

SENATE RULES COMMITTEE

AB 1108

Office of Senate Floor Analyses

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THIRD READING

Bill No: AB 1108
Author: Ma (D), et al
Amended: 5/14/07 in Assembly
Vote: 21

SENATE ENV. QUALITY COMMITTEE: 5-2, 7/2/07

AYES: Simitian, Florez, Kuehl, Lowenthal, Steinberg

NOES: Runner, Aanestad

ASSEMBLY FLOOR: 41-34, 6/5/07 - See last page for vote

SUBJECT: Children's products: phthalates

SOURCE: Environment California

DIGEST: This bill prohibits the use of phthalates in toys and childcare products designed for babies and children under three years of age.

ANALYSIS:

Existing law:

1. Requires, under the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as Proposition 65) the Governor to revise and publish a list of chemicals that have been scientifically proven to cause cancer or reproductive toxicity each year. Prohibits any person in the course of doing business in California from knowingly exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning. Nor can such chemicals be discharged into the drinking water.

CONTINUED

2. Prohibits the manufacture, processing, and distribution in commerce of products containing certain chemicals found to raise health risks, including, but not limited to, polybrominated diphenyl ether (PBDE), a fire retardant formerly used in furniture, computers and other consumer products.

This bill:

1. Prohibits the use of phthalates in toys and childcare products designed for babies and children under three years of age.
2. Requires that manufacturers use the least toxic alternative when replacing phthalates in accordance with this bill.
3. Prohibits manufacturers from replacing phthalates with carcinogens rated by the United States Environmental Protection Agency as A, B, or C carcinogens, or substances listed as known or likely carcinogens, known to be human carcinogens, likely to be human carcinogens, or suggestive of being human carcinogens, as described in the "List of Chemicals Evaluated for Carcinogenic Potential," or known to the state to cause cancer as listed in the California Safe Drinking Water Act (Chapter 4 (Section 116270 et seq.)).
4. Prohibits manufacturers from replacing phthalates with reproductive toxicants that cause birth defects, reproductive harm, or developmental harm as identified by the United States Environmental Protection Agency or listed in the California Safe Drinking Water Act (Section 116270 et seq.).

Background

Phthalates. Phthalates, or phthalate esters, are a group of chemical compounds that are mainly used as plasticizers (substances added to plastics to increase their flexibility). They are used to turn polyvinyl chloride from a hard plastic into a flexible plastic. The effects of phthalates vary in scientific studies on animals, but testicular injury, liver injury, and liver cancer have been associated with exposure to the chemical. Once in the system, there are claims that they may disrupt the hormones and the reproductive system.

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Phthalates and Proposition 65. Proposition 65 provides two primary mechanisms for administratively listing chemicals that are known to the state to cause cancer or reproductive toxicity. A chemical may be listed under Proposition 65 when a body considered to be authoritative by the state's qualified experts has formally identified the chemical as causing cancer or reproductive toxicity. The entities identified as "authoritative bodies" for purposes of Proposition 65 include the U.S. Environmental Protection Agency, the International Agency for Research on Cancer, the FDA, the National Institute for Occupational Safety and Health, and the National Toxicology Program (NTP). As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA) lists chemicals as known to the State to cause reproductive toxicity. In 2004, OEHHA began the process of listing of DBP, butyl benzyl phthalate (BBP); di-n-hexyl four phthalates meet the criteria for listing under Proposition 65.

In 2005, OEHHA determined all four phthalates meet the criteria for listing under Proposition 65.

Efforts in San Francisco. In July 2006 San Francisco passed an ordinance that mirrors this bill. However, the city is considering amending their ordinance as follows: to re-state the ban on toys, child care products, and child feeding products made with certain phthalates; repeal the ban on toys, child care products, and child feeding products made with bisphenol-A, pending State action; provide for implementation and enforcement, including administrative and criminal penalties; and, add disclaimer of liability and severability clauses. On April 10, 2007 the Operations and Neighborhood Services Committee voted to narrow the ordinance, including removing the ban on bisphenol-A. The full Board of Supervisors passed the item on April 17, 2007.

Lawsuit Related to the Ordinance. The Toy Industry Association, Ambassador Toys, the California Chamber of Commerce and the American Chemistry Council filed suit against the City of San Francisco's ordinance in November 2006. The Natural Resources Defense Council, Physicians for Social Responsibility, Making Our Milk Safe, Environment California and the Center for Biodiversity have signed onto the suit as codefendants. The suit maintains that because a federal regulatory agency, the US Consumer Product Safety Commission, charged with overseeing the safety of children's toys has already reviewed the primary phthalate used in toys and

concluded that it is safe for children, federal law prohibits states and localities from now trying to step in.

Other States. There are two bills newly introduced in New York. One measure, A6829 mirrors this bill and would prohibit the manufacture, distribution and sale of certain toys and child care products containing bisphenol-A or phthalates. Another bill, A333 would prohibit certain sales containing measurable amounts of phthalates that have been proven to be harmful to young children. Additionally, the City of New York is considering a similar ordinance. Legislatures in both Oregon and Maryland have introduced legislation this year that mirrors this bill as well.

