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## Washington Becomes First State to Ban Flame Retardants

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### Breaking Developments In Environmental Law

Governor Christine Gregoire signed into law on Tuesday, April 17, a ban on certain types of flame retardants known as polybrominated diphenyl ethers (“PBDE”), which are used in a number of consumer products, including mattresses, carpet pads, furniture, and plastic enclosures for televisions and computers. Washington’s ban comes after extensive debate concerning persistent toxic chemicals and the value of using PBDEs. The compounds are the subject of particular concern because some studies indicate that the chemicals have been found in blood, fat tissue and breast milk in humans, and may present a health risk.

There are three primary types of PBDEs – penta, octa and deca. Since December 2004, U.S. manufacturers have voluntarily eliminated penta and octa, and those compounds are no longer produced by international manufacturers. The measure signed by the Governor focuses on deca, which was developed to replace penta and octa. The law bans deca in mattresses after January 1, 2008. Deca will be banned in other consumer products beginning January 1, 2011, but only if the Department of Ecology and Department of Health determine whether safer and technically feasible alternatives exist, and if a safety committee and the state fire marshal determine that the alternatives meet fire safety rules.

The ban does not apply to aircraft, military uses and medical equipment, commercial office furniture and drapes, vehicles, or to products composed of recycled or used materials containing deca.

The statute provides for warning notices to be sent to manufacturers, followed by civil penalties of \$1,000 for the first offense and \$5,000 for subsequent offenses. Retailers who do not knowingly sell a product with PBDEs are not liable. The statute does not provide for a private right of action.

A copy of the final bill is available [here](http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/House%20Passed%20Legislature/1024-S.PL.pdf) (<http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/House%20Passed%20Legislature/1024-S.PL.pdf>).

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