

AMENDED IN ASSEMBLY AUGUST 18, 2014

AMENDED IN ASSEMBLY JUNE 30, 2014

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN ASSEMBLY JUNE 10, 2014

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 Section 19094 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 certain upholstered furniture to contain a specified label that is permanently attached 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 statement 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 or for failure to provide, upon request, the required documentation to the bureau, as specified.

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 "contain NO added flame retardant chemicals" for testing for the presence of added flame retardant chemicals, as specified. If the department's testing shows that a covered product labeled as "contain NO added flame retardant chemicals" is mislabeled because it contains added flame retardant chemicals, the bill would require the bureau to assess fines for violations against manufacturers of the covered product and component manufacturers, as specified.

The bill would require the bureau to make 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 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 the Bureau of
9 Electronic and Appliance Repair, Home Furnishings, and Thermal
10 Insulation's Technical Bulletin 117.

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

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

18 (e) A study by the California Environmental Protection Agency
19 found that women in California have much higher levels of toxic
20 flame retardants in their breast tissue than women in other states
21 and countries. Studies published in the journal of Environmental
22 Research show that children in California have much higher levels
23 of flame retardant chemicals than children elsewhere in the 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) Various studies have linked exposure to flame retardants to
6 cancer, lower IQs and attention problems, male infertility, male
7 birth defects, and early puberty in girls.

8 (h) In 2012, Governor Brown asked the Bureau of Electronic
9 and Appliance Repair, Home Furnishings, and Thermal Insulation
10 to review the state's four-decade-old flammability standards and
11 recommend changes to reduce toxic flame retardants while
12 continuing to ensure fire safety.

13 (i) The Bureau of Electronic and Appliance Repair, Home
14 Furnishings, and Thermal Insulation concluded that “studies show
15 that fire retardant (FR) tested foam does not provide a meaningful
16 difference in egress time from non-FR foam and increases
17 smoldering propensity.” In 2013, the Bureau of Electronic and
18 Appliance Repair, Home Furnishings, and Thermal Insulation
19 promulgated regulations revising Technical Bulletin 117 to allow
20 furniture manufacturers to meet a smoldering standard. The revised
21 Technical Bulletin 117-2013 provides improved fire safety
22 standards without the use of flame retardant chemicals.

23 (j) Technical Bulletin 117-2013 can be met with or without the
24 use of flame retardant chemicals, but consumers currently have
25 no way to know whether flame retardant chemicals have been
26 added to the product.

27 (k) Consumers want to be able to exercise an informed choice
28 and buy products that are not only safer for themselves and their
29 families, but are products that will also keep our firefighters safer.

30 (l) It is, therefore, the intent of the Legislature in enacting this
31 measure to provide California consumers clear information about
32 the furniture products they are purchasing, specifically concerning
33 compliance with fire safety standards and the absence or presence
34 of added flame retardant chemicals.

35 SEC. 2. Section 19094 is added to the Business and Professions
36 Code, to read:

37 19094. (a) For the purposes of this section, the following
38 definitions shall apply:

39 (1) “Component” means the separate constituent parts of
40 upholstered furniture sold in California, as identified in Technical

1 Bulletin 117-2013, specifically cover fabrics, barrier materials,
2 resilient filling materials, and decking materials.

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

9 (3) “*Flame retardant chemical*” means any chemical or
10 chemical compound for which a purported functional use is to
11 resist or inhibit the spread of fire. Flame retardant chemicals
12 include, but are not limited to, halogenated, phosphorous-based,
13 nitrogen-based, and nanoscale flame retardants, and flame
14 retardant chemicals listed as “designated chemicals” pursuant to
15 Section 105440 of the Health and Safety Code.

16 (4) “Chemical” means either of the following:

17 (A) An organic or inorganic substance of a particular molecular
18 identity, including any combination of those substances occurring,
19 in whole or in part, as a result of a chemical reaction or occurring
20 in nature, and any element, ion, or uncombined radical, and any
21 degrade, metabolite, or reaction product of a substance with a
22 particular molecular identity.

23 (B) A chemical ingredient, which means a substance comprising
24 one or more substances described in subparagraph (A).

25 (5) “Molecular identity” means the substance’s properties listed
26 below:

27 (A) Agglomeration state.

28 (B) Bulk density.

29 (C) Chemical composition, including surface coating.

30 (D) Crystal structure.

31 (E) Dispersability.

32 (F) Molecular structure.

33 (G) Particle density.

34 (H) Particle size, size distribution, and surface area.

35 (I) Physical form and shape, at room temperature and pressure.

36 (J) Physicochemical properties.

37 (K) Porosity.

38 (L) Solubility in water and biologically relevant fluids.

39 (M) Surface charge.

40 (N) Surface reactivity.

1 ~~(3)~~

2 (6) “Added flame retardant chemicals” means flame retardant
3 chemicals that are present in any covered product or component
4 thereof at levels above 1,000 parts per million.

5 ~~(4)~~

6 (7) “Department” means the Department of Toxic Substances
7 Control.

