

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 99 (Delegates Hubbard and V. Turner)
Health and Government Operations

Finance

**Public Health - Child Care Products Containing Flame-Retardant Chemicals
(TCEP) - Prohibition**

This bill prohibits a person from importing, selling, or offering for sale any child care product that contains more than one-tenth of 1% (by mass) of tris (2-chloroethyl) phosphate (TCEP). A “child care product” is a consumer product – including a baby product, toy, car seat, nursing pillow, crib mattress, or stroller – intended for use by a child younger than age three. (The bill does not apply to the sale or distribution of a child care product that is resold, offered for resale, or distributed by a consumer for consumer use. Furthermore, the Secretary of Health and Mental Hygiene may suspend implementation of this prohibition if the Secretary determines that the fire safety benefits of TCEP are greater than the health risks associated with TCEP.) A person that violates the bill is subject to a civil penalty of up to \$1,000 for a first violation and \$2,500 for each subsequent violation. In addition, the bill authorizes a court to enjoin any action prohibited by the bill.

The Department of Health and Mental Hygiene (DHMH) must, on or before January 1, 2014, adopt regulations to implement the bill.

Fiscal Summary

State Effect: Minimal increase in general fund revenues beginning in FY 2014 due to the bill’s civil penalty provision. DHMH can use existing resources to adopt the required regulations.

Local Effect: Enforcement can likely be handled with existing resources, assuming enforcement is complaint-based. However, if complaint volume is high, local health department workloads may increase. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: TCEP is one of several phosphorus-based flame retardants referred to as “TRIS” chemicals. (“TRIS” denotes a chemical compound that features three parts of equal structure.) TCEP is human-made and is added to certain plastics, fabrics, and foams to reduce the ability of those materials to ignite and burn.

According to the Agency for Toxic Substances and Disease Registry (ATSDR) in the U.S. Department of Health and Human Services, humans can be exposed to TCEP by either inhaling dust from or touching TCEP-treated products. ATSDR advises that, although laboratory tests have linked exposure to TCEP with tumors and leukemia in rats, there is insufficient information to determine with certainty whether TCEP causes cancer in humans. However, TCEP has been identified as a chemical of high concern by several states – including California, Maine, Minnesota, and Washington – as well as by the European Union and Canada.

Recent studies indicate that TRIS (and, in particular, TCEP) is prevalent in baby products – such as nursing pillows, car seats, and highchairs – that are made with polyurethane foam. (For example, researchers found that flame retardants represent 3% to 5% of the weight of the foam in an average changing pad.)

The U.S. Consumer Product Safety Commission (CPSC) prohibited the use of TRIS in children’s clothing in 1977, citing laboratory tests that demonstrated a causal link between TRIS and cancer in animals. CPSC has since identified TRIS as a “probable human carcinogen.” In 2011, New York became the first state to prohibit the sale of certain child care products containing TRIS. (That prohibition begins December 1, 2013.)

Small Business Effect: Potential meaningful decrease in revenues for small retailers that will not be allowed to sell child care products in their existing stock that contain TCEP on or after October 1, 2013. The bill does not provide for any phasing out of existing stock.

Additional Information

Prior Introductions: HB 107 of 2012 received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Cross File: None.

Information Source(s): U.S. Department of Health and Human Services (Agency for Toxic Substances and Disease Registry), U.S. Consumer Product Safety Division, Maryland Department of the Environment, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Maryland Association of County Health Officers, *New York Times*, Department of Legislative Services

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