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## Environment Committee

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### HB 1174

**Brief Description:** Concerning flame retardants.

**Sponsors:** Representatives Van De Wege, Taylor, Fitzgibbon, Senn, Shea, Magendanz, Springer, Tarleton, Ortiz-Self, Gregerson, Ormsby, Hunter, Ryu, S. Hunt, Riccelli, Stanford, Tharinger, Jinkins, Walkinshaw, Fey, Clibborn, Farrell and Goodman.

#### Brief Summary of Bill

- Prohibits the sale, manufacture, or distribution of children's products or residential upholstered furniture containing the chemical Tris(2-chloroethyl) phosphate (TCEP) or Tris(1, 3-dichloro-2-propyl) phosphate (TDCPP) in amounts greater than 100 parts per million (ppm) in any product component, beginning July 1, 2016.
- Bans the manufacture, sale, or distribution of children's products or residential upholstered furniture containing a flame retardant identified by the Department of Ecology as a high priority chemical of high concern for children in amounts greater than 100 ppm in any product component, beginning July 1, 2016.
- Allows the temporary use of flame retardants other than TCEP and TDCPP that are listed as chemicals of high concern for children if a manufacturer demonstrates that there is not a technically feasible safer alternative that meets fire safety standards.

**Hearing Date:** 1/19/15

**Staff:** Jacob Lipson (786-7196).

#### **Background:**

##### Children's Safe Products Act.

In 2008 the Legislature passed the Children's Safe Products Act (CSPA), which limits certain chemicals, including lead and phthalates, in children's products. Manufacturers in violation of restrictions on the use of these chemicals are subject to fines of up to \$5,000 for initial violations and up to \$10,000 for subsequent violations. Retailers who unknowingly sell products containing restricted flame retardants are shielded from liability.

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*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.*

The CSPA also requires the Department of Ecology (the Department), in consultation with the Department of Health, to identify high priority chemicals of high concern for children (CHCC) using several criteria. The CSPA also requires manufacturers of children's products containing these identified chemicals to annually report information about the use of the chemicals to the Department.

The CSPA requires the Department to develop a CHCC list. In 2011 the Department adopted rules that included 66 chemicals on the initial CHCC list. The Department's administrative rules allow the addition or removal of a chemical from the CHCC list upon the Department's adoption of a supplementary rule to add or remove the particular chemical from the CHCC list.

The Department's CSPA rules also establish procedures for manufacturers to notify the Department when their products contain chemicals on the CHCC list, and also set the Department's enforcement authority.

#### TCEP and TDCPP.

The chemicals Tris(2-chloroethyl) phosphate (TCEP) and Tris(1, 3-dichloro-2-propyl) phosphate (TDCPP) may be added to plastics, foams, and textiles as flame retardants. The Department included TCEP on the initial 66-chemical CHCC list established pursuant to the CSPA, and in 2013 the Department adopted a rule that added TDCPP to the CHCC list.

#### Other Flame Retardants on the CHCC List.

In addition to TCEP and TDCPP, four other chemicals on the CHCC list were identified as sometimes providing a flame retardant function in the Department of Health and Ecology's published rationale for including those chemicals on the CHCC list. The chemicals on the CHCC list identified as being a flame retardant or supporting flame retardant functions are:

- Antimony and Antimony Compounds;
- Hexabromocyclododecane (HBCD);
- Tetrabromobisphenol-A (TBBPA); and
- Decabromodiphenyl ether (BDE-209).

#### Fire Safety Standards.

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.

### **Summary of Bill:**

#### Prohibitions.

The manufacture, sale, or distribution of residential upholstered furniture or children's products containing TDCPP and TCEP in any product component in amounts greater than 100 parts per million (ppm) is prohibited as of July 1, 2016. Also banned, as of July 1, 2016, is the sale, manufacture, or distribution of children's products or residential upholstered furniture containing

any flame retardant identified as a high priority CHCC in amounts greater than 100 ppm in any product component. Sales involving nonprofit organizations and persons not customarily in the business of selling furniture or children's products are exempted from the prohibitions on the manufacture, sale, and distribution of TDCPP, TCEP, and other flame retardants on the CHCC.

Temporary Exemptions for CHCC Flame Retardants.

The Department must allow a manufacturer to temporarily include CHCC-listed flame retardants in children's products or residential upholstered furniture, but only if the manufacturer demonstrates, and the Department determines, that there is not a technically feasible, safer alternative to the chemical that meets federal and state fire safety standards. These temporary exemptions allowing a manufacturer to use a CHCC-listed flame retardant may last no more than two years.

However, unlike other flame retardants on the CHCC list, the TCEP and TDCPP are prohibited from temporary inclusion in children's products or residential upholstered furniture and are not subject to the temporary manufacturer-specific exemptions by the Department.

Department of Ecology Enforcement and Administrative Procedures.

The Department may enforce the ban on TCEP, TDCPP, and CHCC-listed flame retardants using the same enforcement mechanisms created by the CSPA, including the issuance of penalties for violations. Ninety days before restrictions on TCEP, TDCPP, or CHCC-listed flame retardants take effect, manufacturers of children's products or residential upholstered furniture containing those substances must notify the retailers of their products.

Beginning on July 1, 2016, the Department may request manufacturers to submit certificates of compliance indicating the names of any flame retardant chemicals used in their products, and the basis for any temporary exemption allowing the use of a flame retardant on the CHCC list. Manufacturers must comply by submitting a certificate of compliance to the Department within 60 days of the request.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 2015.

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