited to bats,
8 balls, gloves, sticks, pucks, and pads;

9 (xiii) Roller skates;

10 (xiv) Scooters;

11 (xv) Model rockets;

12 (xvi) Athletic shoes with cleats or spikes; and

13 (xvii) Pocket knives and multitools.

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

21 (4) "Decabromodiphenyl ether" means the chemical
22 decabromodiphenyl ether, chemical abstracts service number 1163-19-5,
23 as of the effective date of this section.

24 (5) "HBCD" means the chemical hexabromocyclododecane, chemical
25 abstracts service number 25637-99-4, as of the effective date of this
26 section.

27 (6) "High priority chemical" means a chemical identified by a
28 state agency, federal agency, or accredited research university, or
29 other scientific evidence deemed authoritative by the department of
30 health on the basis of credible scientific evidence as known to do
31 one or more of the following:

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

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

35 (c) Disrupt the endocrine system;

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

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

39 (f) Be very persistent and very bioaccumulative.

1 (7) "Manufacturer" includes any person, firm, association,
2 partnership, corporation, governmental entity, organization, or joint
3 venture that produces a product or an importer or domestic
4 distributor of a product. For the purposes of this subsection,
5 "importer" means the owner of the product.

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

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

12 (10) "Toy" means a product designed or intended by the
13 manufacturer to be used by a child at play.

14 (11) "Very bioaccumulative" means having a bioconcentration
15 factor or bioaccumulation factor greater than or equal to five
16 thousand, or if neither are available, having a log Kow greater than
17 5.0.

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

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

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

24 NEW SECTION. **Sec. 3.** (1)(a) By rule, the secretary of the
25 department of health may prohibit the manufacture, sale, distribution
26 for sale, or distribution for use in this state of residential
27 upholstered furniture, as defined in RCW 70.76.010, or children's
28 products containing a flame retardant in any product component in
29 amounts greater than one thousand parts per million that meets the
30 criteria of a high priority chemical of high concern for children
31 under RCW 70.240.030(1).

32 (b) After January 1, 2016, a rule that restricts a flame
33 retardant under (a) of this subsection must be adopted prior to
34 December 1st of any year and the restrictions under (a) of this
35 subsection do not take effect before the end of the regular
36 legislative session in the next year.

37 (2) Before the secretary of the department of health may adopt a
38 rule to restrict a flame retardant, the department of health must
39 submit a report to the legislature no later than at the time of

1 publication of the notice of a rule-making hearing required under RCW
2 34.05.320. The report to the legislature must contain:

3 (a) A determination by the department of health as to whether
4 children or vulnerable populations are likely to be exposed to the
5 chemical directly or indirectly from its use in products. The
6 determination of the department of health must be made after an
7 evaluation of available information on:

8 (i) Levels of the flame retardants in consumer products;

9 (ii) Migration of the flame retardants out of products during and
10 after use; and

11 (iii) Levels of the flame retardants in humans and the
12 environment, including but not limited to the home environment;

13 (b) A review of available toxicity data to evaluate the health
14 concerns for children or vulnerable populations; and

15 (c) A determination of whether a safer alternative has been
16 identified to meet applicable fire safety standards for residential
17 furniture and children's products by evaluating existing chemical
18 action plans and assessments of safer alternatives that have been
19 completed for flame retardant chemicals.

20 (3) The department of health must identify the sources of
21 information it relied upon in making the determination required in
22 subsection (2) of this section, including peer-reviewed science.

23 (4) Violations of rules adopted pursuant to this chapter are
24 subject to the penalties provided in RCW 70.240.050.

25 (5) The department of health may adopt rules as necessary for the
26 purpose of implementing, administering, and enforcing this chapter.

27 (6) This section expires July 1, 2022.

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

30 (1) A manufacturer of products that are restricted under this
31 chapter or chapter 70.--- RCW (the new chapter created in section 5
32 of this act) must notify persons that sell the manufacturer's
33 products in this state about the provisions of this chapter no less
34 than ninety days prior to the effective date of the restrictions.

35 (2) A manufacturer that produces, sells, or distributes a product
36 prohibited from manufacture, sale, or distribution in this state
37 under this chapter (~~shall~~) or chapter 70.--- RCW (the new chapter
38 created in section 5 of this act) must recall the product and
39 reimburse the retailer or any other purchaser for the product.

1 (3) A manufacturer of (~~children's~~) products in violation of
2 this chapter or chapter 70.--- RCW (the new chapter created in
3 section 5 of this act) is subject to a civil penalty not to exceed
4 five thousand dollars for each violation in the case of a first
5 offense. Manufacturers who are repeat violators are subject to a
6 civil penalty not to exceed ten thousand dollars for each repeat
7 offense. Penalties collected under this section must be deposited in
8 the state toxics control account created in RCW 70.105D.070.

9 (4) Retailers who unknowingly sell products that are restricted
10 from sale under this chapter or chapter 70.--- RCW (the new chapter
11 created in section 5 of this act) are not liable under this chapter.

12 (5) The sale or purchase of any previously owned products
13 containing a chemical restricted under this chapter or chapter 70.---
14 RCW (the new chapter created in section 5 of this act) made in casual
15 or isolated sales as defined in RCW 82.04.040, or by a nonprofit
16 organization, is exempt from this chapter and chapter 70.--- RCW (the
17 new chapter created in section 5 of this act).

18 NEW SECTION. Sec. 5. Sections 2 and 3 of this act constitute a
19 new chapter in Title 70 RCW."

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20 On page 1, line 2 of the title, after "firefighters" strike the
21 remainder of the title and insert ", by establishing a process for
22 the department of health to restrict the use of additional toxic
23 flame retardant chemicals; amending RCW 70.240.050; adding a new
24 section to chapter 70.240 RCW; adding a new chapter to Title 70 RCW;
25 prescribing penalties; and providing an expiration date."

EFFECT: Restores provisions of the original bill as follows:

(1) Grants time-limited (until July 1, 2020) authority to the DOH to adopt rules prohibiting the manufacture, sale, or distribution of children's products or residential upholstered furniture containing a flame retardant in amounts greater than 1,000 ppm that meets the criteria of a high priority chemical of high concern for children, subject to the following limitations:

(a) Requires prior notice and reporting to the legislature before undertaking rule making; and

(b) Requires that any rule adopted allow for a delayed effective date such that the legislature will have at least a full regular session to review the rule.

(2) Establishes a civil fine for a manufacturer's violation of a law or rule governing prohibited chemicals of high concern for children.

(3) Requires manufacturers of a restricted product containing a chemical of high concern for children to notify sellers of the restricted product and to recall the restricted product.

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