

SENATE BILL REPORT

ESHB 2545

As of February 29, 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: Passed House: 2/15/16, 76-21.

Committee Activity: Health Care: 2/25/16, 2/25/16 [DPA-WM, w/oRec].
Ways & Means: 2/29/16.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Becker, Chair; Cleveland, Ranking Minority Member; Angel, Bailey, Conway, Frockt, Jayapal, Keiser, Parlette and Rivers.

Minority Report: That it be referred without recommendation.

Signed by Senators Dammeier, Vice Chair; Baumgartner and Brown.

Staff: Mich'l Needham (786-7442)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Mark Eliason (786-7454)

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.

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.

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 Bill (Recommended Amendments): Beginning July 1, 2017, no manufacturer, wholesaler, 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 (ppm) in any product component:

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

The Department of Ecology (DOE), in consultation with the Department of Health (DOH), must make a determination regarding whether a listed flame retardant meets the criteria of a high priority chemical of high concern for children. The listed chemicals include:

- IPTPP;
- TBB;
- TBPH;
- TCPP
- TPP; and
- V6.

If a listed flame retardant chemical meets the criteria of a high priority chemical of high concern for children, DOE, in consultation with DOH, must determine whether additional manufacturer data is needed to further evaluate the flame retardant chemical. If additional data is needed, DOE may initiate rule making to add the flame retardant according to the process and criteria adopted in rule. If DOE, in consultation with DOH, determines that a listed flame retardant chemical meets the criteria of a chemical of high concern for children and there is available information, DOE must submit a report to the Legislature by December 1, 2016, with enumerated details.

DOE, in consultation with DOH, must create an external advisory committee to provide information for the report to the Legislature and any rule making. All advisory meetings must be open to the public, and must include representatives of large and small business; community, environmental, and public health advocacy groups; local governments; affected and interested businesses; groups representing firefighters; and public health agencies.

If DOE submits a report to the Legislature recommending restricting a listed flame retardant, the rule-making process may not commence prior to the end of the 2017 regular Legislative session.

Before December 1 of any year until December 2021, DOH may propose a rule to restrict flame retardant chemicals consistent with DOE's recommendations but the rule may not be finalized and adopted before the end of the regular Legislative session in the year following the rule proposal, and may not be finalized and adopted if the Legislature takes action to implement restrictions on the listed flame retardant chemical consistent with DOE recommendations. The rule-making authority of DOH expires July 1, 2022.

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.

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.

EFFECT OF CHANGES MADE BY HEALTH CARE COMMITTEE (Recommended Amendments):

- The definition of "children's product" is modified to exclude an inaccessible electronic component part located inside a children's electronic product and not capable of being touched or mouthed.
- The ban on the five listed flame retardants is retained.
- The Department of Health rule-making process is modified.
- The Department of Ecology, in consultation with the Department of Health, must make a determination regarding whether a listed chemical meets the criteria of a high priority chemical of high concern for children.
- If the Departments determine a chemical is of high priority, they must determine whether additional manufacturer data on use in children's products is needed in order to further evaluate the flame retardant. If additional data is needed, the department may initiate rule making to add the flame retardant according to the process and criteria adopted by DOE.
- If the Departments determine that a flame retardant meets the high priority and there is available information on use of the chemical in children's products, then DOE must report to the Legislature by December 1, 2016, with identified items.
- The Departments must create an external advisory committee to provide stakeholder input, expertise, and additional information for the report and any rule making. All advisory meetings must be open to the public, and membership must include representatives from large and small business, community, environmental and public health advocacy groups, local governments, affected business, groups representing firefighters, and public agencies.
- Before December 1 of each year DOH may propose a rule to restrict only listed flame retardants consistent with DOE's recommendations. The rule may not be finalized before the end of the regular session.
- Penalties are retained.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 23, 2016.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Health Care): PRO: I support both striking amendment options before the committee today. It is important to Goodwill to retain responsibility with the manufacturers and retain the exemption for the previously used products. The striker provide additional Legislative control and oversight into the process with reports back to the Legislature.

