

AMENDED IN SENATE APRIL 21, 2014
AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 1019

Introduced by Senator Leno

February 14, 2014

An act to add ~~Section 19094~~ *Sections 19094 and 19095* to the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 1019, as amended, Leno. Upholstered furniture: flame retardant chemicals.

Existing federal law requires the Consumer Product Safety Commission to institute proceedings for the determination of an appropriate flammability standard if the commission finds that such a standard, including labeling, for a fabric, related material, or product, may be needed to protect the public. Existing federal law authorizes a state to establish a flammability standard if, among other things, it provides a higher degree of protection from the risk of fire.

Existing state law, the Home Furnishings and Thermal Insulation Act, provides for the licensure and regulation of upholstered furniture manufacturers by the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation. Existing state law requires every upholstered-furniture manufacturer to hold a furniture and bedding manufacturer's license. Existing state law also requires every upholstered-furniture retailer to hold a retail furniture dealer's license. A violation of the act is a crime.

Existing state law requires upholstered furniture and bedding to contain a specified label that is securely fastened in a manner approved by the bureau in an area open to visible view. Existing state law

establishes a standard to produce upholstered furniture which is safer from the hazards associated with smoldering ignition. This standard provides methods for smolder resistance of cover fabrics, barrier materials, resilient filling materials, and decking materials for use in upholstered furniture.

~~This bill would require an upholstered furniture~~ a manufacturer of covered products, as defined, to indicate whether or not the product contains added flame retardant chemicals, as defined, by including a specified statement on that label. ~~The bill would also require the upholstered furniture manufacturer of any covered product sold in California to provide point-of-sale signs containing the aforementioned statement to the upholstered furniture retailer for each product shipped to California. For in-store sales in California and for Internet and paper catalog sales to California, the bill would require the upholstered furniture retailer in California to display the point-of-sale sign in a specified manner.~~

~~If flame retardant chemicals are added to covered products sold in California, the bill would require the upholstered furniture manufacturer to make good faith efforts to determine the various flame retardant chemicals used in its products and report this information to the bureau. The bill would require the bureau to make this information publicly available on its Internet Web site.~~

~~The bill would require the upholstered furniture manufacturer of the covered product to retain sufficient documentation to show the chemicals whether flame retardant chemicals were added to a covered product or component. If no flame retardant chemicals were added to the covered product sold in California, the bill would require the upholstered furniture manufacturer of the covered product sold in California to retain documentation that no flame retardant chemicals were added. The bill would provide that a written statement *affidavit* by the supplier of each component of the furniture, attesting under penalty of perjury that no flame retardant chemicals were added, attesting that *flame retardant chemicals were added or not added* is sufficient to make this showing. By expanding the crime of perjury, the bill would impose a state-mandated local program.~~

Upon request, the bill would require ~~an upholstered furniture~~ a manufacturer of a covered product sold in California to provide to the bureau, within 30 days of the request, documentation establishing the accuracy of the flame retardant chemical statement on the ~~label and sign~~ label. The bill would require the bureau to provide the Department

of Toxic Substances Control with samples of the covered product or components thereof sold in California from products marked “contains NO added flame retardant chemicals” for testing for the presence of added flame retardant chemicals. If the department’s testing shows that a covered product labeled as “contains NO added flame retardant chemicals” is mislabeled because it contains added flame retardant chemicals, the bill would authorize the bureau to assess fines for violations against ~~upholstered-furniture~~ manufacturers of the covered product and component manufacturers. The bill would also authorize the bureau to assess fines for failure to maintain the required chain of custody documentation.

The bill would require the bureau to assess fines for certain violations and would additionally authorize the bureau to issue a citation including a citation with a fine for certain violations, as specified. The bill would authorize the bureau to make this citation information available to the public. The bill would also make it the duty of the bureau to receive consumer complaints.

The bill would authorize the bureau to adopt regulations in order to carry out these provisions.

