

Senate Bill No. 1019

Passed the Senate August 28, 2014

Secretary of the Senate

Passed the Assembly August 27, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 19094 to the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 1019, 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.

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

SECTION 1. The Legislature finds and declares all of the following:

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

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

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

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

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

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

(g) Various studies have linked exposure to flame retardants to cancer, lower IQs and attention problems, male infertility, male birth defects, and early puberty in girls.

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

(i) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation concluded that "studies show that fire retardant (FR) tested foam does not provide a meaningful

difference in egress time from non-FR foam and increases smoldering propensity.” In 2013, the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation promulgated regulations revising Technical Bulletin 117 to allow furniture manufacturers to meet a smoldering standard. The revised Technical Bulletin 117-2013 provides improved fire safety standards without the use of flame retardant chemicals.

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

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

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

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

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

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

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

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

which “flame retardant” appears on the substance Safety Data Sheet (SDS) pursuant to Section 1910.1200(g) of Title 29 of the Code of Federal Regulations.

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

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

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

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

(A) Agglomeration state.

(B) Bulk density.

(C) Chemical composition, including surface coating.

(D) Crystal structure.

(E) Dispersability.

(F) Molecular structure.

(G) Particle density.

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

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

(J) Physicochemical properties.

(K) Porosity.

(L) Solubility in water and biologically relevant fluids.

(M) Surface charge.

(N) Surface reactivity.

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

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

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

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

statement” on the label described in Section 1374.3 of Title 4 of the California Code of Regulations for covered products:

“The upholstery materials in this product:
_____contain added flame retardant chemicals
_____contain NO added flame retardant chemicals

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

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

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

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

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

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

(B) The bureau shall assess fines of not less than two thousand five hundred dollars (\$2,500) but not more than fifteen thousand dollars (\$15,000) in accordance with the factors described in subdivision (d) for the failure of the manufacturer of the covered product to maintain the documentation required by this section,

or for the failure of the manufacturer of the covered product to provide, upon request, the documentation required by this section to the bureau. These fines shall replace any other fines in this article for a violation of the documentation requirements of this section. This subparagraph does not alter or amend any other penalty otherwise imposed by this article.

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

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

(ii) No later than August 1 of each fiscal year, the bureau shall assess available resources and determine the number of tests to be conducted in the corresponding fiscal year, pursuant to this subparagraph.

(E) (i) 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 bureau may assess fines for violations against manufacturers of the covered product and component manufacturers to be held jointly and severally liable for the violation.

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

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

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

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

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

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

(iv) 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, in addition to a fine or any other request, the bureau may request that the label required by subdivision (b) for covered products that belong to the same stock keeping unit (SKU) currently produced by the manufacturer be corrected to reflect that flame retardant chemicals are added to the covered product.

(v) 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, in addition to a fine or any other request, the bureau may request additional testing of more products belonging to the same stock keeping unit (SKU) at the manufacturer's expense to verify the accuracy of the label required by subdivision (b) for covered products if the manufacturer wishes to retain the "contain NO added flame retardant chemicals" designation on the label required by subdivision (b).

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

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

- (A) The nature and severity of the violation.
- (B) The good or bad faith of the cited person.
- (C) The history of previous violations.
- (D) Evidence that the violation was willful.

(E) The extent to which the cited person or entity has cooperated with the bureau.

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

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

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

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

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

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

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

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

Approved _____, 2014

Governor