HOUSE BILL REPORT
E2SHB 2647

As Passed House:
February 18, 2008

Title: An act relating to the children's safe products act.

Brief Description: Regarding the children's safe products act.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Dickerson, Hudgins, Hunt, Morrell, Pedersen, Williams, Cody, Green, Campbell, VanDeWege, Hasegawa, Roberts, Loomis, Upthegrove, Liias, Hunter, Chase, Smith, McIntire, Barlow, Conway, Priest, Schual-Berke, Simpson, Kenney, Goodman, Sells, Rolfes, Darneille and Lantz).

Brief History:

Committee Activity:

Select Committee on Environmental Health: 1/23/08, 1/30/08 [DPS];
Appropriations: 2/6/08, 2/8/08 [DP2S(w/o sub ENVH)].

Floor Activity:

Passed House: 2/18/08, 95-0.

Brief Summary of Engrossed Second Substitute Bill

- Prohibits manufacturers, retailers, and wholesalers from manufacturing, selling, offering for sale, distributing for sale, or distributing for use, a children's product or product component that contains a certain concentration of lead, cadmium, or phthalates.
- Requires the Department of Ecology (DOE) to identify high priority chemicals and, of those, chemicals that are of high concern for children.
- Requires manufacturers to file an annual notice with the DOE regarding chemicals of high concern found in their children's products and to notify retailers of recalls of their children's products.
- Authorizes the Secretary of Health to establish and maintain an education campaign regarding chemicals of high concern for children.

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.

HOUSE SELECT COMMITTEE ON ENVIRONMENTAL HEALTH

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Campbell, Chair; Hudgins, Vice Chair; Sump, Ranking Minority Member; Chase, Hunt, Morrell, Newhouse and Wood.

Staff: Ashley Pedersen (786-7303).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Select Committee on Environmental Health. Signed by 19 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Green, Haigh, Hunt, Hunter, Kagi, Linville, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 10 members: Representatives Alexander, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Hinkle, Kretz, Priest, Ross, Schmick and Walsh.

Staff: Alicia Dunkin (786-7178).

Background:

Federal Laws, Regulations, and Guidelines

The Federal Hazardous Substances Act (FHSA) grants the Consumer Product Safety Commission (CPSC) the authority to promulgate regulations to protect consumers from products containing hazardous substances. The CPSC has restricted the amount of lead in paint to a maximum of 600 parts per million (ppm). This restriction applies to consumer products (defined in section 3(a)(1) of the Consumer Product Safety Act), toys, furniture, and products sold to consumers for use in homes, schools, parks, hospitals, and other areas. The CPSC is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. A part of CPSC's mission is to inform the public about product hazards and to issue notices of public recalls. The CPSC issues recalls for toys.

Cosmetics marketed in the United States are regulated by the Food and Drug Administration (FDA) pursuant to the Federal Food, Drug, and Cosmetic Act (FDCA) and the Fair Packaging and Labeling Act (FPLA). The FDCA prohibits the marketing of adulterated or misbranded cosmetics in interstate commerce. Violations of the FDCA involving product composition – whether they result from ingredients, contaminants, processing, packaging, or shipping and handling – cause cosmetics to be adulterated and subject to regulatory action. In addition, under the authority of the FPLA, the FDA requires an ingredient declaration on the cosmetic products sold at the retail level to consumers.

Lead

According to the Centers for Disease Control and Prevention's International Chemical Safety Card for lead, lead can be absorbed into the body by inhalation and ingestion. Long term or repeated exposure to lead may have effects on the blood bone marrow central nervous system, peripheral nervous system, kidneys, resulting in anemia, encephalopathy (e.g., convulsions), peripheral nerve disease, abdominal cramps and kidney impairment. Long term or repeated exposure to lead may cause toxicity to human reproduction or development.

The American Academy of Pediatrics recommends a level of 40 ppm of lead as the maximum that should be allowed in children's products. Lead is often found in brightly colored wood and vinyl toys, and imported jewelry.

Cadmium

According to the Centers for Disease Control and Prevention's International Chemical Safety Card for cadmium, cadmium can be absorbed into the body by inhalation of its aerosol and by ingestion. Cadmium exposure is associated in animal studies with developmental effects, including possible decreases in birth weight, delayed sensory-motor development, hormonal effects, and altered behavior. Cadmium can cause adverse effects on the kidney, lung and intestines. Cadmium is classified as a known human carcinogen, associated with lung, and prostate cancer. Exposure to cadmium can result in bone loss and increased blood pressure. Acute toxicity from ingestion of high levels of cadmium can result in abdominal pain, nausea, vomiting, and death.