Because a violation of the bill’s requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. The Legislature finds and declares all of the~~
- 2 ~~following:~~
- 3 ~~(a) In 1975, California implemented Technical Bulletin 117,~~
- 4 ~~which requires that materials, such as polyurethane foam, used to~~
- 5 ~~fill furniture be able to withstand a small open flame for at least~~
- 6 ~~12 seconds.~~
- 7 ~~(b) Flame retardant chemicals are used widely in upholstered~~
- 8 ~~furniture to meet the flame retardant standards of California Bureau~~

1 of Electronic and Appliance Repair, Home Furnishings, and
2 Thermal Insulation Technical Bulletin 117.

3 (e) People are exposed to flame retardant chemicals in multiple
4 ways, including when the chemicals migrate from furniture and
5 other consumer products into air and dust in the home or
6 workplace.

7 (d) Some of these chemicals can persist in the environment,
8 bioaccumulate in people and animals, and have been shown to
9 cause adverse developmental effects in animals and humans.

10 (e) A study by the California Environmental Protection Agency
11 found that women in California have much higher levels of toxic
12 flame retardants in their breast tissue than women in other states
13 and countries. Studies published in the journal of Environmental
14 Research show that children in California have much higher levels
15 of flame retardant chemicals than children elsewhere in the country.

16 (f) A study published in the Journal of Occupational and
17 Environmental Medicine concluded that firefighters have a
18 significantly elevated risk of cancer that may be attributed to toxic
19 chemicals they inhale, including flame retardants.

20 (g) California consumers have become increasingly concerned
21 about the potential adverse human health impacts due to exposure
22 to certain chemical flame retardants. Various studies have linked
23 exposure to flame retardants to cancer, lower IQs and attention
24 problems, male infertility, male birth defects, and early puberty in
25 girls.

26 (h) In 2012, the Chair of the Federal Consumer Product Safety
27 Commission, testified to Congress that “the fire-retardant foams
28 did not offer a practically significant greater level of open flame
29 safety than the untreated foams.”

30 (i) In 2012, the Chicago Tribune published a series of
31 investigative reports that showed that the claims of the efficacy of
32 flame retardants in furniture misrepresent the science.

33 (j) In 2012, Governor Brown asked of the Bureau of Electronic
34 and Appliance Repair, Home Furnishings, and Thermal Insulation
35 to review the state’s four-decade-old flammability standards and
36 recommend changes to reduce toxic flame retardants while
37 continuing to ensure fire safety.

38 (k) The Bureau concluded that the presence of flame retardant
39 chemicals in furniture does not provide a meaningful fire safety
40 benefit. In 2013, the Bureau of Electronic and Appliance Repair,

1 ~~Home Furnishings, and Thermal Insulation promulgated~~
2 ~~regulations, revising Technical Bulletin 117 to allow furniture~~
3 ~~manufacturers to meet a smoldering standard. The revised~~
4 ~~Technical Bulletin 117-2013 provides improved fire safety~~
5 ~~standards without the use of flame retardant chemicals.~~

6 ~~(l) California consumers have voiced a desire to purchase~~
7 ~~furniture that complies with Technical Bulletin 117-2013 but does~~
8 ~~not contain flame retardant chemicals.~~

9 ~~(m) Technical Bulletin 117-2013 can be met with or without~~
10 ~~the use of flame retardant chemicals, but consumers currently have~~
11 ~~no way to know whether flame retardant chemicals have been~~
12 ~~added to the product.~~

13 ~~(n) It is, therefore, the intent of the Legislature in enacting this~~
14 ~~measure to provide California consumers clear information about~~
15 ~~the furniture products they are purchasing, specifically concerning~~
16 ~~compliance with fire safety standards and the absence or presence~~
17 ~~of added flame retardant chemicals.~~

18 *SECTION 1. Section 19094 is added to the Business and*
19 *Professions Code, to read:*

20 *19094. The Legislature finds and declares all of the following:*

21 *(a) In 1975, California implemented Technical Bulletin 117,*
22 *which requires that materials, such as polyurethane foam, used*
23 *to fill furniture be able to withstand a small open flame for at least*
24 *12 seconds.*

