

Introduced by Senator Leno

February 27, 2015

An act to add Sections 19095 and 19161.4 to the Business and Professions Code, relating to home furnishings.

LEGISLATIVE COUNSEL'S DIGEST

SB 763, as introduced, Leno. Juvenile products: 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. The 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 juvenile products, as defined, sold in California to indicate whether or not the product contains added flame retardant chemicals, as defined, by including a specified statement on that label. For sales in California over the Internet and paper catalog sales to California, the bill would require the retailer of juvenile products in California to display the point-of-sale sign in a specified manner.

The bill would require the manufacturer of the juvenile product to retain sufficient documentation to show whether flame retardant chemicals were added to a juvenile 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 juvenile 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 juvenile 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, as specified. If the department’s testing shows that a juvenile 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 manufacturers of the juvenile 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 Home Furnishings and Thermal Insulation Act requires that all mattresses and mattress sets manufactured for sale in this state, and all seating furniture sold or offered for sale for use in this state, be fire retardant, as defined. Existing law requires that all bedding products, other than mattresses and mattress sets, that the bureau determines to contribute to mattress bedding fires comply with specified regulations adopted by the bureau.

Existing law authorizes the chief of the bureau, subject to specified approval, to exempt items of upholstered furniture that are not deemed to be a serious fire hazard from these fire retardant requirements. Existing regulation exempts from these fire retardant requirements specified articles of upholstered furniture that include bassinets, booster seats, and car seats that are not used for, or in, facilities designed for the care or treatment of humans.

This bill would exempt from the aforementioned fire retardant requirements under the act specified articles of upholstered juvenile products, as provided.

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 19095 is added to the Business and
- 2 Professions Code, to read:
- 3 19095. (a) For the purposes of this section, the following
- 4 definitions shall apply:
- 5 (1) "Component" means the separate constituent parts of
- 6 upholstered furniture sold in California, as identified in Technical
- 7 Bulletin 117-2013, specifically cover fabrics, barrier materials,
- 8 resilient filling materials, and decking materials.
- 9 (2) "Juvenile product" includes, but is not limited to, a bassinet,
- 10 booster seat, car seat, changing pad, floor play mat, highchair,
- 11 highchair pad, infant bouncer, infant carrier, infant seat, infant
- 12 swing, infant walker, nursing pad, nursing pillow, playpen side
- 13 pad, playard, portable hook-on chair, stroller, children's nap mat,

1 baby carrier that is worn by an adult, foam crib mattress, and
2 children's upholstered furniture.

3 (3) "Added flame retardant chemicals" means flame retardant
4 chemicals that are present in any juvenile product or component
5 thereof at levels above 500 parts per million.

6 (4) "Flame retardant chemical" means any chemical or chemical
7 compound for which a functional use is to resist or inhibit the
8 spread of fire. Flame retardant chemicals include, but are not
9 limited to, halogenated, phosphorous-based, nitrogen-based, and
10 nanoscale flame retardants, flame retardant chemicals listed as
11 "designated chemicals" pursuant to Section 105440 of the Health
12 and Safety Code, and any chemical or chemical compound for
13 which "flame retardant" appears on the substance Safety Data
14 Sheet (SDS) pursuant to Section 1910.1200(g) of Title 29 of the
15 Code of Federal Regulations.

16 (5) "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 degradate, 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 (6) "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 (7) “Department” means the Department of Toxic Substances
2 Control.

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

6 (b) (1) (A) A manufacturer of juvenile products sold in
7 California shall indicate whether or not the product contains added
8 flame retardant chemicals by including the following statement
9 on the label described in Section 1126 of Title 4 of the California
10 Code of Regulations for juvenile products:

11
12 “This product meets California’s furniture fire safety standard
13 and:

14 _____contains added flame retardant chemicals

15 _____contains NO added flame retardant chemicals

16 The State of California has determined that no flammability
17 standard is needed for this product. The state has identified many
18 flame retardant chemicals as being known to, or strongly suspected
19 of, adversely impacting human health or development.”

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

24 (B) This statement shall be 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 (2) (A) For sales of juvenile products sold in California via an
28 Internet Web site, the retailer of juvenile products in California
29 shall place the point-of-sale sign containing the flame retardant
30 chemical statement clearly and conspicuously, and in close
31 proximity to the juvenile product’s price, on each Internet Web
32 site page that contains a detailed description of the juvenile product
33 and its price. The point-of-sale sign shall be sized and placed so
34 as to remain clear and conspicuous to a consumer viewing the
35 page.

36 (B) For sales of juvenile products sold in California through
37 paper catalogs, the retailer of juvenile products in California shall
38 place the point-of-sale sign containing the flame retardant chemical
39 statement clearly and conspicuously, and in close proximity to the
40 juvenile product’s price, on each page that contains a detailed

1 description of the juvenile product and its price. The point-of-sale
2 sign shall be sized and placed so as to remain clear and conspicuous
3 to consumers.

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

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

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

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

28 (C) A manufacturer of juvenile products sold in California and
29 component suppliers shall be jointly and severally liable for
30 violations of the documentation required in this section.

31 (D) (i) The bureau shall provide the Department of Toxic
32 Substances Control with a selection of samples from juvenile
33 products marked “contains NO added flame retardant chemicals”
34 for testing for the presence of added flame retardant chemicals.
35 The samples shall be from the components identified in paragraph
36 (1) of subdivision (a). The bureau shall select samples based on
37 consultation with the department, taking into account a range of
38 manufacturers and types of juvenile products. The bureau and the
39 department shall consult on the tests to be conducted by the
40 department. The department shall provide the results of any

1 completed test to the bureau. The bureau shall reimburse the
2 department for the cost of testing for the presence of added flame
3 retardant chemicals in juvenile products marked “contains NO
4 added flame retardant chemicals”.

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

9 (E) (i) If the department’s testing shows that a juvenile product
10 labeled as “contains NO added flame retardant chemicals” is
11 mislabeled because it contains added flame retardant chemicals,
12 the bureau may assess fines for violations against manufacturers
13 of the juvenile product and component manufacturers to be held
14 jointly and severally liable for the violation.

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

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

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

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

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

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

34 (iv) If the department’s testing shows that a juvenile product
35 labeled as “contains NO added flame retardant chemicals” is
36 mislabeled because it contains added flame retardant chemicals,
37 in addition to a fine or any other request, the bureau may request
38 that the label required by subdivision (b) for juvenile products that
39 belong to the same stock keeping unit (SKU) currently produced

1 by the manufacturer be corrected to reflect that flame retardant
2 chemicals are added to the juvenile product.

3 (v) If the department's testing shows that a juvenile product
4 labeled as "contains NO added flame retardant chemicals" is
5 mislabeled because it contains added flame retardant chemicals,
6 in addition to a fine or any other request, the bureau may request
7 additional testing of more products belonging to the same stock
8 keeping unit (SKU) at the manufacturer's expense to verify the
9 accuracy of the label required by subdivision (b) for juvenile
10 products if the manufacturer wishes to retain the "contains NO
11 added flame retardant chemicals" designation on the label required
12 by subdivision (b).

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

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

- 18 (A) The nature and severity of the violation.
- 19 (B) The good or bad faith of the cited person.
- 20 (C) The history of previous violations.
- 21 (D) Evidence that the violation was willful.
- 22 (E) The extent to which the cited person or entity has cooperated
23 with the bureau.

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

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

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

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

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

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

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

5 SEC. 2. Section 19161.4 is added to the Business and
6 Professions Code, to read:

7 19161.4. The requirements of Section 19161 shall not apply
8 to juvenile products, as defined in Section 19095.

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