

SENATE BILL REPORT

SB 5231

As Reported by Senate Committee On:
Environment, Water & Energy, February 8, 2011

Title: An act relating to children's safe products.

Brief Description: Regarding the safety of certain children's products.

Sponsors: Senators Nelson, Swecker, Rockefeller, Ranker, Chase, Regala, Kohl-Welles and Kline; by request of Department of Ecology.

Brief History:

Committee Activity: Environment, Water & Energy: 1/25/11, 2/08/11 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 5231 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Nelson, Vice Chair; Chase, Fraser and Ranker.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin and Holmquist Newbry.

Minority Report: That it be referred without recommendation.

Signed by Senator Morton.

Staff: Jan Odano (786-7486)

Background: In 2008 the Legislature passed E2SHB 2647, The Children's Safe Products Act (CSPA). The CSPA:

- banned the sale, manufacturing, and distribution of children's products with certain levels of lead, cadmium, and phthalates as of July 1, 2009;
- required the Department of Ecology (Ecology) to identify chemicals of high concern for children using set criteria;
- required manufacturers of children's products containing identified chemicals of high concern to annually report product information to Ecology;
- authorized Ecology to develop rules to implement the CSPA; and

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- required Ecology to submit a report on chemicals of high concern and children's products including policy options for addressing children's products containing chemicals of high concern and recommendations for ways to inform consumers about toxic chemicals in products.

The federal Consumer Product Safety Improvement Act, which came into force August 2008, substantially pre-empted the CSPA provisions to ban lead, cadmium, and phthalates in children's products. Washington has deferred to the Consumer Product Safety Improvement Act regarding the use of lead, cadmium, and phthalates in children's products. However, the requirements for identifying chemicals of high concern for children and reporting by manufacturers remain valid.

Ecology and the Department of Health (DOH) identified substances that met the statutory definition of high priority chemicals, and then prioritized the list to 59 chemicals of high concern for children.

Ecology is developing rules to establish the list of chemicals of high concern for children; provide notification requirements for manufacturers of children's products with chemicals of high concern; establish which manufacturers are required to comply with the rule; and set forth penalties for failure to provide the appropriate information to Ecology. Ecology plans to have the rule completed in March 2011, and effective April 2011. The first notices with manufacturers' information are due to Ecology April 2012.

In its report, Ecology identified several policy options to address children's products containing chemicals of high concern. The options include (1) require manufacturers to provide information about alternative chemicals and an assessment of the alternative to determine if it is safer and effective; (2) increase public awareness of products with chemicals of high concern through a website, or by requiring labeling; (3) restrict or prohibit the use of the chemical; (4) require product stewardship or recycling; and (5) provide grants or require manufactures to fund the development of alternative, less toxic formulations for children's products.

Summary of Bill (Recommended Substitute): Ecology must review and evaluate manufacturer product information and develop a draft list of products that should be considered for alternatives assessments. Ecology must develop the list using criteria such as toxicity of the chemical, extent of and potential for multiple routes of exposure; presence of the chemical in multiple products; availability of alternatives; and if the product has been banned by another state.

DOH must prioritize products on Ecology's draft list based on the potential hazard from potential exposure through direct or indirect contact with the product; the likelihood that the chemical will be released into a child's environment; and the number of products sold in the state or nationally. Ecology may identify those products requiring an alternatives assessment consistent with DOH's prioritization, other relevant information, and in consideration of public comment.

Ecology may issue administrative orders to require manufacturers of products identified as needing an alternatives assessment to conduct an alternatives assessment. Manufacturers

must submit alternatives assessments within the timeframe established in the administrative order. Manufacturers may work with other manufacturers of similar products containing the same chemical to complete the alternatives assessment.

Ecology must develop guidelines for conducting alternative assessments with the assistance of DOH, technical experts from manufacturing, toxicologists, children's health specialists, and epidemiologists.

The alternative assessments must at least include elements such as: availability of alternatives; information on the persistence and bioaccumulation potential of any alternatives; toxicity of alternatives; and environmental impacts. Ecology must provide opportunity for public comment on alternatives assessments. Ecology and DOH must review alternatives assessments, additional relevant information and public comments, and determine if there are additional actions the Legislature should take to protect children's health. The departments must submit a report on their findings to the Legislature.

Manufacturers with annual sales of less than \$1 million or current label from the U.S. Environmental Protection Agency Design for the Environment Program are exempt from notice requirements.

Civil penalties are appealable to the Pollution Control Hearings Board.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute): Limits the scope of children's products to those currently in statute. Adds to the list of exempt products, science kits, paper and forest products and certain products such as food, medical devices, drugs, and dietary supplements, regulated by the US Food and Drug Administration. Clarifies that Ecology must review alternatives assessments and other relevant information and determine if there are additional actions that the Legislature should take to protect children's health.

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 on Original Bill: PRO: Research continues to show that our children's health continues to be affected by toxic chemicals in products they use. There is a need to take a further look at the chemicals in children's products and to ensure the protection of our children. We need to make sure children's products are free from toxic chemicals. A barrier to finding alternatives to toxic chemicals is information. A comprehensive list will help close the information/data gap and give government and manufacturers the information they need to take appropriate action on these products. This is an important step to look for ways to make children's products safer and more safely. It takes time to carry out a fair process and will take several years, but the time is needed to give businesses certainty and to make changes to their business processes. There are high

economic costs attributable to environmental contaminants that impact our children. Recent reports show that manufacturers are complying with chemical regulations, however harmful chemicals still exist in children's products.

CON: The current law is not fully implemented. We need a chance to adapt before moving forward. This will impose costly new requirements on businesses and slow our economic recovery. Rules for reporting information have not been adopted yet and businesses should be allowed to report prior to having to meet additional actions. Businesses are relocating elsewhere rather than to meet the current requirements in this state. This bill is not needed because businesses must adhere to several federal requirements in order to sell their products. This bill exponentially expands the underlying legislation to almost all products. This should be done at the federal level. Businesses with specialized products will have to test for chemicals and this will result in huge barriers to small businesses.

Persons Testifying: PRO: Senator Nelson, prime sponsor; Steve Breaux, Wash PIRG; Carol Kraege, Ecology; Erika Schreder, WA Toxics Coalition; Barry Lawson, WA Chapter of American Pediatrics; Karen Bowman, WA State Nurses Assn.; Rachel Koller, parent; Jessie Dye, Earth Ministry; Dana Swanson, Lutheran Volunteer Corps; Donna Patrick, Developmental Disabilities Council, ARC of WA; Barbara Morrissey, Department of Health; Carmen McDermott, MD.

CON: Grant Nelson, Assn. of WA Business; Joe Gregorich, TIF; Mark Greenberg, American Chemistry Council; Holly Chisa, NW Grocery Assn; Mark Johnson, WA Retail Assn.; Allen Rickert, Top Ten Toys.