25 *(b) Flame retardant chemicals are used widely in upholstered*
26 *furniture to meet the flame retardant standards of the Bureau of*
27 *Electronic and Appliance Repair, Home Furnishings, and Thermal*
28 *Insulation's Technical Bulletin 117.*

29 *(c) People are exposed to flame retardant chemicals in multiple*
30 *ways, including when the chemicals migrate from furniture and*
31 *other consumer products into air and dust in the home or*
32 *workplace.*

33 *(d) Some of these chemicals can persist in the environment,*
34 *bioaccumulate in people and animals, and have been shown to*
35 *cause adverse developmental effects in animals and humans.*

36 *(e) A study by the California Environmental Protection Agency*
37 *found that women in California have much higher levels of toxic*
38 *flame retardants in their breast tissue than women in other states*
39 *and countries. Studies published in the journal of Environmental*
40 *Research show that children in California have much higher levels*

1 of flame retardant chemicals than children elsewhere in the
2 country.

3 (f) A study published in the *Journal of Occupational and*
4 *Environmental Medicine* concluded that firefighters have a
5 significantly elevated risk of cancer that may be attributed to toxic
6 chemicals they inhale, including flame retardants.

7 (g) California consumers have become increasingly concerned
8 about the potential adverse human health impacts due to exposure
9 to certain chemical flame retardants. Various studies have linked
10 exposure to flame retardants to cancer, lower IQs and attention
11 problems, male infertility, male birth defects, and early puberty
12 in girls.

13 (h) In 2012, the Chairman of the federal Consumer Product
14 Safety Commission testified to Congress that “the fire-retardant
15 foams did not offer a practically significant greater level of open
16 flame safety than the untreated foams.”

17 (i) In 2012, the *Chicago Tribune* newspaper published a series
18 of investigative reports that showed that the claims of the efficacy
19 of flame retardants in furniture misrepresent the science.

20 (j) In 2012, Governor Brown asked the Bureau of Electronic
21 and Appliance Repair, Home Furnishings, and Thermal Insulation
22 to review the state’s four-decade-old flammability standards and
23 recommend changes to reduce toxic flame retardants while
24 continuing to ensure fire safety.

25 (k) The Bureau of Electronic and Appliance Repair, Home
26 Furnishings, and Thermal Insulation concluded that the presence
27 of flame retardant chemicals in furniture does not provide a
28 meaningful fire safety benefit. In 2013, the Bureau of Electronic
29 and Appliance Repair, Home Furnishings, and Thermal Insulation
30 promulgated regulations, revising Technical Bulletin 117 to allow
31 furniture manufacturers to meet a smoldering standard. The revised
32 Technical Bulletin 117-2013 provides improved fire safety
33 standards without the use of flame retardant chemicals.

34 (l) California consumers have voiced a desire to purchase
35 furniture that complies with Technical Bulletin 117-2013 but does
36 not contain flame retardant chemicals.

37 (m) Technical Bulletin 117-2013 can be met with or without the
38 use of flame retardant chemicals, but consumers currently have
39 no way to know whether flame retardant chemicals have been
40 added to the product.

1 (n) Upholstered furniture manufacturers and California’s retail
2 industry recognize the intrinsic value of helping consumers make
3 knowledgeable buying decisions and are uniquely positioned to
4 take the lead in building trust in the marketplace. Providing
5 information on the use of chemical flame-retardants in upholstered
6 furniture gives retailers a unique opportunity to respond to the
7 needs of their customers. Consumers want to be able to exercise
8 an informed choice and buy products that are not only safer for
9 themselves and their families, but are products that will also keep
10 our firefighters safer.

11 (o) It is, therefore, the intent of the Legislature in enacting this
12 measure to provide California consumers clear information about
13 the furniture products they are purchasing, specifically concerning
14 compliance with fire safety standards and the absence or presence
15 of added flame retardant chemicals.

