

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 206 (Delegate Angel, *et al.*)
Health and Government Operations

Public Health - Child Care Products Containing Flame-Retardant Chemicals -
Prohibition

This bill expands current prohibitions related to child care products that contain flame-retardant chemicals by (1) adding three more chemicals to the list of prohibited chemicals, specifically decabromodiphenyl ether (decaBDE), hexabromocyclododecane (HBCD), and tetrabromobisphenol A (TBBPA); (2) establishing that, in addition to specified child care products, upholstered furniture for residential use containing more than one-tenth of 1% (by mass) of a prohibited chemical and intended for use by a child of a certain age, may not be sold in the State; and (3) increasing the intended age of use from 3 to 12, as the threshold age for all affected products. Existing enforcement and penalty provisions related to prohibitions for specified products containing flame-retardant chemicals apply.

The Department of Health and Mental Hygiene (DHMH) must adopt regulations to implement the bill by January 1, 2018.

Fiscal Summary

State Effect: Minimal increase in general fund revenues beginning in FY 2018 due to existing civil penalty provisions. 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: 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.

A person may not import, sell, or offer for sale any child care product that contains more than one-tenth of 1% (by mass) of (1) tris (1, 3-dichloro-2-propyl) phosphate (TDCPP) or (2) tris (2-chloroethyl) phosphate (TCEP). A person that violates this prohibition is subject to a civil penalty of up to \$1,000 for a first violation and \$2,500 for each subsequent violation. Further, a court may enjoin any prohibited action. The prohibition 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. The Secretary of Health and Mental Hygiene may suspend implementation of the prohibition if the Secretary determines that the fire safety benefits of TDCPP or TCEP are greater than the associated health risks.

Under § 6-1202.1 of the Environment Article, a person may not manufacture, lease, sell, or distribute *any* product that contains more than one-tenth of 1% of decaBDE by mass. Any activity involving a product that contains decaBDE that occurs *subsequent to first sale at retail* is not subject to the prohibition. Additional exceptions apply, including allowing a retailer to continue selling a prohibited product if it was in its existing inventory when the prohibition went into effect. The prohibition was phased in – initially applying only to mattresses, upholstered furniture for residential use, and electrical or electronic equipment. Specified transportation equipment, military equipment, and components of transportation or military equipment were exempted for the first three years.

Background: 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.”

TDCPP (along with 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. TDCPP, also known as chlorinated TRIS, remains in use as a flame retardant for polyurethane foam, plastics, resins, and some fabric backings. TDCPP may be the most common flame retardant found in baby products with foam, including car seats, changing pads, and baby carriers.

The U.S. Environmental Protection Agency (EPA) regulates the introduction of new or already existing chemicals through the Toxic Substances Control Act (TSCA). EPA published a final significant new use rule (SNUR) under TSCA for HBCD, which requires any person who intends to manufacture or process HBCD for use in consumer textiles

(other than for use in motor vehicles) to notify EPA at least 90 days before commencing that activity. The HBCD SNUR went into effect November 23, 2015. The required notification under SNUR provides EPA with the opportunity to evaluate the intended use and, if appropriate, to prohibit or limit that activity before it occurs. EPA also initiated, but did not finalize, a 2012 SNUR for certain polybrominated diphenyl ethers, including decaBDE. However, in December 2009, the two U.S. producers of decaBDE, and the largest U.S. importer, announced commitments to phase out manufacture and importation of decaBDE for most uses in the United States by December 31, 2012, and to end manufacture and import for all uses by the end of 2013. EPA published a work plan chemical problem formulation and initial assessment for TBBPA in August 2015 and concluded that EPA will further assess TBBPA risks to the environment and human health.

The State of Washington enacted legislation prohibiting the sale of children's products or residential upholstered furniture with any product component that contains more than 1,000 parts per million of TDCPP, TCEP, decaBDE, HBCD, or additive TBBPA. The ban takes effect July 1, 2017.

Small Business Effect: Although existing federal measures limit the sale of several chemicals listed in the bill for consumer products and current law already prohibits the initial sale of products containing more than one-tenth of 1% of decaBDE by mass, the impact on small businesses may be meaningful as the bill does not provide for any phasing out of existing stock. Small business revenues decrease due to not being allowed to sell affected child care products and furniture that contain HBCD and TBBPA on or after October 1, 2017 (as well as any subsequent, such as consignment, sale of products containing decaBDE). In addition, any such products and furniture intended for children between the ages of 3 and 12 containing TDCPP or TCEP may no longer be sold.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): U.S. Environmental Protection Agency; Department of Health and Mental Hygiene; Department of Legislative Services

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