

# SENATE BILL REPORT

## ESHB 1294

---

---

As Reported by Senate Committee On:  
Energy, Environment & Telecommunications, April 2, 2013

**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:** Passed House: 3/06/13, 53-44.

**Committee Activity:** Energy, Environment & Telecommunications: 3/19/13, 4/02/13 [DPA, DNP, w/oRec].

---

### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Majority Report:** Do pass as amended.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Chase, Cleveland, Honeyford and Litzow.

**Minority Report:** Do not pass.

Signed by Senator Brown.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Ranker, Ranking Member; Billig.

**Staff:** Jan Odano (786-7486)

**Background:** In 2008, the Legislature passed E2SHB 2647, The Children's Safe Products Act (CSPA). The legislation defines a high-priority chemical as one that is identified to do one or more of the following:

- harm the normal development of a fetus or child or cause other developmental toxicity;
- cause cancer, genetic damage, or reproductive harm;
- disrupt the endocrine system;
- damage the nervous system, immune system, or organs or cause other systemic toxicity;

---

*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.*

- be persistent, bioaccumulative, and toxic; or
- be very persistent and very bioaccumulative.

Under CSPA, the Department of Ecology (Ecology) in consultation with the Department of Health (DOH), must identify chemicals of high concern for children (CHCC). A CHCC is a high-priority chemical and:

- is found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids;
- is found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or
- is added to or is present in a consumer product used or present in the home.

There are 66 CHCCs on the list for which manufacturers of children's products must annually report product information to Ecology.

The chemicals TCEP and TDCPP are added to plastics, foams, and textiles as flame retardants. These chemicals are found in children's products such as car seats, baby changing pads, and baby carriers. TCEP and TDCPP are used as a replacement for certain PBDE flame retardants that are banned or voluntarily phased out of use.

Ecology received a petition to include TDCPP to the list of CHCCs. Rulemaking was initiated to amend the CHCC list to include TDCPP.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Recommended Amendments):** Beginning July 1, 2015, the manufacture, sale, and distribution of children's products of which any component contains more than 100 parts per million of TDCPP or TCEP is prohibited. Nonprofit organizations and private parties making sales or purchases of used products are exempt from the prohibitions on chemicals restricted under CSPA.

**EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Amendments):** Nonprofit organizations and private parties making sales or purchases of used products containing TDCPP or TCEP are exempt from the prohibition.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony as Heard in Committee :** PRO: The striking amendment only bans the two TRIS chemicals and does not prevent a manufacturer from replacing a toxic chemical with a worse chemical. The efficacy of the ban on TRIS is eroded

by not including residential upholstered furniture, which is a major source for exposure. The striking amendment does not go far enough. It removes language to encourage manufacturers to look for a safer alternative. If there is no mechanism in place to address replacing toxic chemicals, then we will be back next year to ban the next harmful chemical.

The underlying ESHB is the most protective form of the bill. The ban is critical because it prohibits the use of a cancer-causing chemical. Children have the highest risk of exposure. It sets up a mechanism to stop replacement of a banned chemical with another harmful chemical. There are safer alternatives at reasonable cost that will protect our children. It would allow the state to learn more about replacement chemicals. The flame retardant chemicals do not stop fires at the amounts used in residential furniture. The chemicals are toxic and should be banned. It takes sophisticated knowledge to understand the impacts of these chemicals. We need a system that uses the precautionary principle. We need something stronger than voluntary standards to protect the most vulnerable. We should protect firefighters from the toxic chemicals resulting from burning products.

CON: The ESHB is not a compromise. The fundamental problem with the bill is that it gives Ecology the authority to ban chemicals without legislative approval. The bill would allow the use of the reporting rule to ban chemicals, which should require a much higher threshold.

OTHER: The bill needs an exemption for the sale of used products by nonprofit organizations that have no way to determine the manufacturer. This does not address the underlying question of how to get to the next chemical. The issue should be addressed at the federal level. It is a nightmare for retailers to comply with a patchwork of different states' laws.

**Persons Testifying:** PRO: Mark Miloscia, WA State Catholic Conference; Erika Schreder, WA Toxics Coalition; Mike Brown, WA Fire Chiefs; Geoff Simpson, WA Council of Fire Fighters; Cliff Traisman, WA Conservation Voters/WA Environmental Council; Dr. Vyto Babrauskas, Dr. Barry Lawson, American Academy of Pediatrics; Sofia Aragon, WA State Nurses Assn.; Dr. Loretta Jankowski; Jessie Dye, Earth Ministry; Mary Moore, League of Women Voters; Barbara Morrissey, DOH; Carol Kraege, Ecology; Stacy Hirsch, citizen.

CON: Brandon Houskeeper, Assn. of WA Business.

OTHER: Phil Watkins, Goodwill Industries; Mark Johnson, WA Retail Assn.; Brandon Houskeeper, Assn. of WA Business.