

SENATE BILL REPORT

SB 6440

As of February 15, 2016

Title: An act relating to reducing public health threats that particularly impact highly exposed populations, including children and firefighters, by establishing a process for the department of health to restrict the use of toxic flame retardant chemicals in certain types of consumer products.

Brief Description: Reducing public health threats that particularly impact highly exposed populations, including children and firefighters, by establishing a process for the department of health to restrict the use of toxic flame retardant chemicals in certain types of consumer products.

Sponsors: Senators Parlette, Cleveland, Becker, Rolfes, Warnick, Bailey, Miloscia, Nelson, Angel, Brown, Rivers, Frockt, Dammeier, O'Ban, King, Litzow, Hewitt, Fraser, Lias, Billig, Pedersen, Darneille, McCoy, Jayapal, Habib, Benton, Chase and Hasegawa.

Brief History:

Committee Activity: Health Care: 1/28/16.

SENATE COMMITTEE ON HEALTH CARE

Staff: Mich'l Needham (786-7442)

Background: A manufacturer, wholesaler, or retailer may not manufacture, sell or distribute a children's product or product component that contains the following:

- lead at more than .009 percent by weigh, or 90 parts per million;
- cadmium at more than .004 percent by weight, or forty parts per million;
- phthalates, individually or in combination, at more than .10 percent by weight, or 1,000 parts per million.

The Department of Ecology (Ecology), in consultation with the Department of Health (DOH), has developed a list of chemicals of high concern for children (CHCC). Among the chemicals on the list are the following flame retardants:

- TDCPP (tris (1, 3-dicholoro-2-propyl) phosphate);
- TCEP (tris (2-chloroethyl) phosphate);
- decabromodiphenyl ether;
- HBCD (hexabromocyclododecane); and
- additive TBBPA (tetrabromobisphenol A).

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.

Manufacturers must provide notice to Ecology that the manufacturer's product contains a chemical on the CHCC list and Ecology has enforcement authority if manufacturers fail to provide notice.

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.

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 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 certain forms of TBBPA.

Summary of Bill: Beginning July 1, 2017, no manufacturer, wholesale, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in the state any children's products or residential upholstered furniture containing any of the following flame retardants in amounts greater than 1000 parts per million in any product component:

- TDCPP;
- TCEP;
- decabromodiphenyl ether;
- HBCD; and
- additive TBBPA.

The Department of Health may, by rule, prohibit the manufacture, sale, or distribution in this state of children's products or residential upholstered furniture containing a flame retardant in amounts greater than 1000 parts per million that meets the criteria of a high priority chemical of high concern for children. The rule must be adopted prior to December 1 in any year and may not take effect before the end of the regular legislative session in the next year.

Before the Secretary of the DOH may adopt a rule, the DOH must submit a report to the Legislature that addresses:

- whether children or vulnerable populations are likely to be exposed to the chemical directly or indirectly from its use in products;
- toxicity data to evaluate the health concerns for children or vulnerable populations; and
- whether a safer alternative has been identified.

Any person or entity violating these rules is subject to a civil penalty not to exceed \$5,000 for each violation for a first offense or \$10,000 for each repeat offense. The rulemaking authority of the DOH expires July 1, 2022.

A manufacturer of a children's product or residential upholstered furniture that is prohibited, either in statute or rule, must notify sellers of the restricted product no less than 90 days before the effective date of the restriction. A manufacturer that produces, sells, or distributes a restricted product must recall the product and reimburse the retailer or any other purchaser for the product. A manufacturer of a restricted product in violation of any of the provisions, in statute or rule, restricting the sale of products with flame retardants is subject to a civil penalty not to exceed \$5,000 for each violation for a first offense or \$10,000 for each repeat offense.

Appropriation: None.

Fiscal Note: Requested on January 20, 2016.

