

AMENDED IN SENATE MAY 27, 2014
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 ~~Sections~~ *Section* 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 *and each offense is punishable by a fine, as specified.*

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 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 require the manufacturer of the covered product to retain sufficient documentation to show whether flame retardant chemicals were added to a covered product or component. The bill would provide that a written affidavit by the supplier of each component attesting that flame retardant chemicals were added or not added is sufficient to make this showing. *The bill would require the bureau to assess a fine for a violation of the documentation requirement, as specified.*

~~Upon request, the~~

~~The bill would require a manufacturer of a covered product sold in California, upon request, to provide to the bureau, within 30 days of the request, documentation establishing the accuracy of the flame retardant chemical statement on the 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 “contain NO added flame retardant chemicals” for testing for the presence of added flame retardant chemicals: chemicals, as specified. If the department’s testing shows that a covered product labeled as “contains “contain NO added flame retardant chemicals” is mislabeled because it contains added flame retardant chemicals, the bill would authorize require the bureau to assess fines for violations against manufacturers of the covered product and component manufacturers, as specified. 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~~

~~The bill would authorize require the bureau to make this citation information about any citation issued pursuant to its provisions available to the public on its Internet Web site. 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. Section 19094 is added to the Business and~~
2 ~~Professions Code, to read:~~

3 ~~19094. The Legislature finds and declares all of the following:~~

4 ~~(a) In 1975, California implemented Technical Bulletin 117,~~
5 ~~which requires that materials, such as polyurethane foam, used to~~
6 ~~fill furniture be able to withstand a small open flame for at least~~
7 ~~12 seconds.~~

8 ~~(b) Flame retardant chemicals are used widely in upholstered~~
9 ~~furniture to meet the flame retardant standards of the Bureau of~~
10 ~~Electronic and Appliance Repair, Home Furnishings, and Thermal~~
11 ~~Insulation’s Technical Bulletin 117.~~

12 ~~(c) People are exposed to flame retardant chemicals in multiple~~
13 ~~ways, including when the chemicals migrate from furniture and~~
14 ~~other consumer products into air and dust in the home or~~
15 ~~workplace.~~

16 ~~(d) Some of these chemicals can persist in the environment,~~
17 ~~bioaccumulate in people and animals, and have been shown to~~
18 ~~cause adverse developmental effects in animals and humans.~~

19 ~~(e) A study by the California Environmental Protection Agency~~
20 ~~found that women in California have much higher levels of toxic~~
21 ~~flame retardants in their breast tissue than women in other states~~
22 ~~and countries. Studies published in the journal of Environmental~~

1 Research show that children in California have much higher levels
2 of flame retardant chemicals than children elsewhere in the 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 in
12 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
38 the 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 *SECTION 1. The Legislature finds and declares all of the*
17 *following:*

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

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

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

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

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34 *found that women in California have much higher levels of toxic*
35 *flame retardants in their breast tissue than women in other states*
36 *and countries. Studies published in the journal of Environmental*
37 *Research show that children in California have much higher levels*
38 *of flame retardant chemicals than children elsewhere in the*
39 *country.*

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

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

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

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16 of investigative reports that showed that the claims of the efficacy
17 of flame retardants in furniture misrepresent the science.

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19 and Appliance Repair, Home Furnishings, and Thermal Insulation
20 to review the state’s four-decade-old flammability standards and
21 recommend changes to reduce toxic flame retardants while
22 continuing to ensure fire safety.

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

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

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

39 (n) Upholstered furniture manufacturers and California’s retail
40 industry recognize the intrinsic value of helping consumers make

1 knowledgeable buying decisions and are uniquely positioned to
2 take the lead in building trust in the marketplace. Providing
3 information on the use of chemical flame retardants in upholstered
4 furniture gives retailers a unique opportunity to respond to the
5 needs of their customers. Consumers want to be able to exercise
6 an informed choice and buy products that are not only safer for
7 themselves and their families, but are products that will also keep
8 our firefighters safer.

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

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

16 ~~19095.~~

17 19094. (a) For the purposes of this section, the following
18 definitions shall apply:

19 (1) “Component” means the separate constituent parts of
20 upholstered furniture sold in California, as identified in Technical
21 Bulletin 117-2013, specifically cover fabrics, barrier materials,
22 resilient filling materials, and decking materials.

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

29 (3) “Added flame retardant chemicals” means flame retardant
30 chemicals that are present in any covered product or component
31 thereof at levels above ~~1000~~ 1,000 parts per million.

32 (4) “Department” means the Department of Toxic Substances
33 Control.

34 (5) “Consumer Price Index” means the Consumer Price Index
35 for All Urban Consumers published by the Bureau of Labor
36 Statistics.