8 ~~(5)~~

9 (8) “Consumer Price Index” means the Consumer Price Index
10 for All Urban Consumers published by the Bureau of Labor
11 Statistics.

12 (b) (1) A manufacturer of covered products shall indicate
13 whether or not the product contains added flame retardant
14 chemicals by including the following “flame retardant chemical
15 statement” on the label described in Section 1374.3 of Title 4 of
16 the California Code of Regulations for covered products:

17

18 “The upholstery materials in this product:

19 _____ contain added flame retardant chemicals

20 _____ contain NO added flame retardant chemicals

21 The State of California has updated the flammability standard
22 and determined that the fire safety requirements for this product
23 can be met without adding flame retardant chemicals. The state
24 has identified many flame retardant chemicals as being known to,
25 or strongly suspected of, adversely impacting human health or
26 development.”

27

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

31 (2) This statement shall be included in the label described in
32 Section 1374.3 of Title 4 of the California Code of Regulations in
33 accordance with the bureau’s regulations for that label. The
34 statement need not be in all capital letters, and shall follow the
35 statement required by Section 1374.3 of Title 4 of the California
36 Code of Regulations.

37 (c) (1) The manufacturer of the covered product sold in
38 California shall retain documentation to show whether flame
39 retardant chemicals were added. A written statement by the supplier
40 of each component covered by Technical Bulletin 117-2013

1 attesting either that flame retardant chemicals were added or not
2 added shall be sufficient documentation.

3 (2) The bureau shall ensure compliance with the labeling and
4 documentation requirements in this section.

5 (3) (A) Upon request, a manufacturer of a covered product sold
6 in California shall provide to the bureau, within 30 days of the
7 request, documentation establishing the accuracy of the flame
8 retardant chemical statement on the label required by subdivision
9 (b).

10 (B) The bureau shall assess fines of not less than two thousand
11 five hundred dollars (\$2,500) but not more than fifteen thousand
12 dollars (\$15,000) in accordance with the factors described in
13 subdivision (d) for the failure of the manufacturer of the covered
14 product to maintain the documentation required by this section,
15 or for the failure of the manufacturer of the covered product to
16 provide, upon request, the documentation required by this section
17 to the bureau. These fines shall replace any other fines in this article
18 for a violation of the documentation requirements of this section.
19 This subparagraph does not alter or amend any other penalty
20 otherwise imposed by this article.

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

24 (D) The bureau shall provide the Department of Toxic
25 Substances Control with a selection of samples from covered
26 products marked “contain NO added flame retardant chemicals”
27 for testing for the presence of added flame retardant chemicals.
28 The samples shall be from the components identified in paragraph
29 (1) of subdivision (a). The bureau shall select samples based on
30 consultation with the department, taking into account a range of
31 manufacturers and types of covered products. The bureau and the
32 department shall consult on the tests to be conducted by the
33 department. The department shall provide the results of any
34 completed test to the bureau.

35 (E) (i) If the department’s testing shows that a covered product
36 labeled as “contain NO added flame retardant chemicals” is
37 mislabeled because it contains added flame retardant chemicals,
38 the bureau may assess fines for violations against manufacturers
39 of the covered product and component manufacturers to be held
40 jointly and severally liable for the violation.

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

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

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

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

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

16 (iii) The fines in clause (ii) shall replace any other fines in this
17 article for a violation of the testing requirements of this section.
18 This clause does not alter or amend any other penalty otherwise
19 imposed by this article.

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

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

38 (d) (1) The bureau shall make information about any citation
39 issued pursuant to this section available to the public on its Internet
40 Web site.

1 (2) In determining the amount of the fine for violations of this
2 section, the bureau shall consider the following factors:

- 3 (A) The nature and severity of the violation.
- 4 (B) The good or bad faith of the cited person.
- 5 (C) The history of previous violations.
- 6 (D) Evidence that the violation was willful.
- 7 (E) The extent to which the cited person or entity has cooperated
8 with the bureau.

9 (3) (A) The bureau shall adjust all minimum and maximum
10 fines imposed by this section for inflation every five years.

11 (B) The adjustment shall be equivalent to the percentage, if any,
12 that the Consumer Price Index at the time of adjustment exceeds
13 the Consumer Price Index at the time this section goes into effect.
14 Any increase determined under this paragraph shall be rounded as
15 follows:

16 (i) In multiples of ten dollars (\$10) in the case of penalties less
17 than or equal to one hundred dollars (\$100).

18 (ii) In multiples of one hundred dollars (\$100) in the case of
19 penalties greater than one hundred dollars (\$100) but less than or
20 equal to one thousand dollars (\$1,000).

21 (iii) In multiples of one thousand dollars (\$1,000) in the case
22 of penalties greater than one thousand dollars (\$1,000).

23 (4) It shall be the duty of the bureau to receive complaints from
24 consumers concerning covered products sold in California.

25 (e) The bureau may adopt regulations pursuant to the
26 Administrative Procedure Act (Chapter 3.5 (commencing with
27 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
28 Code) to carry out this section.

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