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: People with a development disability often have compromised immune systems that are more susceptible to harmful agents like the toxic chemicals in flame retardants. There is no benefit to the flame retardants and we should make people safe from these toxic chemicals. People of color are exposed to toxic carcinogens at two to 10 times the rates others are exposed. They have higher concentrations of toxics in their systems. The children are especially vulnerable to toxic substances. Protect our younger generations. I am delighted the authority to monitor toxic substances that are a high concern to children is placed with the Department of Health. They have a responsibility to protect public health with a focus on our children and our firefighters. Firefighters are getting cancer at much higher rates than the general population because they are exposed to so many toxic chemicals. We must protect our employees more quickly than the Legislature has been willing to, with a nine-year discussion on banning these five chemicals that are known carcinogens. The exposure to the toxic chemicals is mostly through residential products and the firefighter is exposed for a lengthy period of time to the fire and the gases. We want safer alternatives so we are not putting our firefighters at risk. This bill does not deal with electronics. It is a very limited focus on children's products and household furniture. This bill offers a five-year demonstration to put authority with the DOH as a trial run. We learned from the 2007 ban on toxic chemicals that companies just used replacements that are also toxic. Scriptural values teach us we should do everything in our power to protect our neighbors and the vulnerable. The faith community supports banning these toxic chemicals. Safer alternatives exist. DOH needs the authority to ban the use of toxic chemicals to protect our vulnerable. These toxics are used heavily in foam, like furniture and baby changing pads, in the additive form which is not chemically bound and can escape into our homes. They are filled with the toxic dust and exposure rates are higher than we thought. It is common sense to remove them when safer alternatives exist.

CON: Flame retardants are not all the same - some are harmful and some are not. It is important to look at the degree of exposure to them. The mere presence of a chemical of high concern for children in a product does not mean the product causes harm. The chemicals can be found in electronic components but are contained. Flame retardants may be present in items like circuit boards or electronic components of a toy but they are contained

and not easily accessible. Removing the flame retardants could increase the fire hazard of these components. It is important to understand reporting of the 66 chemicals on the list of high concern for children's safe product list is working well. The patchwork of regulatory approaches is not desirable. Change should be handled at the federal level. This bill goes further than the children's safe products which does exclude technology like phones. This gives authority to two agencies to regulate the issue which adds to the state by state patchwork of regulation when a federal resolution is needed. It is difficult for retailers to purchase differently for Washington, as a small market, when we order products for the entire country, not state by state. A federal fix is needed for consistency across state borders. We agree with the ban of the chemical listed in section 2. We already report to DOE and that is working. We have concerns about adding DOH and with section 4 on the reimbursement. We need to retain legislative oversight.

OTHER: We support the concept in this bill, although it is not in the Governor's budget proposal. We know that the 2007 banned products were replaced with regrettable substitutes that are known to cause problems. We have identified other flame retardants that can be used and other pathways that can be healthier, for example manufacturers can follow the new California fire standards, we can use design alternatives with barrier fabrics that do not allow the toxic dust to escape, and plastics can use the reactive form. We request the cosmetics reference be removed from the bill.

Persons Testifying: PRO: Michael White, Washington State Council of Fire Fighters; Darcy Huffman, Earth Ministry; Erika Schreder, Science Director; Karen Bowman, WA State Nurses Association; Diana Stadden, ARC of WA State; Felipe Rodriguez-Flores, Progreso: Latino Progress; Dave Maston, Washington Toxics Coalition; Jim Kambeitz, Washington State Association of Fire Marshals.

CON: Thomas Osimitz , Science Strategies; Grant Nelson, Toy Industry Assoc.; Mark Greenberg, American Chemistry Council; Brandon Houskeeper, Assoc. of WA Business; Charlie Brown, Consumer Technology Association; Mark Johnson, Washington Retail Association; Holly Chisa, NW Grocery Assn.

OTHER: Barbara Morrissey, Washington Department of Health; Melissa Gombosky, Personal Care Products Council.

Persons Signed In To Testify But Not Testifying: No one.