CON: It is leaping to a conclusion that detecting a chemical in the environment impacts human health. We are missing a discussion about the level of exposure that causes harm. The EPA should inform the discussion. We have concerns with the bill as drafted and believe the consumer products safety commission should be evaluating flame retardants. Manufacturers are challenged to comply with state restrictions and national restrictions. We are opposed to new authority for the departments to ban any products. There needs to be a public process with rule making to determine if the chemicals meet the criteria for high

concerns. We should direct DOE to study the six chemicals and bring recommendations back. Retailers have started their purchases for next Christmas already and they can't meet Washington State specific standards. We prefer to have the EPA and consumer products safety commission develop standards. We are opposed to the additional authority for Department of Health and believe the process should stay with the Department of Ecology. Any bans needs to be decided by the Legislature. The definition of children's products with the internal components reference is a good change. This bill gives two agencies authority in the process and we think it should stay with Department of Ecology. We appreciate the additional definition of children's products.

OTHER: Department of Health supports the bill and both striking amendment proposals. The focus on six additional chemicals is important. they are all additive chemicals which means they escape into the air as dust and are very similar to the five chemicals that are banned. All six have been detected in products and in bio-monitoring in people. It is important to create a mechanism to ban future chemicals. The six additional chemical are of high concern for children and were in the report Department of Ecology submitted to the Legislature. The bill does not compromise fire safety. Alternatives to these products are already available on the market.

Persons Testifying (Health Care): PRO: Representative Van De Wege, prime sponsor; Shelly Helder, the 5 Goodwill organizations of WA; Dave Mastin, Washington Toxics Coalition.

CON: Tim Shestek, American Chemistry Council; Jennifer Gibbons, Toy Industry Association; Brandon Houskeeper, Assoc. of WA Business; Mark Johnson, Washington Retail Association; Holly Chisa, NW Grocery Assn; Charlie Brown, Consumer Technology Association.

OTHER: Holly Davies, Washington State Dept of Ecology; Barbara Morrissey, Washington State Dept of Health.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony (Ways & Means): PRO: The exemption for previously used products to protect non-profits are crucial.

CON: We are opposed to having the Department of Health involved and believe this process should remain with the Department of Ecology. The spending in the fiscal note is unnecessary. Federal rules and the Environmental Protection Agency already govern the use of chemicals in products and already has funding to conduct studies and analysis on the use and safety of chemicals in consumer products. If a chemical should be banned, they will take action. It is believed that any bans on the use of chemicals must be approved by the legislature.

OTHER: This bill is a step in the right direction and makes progress on taking steps to protect individuals from these chemicals.

Persons Testifying (Ways & Means): PRO: Shelly Helder, the 5 Goodwill Organizations of WA, Dave Mastin, WA Toxics Coalition.

CON: Brandon Housekeeper, Association of WA Business; Mark Johnson, Washington Retail Association; Grant Nelson, American Chemistry Council.

OTHER: Charlie Brown, Consumer Technology Association.

Persons Signed In To Testify But Not Testifying: PRO: Michael White, Washington State Council of Fire Fighters; Mary McHale, American Cancer Society & Cancer Action Network; Laurie Lippold, WA Chapter American Academy of Pediatrics, Ellicott Dandy, OneAmerica, Donna Christensen, WA State Catholic Conference; Nacy Sapiro, League of Women Voters of Washington; Margaret-Lee Thompson, ARC of United States, Lorin Thompson; Joe Kendo, Washington State Labor Council; Steve Breaux, Planned Parenthood Votes NW, Kaitlin Winter-Eulberg, Faith Action Network; Dylan Doty, Washington Fire Chiefs; Emily Murphy, Children's Alliance; Diana Stadden, ARC of Washington; Melissa Johnson, Washington State Nurses Association; Brittany Stadden, People first; Donna Patrick, Developmental disabilities Council; Felipe Rodriguez-Flores, Progreso: Latino Progress; Noah Sidel, Self Advocates in Leadership.

CON: Patrick Connor, NFIB/Washington; Holly Chisa, NW Grocery Association.

OTHER: Holly Davies, Washington State Department of Ecology; Steve Buckner, Bayer and Johnson and Johnson.