

SENATE BILL REPORT

SB 6120

As Reported by Senate Committee On:
Environment, January 20, 2012
Ways & Means, February 7, 2012

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

Brief Description: Concerning children's safe products.

Sponsors: Senators Nelson, Swecker, Harper, Hargrove, Kohl-Welles, Fraser, Kastama, Pridemore, Rolfes, Frockt, Ranker, Regala, Shin, Tom, Kline, Chase, Keiser and Conway.

Brief History:

Committee Activity: Environment: 1/17/12, 1/20/12 [DPS-WM, DNP].
Ways & Means: 1/26/12, 2/07/12 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 6120 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nelson, Chair; Rolfes, Vice Chair; Chase, Fraser and Pridemore.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Minority Member; Honeyford, Morton and Sheldon.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6120 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Baumgartner, Brown, Conway, Fraser, Harper, Kastama, Keiser, Kohl-Welles, Pridemore, Regala and Tom.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Hewitt, Holmquist Newbry, Honeyford, Padden and Schoesler.

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.

Minority Report: That it be referred without recommendation.
Signed by Senator Parlette, Ranking Minority Member Capital.

Staff: Michael Bezanson (786-7449)

Background: In 2008 the Legislature passed E2SHB 2647, The Children's Safe Products Act (CSPA). In part, CSPA requires the Department of Ecology (DOE) to identify chemicals of high concern for children using certain criteria. CSPA also requires manufacturers of children's products containing identified chemicals of high concern to annually report product information to DOE. DOE is authorized to adopt rules to implement, administer and enforce the act. California, Maine, and Minnesota also have passed legislation regarding chemicals of concern in children's products.

DOE finalized and adopted rules in July 2011. The rules establish a list of chemicals of high concern for children, provide notification requirements for manufacturers, and set enforcement actions. The reporting requirements are phased-in by manufacturer size and type of children's product. The largest manufacturers must begin reporting by August 2012 on children's products intended for feeding or sucking as well as lotions, shampoos, and creams. The manufacturer's notice must be filed annually and provide information about chemicals of high concern for children that are intentionally added to the product.

The chemicals TCEP (Tris(2-chloroethyl) phosphate) and TDCP (Tris(1-chloro-2-propyl) phosphate), known collectively as TRIS, are added to plastics, foams, and textiles as flame retardants. TRIS is found in children's products such as car seats, baby changing pads, and baby carriers. TRIS is used as a replacement for certain PBDE (Polybrominated Diphenyl Ether) flame retardants that have been banned or voluntarily phased out of use. Beginning December 1, 2013, the state of New York will prohibit the sale of products containing TRIS intended for use by children under the age of three, such as baby products, toys, car seats, nursing pillows, crib mattresses and strollers.

Summary of Bill (Recommended Second Substitute): The manufacture, distribution, and sale of children's products containing TCEP in amounts greater than 100 parts per million is prohibited beginning July 1, 2014. The prohibition does not apply to recycled materials containing less than .01 percent of TCEP or to previously owned products sold in casual or isolated sales or by nonprofit organizations.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): Modifies the ban on TRIS to only apply to TCEP in amounts greater than one hundred parts per million in any component. Exempts the sale or use of recycled materials containing less than .01 percent of TCEP. Removes the ban on TDCPP. Clarifies that only used products sold by casual or isolated sales or by nonprofit organizations are exempt.

Removes all other sections of the bill.

EFFECT OF CHANGES MADE BY ENVIRONMENT COMMITTEE (Recommended First Substitute): Grammatical and technical changes are made. The timeframe for when DOE may require alternatives assessments is clarified.

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 (Environment): PRO: The current approach to chemicals affecting the environment, public health and safety is fundamentally flawed. The system errs on the side of commerce rather than safety. There is no mechanism to address known toxic chemicals. This bill moves towards such system. It is critical to find safer alternatives. There is research showing high levels of TRIS in children's products. There are studies showing the impacts of some of the chemicals such as: PBDEs can cause low-birth weight babies; and Bisphenol-A has a linear relationship to behavioral issues. TRIS is a carcinogen. This bill will get TRIS out of kids products. There are several good alternatives for flame retardants. Early intervention can help a child reach their full potential. The adverse effects of chemicals such as TRIS impacts kids. Parents shouldn't have to be chemistry professors to determine safe products for their children.