There are no restrictions on cadmium in children's products in the United States. The U.S. Environmental Protection Agency has set a limit of five parts of cadmium per billion parts of drinking water (5 ppb). The FDA limits the amount of cadmium in food colors to 15 ppm. The Occupational Safety and Health Administration limits workplace air to 100 micrograms cadmium per cubic meter (100µg/m3) as cadmium fumes and 200 mg/m3 as cadmium dust.

Phthalates

Phthalates are a group of chemicals used in hundreds of products, such as toys, vinyl flooring and wall coverings, detergents, lubricating oils, food packaging, pharmaceuticals, blood bags and tubing, and personal care products such as nail polish, hair sprays, soaps, and shampoos. Phthalates are plasticizers that are added to polyvinyl chloride (PVC) products to impart flexibility and durability.

Phthalates are widely detected in human blood and urine samples. According to the Centers for Disease Control, phthalates are found in Americans of all ages, sizes, and races. A 2005 study from the Centers for Disease Control indicates that women are slightly more exposed than men, and younger children (ages 6-11) are more exposed than older children (ages 12-19 or 20).

Phthalates are animal carcinogens and can cause fetal death, malformations, and reproductive toxicity in laboratory animals. Nondietary ingestion of phthalates can occur when children mouth, suck, or chew on phthalate-containing toys or other objects.

Summary of Engrossed Second Substitute Bill:

Beginning July 1, 2009, manufacturers, wholesalers, and retailers are prohibited from manufacturing, selling, offering for sale, distributing for sale, or distributing for use, a children's product or product component that contain:

- lead or cadmium at more than .004 percent by weight (40 ppm); or
- phthalates at more than 0.1 percent by weight (100 ppm).

Department of Ecology

The Department of Ecology (DOE) must:

- identify high priority chemicals that are of high concern for children in consultation with the DOH (by January 1, 2009);
- identify children's products or product categories that contain chemicals of high concern for children (by January 1, 2009);
- prepare and distribute information to in-state and out-of-state manufacturers to assist them in identifying prohibited products (by January 1, 2009);
- finalize the list of high priority chemicals of high concern for children (by January 1, 2010);
- assist in-state retailers in identifying prohibited products;
- develop and publish a web site providing consumers with information regarding the high priority chemicals and safer alternatives; and
- submit a report on chemicals of high concern to the appropriate standing committees of the Legislature (by January 1, 2009).

High priority chemicals that are of high concern for children are determined based on a consideration of a child's or developing fetus's potential for exposure to each chemical. The list must include chemicals that have been found to be in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids, or to be present in household dust, indoor air, drinking water, or elsewhere in the home environment. This list must also include chemicals that have been added to or present in consumer products used or present in the home.

The DOE's report to the Legislature must include policy options regarding addressing children's products that contain chemicals of high concern. The report must also include recommendations for additional ways to inform consumers about toxic chemicals in products.

The DOE may adopt rules implementing, administering, and enforcing this bill.

Manufacturers

Beginning six months after a chemical has been identified as a chemical of high concern, manufacturers must notify the DOE of its products that contain a high priority chemical. This notice must be filed annually and must include:

- the name and chemical abstracts service registry number of the chemical;
- a description of the product or product component;
- a description of the function of the chemical in the product;
- the amount of the chemical in the product; and
- the name and address of the manufacturer and contact information.

The DOE may require manufacturers to electronically file their annual notice.

No less than 90 days prior to the effective date of the restrictions, manufacturers must notify persons that sell its products about the provisions of this chapter. Manufacturers must recall products and reimburse retailers and purchasers for products sold in prohibition of this chapter.

Manufactures in violation of this chapter may be subject to a civil penalty of up to $5,000 per violation, and of to $10,000 for each repeat offense.

Retailers

Retailers that unknowingly sell prohibited products are not liable under this chapter.

Secretary of Health

The Secretary of Health is authorized to establish a product safety education campaign to promote greater awareness of infants and children products that contain chemicals of high concern for children.

A null and void clause was added.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 5, 2008.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony: (Select Committee on Environmental Health)