16 SEC. 2. Section ~~19094~~ 19095 is added to the Business and
17 Professions Code, to read:

18 ~~19094.~~

19 19095. (a) For the purposes of this section, the following
20 definitions shall apply:

21 (1) “Component” means the separate constituent parts of
22 upholstered furniture sold in California, ~~including, but not limited~~
23 ~~to, as identified in Technical Bulletin 117-2013, specifically cover~~
24 fabrics, barrier materials, resilient filling materials, and decking
25 materials.

26 (2) “Covered products” means any flexible polyurethane foam
27 or upholstered or reupholstered furniture sold in California that is
28 required to meet the test requirements set forth in Technical
29 Bulletin 117-2013, entitled “Requirements, Test Procedure and
30 Apparatus for Testing the Smolder Resistance of Materials Used
31 in Upholstered Furniture.”

32 (3) “Added flame retardant chemicals” means flame retardant
33 chemicals that are present in any covered product or component
34 thereof at levels above ~~500~~ 1000 parts per million.

35 (4) “Department” means the Department of Toxic Substances
36 Control.

37 (5) “Consumer Price Index” means the Consumer Price Index
38 for All Urban Consumers published by the Bureau of Labor
39 Statistics.

1 (b) (1) ~~(A) An upholstered-furniture~~A manufacturer of covered
 2 products shall indicate whether or not the product contains added
 3 flame retardant chemicals by including the following ~~statement~~
 4 “*flame retardant chemical statement*” on the label described in
 5 Section 1126 of Title 4 of the California Code of Regulations for
 6 covered products:

7
 8 “This product meets California’s furniture fire safety standard
 9 and *the upholstery materials*:

10 _____contains added flame retardant chemicals

11 _____contains NO added flame retardant chemicals

12 The Bureau of Electronic and Appliance Repair, Home
 13 Furnishings, and Thermal Insulation found that flame retardant
 14 chemicals in furniture do not provide a meaningful fire safety
 15 benefit. According to the Centers for Disease Control and
 16 Prevention (CDC), such flame retardant chemicals can migrate
 17 into air and ~~house~~ dust where people can be exposed to them.”

18
 19 ~~An upholstered-furniture manufacturer~~

20 A manufacturer of covered products shall indicate the absence
 21 or presence of added flame retardant chemicals by placing an “X”
 22 in one of the appropriate blanks.

23 ~~(B)~~

24 (2) This statement shall be ~~in~~ included in the label described in
 25 Section 1126 of Title 4 of the California Code of Regulations in
 26 accordance with the bureau’s regulations for that label.

27 ~~(C)~~

28 (3) Notwithstanding any other law, the bureau shall assess fines
 29 for violations of this ~~paragraph~~ *subdivision* pursuant to Section
 30 1383.2 of Title 4 of the California Code of Regulations.

31 ~~(2) (A) The upholstered-furniture manufacturer of any covered~~
 32 ~~product sold in California shall provide point-of-sale signs~~
 33 ~~containing the flame retardant chemical statement to the~~
 34 ~~upholstered-furniture retailer for each product shipped to~~
 35 ~~California. For in-store sales in California, the upholstered-furniture~~
 36 ~~retailer in California shall display the point-of-sale sign next to~~
 37 ~~the price or description of the covered product. The point-of-sale~~
 38 ~~sign shall be sized and placed so as to remain clear and conspicuous~~
 39 ~~to consumers, and the minimum size of type shall be at least 0.2~~
 40 ~~inches in height.~~

1 ~~(i) For sales of covered products sold in California via an~~
2 ~~Internet Web site, the upholstered-furniture retailer in California~~
3 ~~shall place the point-of-sale sign containing the flame retardant~~
4 ~~chemical statement clearly and conspicuously, and in close~~
5 ~~proximity to the covered product's price, on each Internet Web~~
6 ~~site page that contains a detailed description of the covered product~~
7 ~~and its price. The point-of-sale sign shall be sized and placed so~~
8 ~~as to remain clear and conspicuous to a consumer viewing the~~
9 ~~page.~~

