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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 8. SPECIAL BUSINESS REGULATIONS [18400 - 22949.92.2] (*Division 8 added by Stats. 1941, Ch. 44.*)

CHAPTER 3. Home Furnishings [19000 - 19221] (*Heading of Chapter 3 amended by Stats. 1972, Ch. 749.*)

ARTICLE 5.5. Juvenile Products, Upholstered Furniture, and Mattresses [19100 - 19104] (*Article 5.5 added by Stats. 2018, Ch. 924, Sec. 2.*)

19100. For the purposes of this article, the following definitions apply:

(a) "Chemical" has the same meaning as in subdivision (a) of Section 19094.

(b) "Consumer price index" has the same meaning as in subdivision (a) of Section 19094.

(c) (1) "Covered flame retardant chemical" means any chemical that meets both of the following criteria:

(A) A functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire, including, but not limited to, any chemical for which the term "flame retardant" appears on the Occupational Safety and Health Administration substance safety data sheet pursuant to subdivision (g) of Section 1910.1200 of Title 29 of the Code of Federal Regulations as it read on January 1, 2019.

(B) The chemical is one of the following:

(i) A halogenated, organophosphorus, organonitrogen, or nanoscale chemical.

(ii) A chemical defined as a "designated chemical" in Section 105440 of the Health and Safety Code.

(iii) A chemical listed on the Washington State Department of Ecology's list of Chemicals of High Concern to Children in Section 173-334-130 of Title 173 of the Washington Administrative Code as of January 1, 2019, and identified as a flame retardant or as a synergist to flame retardants in the rationale for inclusion in the list.

(2) As used in this subdivision:

(A) "Halogenated chemical" means any chemical that contains one or more halogen elements, including fluorine, chlorine, bromine, or iodine.

(B) "Organophosphorus chemical" is any chemical that contains one or more carbon elements and one or more phosphorus elements.

(C) "Organonitrogen chemical" is any chemical that contains one or more carbon elements and one or more nitrogen elements.

(d) "Juvenile product" means a product subject to this chapter and designed for residential use by infants and children under 12 years of age, including, but not limited to, a bassinet, booster seat, changing pad, floor playmat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant swing, infant walker, nursing pad, nursing pillow, playpen side pad, playard, portable hook-on chair, stroller, and children's nap mat.

(e) Juvenile products do not include any of the following:

(1) Products that are not primarily intended for use in the home, such as products or components for motor vehicles, watercraft, aircraft, or other vehicles.

(2) Products subject to Part 571 of Title 49 of the Code of Federal Regulations regarding parts and products used in vehicles and aircraft.

(3) Products required to meet state flammability standards in Technical Bulletin 133, entitled "Flammability Test Procedure for Seating Furniture for Use in Public Occupancies."

(4) Consumer electronic products that do not fall under the bureau's jurisdiction for flammability standards.

(f) "Mattress" has the same definition as that term is defined in Section 1632.1 of Title 16 of the Code of Federal Regulations.

(g) "Reupholstered furniture" means furniture whose original fabric, padding, decking, barrier material, foam, or other resilient filling has been replaced by a custom upholsterer, that has not been sold since the time of the replacement, and that is required to meet the flammability standards set forth in Technical Bulletin 117-2013 entitled "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture." Reupholstered furniture shall not include products required to meet Technical Bulletin 133.

(h) "Upholstered furniture" has the same meaning as "covered products" does in subdivision (a) of Section 19094.

(Amended by Stats. 2021, Ch. 188, Sec. 21. (SB 826) Effective January 1, 2022.)

19101. (a) On or after January 1, 2020, a person, including a manufacturer, shall not sell or distribute in commerce in this state any new, not previously owned juvenile products, mattresses, or upholstered furniture that contains, or a constituent component of which contains, covered flame retardant chemicals at levels above 1,000 parts per million.

(b) On or after January 1, 2020, a custom upholsterer shall not repair, reupholster, recover, restore, or renew upholstered furniture or reupholstered furniture using replacement components that contain covered flame retardant chemicals at levels above 1,000 parts per million.

(c) The prohibitions in subdivisions (a) and (b) do not apply to the following:

(1) Electronic components of juvenile products, mattresses, reupholstered furniture, upholstered furniture, or any associated casing for those electronic components.

(2) Upholstered or reupholstered furniture components other than those identified in paragraph (1) of subdivision (a) of Section 19094.

(3) Thread or fiber when used for stitching mattress components together.

(4) Aramid fiber when used in fabric in the interior of a mattress or in fabric that covers the bottom (nonsleep surface) of a mattress that has a sleeping surface on only one side of the mattress.

(5) Modacrylic fiber without antimony trioxide or other covered flame retardant chemicals.

(6) Until January 1, 2027, components of adult mattresses other than foam. As used in this paragraph, "adult mattresses" means mattresses other than toddler mattresses, crib mattresses, and other infant sleep products.

(d) (1) On or before October 1, 2025, the International Sleep Products Association shall submit to the bureau a quantitative health risk assessment of modacrylic fiber without antimony trioxide that was performed by an independent toxicologist who is board-certified by the American Board of Toxicology.

(2) The bureau shall post the assessment conducted pursuant to subdivision (a) on its internet website.

(e) (1) Notwithstanding subdivisions (b) and (c) of Section 25257.1 of the Health and Safety Code, this section shall not be construed to prohibit or restrict the authority of the Department of Toxic Substances Control to prioritize or take action on any products containing a covered flame retardant chemical in order to limit exposure to or reduce the level of hazard posed by these covered flame retardant chemicals.

