

AMENDED IN SENATE MAY 7, 2015
AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 763

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 amended, 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 *mattress*, 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~~ *a permanently affixed* 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 a 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 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 juvenile
- 6 products sold in California, specifically cover fabrics, barrier
- 7 materials, resilient filling materials, and plastic parts.
- 8 (2) “Juvenile product” includes, but is not limited to, a bassinet,
- 9 booster seat, infant car seat, changing pad, floor play mat,
- 10 highchair, highchair pad, infant bouncer, infant carrier, infant seat,
- 11 infant swing, infant walker, nursing pad, nursing pillow, playpen

1 side pad, playard, portable hook-on chair, stroller, children's nap
2 mat, baby carrier that is worn by an adult, and an infant foam crib
3 mattress. *"Juvenile product" does not include products required*
4 *to meet federal flammability standards contained in Part 1632 or*
5 *1633 of Title 16 of the Code of Federal Regulations.*

6 (3) "Added flame retardant chemicals" means flame retardant
7 chemicals that are present in any juvenile product or component
8 thereof at levels above 1,000 parts per million.

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

19 (5) "Chemical" means either of the following:

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

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

28 (6) "Molecular identity" means the substance's properties listed
29 below:

30 (A) Agglomeration state.

31 (B) Bulk density.

32 (C) Chemical composition, including surface coating.

33 (D) Crystal structure.

34 (E) Dispersibility.

35 (F) Molecular structure.

36 (G) Particle density.

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

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

39 (J) Physicochemical properties.

40 (K) Porosity.

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

2 (M) Surface charge.

3 (N) Surface reactivity.

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

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

9 (b) (1) (A) A manufacturer of juvenile products sold in
10 California shall indicate whether or not the product contains added
11 flame retardant chemicals by including the following statement
12 on a label ~~for juvenile products~~: *permanently affixed to the juvenile*
13 *product*:
14

15 “The State of California has determined that this product does
16 not pose a serious fire hazard. The state has identified many flame
17 retardant chemicals as being known to, or strongly suspected of,
18 adversely impacting human health or development.

19 This product:

20 _____ contains added flame retardant chemicals

21 _____ contains NO added flame retardant chemicals”
22

23 A

24 (B) A manufacturer of juvenile products sold in California shall
25 indicate the absence or presence of added flame retardant chemicals
26 by placing an “X” in one of the appropriate blanks.

27 ~~(B) This statement shall be included in the label described in~~
28 ~~Section 1126 of Title 4 of the California Code of Regulations in~~
29 ~~accordance with the bureau’s regulations for that label.~~

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

39 (B) For sales of juvenile products sold in California through
40 paper catalogs, the retailer of juvenile products in California shall

1 place a point-of-sale sign containing the flame retardant chemical
2 statement clearly and conspicuously, and in close proximity to the
3 juvenile product's price, on each page that contains a detailed
4 description of the juvenile product and its price. The point-of-sale
5 sign shall be sized and placed so as to remain clear and conspicuous
6 to consumers.

7 (c) (1) The manufacturer of the juvenile product sold in
8 California shall retain documentation to show whether flame
9 retardant chemicals were added. A written statement by the supplier
10 of each component of a juvenile product attesting either that flame
11 retardant chemicals were added or not added shall be sufficient
12 documentation.

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

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

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

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

34 (D) (i) The bureau shall provide the Department of Toxic
35 Substances Control with a selection of samples from juvenile
36 products marked "contains NO added flame retardant chemicals"
37 for testing for the presence of added flame retardant chemicals.
38 The samples shall be from the components identified in paragraph
39 (1) of subdivision (a). The bureau shall select samples based on
40 consultation with the department, taking into account a range of

1 manufacturers and types of juvenile products. The bureau and the
2 department shall consult on the tests to be conducted by the
3 department. The department shall provide the results of any
4 completed test to the bureau. The bureau shall reimburse the
5 department for the cost of testing for the presence of added flame
6 retardant chemicals in juvenile products marked “contains NO
7 added flame retardant chemicals”.

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

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

18 (ii) A fine for a violation of this subparagraph relating to
19 mislabeling shall be assessed in accordance with the factors
20 described in subdivision (d) and the 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 (iii) The fines in clause (ii) shall replace any other fines in this
34 article for a violation of the testing requirements of this section.
35 This clause does not alter or amend any other penalty otherwise
36 imposed by this article.

37 (iv) If the department’s testing shows that a juvenile product
38 labeled as “contains NO added flame retardant chemicals” is
39 mislabeled because it contains added flame retardant chemicals,
40 in addition to a fine or any other request, the bureau may request

1 that the label required by subdivision (b) for juvenile products that
2 belong to the same stock keeping unit (SKU) currently produced
3 by the manufacturer be corrected to reflect that flame retardant
4 chemicals are added to the juvenile product.

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

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

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

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

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

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

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

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

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

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

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

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

9 19161.4. The requirements of Section 19161 shall not apply
10 to juvenile products, as defined in Section 19095.

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