

HOUSE BILL REPORT

ESHB 2545

As Passed House:
February 15, 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:

Committee Activity:

Health Care & Wellness: 1/27/16, 2/3/16 [DPS];
Appropriations: 2/8/16, 2/9/16 [DPS(HCW)].

Floor Activity:

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

Brief Summary of Engrossed Substitute Bill

- Prohibits the manufacture, sale, or distribution of children's products or residential upholstered furniture containing specified flame retardants in amounts greater than 1,000 parts-per-million (ppm).
- Allows the Secretary of the Department of Health, by rule, to prohibit the manufacture, sale, or distribution of children's products or residential upholstered furniture containing specified flame retardants in amounts greater than 1,000 ppm.
- Requires manufacturers of a restricted product to notify sellers of the restricted product and to recall the restricted product.

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 COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Cody, Chair; Riccelli, Vice Chair; Clibborn, Jinkins, Moeller, Robinson, Tharinger and Van De Wege.

Minority Report: Do not pass. Signed by 6 members: Representatives Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Caldier, DeBolt, Johnson and Short.

Minority Report: Without recommendation. Signed by 1 member: Representative Rodne.

Staff: Ariele Landstrom (786-7190).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 23 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Parker, Assistant Ranking Minority Member; Cody, Fitzgibbon, Hansen, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Pettigrew, Robinson, Sawyer, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 7 members: Representatives Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dent, Haler, Schmick and Van Werven.

Minority Report: Without recommendation. Signed by 2 members: Representatives Condotta and Magendanz.

Staff: Charlie Gavigan (786-7340).

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);
- 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.

2014 Ecology Flame Retardant Report.

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 Engrossed Substitute Bill:

Prohibition on Certain Chemicals.

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 in any product component:

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

Department of Health Rule-Making.

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 1,000 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.

Penalties.

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.

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

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) The state has banned some flame retardants, but they have often been replaced by worse chemicals. Children can breathe in these chemicals. Exposure to these chemicals is harmful to firefighters. Peer-reviewed science demonstrates that flame retardants are toxic to human health. They contribute to cancer, hormone disruption, neuro-behavioral disabilities, Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder, learning and memory deficits, lower IQs, and infertility. Children are especially vulnerable because their brains are developing and they are exposed more because of the presence of flame retardants in children's products. Children ingest up to 10 times as much as adults do because they put these products in their mouths. Firefighters are more likely to die from cancer than the general population. They have greater rates of toxics in their bodies than the general population. These chemicals affect people with developmental disabilities because they have lower immune systems. These toxins can create medical complications for people with developmental disabilities.

This bill will reduce exposure to toxic flame retardants in people's homes. Some of these chemicals are found in foam; they are not chemically bound to the foam, so they escape into the air. These chemicals show up everywhere in our environment. They show up in breast milk and umbilical cord blood. Our current regulatory system does not regulate current chemicals. A new generation of flame retardants are present in indoor air. There are safer alternatives. These flame retardants haven't been shown to provide any safety benefit.

(Opposed) This is new and unprecedented authority for the DOH. Whether or not the product poses a risk, the DOH can ban it. The issues around this bill are complex. This is taking a report list and turning it into a ban list. Reporting has been with Ecology and it is preferable to stay with Ecology. The authority should not be with the DOH, but rather with the Legislature. The Legislature needs to take more time with this because it is in a new committee.

There is concern about the reimbursement for recalled products because some entities are both an importer/distributor and a retailer. There is confusion about whether a retailer has to reimburse itself if it's also an importer.

The federal Environmental Protection Agency is conducting ongoing assessments of how flame retardants are used and this information could be useful. There should be a national fix. Multistate retailers that import components from all over the world would have a difficult time with different standards in different states. The Legislature should wait until these reviews are completed. Dealing with only one regulating agency would be preferable.

The mere presence of these chemicals in products does not indicate risk of harm. There are naturally occurring chemicals in food. Additive TBBPA in products is often very small. Many studies show that exposure to TBBPA does not cause negative health effects. What is missing from the bill is which chemicals pose the greatest risk.

Toy manufacturers do not add flame retardants to toys, but electronic components may contain flame retardants. Those components are critical to the safety of products because they have an increased flammability.

(Other) This bill addresses ongoing concerns at the DOH, but it is not in the Governor's budget. Studies indicate wide exposure to these chemicals. The rule-making procedure in the bill would allow the DOH to look more closely at chemicals. Standards can be met without using flame retardants.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill is an effort to get ahead of the problem of toxic chemicals in children's products and furniture, banning the toxic chemical before it is used in these products. The Department of Ecology identifies chemicals that are problems, and the Department of Health would decide which should be banned for children's products and furniture under the bill.

(Opposed) This debate should be at the federal level, not the state level. The funding could be better used on toxic cleanup rather than this. Funding is from the toxics account; that

account is oversubscribed, which means important clean-up projects are not getting done. There are concerns that the bill does not clearly exempt consumer electronics and the bill is broader than children's safe products. Two state agencies shouldn't be regulating the same policy area. Regulation of this area should stay with the Department of Ecology; this agency is already dedicating significant resources to this issue.

Persons Testifying (Health Care & Wellness): (In support) Representative Van De Wege, prime sponsor; Erika Schreder and Dave Mastin, Washington Toxics Coalition; Jennifer Klein; Karen Bowman, Washington State Nurses Association; Michael White, Washington State Council of Fire Fighters; Rachel Koller; and Noah Seidel, Arc of Washington State.

(Opposed) Mark Johnson, Washington Retail Association; Brandon Housekeeper, Association of Washington Business; Holly Chisa, Northwest Grocery Association; Jennifer Gibbons, Toy Industry Association; Tim Shestek, American Chemistry Council; Thomas Osimitz, Science Strategies; and Charlie Brown, Consumer Technology Association.

(Other) Barbara Morrissey, Washington State Department of Health.

Persons Testifying (Appropriations): (In support) Dave Mastin, Washington Toxics Coalition.

(Opposed) Mark Johnson, Washington Retail Association; Brandon Housekeeper, Association of Washington Business; Charlie Brown, Consumer Technology Association; and Holly Chisa, Northwest Grocery Association.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): Robert Bradley, Washington Fire Chiefs and Fire Marshals; Ivanova Smith, People First; Doreen Vandervort, Self Advocates of Washington; Robert Wardell; and Melissa Gombosky, Personal Care Products Council.

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