

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2545

Chapter 176, Laws of 2016

64th Legislature
2016 Regular Session

FLAME RETARDANT CHEMICALS--CONSUMER PRODUCTS--RESTRICTION

EFFECTIVE DATE: 6/9/2016

Passed by the House March 8, 2016
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2016
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved April 1, 2016 3:32 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2545** as passed by House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 4, 2016

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2545

AS AMENDED BY THE SENATE

Passed Legislature - 2016 Regular Session

State of Washington **64th Legislature** **2016 Regular Session**

By House Health Care & Wellness (originally sponsored by Representatives Van De Wege, Taylor, DeBolt, Cody, Rodne, Kochmar, Stambaugh, Riccelli, Johnson, Jenkins, Kagi, Harris, Smith, Stokesbary, Caldier, Zeiger, Tharinger, Hickel, Fitzgibbon, Muri, Reykdal, Frame, Rossetti, S. Hunt, Hudgins, McBride, Ormsby, Appleton, Walkinshaw, Senn, Ryu, Gregerson, Sells, Harmsworth, Tarleton, Pollet, Bergquist, Stanford, and Scott)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to reducing public health threats that
2 particularly impact highly exposed populations, including children
3 and firefighters, by establishing a process for the department of
4 health to restrict the use of toxic flame retardant chemicals in
5 certain types of consumer products; amending RCW 70.240.010 and
6 70.240.050; and adding new sections to chapter 70.240 RCW.

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

8 **Sec. 1.** RCW 70.240.010 and 2008 c 288 s 2 are each amended to
9 read as follows:

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

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

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

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

21 (c) Sold in any of the following:

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

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

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

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

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

17 (c) Sized for children and not intended for use by adults; or

18 (d) Sold in any of the following:

19 (i) A vending machine;

20 (ii) Retail store, catalogue, or online web site, in which a
21 person exclusively offers for sale products that are packaged,
22 displayed, or advertised as appropriate for use by children; or

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

27 (3)(a) "Children's product" includes any of the following:

28 (i) Toys;

29 (ii) Children's cosmetics;

30 (iii) Children's jewelry;

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

34 (v) (~~Child car seats~~) Portable infant or child safety seat
35 designed to attach to an automobile seat.

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

37 (i) Batteries;

38 (ii) Slings and catapults;

39 (iii) Sets of darts with metallic points;

40 (iv) Toy steam engines;

- 1 (v) Bicycles and tricycles;
- 2 (vi) Video toys that can be connected to a video screen and are
3 operated at a nominal voltage exceeding twenty-four volts;
- 4 (vii) Chemistry sets;
- 5 (viii) Consumer and children's electronic products, including but
6 not limited to personal computers, audio and video equipment,
7 calculators, wireless phones, game consoles, and hand-held devices
8 incorporating a video screen, used to access interactive software and
9 their associated peripherals;
- 10 (ix) Interactive software, intended for leisure and
11 entertainment, such as computer games, and their storage media, such
12 as compact disks;
- 13 (x) BB guns, pellet guns, and air rifles;
- 14 (xi) Snow sporting equipment, including skis, poles, boots, snow
15 boards, sleds, and bindings;
- 16 (xii) Sporting equipment, including, but not limited to bats,
17 balls, gloves, sticks, pucks, and pads;
- 18 (xiii) Roller skates;
- 19 (xiv) Scooters;
- 20 (xv) Model rockets;
- 21 (xvi) Athletic shoes with cleats or spikes; and
- 22 (xvii) Pocket knives and multitools.
- 23 (4) "Cosmetics" includes articles intended to be rubbed, poured,
24 sprinkled, or sprayed on, introduced into, or otherwise applied to
25 the human body or any part thereof for cleansing, beautifying,
26 promoting attractiveness, or altering the appearance, and articles
27 intended for use as a component of such an article. "Cosmetics" does
28 not include soap, dietary supplements, or food and drugs approved by
29 the United States food and drug administration.
- 30 (5) "Department" means the department of ecology.
- 31 (6) "High priority chemical" means a chemical identified by a
32 state agency, federal agency, or accredited research university, or
33 other scientific evidence deemed authoritative by the department on
34 the basis of credible scientific evidence as known to do one or more
35 of the following:
- 36 (a) Harm the normal development of a fetus or child or cause
37 other developmental toxicity;
- 38 (b) Cause cancer, genetic damage, or reproductive harm;
- 39 (c) Disrupt the endocrine system;

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

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

4 (f) Be very persistent and very bioaccumulative.