(2) If the Department of Toxic Substances Control adopts a regulatory response described in the Safer Consumer Products Program (Chapter 55 (commencing with Section 69501) of Division 4.5 of Title 22 of the California Code of Regulations) governing the use of a flame retardant chemical in a product covered by this section, this section shall not apply to the use of that chemical upon the date that the department posts a notice on its internet website that it has adopted the regulatory response.

(Amended by Stats. 2023, Ch. 461, Sec. 1. (AB 1059) Effective January 1, 2024.)

19101.5. (a) On and after January 1, 2027, a person, including, but not limited to, a manufacturer, retailer, importer, or online seller, shall not manufacture, sell, offer, or distribute in commerce in this state any new, not previously owned juvenile product, mattress, or upholstered furniture that contains, or a constituent component of which contains, textile fiberglass.

(b) On and after January 1, 2027, a custom upholsterer shall not repair, reupholster, recover, restore, or renew any mattress, juvenile product, upholstered furniture, or reupholstered furniture using a replacement component that contains, or a constituent component of which contains, textile fiberglass.

(c) For purposes of this section, "textile fiberglass" means textile yarns whose composition includes one or more continuous glass filaments in a form suitable for knitting, weaving, or otherwise intertwining to form a textile fabric, but excludes the following:

- (1) Thread or fiber when used for stitching mattress components together.
- (2) Yarns in which the glass filaments are corespun or sheathed by another fiber.

(Added by Stats. 2023, Ch. 461, Sec. 2. (AB 1059) Effective January 1, 2024.)

19102. The director may adopt regulations and rules necessary or appropriate for the implementation and enforcement of this article.

(Added by Stats. 2018, Ch. 924, Sec. 2. (AB 2998) Effective January 1, 2019.)

19103. (a) The bureau shall enforce and ensure compliance with Sections 19101 and 19101.5.

(b) (1) The bureau shall provide the Department of Toxic Substances Control with a selection of samples from products regulated under this article to test for compliance with Section 19101. The bureau shall select samples based on consultation with the Department of Toxic Substances Control, taking into account a range of manufacturers and types of products regulated under this article. The bureau shall integrate these testing requirements into the existing testing program described in subdivision (c) of Section 19094.

(2) (A) If the Department of Toxic Substances Control's testing shows that any reupholstered furniture or new, not previously owned juvenile products, mattresses, or upholstered furniture is in violation of Section 19101, the bureau may assess fines for violations against manufacturers of the product for the violation. The bureau shall reimburse the Department of Toxic Substances Control for the cost of testing for the presence of covered flame retardant chemicals pursuant to this article.

(B) If a person continues to sell or distribute products in commerce in this state belonging to the same stock keeping unit (SKU) as products that do not comply with Sections 19101 and 19101.5, after notice of the violation is posted on the bureau's internet website, the bureau may assess fines against the person for the continued sale or distribution of those products. The bureau shall make information about any citation issued pursuant to this section available to the public on its internet website, and shall develop a process for keeping interested persons informed about updates to notices of violation posted on the bureau's internet website.

(c) A fine for a violation of this section shall be assessed in accordance with the following schedule:

(1) 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).

(2) 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).

(3) 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).

(4) 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).

(d) In determining the amount of the fine for a violation of this section, the bureau shall consider the following factors:

- (1) The nature and severity of the violation.
- (2) The good or bad faith of the cited person.
- (3) The history of previous violations.
- (4) Evidence that the violation was willful.
- (5) The extent to which the cited person or entity has cooperated with the bureau.

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

(2) 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:

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

(B) 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).

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

(f) The bureau shall receive complaints from consumers concerning products regulated by this article sold in this state.

(Amended by Stats. 2023, Ch. 461, Sec. 3. (AB 1059) Effective January 1, 2024.)

19104. (a) The International Sleep Products Association shall conduct a survey of mattress producers, including those that are registered with the bureau as of January 1, 2019, and shall submit a survey report to the bureau on or before January 31, 2020. The International Sleep Products Association shall conduct a new survey of mattress producers, including, but not limited to, registered mattress producers, and submit a survey report to the bureau on or before January 31, 2023, and every three years thereafter. A survey report shall include the following information for each unique combination of fibers or yarns, or both, and other materials in components used for meeting flammability standards, including, but not limited to, mattress components such as fire barriers or flame retardant chemical-treated batting or ticking or closing thread, used in the manufacture of new mattresses:

(1) A list of the fibers or any other materials used in each component used for meeting flammability standards other than chemicals identified under paragraph (2). The specific brand name or producer of the fire barrier need not be identified.

(2) The identity of any covered flame retardant chemical, as described in subparagraph (A) of paragraph (1) of subdivision (c) of Section 19100, contained in each mattress component in an amount over 1000 parts per million, including, but not limited to, the Chemical Abstracts Service (CAS) number, if available.

(3) The method for incorporating the chemical in each mattress component used for meeting flammability standards, such as additive, reactive, or other method.

(4) The percentage of new mattress units in the United States that use the mattress component for meeting flammability standards.

(5) The types of mattresses that the mattress component is used with, such as innerspring, polyurethane foam, memory foam, gel foam, latex foam, fiber, air bladders, or the combination of those materials.

(b) All mattress producers of new mattresses that are registered with the bureau, commencing January 1, 2019, and thereafter, shall respond to the survey conducted by the International Sleep Products Association pursuant to subdivision (a). The International Sleep Products Association shall submit to the bureau a list of any producers who fail to respond to the survey. The bureau shall post the list of nonresponders on its Internet Web site.

(c) The bureau shall post the reports on its Internet Web site.

(Added by Stats. 2018, Ch. 924, Sec. 2. (AB 2998) Effective January 1, 2019.)