10 ~~(ii) For sales of covered products sold in California through~~
11 ~~paper catalogs, the upholstered-furniture retailer in California shall~~
12 ~~place the point-of-sale sign containing the flame retardant chemical~~
13 ~~statement clearly and conspicuously, and in close proximity to the~~
14 ~~covered product's price, on each page that contains a detailed~~
15 ~~description of the covered product and its price. The point-of-sale~~
16 ~~sign shall be sized and placed so as to remain clear and conspicuous~~
17 ~~to consumers.~~

18 ~~(B) The bureau shall assess fines for violations of this paragraph~~
19 ~~in accordance with the factors described in subdivision (e) and the~~
20 ~~following schedule:~~

21 ~~(i) The fine for the first violation shall be not less than one~~
22 ~~thousand dollars (\$1,000) but not more than two thousand five~~
23 ~~hundred dollars (\$2,500).~~

24 ~~(ii) The fine for the second violation shall be not less than two~~
25 ~~thousand five hundred dollars (\$2,500) but not more than five~~
26 ~~thousand dollars (\$5,000).~~

27 ~~(iii) The fine for the third violation shall be not less than five~~
28 ~~thousand dollars (\$5,000) but not more than seven thousand five~~
29 ~~hundred dollars (\$7,500).~~

30 ~~(iv) The fine for any subsequent violation shall be not less than~~
31 ~~seven thousand five hundred dollars (\$7,500) but not more than~~
32 ~~ten thousand dollars (\$10,000).~~

33 ~~(e) If flame retardant chemicals are added to a covered product~~
34 ~~sold in California, the upholstered-furniture manufacturer shall~~
35 ~~make good faith efforts to determine the various flame retardant~~
36 ~~chemicals used in its products and report this information~~
37 ~~semi-annually to the bureau. The bureau shall make this~~
38 ~~information publicly available on its Internet Web site. If~~
39 ~~information on the specific flame retardant chemicals used in the~~
40 ~~covered product is not known to the upholstered-furniture~~

1 manufacturer, the upholstered-furniture manufacturer may report
2 the trade name of the chemical mixture used.

3 ~~(d) (1) (A) If any flame retardant chemical was added to the~~
4 ~~covered product or any component thereof sold in California, the~~
5 ~~upholstered-furniture manufacturer of the covered product shall~~
6 ~~retain sufficient documentation to show the chemicals and the~~
7 ~~amounts of the chemicals that were added.~~

8 ~~(B) If no flame retardant chemicals were added to the covered~~
9 ~~product sold in California, the upholstered-furniture~~

10 *(c) (1) The manufacturer of the covered product sold in*
11 *California shall retain documentation that no to show whether*
12 *flame retardant chemicals were added. A written statement affidavit*
13 *by the supplier of each component of the furniture covered by*
14 *Technical Bulletin 117-2013 attesting under penalty of perjury*
15 *that no flame retardant chemicals were added or not added shall*
16 *be sufficient documentation.*

17 (2) The bureau shall ensure compliance with labeling and
18 documentation of chain of custody requirements in this section.

19 (3) (A) Upon request, ~~an upholstered-furniture~~ a manufacturer
20 of a covered product sold in California shall provide to the bureau,
21 within 30 days of the request, documentation establishing the
22 accuracy of the flame retardant chemical statement on the label
23 ~~and sign~~ required by subdivision (b).

24 (B) The bureau shall assess fines of not less than two thousand
25 five hundred dollars (\$2,500) but not more than fifteen thousand
26 dollars (\$15,000) in accordance with the factors described in
27 subdivision (e) for the failure of the ~~upholstered-furniture~~
28 manufacturer *of the covered product* to maintain the required chain
29 of custody documentation.

30 (C) The bureau shall provide the Department of Toxic
31 Substances Control with samples of the covered product or
32 components thereof sold in California from products marked
33 “contains NO added flame retardant chemicals” for testing for the
34 presence of added flame retardant chemicals. The department shall
35 provide the results of all testing to the bureau.

36 (D) (i) If the department’s testing shows that a covered product
37 labeled as “contains NO added flame retardant chemicals” is
38 mislabeled because it contains added flame retardant chemicals,
39 the bureau may assess fines for violations against
40 ~~upholstered-furniture~~ manufacturers of the covered product and

1 component manufacturers to be held jointly and severally liable
2 for the violation.