5 (7) "Manufacturer" includes any person, firm, association,
6 partnership, corporation, governmental entity, organization, or joint
7 venture that produces ((a)) residential upholstered furniture as
8 defined in RCW 70.76.010 or children's product or an importer or
9 domestic distributor of ((a)) residential upholstered furniture as
10 defined in RCW 70.76.010 or children's product. For the purposes of
11 this subsection, "importer" means the owner of the residential
12 upholstered furniture as defined in RCW 70.76.010 or children's
13 product.

14 (8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP),
15 dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl
16 phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl
17 phthalate (DnOP).

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

20 (10) "Trade association" means a membership organization of
21 persons engaging in a similar or related line of commerce, organized
22 to promote and improve business conditions in that line of commerce
23 and not to engage in a regular business of a kind ordinarily carried
24 on for profit.

25 (11) "Very bioaccumulative" means having a bioconcentration
26 factor or bioaccumulation factor greater than or equal to five
27 thousand, or if neither are available, having a log Kow greater than
28 5.0.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (1) TDCPP;

- 1 (2) TCEP;
- 2 (3) Decabromodiphenyl ether;
- 3 (4) HBCD; or
- 4 (5) Additive TBBPA.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.240
6 RCW to read as follows:

7 (1) The department shall consider whether the following flame
8 retardants meet the criteria of a chemical of high concern for
9 children:

- 10 (a) IPTPP;
- 11 (b) TBB;
- 12 (c) TBPH;
- 13 (d) TCPP;
- 14 (e) TPP;
- 15 (f) V6.

16 (2)(a) Within one year of the department adopting a rule that
17 identifies a flame retardant in subsection (1) of this section as a
18 chemical of high concern for children, the department of health, in
19 consultation with the department, must create a stakeholder advisory
20 committee for each flame retardant chemical to provide stakeholder
21 input, expertise, and additional information in the development of
22 recommendations as provided under subsection (4) of this section. All
23 advisory committee meetings must be open to the public.

24 (b) The advisory committee membership must include, but is not
25 limited to, representatives from: Large and small business sectors;
26 community, environmental, and public health advocacy groups; local
27 governments; affected and interested businesses; and public health
28 agencies.

29 (c) The department may request state agencies and technical
30 experts to participate. The department of health shall provide
31 technical expertise on human health impacts including: Early
32 childhood and fetal exposure, exposure reduction, and safer
33 substitutes.

34 (3) When developing policy options and recommendations consistent
35 with subsection (4) of this section, the department must rely on
36 credible scientific evidence and consider information relevant to the
37 hazards based on the quantitative extent of exposures to the chemical
38 under its intended or reasonably anticipated conditions of use. The

1 department of health, in consultation with the department, must
2 include the following:

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

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

6 (c) Quantitative estimates of the potential human and
7 environmental exposures associated with the use and release of the
8 chemical;

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

12 (e) An evaluation of:

13 (i) Environmental and human health benefits;

14 (ii) Economic and social impacts;

15 (iii) Feasibility;

16 (iv) Availability and effectiveness of safer substitutes for uses
17 of the chemical;

18 (v) Consistency with existing federal and state regulatory
19 requirements; and

20 (f) Recommendations for:

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

23 (ii) Minimizing exposure to the chemical;

24 (iii) Using safer substitutes; and

25 (iv) Encouraging the development of safer alternatives.

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

31 (b) When the department of health, in consultation with the
32 department, determines that flame retardant chemicals identified in
33 subsection (1) of this section as a chemical of high concern for
34 children should be restricted or prohibited from use in children's
35 products, residential upholstered furniture as defined in RCW
36 70.76.010, or other commercial products or processes, the department
37 of health must include citations of the peer-reviewed science and
38 other sources of information reviewed and ultimately relied upon in
39 support of the recommendation to restrict or prohibit the chemical.

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

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

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

11 (3) A manufacturer of (~~children's~~) products in violation of
12 this chapter is subject to a civil penalty not to exceed five
13 thousand dollars for each violation in the case of a first offense.
14 Manufacturers who are repeat violators are subject to a civil penalty
15 not to exceed ten thousand dollars for each repeat offense. Penalties
16 collected under this section must be deposited in the state toxics
17 control account created in RCW 70.105D.070.

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

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

Passed by the House March 8, 2016.

Passed by the Senate March 4, 2016.

Approved by the Governor April 1, 2016.

Filed in Office of Secretary of State April 4, 2016.

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