

# SENATE BILL REPORT

## SB 5181

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As of February 15, 2013

**Title:** An act relating to flame retardants.

**Brief Description:** Concerning flame retardants.

**Sponsors:** Senators Nelson, Billig, Hargrove, Harper, Schlicher, Kline, Frockt, Chase, Hasegawa, Tom, Mullet, Fraser, Rolfes, Litzow, McAuliffe, Keiser, Murray, Ranker and Shin.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications: 2/13/13.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Staff:** Jan Odano (786-7486)

**Background:** Polybrominated Diphenyl Ether (PBDE) are flame retardant chemicals that were added to a wide variety of household products. PBDEs have been found in high levels in humans, house dust, fish, and wildlife. Because of the concerns for human health and the environment, the Legislature banned the use of certain PBDEs for use in residential upholstered furniture. The Department of Ecology (DOE) is authorized to enforce PBDE restrictions by requiring a certificate of compliance from manufacturers and to issue penalties of up to \$1,000 per violation for first time violators and up to \$5,000 for repeat violators.

In 2008, the Legislature passed E2SHB 2647, The Children's Safe Products Act (CSPA). In part, CSPA requires DOE in consultation with the Department of Health (DOH) to identify chemicals of high concern for children (CHCC) using certain criteria. CSPA also requires manufacturers of children's products containing identified chemicals of high concern to annually report product information to DOE.

The chemicals TCEP and TDCPP, known collectively as TRIS, 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 is used as a replacement for certain PBDE flame retardants that have been banned or voluntarily phased out of use.

GreenScreen is a chemical hazard assessment tool used to identify chemicals of high concern and safer alternatives. It was developed by Clean Production Action, a nonprofit

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organization. The screening assessment of a chemical's hazardous characteristics is scored on a benchmark scale of one to four with a benchmark one consisting of chemicals with the greatest hazard potential.

**Summary of Bill:** The manufacture, distribution, and sale of residential upholstered furniture or children's products containing TRIS or any flame retardant identified as a chemical of high concern for children in amount greater than 50 parts per million is prohibited beginning July 1, 2014. The sale and purchase of used products are exempt.

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 by: providing an evaluation of alternatives using GreenScreen; describing why there is no technically feasible alternative to meet fire safety standards and why the chemical of high concern for children must be used; and providing chemical abstracts service numbers and the nonchemical alternatives considered. A technically feasible alternative may not be any unspecified or benchmark one chemicals as identified by GreenScreen.

Beginning on January 1, 2015, 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. DOE must give manufacturers 60 days to submit the certificate. When completing a certificate of compliance or request for an exemption, a manufacturer may mark information that it feels are trade secrets or commercial or financial information, which the Director of DOE must consider when determining confidential business information. The Director of DOE must follow current procedures governing the release of confidential business information.

Violations to the ban on TRIS and flame retardants identified on the CHCC list are subject to a \$1,000 fine for the first offense and up to \$5,000 for each repeat offense. DOE is authorized to add or delete chemicals from the high priority CHCC list. It must follow the criteria currently used to determine a CHCC.

**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: TRIS is a neurotoxin, carcinogen, and hormone disruptor found in baby products. There are alternatives to these flame retardants. We need to get off the toxic treadmill. The GreenScreen assessment tool is used by major corporations to determine alternatives to chemicals. It is our moral obligation to protect the planet and to provide a safe and protective environment for kids. These chemicals are

dangerous to the smallest of us. This is an important issue to the fire service. Fire retardants are important but safer alternatives are available for kids and to protect firefighters as well.

CON: This is unprecedented and concerning. It converts the list of chemicals of high concern for children from a reporting tool to a ban list. Standards for reporting are much lower than for a persistent, bioaccumulative, and toxic chemical. GreenScreen is a proprietary product and it is limited in its ability to assess chemicals. The method that DOE is developing is preferred. There needs to be a national approach.

OTHER: People in cars should be healthy and safe. There needs to be a process to explore alternatives.

**Persons Testifying:** PRO: Erika Schreder, WA Toxics Coalition; Cliff Traisman, WA Environmental Council, WA Conservation Voters; Kelly Fox, WA State Council of Fire Fighters; Karen Bowman, WA State Nurses Assn.; Mike Brown, WA Fire Chiefs; Mark Miloscia, WA State Catholic Conference; Jessie Dye, Earth Ministry; Barbara Morrissey, DOH; Carol Kraege, DOE; Joellen Wilhelm, citizen.

CON: Brandon Houskeeper, Assn. of WA Business; Mark Greenberg, American Chemistry Council; Mark Johnson, WA Retail Assn.

OTHER: Ryan Spiller, Automobile Alliance.