

AMENDED IN ASSEMBLY JUNE 19, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 7, 2015

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 763**

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**Introduced by Senator Leno**

February 27, 2015

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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 a ~~permanently affixed label~~. *label, that meets certain labeling requirements, securely attached to the product.* 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~~ *the flame retardant chemical statement on their Internet Web site and catalogue pages* 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:

1 (1) “Component” means the separate constituent parts of juvenile  
2 products sold in California, specifically cover fabrics, barrier  
3 materials, resilient filling materials, and plastic parts.

4 (2) “Juvenile product” means a product subject to the Home  
5 Furnishings and Thermal Insulation Act and intended for use by  
6 infants and children under 12 years of age, such as a bassinet,  
7 booster seat, infant car seat, changing pad, floor play mat,  
8 highchair, highchair pad, infant bouncer, infant carrier, infant seat,  
9 infant swing, infant walker, nursing pad, nursing pillow, playpen  
10 side pad, playard, portable hook-on chair, stroller, children’s nap  
11 mat, and infant foam crib mattress. Products subject to the  
12 requirements of Section 19094 are not subject to the requirements  
13 of this section. “Juvenile product” does not include products  
14 required to meet federal flammability standards contained in Part  
15 1632 or 1633 of Title 16 of the Code of Federal Regulations.

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

19 (4) “Flame retardant chemical” means any chemical or chemical  
20 compound for which a functional use is to resist or inhibit the  
21 spread of fire. Flame retardant chemicals include, but are not  
22 limited to, halogenated, phosphorous-based, nitrogen-based, and  
23 nanoscale flame retardants, flame retardant chemicals listed as  
24 “designated chemicals” pursuant to Section 105440 of the Health  
25 and Safety Code, and any chemical or chemical compound for  
26 which “flame retardant” appears on the substance Safety Data  
27 Sheet (SDS) pursuant to Section 1910.1200(g) of Title 29 of the  
28 Code of Federal Regulations.

29 (5) “Chemical” means either of the following:

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

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

38 (6) “Molecular identity” means the substance’s properties listed  
39 below:

40 (A) Agglomeration state.

- 1 (B) Bulk density.
- 2 (C) Chemical composition, including surface coating.
- 3 (D) Crystal structure.
- 4 (E) Dispersibility.
- 5 (F) Molecular structure.
- 6 (G) Particle density.
- 7 (H) Particle size, size distribution, and surface area.
- 8 (I) Physical form and shape, at room temperature and pressure.
- 9 (J) Physicochemical properties.
- 10 (K) Porosity.
- 11 (L) Solubility in water and biologically relevant fluids.
- 12 (M) Surface charge.
- 13 (N) Surface reactivity.

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

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

19 (b) (1) (A) A manufacturer of juvenile products sold in  
20 California shall ~~indicate whether or not the product contains added~~  
21 ~~flame retardant chemicals by including the following statement~~  
22 ~~on a label permanently affixed to the juvenile product: have a label~~  
23 *securely attached to the product, in plain view, stating the*  
24 *following:*

25  
26 “The State of California has determined that this product does  
27 not pose a serious fire hazard. The state has identified many flame  
28 retardant chemicals as being known to, or strongly suspected of,  
29 adversely impacting human health or development.

30 ~~This~~ *The fabric, filling, and plastic parts of this product:*

31 \_\_\_\_\_ contains added flame retardant chemicals

32 \_\_\_\_\_ contains NO added flame retardant chemicals”

33  
34 (B) A manufacturer of juvenile products sold in California shall  
35 indicate the absence or presence of added flame retardant chemicals  
36 by placing an “X” in one of the appropriate blanks.

37 (C) *The label for juvenile products shall comply with the*  
38 *labeling requirements of subdivisions (a), (b), and (e) of Section*  
39 *1126 of Title 4 of the California Code of Regulations. The type on*  
40 *the label need not be in all capital letters.*

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

(B) For sales of juvenile products sold in California through paper catalogs, the retailer of juvenile products in California shall place ~~a point-of-sale sign containing~~ the flame retardant chemical statement clearly and conspicuously, and in close proximity to the juvenile product's price, on each page that contains a detailed description of the juvenile product and its price. The ~~point-of-sale sign~~ *statement* shall be sized and placed so as to remain clear and conspicuous to consumers.

(c) (1) The manufacturer of the juvenile product sold in California shall retain documentation to show whether flame retardant chemicals were added. A written statement by the supplier of each component of a juvenile product 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 juvenile 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 juvenile product to maintain the documentation required by this section, or for the failure of the manufacturer of the juvenile 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.

1 This subparagraph does not alter or amend any other penalty  
2 otherwise imposed by this article.

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

6 (D) (i) The bureau shall provide the Department of Toxic  
7 Substances Control with a selection of samples from juvenile  
8 products marked “contains NO added flame retardant chemicals”  
9 for testing for the presence of added flame retardant chemicals.  
10 The samples shall be from the components identified in paragraph  
11 (1) of subdivision (a). The bureau shall select samples based on  
12 consultation with the department, taking into account a range of  
13 manufacturers and types of juvenile products. The bureau and the  
14 department shall consult on the tests to be conducted by the  
15 department. The department shall provide the results of any  
16 completed test to the bureau. The bureau shall reimburse the  
17 department for the cost of testing for the presence of added flame  
18 retardant chemicals in juvenile products marked “contains NO  
19 added flame retardant chemicals.”

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

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

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

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

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

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

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

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

11 (iv) If the department's testing shows that a juvenile product  
12 labeled as "contains NO added flame retardant chemicals" is  
13 mislabeled because it contains added flame retardant chemicals,  
14 in addition to a fine or any other request, the bureau may request  
15 that the label required by subdivision (b) for juvenile products that  
16 belong to the same stock keeping unit (SKU) currently produced  
17 by the manufacturer be corrected to reflect that flame retardant  
18 chemicals are added to the juvenile product.

19 (v) If the department's testing shows that a juvenile product  
20 labeled as "contains NO added flame retardant chemicals" is  
21 mislabeled because it contains added flame retardant chemicals,  
22 in addition to a fine or any other request, the bureau may request  
23 additional testing of more products belonging to the same stock  
24 keeping unit (SKU) at the manufacturer's expense to verify the  
25 accuracy of the label required by subdivision (b) for juvenile  
26 products if the manufacturer wishes to retain the "contains NO  
27 added flame retardant chemicals" designation on the label required  
28 by subdivision (b).

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

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

34 (A) The nature and severity of the violation.

35 (B) The good or bad faith of the cited person.

36 (C) The history of previous violations.

37 (D) Evidence that the violation was willful.

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



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

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

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

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

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

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

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

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

23 19161.4. The requirements of Section 19161 shall not apply  
24 to juvenile products, as defined in Section 19095.

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