Bans for phthalates in products intended for children exist in European nations, Argentina, Fiji, Mexico and Japan. Austria, Denmark, Finland, France, Germany, Greece, Norway, and Sweden placed bans on the use of phthalates in manufacturing soft vinyl toys. Subsequently, in 2005, the European Parliament, one of the European Union's legislative arms, made permanent an earlier temporary emergency ban in place since the 1990s on six phthalates (those covered by the San Francisco ordinance) in children's toys. DEHP, DBP, and BBP were permanently banned in all toys and childcare items, while DINP, DIDP, and DnOP were banned in toys able to be placed in a child's mouth. The European Union has also banned some phthalates in cosmetics. The Japanese government put a temporary ban in place in 2001, and made it permanent 2003, on the use of phthalates in objects intended for the mouths of young children (e.g., pacifiers, bite rings and teethers).

Prior Legislation

AB 319 (Chan) 2005-06 session, commencing January 1, 2007, prohibited the manufacture, sale, or distribution of products containing specific compounds, and restricted manufacturers options when replacing those compounds, as specified. (Died in Assembly Appropriations Committee)

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/12/07)

Environment California (source)
Breast Cancer Action
Breast Cancer Fund

California Labor Federation, AFL-CIO
California League of Conservation Voters
California Nurses Association
City and County of San Francisco
Commonweal
Heal the Bay
Los Angeles County Democratic Party
Making Our Milk Safe
National Environmental Trust
Natural Products Association West
Natural Resources Defense Council
Planned Parenthood Affiliates of California
Planned Parenthood Golden Gate
Planned Parenthood Mar Monte
Planned Parenthood of San Diego and Riverside Counties
Planned Parenthood, Shasta-Diablo
Planning and Conservation League
Sierra Club California
Women's Foundation of California
Zero Breast Cancer

OPPOSITION: (Verified 7/12/07)

American Chemistry Council
American Electronics Association
Avent America, Inc.
California Chamber of Commerce
California Grocers Association
California Manufacturers and Technology Association
California Retailers Association
Chemical Industry Council of California
Disguise, Inc.
Grocery Manufacturers/Food Products Association
International Bottled Water Association
Los Angeles Area Chamber of Commerce
Mattel, Inc.
Phthalates Esters Panel of the American Chemistry Council
Redondo Beach Chamber of Commerce
San Francisco Chamber of Commerce
The Society of the Plastics Industry
Toy Industry Association

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Toy Industry Association of Southern California
Toy Safety and Quality, Inc.

ARGUMENTS IN SUPPORT: According to the author's office, this bill is needed to limit the exposure of phthalates from toys and child care articles that are used by children three years and younger. The focus of this bill is toward young children, because they are most vulnerable, and the chemicals pose too much of a risk to the health and proper development of babies and young children.

The author's office states that over the last few years public health professionals, scientists and community groups have become increasingly concerned about human beings being contaminated by toxic chemicals. Studies reveal that chemical loading in human bodies is increasingly being detected, and are finding connections between chemical exposure and human disabilities and developmental diseases.

ARGUMENTS IN OPPOSITION: According to the Senate Environmental Quality Committee analysis, groups in opposition to this bill assert that the primary phthalate used in children's toys is DINP and it has been used safely for over 40 years. They cite a US Consumer Product Safety Commission five year, peer reviewed, health risk study which determined that children were not at risk from plastic toys. They also contend the alternatives to DINP might result in more brittle plastics that could break and create choking and other hazards.

The European Chemicals Bureau on DBP, BBP, and DINP found them safe to use in their current consumer applications, including toys and childcare articles. They argue that the European ban on some phthalates in cosmetics is not based on evidence that they present an actual risk to humans, but is based solely upon hazard.

According to the California Chamber of Commerce, "Most phthalates are used to make vinyl soft and flexible for use in medical devices, toys and automobiles. They make our homes more decorative, easier to clean, more energy efficient and durable. Phthalates have increased both the durability and safety of many consumer products, saving money for consumers. Safety reviews by European and American scientific panels have found phthalates to be safe for use in consumer products. In fact, there has not been one governmental review that has found phthalates unsafe as used in products for the general public."

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ASSEMBLY FLOOR: 41-34, 6/5/07

AYES: Bass, Beall, Berg, Brownley, Caballero, Carter, Coto, Davis, De Leon, DeSaulnier, Dymally, Eng, Evans, Feuer, Fuentes, Hancock, Hayashi, Hernandez, Huffman, Jones, Karnette, Krekorian, Laird, Leno, Levine, Lieber, Lieu, Ma, Mendoza, Mullin, Nava, Price, Richardson, Ruskin, Salas, Saldana, Solorio, Swanson, Torrico, Wolk, Nunez

NOES: Adams, Aghazarian, Anderson, Arambula, Benoit, Berryhill, Blakeslee, DeVore, Duvall, Emmerson, Fuller, Gaines, Galgiani, Garcia, Garrick, Horton, Houston, Huff, Jeffries, Keene, La Malfa, Maze, Nakanishi, Niello, Parra, Plescia, Sharon Runner, Silva, Smyth, Spitzer, Strickland, Tran, Villines, Walters

NO VOTE RECORDED: Charles Calderon, Cook, De La Torre, Portantino, Soto

TSM:nl 7/12/07 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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