

HOUSE BILL REPORT

ESHB 1294

As Amended by the Senate

Title: An act relating to flame retardants.

Brief Description: Concerning flame retardants.

Sponsors: House Committee on Environment (originally sponsored by Representatives Van De Wege, Hudgins, Pollet, Maxwell, Hunt, Upthegrove, Tharinger, Fey, Farrell, Moscoso, Hunter, Stanford, Reykdal, Fitzgibbon, Bergquist, Tarleton, Goodman, Kagi, Hansen, Jinkins, Habib, Pedersen, Ryu, Lias, Riccelli, Roberts, Morrell, Clibborn and Ormsby).

Brief History:

Committee Activity:

Environment: 2/6/13, 2/14/13 [DPS];

Appropriations Subcommittee on General Government: 2/23/13 [DPS(ENVI)].

Floor Activity:

Passed House: 3/6/13, 53-44.

Senate Amended.

Passed Senate: 4/17/13, 30-18.

Brief Summary of Engrossed Substitute Bill

- Prohibits the sale, manufacture, or distribution of children's products or residential upholstered furniture containing the chemical TCEP (Tris(2-chloroethyl) phosphate) or TDCPP (Tris(1, 3-dichloro-2-propyl) phosphate) in amounts greater than 100 parts per million (ppm) in any product component, beginning July 1, 2015.
- 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 100 ppm in any product component, unless a manufacturer demonstrates that there is not a technically feasible safer alternative to the flame retardant.

HOUSE COMMITTEE ON ENVIRONMENT

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Upthegrove, Chair; McCoy, Vice Chair; Farrell, Fey, Kagi, Lias, Morris and Tharinger.

Minority Report: Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Crouse, Nealey and Overstreet.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: The substitute bill by Committee on Environment be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hudgins, Chair; Dunshee, Hunt, Pedersen and Springer.

Minority Report: Do not pass. Signed by 4 members: Representatives Parker, Ranking Minority Member; Buys, Chandler and Taylor.

Staff: Michael Bennion (786-7118).

Background:

Children's Safe Products Act.

In 2008 the Legislature passed the Children's Safe Products Act (CSPA), which limits certain chemicals, including lead and phthalates, in children's products. Manufacturers in violation of restrictions on the use of these chemicals are subject to fines of up to \$5,000 for initial violations, and up to \$10,000 for subsequent violations.

The CSPA also 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.

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 the DOE when their products contain chemicals on the CHCC list, and also set the DOE's enforcement authority. 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.

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. The TDCPP and TCEP have been used as a replacement for certain Polybrominated Diphenyl Ether (PBDE) flame retardants, a category of flame retardant

chemicals that are statutorily banned from inclusion in many products in Washington. The DOE included TCEP on the initial 66-chemical CHCC list established pursuant to the CSPA, and the DOE is initiating a new rule-making to also add TDCPP to the list.

Fire Safety Standards.

In general, fire safety standards for consumer products are federally established by the United States Consumer Product Safety Commission (CPSC). The federal Flammable Fabrics Act grants regulatory authority to the CPSC to establish mandatory flammability standards for many types of children's products and furniture.

Summary of Engrossed Substitute Bill:

Prohibitions.

The manufacture, sale, or distribution of residential upholstered furniture or children's products containing TDCPP and TCEP in any product component in amounts greater than 100 parts per million (ppm) is prohibited as of July 1, 2015. 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 CHCC in amounts greater than 100 ppm.

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

Manufacturer-Specific Exemptions.

The DOE is required, in certain circumstances, to grant manufacturer-specific exemptions allowing flame retardants on the CHCC list to be temporarily included in children's products or residential upholstered furniture. The TCEP and TDCPP, 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, and the DOE must determine, that there is not a technically feasible, safer alternative to the chemical that meets fire safety standards. 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 CSPA, 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 July 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.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment makes the following changes to the bill:

- Removes the restrictions on the use of TCEP and TDCPP in residential upholstered furniture;
- Removes the restrictions on the use of flame retardants on the Department of Ecology's (DOE) list of Chemicals of High Concern for Children in children's products and residential upholstered furniture, and also removes related provisions allowing manufacturers to apply to the DOE for an exemption allowing for the use of flame retardants on the list of Chemicals of High Concern for Children, and requiring manufacturers to submit certificates of compliance to the DOE;

Allows the sale of used children's products containing TDCPP and TCEP by nonprofit organizations and by people who are not normally engaged in the business of selling children's products.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Environment):

(In support) Tris is widespread in furniture and children's products, and people have a wide exposure in their homes to the hazardous chemicals that this bill would restrict. Children are particularly at risk from the health effects of flame retardants because they tend to put things in their mouths, and spend time on the floor where toxin-containing dust from furniture and toys accumulates. Firefighters, who face elevated cancer risks, are also vulnerable from the exposure to these substances since chemicals intended as fire retardants are released when burned. The burden of proof should be on manufacturers to prove their chemicals are safe. This bill improves public health without compromising public safety, and is reasonable because it allows exemptions for businesses that don't have alternatives to using the chemicals. Manufacturers' use of these chemicals is not needed, since there are alternative means of achieving equally successful fire prevention and suppression. Alternative assessments are needed in order to prevent toxic chemicals from being replaced by other chemicals that are just as hazardous as the ones phased out by legislative action. Many private companies and the DOE have successfully used GreenScreen to compare chemical alternatives.