3 (ii) A fine for a violation of this subparagraph relating to
4 mislabeling shall be assessed in accordance with factors described
5 in subdivision (e) and the following schedule:

6 (I) The fine for the first violation shall be not less than one
7 thousand dollars (\$1,000) but not more than two thousand five
8 hundred dollars (\$2,500).

9 (II) The fine for the second violation shall be not less than two
10 thousand five hundred dollars (\$2,500) but not more than five
11 thousand dollars (\$5,000).

12 (III) The fine for the third violation shall be not less than five
13 thousand dollars (\$5,000) but not more than seven thousand five
14 hundred dollars (\$7,500).

15 (IV) The fine for any subsequent violation shall be not less than
16 seven thousand five hundred dollars (\$7,500) but not more than
17 ten thousand dollars (\$10,000).

18 (iii) If the department's testing shows that a covered product
19 labeled as "contains NO added flame retardant chemicals" is
20 mislabeled because it contains added flame retardant chemicals,
21 in addition to a fine or any other request, the bureau may request
22 that the ~~labels and signs~~ *label* required by subdivision (b) for
23 covered products that belong to the same stock keeping unit (SKU)
24 currently produced by the manufacturer be corrected to reflect that
25 flame retardant chemicals are added to the covered product.

26 (iv) If the department's testing shows that a covered product
27 labeled as "contains NO added flame retardant chemicals" is
28 mislabeled because it contains added flame retardant chemicals,
29 in addition to a fine or any other request, the bureau may request
30 additional testing of more products belonging to the same stock
31 keeping unit (SKU) at the manufacturer's expense to verify the
32 accuracy of the ~~label or sign~~ required by subdivision (b) for covered
33 products if the manufacturer wishes to retain the "contains NO
34 added flame retardant chemicals" designation on the ~~label or sign~~
35 required by subdivision (b).

36 (E) ~~An upholstered furniture~~ A manufacturer of covered products
37 and component suppliers shall be jointly and severally liable for
38 violations of chain of custody requirements in this subdivision.

39 (e)

1 (d) (1) Notwithstanding any other law, the bureau may issue a
2 citation, including a citation with a fine, for a violation of this
3 section, and shall make citation information available to the public.
4 (2) In determining the amount of the fine associated with a
5 citation, the bureau shall consider the following factors:
6 (A) The nature and severity of the violation.
7 (B) The good or bad faith of the cited person.
8 (C) The history of previous violations.
9 (D) Evidence that the violation was willful.
10 (E) The extent to which the cited person or entity has cooperated
11 with the bureau.
12 (3) (A) The bureau shall adjust all minimum and maximum
13 fines imposed by this section for inflation every five years.
14 (B) The adjustment shall be equivalent to the percentage, if any,
15 that the Consumer Price Index at the time of adjustment exceeds
16 the Consumer Price Index at the time this section goes into effect.
17 Any increase determined under this paragraph shall be rounded as
18 follows:
19 (i) In multiples of ten dollars (\$10) in the case of penalties less
20 than or equal to one hundred dollars (\$100).
21 (ii) In multiples of one hundred dollars (\$100) in the case of
22 penalties greater than one hundred dollars (\$100) but less than or
23 equal to one thousand dollars (\$1,000).
24 (iii) In multiples of one thousand dollars (\$1,000) in the case
25 of penalties greater than one thousand dollars (\$1,000).
26 (4) It shall be the duty of the bureau to receive complaints from
27 consumers concerning covered products sold in California.
28 ~~(f) The bureau shall establish requirements for providing~~
29 ~~translations of the flame retardant chemical statement in other~~
30 ~~languages on the sign required by subdivision (b) as may be~~
31 ~~needed.~~
32 ~~(g)~~
33 (e) The bureau may adopt regulations pursuant to the
34 Administrative Procedure Act (Chapter 3.5 (commencing with
35 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
36 Code) in order to carry out ~~the provisions of~~ this section.
37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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