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## Environment Committee

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### HB 1294

**Brief Description:** Concerning flame retardants.

**Sponsors:** Representatives Van De Wege, Hudgins, Pollet, Maxwell, Hunt, Upthegrove, Tharinger, Fey, Farrell, Moscoso, Hunter, Stanford, Reykdal, Fitzgibbon, Bergquist, Tarleton, Goodman, Kagi, Hansen, Jenkins, Habib, Pedersen, Ryu, Liias, Riccelli, Roberts, Morrell, Clibborn and Ormsby.

#### Brief Summary of Bill

- Prohibits the sale, manufacture, or distribution of children's products or residential upholstered furniture containing the chemical Tris in amounts greater than 50 parts per million (ppm) in any product component.
- Bans the manufacture, sale, and distribution of residential upholstered furniture and children's products containing any flame retardant identified as a high priority chemical of high concern for children in amounts greater than 50 ppm, unless a manufacturer demonstrates that there is not a technically feasible safer alternative to the flame retardant.

**Hearing Date:** 2/6/13

**Staff:** Jacob Lipson (786-7196).

#### **Background:**

##### Children's Safe Products Act.

In 2008 the Legislature passed the Children's Safe Products Act (CSPA), which limits certain chemicals in children's products and requires the Department of Ecology (DOE), in consultation with the Department of Health, to identify chemicals of high concern for children (CHCC) using several criteria. The CSPA also requires manufacturers of children's products containing these identified chemicals to annually report product information to the DOE.

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*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.*

The CSPA requires the DOE to develop a CHCC list, and in 2011 the DOE adopted rules that identified 66 chemicals for inclusion on the CHCC list [Washington Administrative Code 173-334-130]. The DOE rules establish procedures for manufacturers' notification of DOE when their products contain chemicals on the CHCC list, and also set the DOE's enforcement authority.

#### Tris.

The chemicals TCEP (Tris(2-chloroethyl) phosphate) and TDCPP (Tris(1, 3-dichloro-2-propyl) phosphate), known collectively as Tris, may be added to plastics, foams, and textiles as flame retardants. Tris has been used as a replacement for certain Polybrominated Diphenyl Ether (PBDE) flame retardants. The DOE is initiating a rule-making to add TDCPP to the CHCC list established by the CSPA.

#### PBDEs.

PBDEs, a category of flame retardant chemicals, are banned from inclusion in many products. DOE's enforcement authority for the PBDE restrictions includes the power to require a certificate of compliance from manufacturers, and to issue penalties of up to \$1,000 per violation for first time violators and up to \$5,000 for repeat violators.

#### GreenScreen.

GreenScreen is a tool developed by Clean Production Action, a non-profit organization, which can be used to compare chemicals and their alternatives by scoring the chemicals on a variety of hazard-related criteria. Based on the screening assessment of a chemical's hazardous characteristics, a chemical can be given a GreenScreen "benchmark" score on a scale of 1 to 4, with "Benchmark 1" comprising the category of chemicals with the greatest potential hazards.

#### Relevant Department of Ecology Administrative Procedures.

The CSPA statute is silent on methods by which chemicals may be added to or removed from the CHCC list; however, the DOE's administrative rules implementing the CSPA allow the addition or removal of a chemical from the CHCC list upon the DOE's adoption of an additional rule to add or remove the particular chemical from the list.

In general, entities which provide certain types of information to the DOE may designate it as confidential. If the DOE agrees that the entity's designation is appropriate, it may withhold that information from public disclosure.

#### **Summary of Bill:**

##### Prohibitions.

The manufacture, sale, or distribution of residential upholstered furniture or children's products containing Tris in any product component in amounts greater than 50 parts per million is prohibited as of July 1, 2014. Also banned, as of July 1, 2015, is the sale, manufacture, or distribution of children's products or residential upholstered furniture containing any flame retardant identified as a high priority chemical of high concern for children (CHCC) in amounts greater than 50 parts per million.

An exception to the sales ban on CHCC and Tris is made for sales by non-profit organizations, as well as for sales by people who are not engaged in the business of selling furniture or children's

products. Retailers who unknowingly sell products containing restricted flame retardants are shielded from liability.

#### Manufacturer-Specific Exemptions.

The DOE may, in certain circumstances, grant manufacturer-specific exemptions allowing flame retardants on the CHCC list to be temporarily included in children's products or residential upholstered furniture. PBDEs and Tris, however, are universally banned from inclusion in children's products and residential upholstered furniture, and may not receive manufacturer-specific exemptions.

In order for a manufacturer to receive an exemption to include a flame retardant on the CHCC list, the manufacturer must demonstrate that there is not a technically feasible safer alternative to the chemical. Prohibited from serving as technically feasible safer alternatives are chemicals which receive the most-hazardous "Benchmark 1" designation under Greenscreen, and chemicals about which there is insufficient information to use GreenScreen. In order to prove a lack of technically feasible safer alternatives to a flame retardant, the manufacturer must include the following information in a request for exemption to the DOE:

- certain information on the CHCC-listed chemical and any non-chemical alternatives;
- a description explaining the manufacturer's rationale for using the CHCC-listed chemical;
- a description of why there is not a technically feasible safer alternative that meets fire safety standards; and
- an evaluation of alternatives using GreenScreen methodology, for which the DOE may provide technical assistance to manufacturers if requested.

Temporary exemptions granted by the DOE to a manufacturer may last no more than two years.

#### Department of Ecology Enforcement and Administrative Procedures.

The DOE may enforce the ban on Tris and CHCC-listed chemicals using the same enforcement mechanisms created by the PBDE law, including the issuance of penalties for violations. Manufacturers of products containing Tris or CHCC-listed chemicals must notify their products' retailers 90 days before the restrictions take effect.

Beginning on January 1, 2015, the DOE may request manufacturers to submit certificates of compliance indicating the names of any flame retardant chemicals used in their products, and the basis for any exemption from the prohibition on the use of flame retardants on the CHCC list. Manufacturers may mark as confidential portions of the information they submit to the DOE, and the DOE may withhold that information from public disclosure.

The DOE is given authority to add or remove chemicals on the CHCC list by rule.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.