

# SENATE BILL REPORT

## ESHB 2545

---

---

As of February 25, 2016

**Title:** An act relating to reducing public health threats that particularly impact highly exposed populations, including children and firefighters, by establishing a process for the department of health to restrict the use of toxic flame retardant chemicals in certain types of consumer products.

**Brief Description:** Reducing public health threats that particularly impact highly exposed populations, including children and firefighters, by establishing a process for the department of health to restrict the use of toxic flame retardant chemicals in certain types of consumer products.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Van De Wege, Taylor, DeBolt, Cody, Rodne, Kochmar, Stambaugh, Riccelli, Johnson, Jinkins, 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).

**Brief History:** Passed House: 2/15/16, 76-21.

**Committee Activity:** Health Care: 2/25/16.

---

### SENATE COMMITTEE ON HEALTH CARE

**Staff:** Mich'l Needham (786-7442)

**Background:** A manufacturer, wholesaler, or retailer may not manufacture, sell or distribute a children's product or product component that contains the following:

- lead at more than 0.009 percent by weight (90 ppm);
- cadmium at more than 0.004 percent by weight (40 ppm); and
- phthalates, individually or in combination, at more than 0.10 percent by weight (1,000 ppm).

The Department of Ecology (Ecology), in consultation with the Department of Health (DOH), has developed a list of high priority chemicals of high concern for children (CHCC). Among the chemicals on the CHCC list are the following flame retardants:

- TDCPP (tris (1, 3-dichloro-2-propyl) phosphate);
- TCEP (tris (2-chloroethyl) phosphate);

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- decabromodiphenyl ether;
- HBCD (hexabromocyclododecane); and
- additive TBBPA (tetrabromobisphenol A).

Manufacturers must provide notice to Ecology that the manufacturer's product contains a chemical on the CHCC list and Ecology has enforcement authority if manufacturers fail to provide notice.

At the federal level, the United States Consumer Product Safety Commission (CPSC) sets both mandatory and voluntary safety standards for consumer products, including fire safety standards. Under the federal Flammable Fabrics Act, the CPSC has used its regulatory authority to establish mandatory flammability standards for furniture and for many types of children's products. At the state level, the State Building Code Council has adopted an amended version of the International Fire Code, which includes flammability standards for upholstered furniture in new and existing buildings.

In the 2014 Supplemental Operating Budget, the Legislature directed Ecology to test for the presence of flame retardants in children's products and furniture and to analyze TBBPA and antimony compounds used as flame retardants. In January 2015, Ecology submitted a report to the Legislature that recommended the restriction of 10 flame retardants in children's products and furniture.

**Summary of Bill:** Beginning July 1, 2017, no manufacturer, wholesale, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in the state any children's products or residential upholstered furniture containing any of the following flame retardants in amounts greater than one thousand parts per million (ppm) in any product component:

- TDCPP;
- TCEP;
- decabromodiphenyl ether;
- HBCD; and
- additive TBBPA.

The Secretary of the DOH may, by rule, prohibit the manufacture, sale, or distribution in this state of children's products or residential upholstered furniture containing any of the following chemicals used as a flame retardant in amounts greater than 1000 ppm:

- IPTPP;
- TBB;
- TBPH;
- TCPP
- TPP; and
- V6.

The DOH must create an external advisory committee for the rule development to provide early stakeholder input, expertise, and additional information. The rule must be adopted prior to December 1 in any year and may not take effect before the end of the regular legislative session in the next year.

Before the Secretary of the DOH may adopt a rule, the DOH must submit a report to the Legislature that addresses:

- whether children or vulnerable populations are likely to be exposed to the chemical directly or indirectly from its use in products;
- toxicity data to evaluate the health concerns for children or vulnerable populations; and
- whether a safer alternative has been identified.

Any person or entity violating these rules is subject to a civil penalty not to exceed \$5,000 for each violation for a first offense or \$10,000 for each repeat offense. The rule-making authority of the DOH expires July 1, 2022.

A manufacturer of a children's product or residential upholstered furniture that is prohibited, either in statute or rule, must notify sellers of the restricted product no less than 90 days before the effective date of the restriction. A manufacturer that produces, sells, or distributes a restricted product must recall the product and reimburse the retailer or any other purchaser for the product. A manufacturer of a restricted product in violation of any of the provisions, in statute or rule, restricting the sale of products with flame retardants is subject to a civil penalty not to exceed \$5,000 for each violation for a first offense or \$10,000 for each repeat offense.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 23, 2016.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: I support both striking amendment options before the committee today. It is important to Goodwill to retain responsibility with the manufacturers and retain the exemption for the previously used products. The striker provide additional Legislative control and oversight into the process with reports back to the Legislature.

CON: It is leaping to a conclusion that detecting a chemical in the environment impacts human health. We are missing a discussion about the level of exposure that causes harm. The EPA should inform the discussion. We have concerns with the bill as drafted and believe the consumer products safety commission should be evaluating flame retardants. Manufacturers are challenged to comply with state restrictions and national restrictions. We are opposed to new authority for the departments to ban any products. There needs to be a public process with rule making to determine if the chemicals meet the criteria for high concerns. We should direct DOE to study the six chemicals and bring recommendations back. Retailers have started their purchases for next Christmas already and they can't meet Washington State specific standards. We prefer to have the EPA and consumer products safety commission develop standards. We are opposed to the additional authority for Department of Health and believe the process should stay with the Department of Ecology. Any bans needs to be decided by the Legislature. The definition of children's products with

the internal components reference is a good change. This bill gives two agencies authority in the process and we think it should stay with Department of Ecology. We appreciate the additional definition of children's products.

OTHER: Department of Health supports the bill and both striking amendment proposals. The focus on six additional chemicals is important. they are all additive chemicals which means they escape into the air as dust and are very similar to the five chemicals that are banned. All six have been detected in products and in bio-monitoring in people. It is important to create a mechanism to ban future chemicals. The six additional chemical are of high concern for children and were in the report Department of Ecology submitted to the Legislature. The bill does not compromise fire safety. Alternatives to these products are already available on the market.

**Persons Testifying:** PRO: Representative Van De Wege, prime sponsor; Shelly Helder, the 5 Goodwill organizations of WA; Dave Mastin, Washington Toxics Coalition.

CON: Tim Shestek, American Chemistry Council; Jennifer Gibbons, Toy Industry Association; Brandon Houskeeper, Assoc. of WA Business; Mark Johnson, Washington Retail Association; Holly Chisa, NW Grocery Assn; Charlie Brown, Consumer Technology Association.

OTHER: Holly Davies, Washington State Dept of Ecology; Barbara Morrissey, Washington State Dept of Health.

**Persons Signed In To Testify But Not Testifying:** No one.