37 (b) (1) A manufacturer of covered products shall indicate
38 whether or not the product contains added flame retardant
39 chemicals by including the following “flame retardant chemical

1 statement” on the label described in Section 1126 of Title 4 of the
2 California Code of Regulations for covered products:

3
4 “This product meets California’s furniture fire safety standard
5 and the upholstery materials:

6 ~~_____contains~~ *contain* added flame retardant chemicals

7 ~~_____contains~~ *contain* NO added flame retardant chemicals

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

14
15 A manufacturer of covered products shall indicate the absence
16 or presence of added flame retardant chemicals by placing an “X”
17 in one of the appropriate blanks.

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

21 ~~(3) Notwithstanding any other law, the bureau shall assess fines~~
22 ~~for violations of this subdivision pursuant to Section 1383.2 of~~
23 ~~Title 4 of the California Code of Regulations.~~

24 (c) (1) The manufacturer of the covered product sold in
25 California shall retain documentation to show whether flame
26 retardant chemicals were added. A written affidavit by the supplier
27 of each component covered by Technical Bulletin 117-2013
28 attesting *either* that flame retardant chemicals were added or not
29 added shall be sufficient documentation.

30 (2) The bureau shall ensure compliance with *the* labeling and
31 documentation ~~of chain of custody~~ requirements in this section.

32 (3) (A) Upon request, a manufacturer of a covered product sold
33 in California shall provide to the bureau, within 30 days of the
34 request, documentation establishing the accuracy of the flame
35 retardant chemical statement on the label required by subdivision
36 (b).

37 (B) The bureau shall assess fines of not less than two thousand
38 five hundred dollars (\$2,500) but not more than fifteen thousand
39 dollars (\$15,000) in accordance with the factors described in
40 subdivision ~~(e)~~ (d) for the failure of the manufacturer of the covered

1 product to maintain the required chain of custody documentation.
2 documentation required by this section. These fines shall replace
3 any other fines in this article for a violation of the documentation
4 requirements of this section. This subparagraph does not alter or
5 amend any other penalty otherwise imposed by this article.

6 ~~(C) The bureau shall provide the Department of Toxic~~
7 ~~Substances Control with samples of the covered product or~~
8 ~~components thereof sold in California from products marked~~
9 ~~“contains NO added flame retardant chemicals” for testing for the~~
10 ~~presence of added flame retardant chemicals. The department shall~~
11 ~~provide the results of all testing to the bureau.~~

12 (C) A manufacturer of covered products and component
13 suppliers shall be jointly and severally liable for violations of the
14 documentation required in this section.

15 (D) The bureau shall provide the Department of Toxic
16 Substances Control with a selection of samples from covered
17 products marked “contain NO added flame retardant chemicals”
18 for testing for the presence of added flame retardant chemicals.
19 The samples shall be from the components identified in paragraph
20 (1) of subdivision (a). The bureau shall select samples based on
21 consultation with the department, taking into account a range of
22 manufacturers and types of covered products. The bureau and the
23 department shall consult on the tests to be conducted by the
24 department. The department shall provide the results of any
25 completed test to the bureau.

26 ~~(D)~~

27 (E) (i) If the department’s testing shows that a covered product
28 labeled as ~~“contains~~ “contain NO added flame retardant chemicals”
29 is mislabeled because it contains added flame retardant chemicals,
30 the bureau may assess fines for violations against manufacturers
31 of the covered product and component manufacturers to be held
32 jointly and severally liable for the violation.

33 (ii) A fine for a violation of this subparagraph relating to
34 mislabeling shall be assessed in accordance with factors described
35 in subdivision ~~(e)~~ (d) and the following schedule:

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

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

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

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

10 (iii) *The fines in clause (ii) shall replace any other fines in this*
11 *article for a violation of the testing requirements of this section.*
12 *This clause does not alter or amend any other penalty otherwise*
13 *imposed by this article.*

14 ~~(iii)~~

15 (iv) If the department’s testing shows that a covered product
16 labeled as ~~“contains~~ “*contain* NO added flame retardant chemicals”
17 is mislabeled because it contains added flame retardant chemicals,
18 in addition to a fine or any other request, the bureau may request
19 that the label required by subdivision (b) for covered products that
20 belong to the same stock keeping unit (SKU) currently produced
21 by the manufacturer be corrected to reflect that flame retardant
22 chemicals are added to the covered product.

23 ~~(iv)~~

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

34 ~~(E) A manufacturer of covered products and component~~
35 ~~suppliers shall be jointly and severally liable for violations of chain~~
36 ~~of custody requirements in this subdivision.~~

37 (d) (1) ~~Notwithstanding any other law, the~~ *The bureau may*
38 ~~issue a citation, including a citation with a fine, for a violation of~~
39 ~~this section, and shall make information about any citation~~

1 ~~information~~ issued pursuant to this section available to the public
2 on its Internet Web site.

3 (2) In determining the amount of the fine ~~associated with a~~
4 ~~citation,~~ for violations of this section, the bureau shall consider the
5 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 (e) The bureau may adopt regulations pursuant to the
29 Administrative Procedure Act (Chapter 3.5 (commencing with
30 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
31 Code) ~~in order~~ to carry out this section.

32 SEC. 3. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O