(In support with concerns) The chemicals that this bill would ban are some of the most frequently-found toxic chemicals that have migrated into the environment. There are functional alternatives for inhibiting fires other than these chemicals.

(With concerns) We would not be using flame retardants if safety did not require us to do so. We need clear guidance on what chemicals we can use as flame retardants in car components.

(Opposed) This bill would delegate too much authority to the DOE, and sets a precedent for allowing the DOE to regulate without concern for the risk or exposure attributable to a

substance. A national standard would be better than a state standard, since it is hard for manufacturers to deal with state-by-state regulations. Industry needs predictability as to what chemicals it can use. The Legislature should let the process it established in the CSPA play itself out, and not interfere by amending the law already. The process by which a chemical is added to the CSPA-established list is sufficient to catch people's attention about the danger of the chemical, and a ban of all of those chemicals is not necessary. There are better ways of conducting alternatives assessments than GreenScreen, which is a proprietary tool which must be licensed and paid for, and which does not necessarily lead to accurate or sufficient results.

Staff Summary of Public Testimony (Appropriations Subcommittee on General Government):

(In support) Most of the costs are for the purchase and testing of products to enforce the ban. Including product components will not change the fiscal note; it clarifies the intent of the bill. Additional chemicals that may be added will be done through rulemaking. Costs to businesses should be reasonably modest because rules elsewhere are changing and the chemicals are already being phased out. There needs to be a regulatory backstop that prevents manufacturers still using the chemicals from continuing to expose children to risks.

Stakeholders worked hard in 2007 to get a ban on Polybrominated diphenyl ethers, only to see it replaced with another class of toxic chemicals dangerous to children. The chemicals are hard to escape. Incidents of childhood cancer are increasing nationwide in recent decades, and a survey has shown that 75,000 children in the state ages 3 to 21 have had to take special education classes for learning disability and behavior in school.

This is one of three priorities for the environmental committee in 2013. Prevention is a good investment. The Model Toxic Control Account funds have always been allowed to be used for prevention. As one chemical gets banned, another is put in place. The two primary chemicals banned were taken out of children's pajamas in the 1970s because of the recognized risk of cancer to children. The bill includes an exemption for manufacturers if there are no known safer alternatives than the ones on the list referred to in the bill. This is a good investment, supported by a broad group of stakeholders, and saves money to the state in the long run. The marketplace should begin to respond, but the bill would avoid moving toward the next toxic chemical.

Flame retardants pose a great risk to firefighters by causing a fire to smolder and create more smoke. This carries a tremendous impact to state firefighters through cancer exposure and the costs of worker compensation. There are alternatives available that are less toxic and are being used.

(Opposed) The fiscal note is incomplete. The bill was amended in the policy committee to require additional banning in all components and requires reviews that will increase the note. The Model Toxic Control Account is being used to pay for this and it should not be used without a direct nexus. This creates a burden on other activities supported by the account. GreenScreen is a proprietary tool and using that will lead to additional litigation that will cost the state more in defending its use. The business community has offered an alternative that will save time and money and remove the GreenScreen process in the bill.

Persons Testifying (Environment): (In support) Senator Nelson; Mark Miloscia, Washington Catholic Conference; Erika Schroeder, Washington Toxics Coalition; Geoff Simpson, Washington State Council of Firefighters; Evan Hirsch; Barbara Morrissey, Department of Health; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; Karen Bowman, Washington State Nursing Association; Elizabeth Davis, League of Women Voters of Washington; Jessie Dye, Earth Ministry; and Mike Brown, Washington Fire Chiefs Association.

(In support with concerns) Carol Kraege, Department of Ecology.

(With concerns) Ryan Spiller, Auto Alliance.

(Opposed) Mark Johnson, Washington Retail Association; Brandon Housekeeper, Association of Washington Business; Jennifer Gibbons, Toy Industry Association; and Mark Greenberg, American Chemistry Council.

Persons Testifying (Appropriations Subcommittee on General Government): (In support) Karen Bowman, Washington State Nurses Association; Nick Federici, Washington Toxics Coalition; Kelly Fox, Washington State Council of Firefighters; and Carol Kraege, Department of Ecology.

(Opposed) Brandon Housekeeper, Association of Washington Business.

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

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on General Government): None.