

HOUSE BILL REPORT

E2SHB 1174

As Passed House:
April 29, 2015

Title: An act relating to flame retardants.

Brief Description: Concerning flame retardants.

Sponsors: House Committee on Appropriations (originally sponsored by 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 History:

Committee Activity:

Environment: 1/19/15, 2/5/15 [DPS];

Appropriations: 2/18/15, 2/25/15 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 3/5/15, 95-3.

First Special Session

Floor Activity:

Passed House: 4/29/15, 92-3.

Brief Summary of Engrossed Second Substitute 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 1,000 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 (Department) as a high-priority chemical of high concern for children in amounts greater than 1,000 ppm in any product component, beginning July 1, 2016.
- Requires the Department to report to the Legislature before identifying a flame retardant as a high priority chemical of high concern for children after January 1, 2015.

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.

- Exempts antimony, antimony compounds, and reactive TBBPA that is chemically bound to a polymer from restrictions on the manufacture, sale, and distribution of flame retardants that are identified as chemicals of high concern for children.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Farrell, Fey, Goodman, McBride and Taylor.

Minority Report: Do not pass. Signed by 4 members: Representatives Shea, Ranking Minority Member; Short, Assistant Ranking Minority Member; Harris and Pike.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment. Signed by 26 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Condotta, Dunshee, Haler, Hansen, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 5 members: Representatives Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dent and Van Werven.

Minority Report: Without recommendation. Signed by 2 members: Representatives Parker, Assistant Ranking Minority Member; Fagan.

Staff: Dan Jones (786-7118).

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.

The CSPA also requires the Department of Ecology (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 Chemicals of High Concern for Children 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.

2014 Ecology Flame Retardant Report.

In the 2014 Supplemental Operating Budget the Legislature directed the Department 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 the Department submitted a report to the Legislature that recommended the restriction of 10 flame retardants in children's products and furniture, including TCEP, TDCPP, HBCD, and TBBPA. The Department's report did not find evidence to recommend enacting restrictions on the form of antimony that is used as a synergist to support flame retardant functions. The Department's report made additional recommendations, which included further reporting on the use of halogenated flame retardants in consumer products other than furniture and children's

products, the establishment of incentives for the use of safer alternatives in consumer products, and performing additional work to identify data gaps on flame retardant chemicals.

Summary of Engrossed Second Substitute 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 1000 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 1000 ppm in any product component. Flame retardants that are identified by Department rule after January 1, 2015 must be identified by December 1 in a given year; the associated restrictions on the manufacture, sale, and distribution of the flame retardant take effect at the conclusion of the regular Legislative session of the following year.

Antimony and antimony compounds are excluded from these restrictions on the manufacture, sale, and distribution of products containing flame retardants identified as chemicals of high concern for children. TBBPA that has undergone a chemical reaction and is covalently bonded as a polymer in a product or product component is also exempt from manufacture, sale, and distribution restrictions. 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.

Before the Department newly identifies a flame retardant as a high priority CHCC after January 1, 2015, the Department must submit a report to the Legislature. This report must be submitted no later than at the time of publication of a notice of the public hearing, which is required under the state Administrative Procedure Act, on the draft administrative rule to identify the flame retardant as a high priority CHCC. The report to the Legislature must include findings on flame retardant exposures and related health concerns for children or vulnerable populations, the identification of safer alternatives to the flame retardant, and the sources on information relied upon in the report.

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: Available.

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

Staff Summary of Public Testimony (Environment):

(In support) This bill addresses toxic flame retardant chemicals that don't break down in the environment and have been found to be present in our bodies, homes, and wildlife. Household dust is a major form of human exposure to these flame retardants. The risks of these flame retardants is not news, and there is ever-growing peer-reviewed scientific evidence that chlorinated and brominated flame retardants cause cancer, hormone disruption, neurotoxicity, developmental disabilities, and other serious health effects. Children are most at risk, because they are smaller, have different metabolisms, and are still developing. Firefighters are also exposed to flame retardants aerosolized in fires, and have elevated rates of cancer as compared to the average population. It is a moral responsibility to protect creation, the planet, and other people. Billions of pounds of these flame retardants are used in children's toys and household furniture, even though there is often no functional need for flame retardants of any kind, or there are safer known alternatives to the flame retardants that are being used. The bill appropriately addresses fire safety by allowing an exemption for manufacturers if there is not a safer alternative that meets fire safety requirements. This bill ensures that manufacturers don't make regrettable substitutions of unsafe alternatives when replacing toxic flame retardants. The Department might not categorize antimony as a flame retardant covered by the bill, since the evidence reviewed indicates it is only used as a flame retardant synergist. It is reasonable to be concerned about the impacts of this bill on businesses, but not at the expense of children. This bill has bipartisan support, and is very similar to the bill that the House passed last year.

(Opposed) This bill changes the chemicals of concern list from a reporting list to a prohibited list. There should be additional thresholds of proof and process in place in order for the Department to be able to ban a chemical, as opposed to just requiring that information about the chemical's use be reported. This bill also provides a way for the Department to require businesses to do alternatives assessments, which are complicated and burdensome. The certificate of compliance is an onerous paperwork requirement for businesses to comply with. This bill is premature, since last year's budget proviso directed the Department to provide the Legislature with a list of recommendations for banning flame retardants, but the Department has not yet met its deadline to do so.

Staff Summary of Public Testimony (Appropriations):

(In support) Firefighters have a disproportionately high rate of cancer because of exposure to flame retardants from fires. Flame retardants are ineffective, and couch cushions and other products containing them are just as susceptible to house fires. Buildings built before the mid-1970s are not nearly as hazardous as those built today and the furnishings we put in them. The small cost of this bill is a good investment for our children and our firefighters alike.

The Legislature has a long history of dealing with toxic chemicals, including bans on mercury and polybrominated diphenyl ethers, which each took three years to pass. This bill has come before the Legislature for the past four years. When the Legislature bans one flame retardant, industry replaces it with another, more toxic version, and this cycle needs to end. Banning chemicals through the Legislature takes a long time, and the Department of Ecology should be granted a limited scope of authority to ban chemicals that the Legislature would ban on its own.

Research has shown that 3 percent of developmental disabilities come from exposure to toxic chemicals, and another 25 percent are a correlation of genetics and chemicals. Banning flame retardants is especially important to those with learning disabilities associated with toxic exposure and their families.

(Opposed) None.

Persons Testifying (Environment): (In support) Representative Van De Wege, prime sponsor; Erika Schreder, Washington Toxics Coalition; Karen Bowman, Washington State Nurse's Association; Vyto Babrauskas, Fire Science and Technology Incorporated; Carol Kraege, Department of Ecology; Barbara Morrissey, Department of Health; Rachel Kollar; Stella Daniels; Jennifer Klein; Diana Stadden, Arc of Washington State; Robert Bradley, Washington Fire Chiefs and Washington State Association of Fire Marshals; Michael White, Washington State Council of Fire Fighters; and Tom Parker, Washington State Catholic Conference.

(Opposed) Brandon Housekeeper, Association of Washington Business.

Persons Testifying (Appropriations): Geoff Simpson, Washington State Council of Fire Fighters; Diana Stadden, The Arc of Washington State; Robert Bradley, Washington State Association of Fire Marshals; Dave Mastin, Washington Toxics Coalition; and Ellen Dorfman.

Persons Signed In To Testify But Not Testifying (Environment): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.