(In support) Toxic exposures during the first three years of life are critical and can have devastating effects on a child's development. Early intervention and prevention measures need to be taken. This bill is timely because during the past six months millions of toys were recalled because of toxic chemicals in the toys. Consumers have a right to know what chemicals are in the products they buy. This state has lead the way on these sorts of issues and should stay out in front. Lead, cadmium, and phthalates are all harmful toxins to children. For example, lead has devastating effects on the developing brain, cadmium is classified as a known human carcinogen, and phthalates can cause deformity in the male reproductive system

such as hypospadias, a birth defect of the urethra. There may be epigenetic effects from exposure to toxins (where genetic impacts are carried on to future generations). Manufacturers are able to make toys and other children's items such as bottle nipples without lead, cadmium, and phthalates. Retailers only have the word of the manufacturers when buying children's products. Manufacturers need to be held accountable. This will give retailers the means to make educated choices. This bill is in line with the European Unions' regulations regarding levels of lead and cadimum, and allows for trace levels of the chemicals in the toys. The 40 ppm level is a middle road requirement when considering the U. S. Environmental Protection Agency's lead levels for other materials such as lead. Children are exposed to hundreds, if not thousands, of chemicals every day and we do not know how all of these chemicals interact together. However, phthalates interact together in an addictive way. Diisononyl phthalate (DINP) is not the only phthalate used in toys. There are safer alternatives to phthalates. We need to act quickly to protect our children's health. A chemical action plan takes a year and half, which is too long.

(With concerns) A definition of importer needs to be included because otherwise many people may be unintentionally included in the bill. Age-ranges should be better defined because there are some toys, such as chemistry project and magnets, that may still be appropriate for older children. Testing requirements should be practical and realistic for manufacturers and producers so that it is achievable for all sizes of businesses.

(Neutral) The DOE is neutral because of the fiscal impacts of this bill, but thinks that the bill addresses an important topic. Ecology's Persistent, Bioaccumulative, and Toxic program addresses chemicals one at a time. Chemical actions plans are effective but they take a year to a year and a half each to complete. The dilemma is how to get ahead of the problem and not just be reactive. This bill brings forward strategic avenues for developing a systemic approach to dealing with the problem. The bill focuses on children who are the most vulnerable to toxic chemicals. However, we do have concerns with some of the language of the bill and will share that to the sponsors.

(Opposed) Phthalates are not linked with lead and cadmium. Phthalates are used only to plastize vinyl in toys and are a wide studied class of compounds. There is not as much data about alternate chemicals that could be used in place of phthalates. Phthalates are a class of chemicals and there are many different types of phthalates. Each different phthalate has very different characteristics. It takes high dose levels of phthalates to be toxic. We must look at levels of actual exposure compared to the levels that cause adverse effects. Phthatlates are found at low levels in the body and they are quickly cleared from the body. Anything can be toxic; the dose determines the toxicity. The Consumer Product Safety Commission looked specifically at DINP in toys and unanimously concluded that toys made with DINP are safe. The DINP is the only phthalate listed in the bill that is used in toys. Hypospadias rates are declining, sperm counts are not decreasing. In Washington, between 1987 to 2002, hypospadias did not increase. The lead and cadmium prohibition levels in the bill should be changed. The lead levels should be set higher at 60 ppm. The age level for children should be set at six. The dates of implementation may be too soon. A chemcial action plan should be done for phthalates.

Staff Summary of Public Testimony: (Appropriations)

(In support) The Department of Ecology currently has an innovative program for polybrominated dyphenyl ethers (PBDE's). Washington is the first state in the country to pass a PBDE or toxic flame retardant bill to keep these chemicals out of children's bodies and out of the environment. This bill would ban lead, cadmium, and phthalates from toys, cosmetics, jewelry, and children's car seats and this the amount of funding in the fiscal note is a good investment to prevent further medical and environmental problems. We currently spend millions on health care and on cleaning up the environment because of these chemicals.

(Opposed) None.

Persons Testifying: (Select Committee on Environmental Health) (In support) Representative Dickerson, prime sponsor; Elizabeth Davis, League of Women Voters of Washington; Graham Wilding; Erika Schreder, Washington Toxics Coalition, and Toxic Free Legacy Coalition; Dr. Barry Lawson, Academy of Pediatrics, Washington State Chapter; Cliff Traisman, Washington Conservation Voters; Gretchen Lee, Breast Cancer Fund; Kim Karu, Childcare Action Council; Brooke Bell; Nick Federici, Washington Toxics Coalition; Blair Anundson, Wash PRIG; Brekke Hewitt, Wind Up Here; Ryan Kellogg, Public Health - Seattle and King County; and Carl Nelson, Washington State Medical Association.

(With concerns) Eric Johnson, Washington Public Ports Association; and Mark Johnson, Washington Retail Association.

(Neutral) Carol Kraege, Department of Ecology.

(Opposed) Harry Fisch and Marian Stanley, American Chemistry Council; and James C. Lamb, The Weinberg Group.

Persons Testifying: (Appropriations) Clifford Traisman, Washington Environmental Council and Washington Conservation Voters; and Nick Federici, Washington Toxics Coalition.

Persons Signed In To Testify But Not Testifying: (Select Committee on Environmental Health) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.