CON: The bill ignores the rule-making activities undertaken by DOE. We should wait until the rule is fully implemented and rule requirements are met before there is an expansion of activities. The first reports required under the rule are not due until August 2012. There needs to be clarity on Bisphenol-A and the prohibitions that were recently passed on the use of this chemical. A definition of credible science is needed in the bill. There needs to be a federal solution that is a risk-based approach to these chemicals. There needs to be a method for prioritization of chemicals so that DOE will not be inundated with unnecessary data. The system for risk evaluation should be one that identifies the hazards, determines the products containing the hazards, and then evaluates the use of the products and by whom. The bill penalizes entrepreneurship by allowing the exchange of confidential business information, which goes against the fundamental provisions of trade secrets and could expose industry participants to liability. The toy industry is already highly regulated with manufacturers required to comply with several federal laws and the American Society for Testing and Materials safety specification on toys.

Persons Testifying (Environment): PRO: Senator Nelson, prime sponsor; Bernie Steckler, Lee Anne Beres, Earth Ministry; Erika Schreder, WA Toxics Coalition; Barry Lawsen, MD, Academy of Pediatrics; Karen Bowman, WA State Nurses Assn.; Erin Naumowicz, Lullaby Organics; Jessie Dye for Loretta Jancoski, Retired Dean of Seattle University, School of Theology & Ministry; Diane Bedwell, Planned Parenthood; Ted Sturdevant, Director, DOE; Mike Brown, WA Fire Chiefs; Elizabeth Davis, League of Women Voters of WA.

CON: Melissa Gombosky, Personal Care Products Council; Courtney Barnes, Assn. of WA Business; Holly Chisa NW Grocery Assn.; Joe Gregoric, Toy Industry Association; John Hewitt, Grocery Manufacturers Assn.; Mark Johnson, WA Retail Assn.; Mark Greenberg, American Chemistry Council.

Staff Summary of Public Testimony on Substitute as Passed by Environment (Ways & Means): PRO: In 2007 we banned MTBE in the hope that there will be safer alternatives. Instead, we have carcinogens. The chemicals in this bill are linked to cancer and other environmental diseases. The bill aims to make sure that we put in place safe alternatives. This bill is a sound investment in addressing the health and toxic problems found in our children's nurseries.

The costs are paid out of the Model Toxics Control Act (MTCA) account. MTCA are the right funds to use. These funds are and have been used in preventing toxic chemicals and pollution. The fiscal costs for this bill are a small price to pay compared to the long term health costs that children will face or the possibility of getting a fatal illness. Children with birth defects require higher levels of care and greater costs to Washington State. Washington State pays a significant portion of direct medical costs and indirect costs to families for children with diseases that are caused by environmental factors such as the four chemicals addressed in this bill. The bill does not take away from any fire safety standards; it just provides that manufactures must use safer alternatives. When TRIS was banned in children's pajamas, an alternative was found that protected against fire and met federal safety standards.

CON: The Children's Safe Product Act has not yet been implemented. The rules were adopted in July 2011, and the first reports are not due until August 2012. The bill is premature, and we should wait to expand the act before the current rules have been implemented. Regulatory provisions are not clear. There are no provisions in the bill for cases where there are no safer alternatives. How can a manufacturer prove this? There is concern that the bill does not adequately protect proprietary business information during assessment processes.

The fiscal note understates the costs of this bill. The fiscal note discusses the need for significant staff resources, but it only requires 0.7 full-time equivalent. The fiscal note assumes 25 assessments, but adequate resources to accomplish this workload are not provided for in the fiscal note. The technical assistance that DOE is required to provide under this bill will require many more resources than assumed in the fiscal note. California looked at this issue and had costs much higher than quoted here. The bill is not risk-based or prioritized, so DOE could receive an extremely large set of documents and data that it will need to consider.

The safest children's product is one that does not catch on fire and burn the child. Burns are the most expensive disease a person can have. A child at the University of Washington Burn Center costs about \$8,000 per day. Burn victims, especially children, come from lower social economic class. The majority of children we take care of are on Medicaid, which impacts the state budget. The fiscally responsible thing to do is to not ban a chemical that helps people to get out of a fire or protect them against burns. The cost benefit of not having a child catch on fire or suffer burns is better than the small chance of getting cancer.

Persons Testifying (Ways & Means): PRO: Senator Nelson, prime sponsor; Erika Schreder, Nick Federici, WA Toxics Coalition; Dr. Laura Hart, WA Physicians for Social Responsibility; Diana Stadden, Arc of WAState; ; Clifford Traisman, WA Environmental Council; Nicole Castonguay WA Chapter of American Academy of Pediatrics; Kate While Tudor, WA State Nurses' Assn.

CON: Mark Johnson, WA Retail Assn.; Mark Greenberg, American Chemistry Council; Joe Gregorich, Toy Industry Assn.; Melissa Gombosky, Personal Care Products Council; Courtney Barnes, Assn. of WA Business; John Hewitt, Grocery Manufactures Assn.; Dr. David Heimback, Citizens for Fire Safety.