

SENATE BILL REPORT

ESHB 1294

As of February 25, 2014

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, S. 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; 1/22/14, 72-25.

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: Flame-retardant chemicals are added to many consumer products to delay combustion and to meet fire safety standards. The flame retardants polybrominated diphenyl ether (PBDE) were added to a wide variety of household products; however, because of concerns for human health and the environment, the Legislature banned the use of certain PBDEs for use in residential upholstered furniture. The chemicals tris(1,3-dichloro-2-propyl) phosphate (TDCPP) and tris(2-chloroethyl)phosphate, (TCEP), known collectively as TRIS, are used as a replacement for certain PBDE flame retardants that were banned or voluntarily phased out of use.

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.

TRIS is added to plastics, foams, and textiles. It is found in children's products such as car seats, baby changing pads, and baby carriers. Concerns have been raised about TRIS because of its widespread use, human exposure, and potential health risks. The use of TCEP in children's products is prohibited in New York and Maryland. Other states have proposed bans of TCEP and TDCPP in children's products and residential upholstered furniture.

The Children's Safe Products Act (CSPA), in part, requires manufacturers of children's products containing chemicals of high concern for children (CHCC) to annually report product information to the Department of Ecology (Ecology). There are 66 CHCCs on the list. In October 2013, Ecology adopted amendments to the CSPA reporting rule in response to a petition to include TDCPP to the list of CHCCs. The revised rule phases in reporting requirements for TDCPP with the first reports due in February 2015.

Summary of Bill: Beginning July 1, 2015, the manufacture, sale, and distribution of residential upholstered furniture and children's products of which any component contains more than 100 parts per million of TDCPP or TCEP are prohibited.

The manufacture, sale, and distribution of residential upholstered furniture and children's products of which any component contains more than 100 parts per million of a flame retardant identified by Ecology as a chemical of high concern for children are banned as of July 1, 2015. A manufacturer may request an exemption to the restrictions for up to two years on flame retardants identified as a chemical of high concern for children. The manufacturer must demonstrate that there are no technically feasible safer alternatives to meet Washington State or federal fire safety standards.

Beginning on July 1, 2015, at the request of Ecology, manufacturers may be required to provide a certificate of compliance that states their products do not contain a restricted flame retardant. The certificate must be kept on file as long as the product is being made and for three years from the date of the last sale or distribution. Ecology must give manufacturers 60 days to submit the certificate.

Summary of Bill (Proposed Amendment): 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 (Proposed 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.