

SENATE BILL REPORT

E2SHB 1174

As of January 18, 2016

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: Passed House: 3/05/15, 95-3.

Committee Activity: Energy, Environment & Telecommunications: 3/17/15.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Staff: Jan Odano (786-7486)

Background: The Children's Safe Products Act (CSPA) provides restrictions on the use of certain chemicals in children's products; requires manufacturers of children's products containing chemicals of high concern for children (CHCC) to annually report product information; and provides enforcement authority. Manufacturers of products that are restricted under the CSPA must notify persons selling their products within 90 days of the effective date of the restrictions and recall and reimburse retailers or other purchasers for the product. Manufacturers in violation of the CSPA are subject to a civil penalty of up to \$5,000 for each first offense violation and up to \$10,000 for repeat offenses.

The Department of Ecology (Ecology), in consultation with the Department of Health, must identify CHCCs. The CSPA rules establish the list of reportable chemicals and procedures for manufactures to notify Ecology. The CHCC list was first adopted in 2011 with 66 chemicals, and is updated through rulemaking for the addition or removal of chemicals.

The CSPA defines a high-priority chemical as a chemical that is identified to do one or more of the following:

- harm the normal development of a fetus or child, or cause other developmental toxicity;
- cause cancer, genetic damage, or reproductive harm;
- disrupt the endocrine system;

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- damage the nervous system, immune system, or organs, or cause other systemic toxicity;
- be persistent, bioaccumulative, and toxic; or
- be very persistent and very bioaccumulative.

Flame-retardant chemicals are added to many consumer products to delay combustion and to meet fire safety standards. The chemicals TCEP and TDCPP, known collectively as TRIS, hexabromocyclododecane (HBCD), and decabromodiphenyl ether (DecaBDE) 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 has been used as a replacement for certain polybrominated diphenyl ether flame retardants that have been banned or voluntarily phased out of use. Concerns have been raised about these flame retardants because of their widespread use, human exposure, and potential health risks. The flame retardants TDCPP, TCEP, and HBCD are included on the CHCC list.

In the 2014 Supplemental Operating Budget, the Legislature directed Ecology to test for the presence of flame retardants in children's products and furniture and to analyze tetrabromobisphenol A (TBBPA) and antimony compounds used as flame retardants. In January 2015, Ecology submitted a report to the Legislature that recommended the restriction of ten flame retardants in children's products and furniture, including TCEP, TDCPP, HBCD, and certain forms of TBBPA. Ecology reported that it did not find evidence to recommend restrictions on the forms of antimony that are used as a synergist to support flame-retardant functions. Ecology's report included additional recommendations, such as, further reporting on the use of halogenated flame retardants in consumer products other than furniture and children's products, establishing incentives for the use of safer alternatives in consumer products, and performing additional work to identify data gaps on flame-retardant chemicals.

Summary of Bill: The manufacture, distribution, and sale of residential upholstered furniture or children's products containing TCEP, TDCPP, or flame retardants identified as a high-priority CHCC in amounts greater than 1000 parts per million is prohibited beginning July 1, 2016. However, antimony, antimony compounds, and the reactive form of TBBPA that is bonded to a polymer in a product are not subject to the restrictions. The sale and purchase of used products are exempt.

By rule Ecology may identify a high-priority chemical as a chemical of concern for children if the chemical is present in humans; in the household environment; or is present in or added to consumer products used in the home. Before a flame retardant may be identified as a high-priority CHCC, Ecology must submit a report to the Legislature no later than publication of the notice for the rulemaking hearing. The report must include a determination of direct or indirect exposure to children or vulnerable populations based on levels of flame retardants in consumer products, humans, and the environment, and migration of flame retardants from products; review of available toxicity data for children's health evaluations; and determination if a safer alternative has been identified to meet applicable fire safety standards.

After January 1, 2015, a rule identifying a flame retardant as a high-priority CHCC, adopted before December 1 of any year, takes effect at the end of the legislative session of the following year.

Beginning on July 1, 2016, manufacturers may be required to provide a certificate of compliance that states their products meet the restrictions for flame retardants. 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.

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: PRO: This bill creates a higher bar to address flame retardants, would restrict chemicals of high concern for children, and address regrettable substitutions. Most flame retardants escape from household products. Flame retardants are not needed in most products. Where they are required and needed, there are safer alternatives. In a fire these chemicals are turned into hazardous gases and expose fire fighters and victims of fires. They do not prevent things from burning. Everyone agrees that these chemicals should be banned, but the Legislature has a difficult time doing so. There was a lot of support in the House once some limitations and controls were added to the bill such as removing alternatives assessments and providing the Legislature with time to comment on the rule. The additional review added to the bill is a good idea. Other important sources of exposure to flame retardants should be addressed through a CAP.

CON: Ecology can add chemicals to the list of chemicals of high concern for children under the Children's Safe Products Act, which would require manufacturers to report when using those chemicals. It's not a ban list. This would require reporting on a chemical that hasn't gone through the rulemaking process under the CSPA. We don't support granting of authority to Ecology to ban. We support requiring Ecology to study a chemical and provide a report back to the Legislature. It's better to have the Legislature participate in the debate. Similar to what Ecology is doing, EPA has a lot of programs that could be used such as their review of flame retardants to better understand the risks, exposures associated with these chemicals and risk management, which we think is more appropriate step at this time. EPA is looking at flame retardants. This would restrict the use of substances that have been determined by governments to be safe for their intended purposes. Where there have been multiple government agency reviews of a chemical showing that the chemical does not present a risk, we question why it would be banned. This does not provide much direct oversight by the Legislature. This will make the list of chemicals of high concern into a ban list. This would require retailer to comply as a manufacturer about providing Ecology with chemical information within 60 days. This would be very difficult for retailers.