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AB-2998 Consumer products: flame retardant materials. (2017-2018)

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Assembly Bill No. 2998

CHAPTER 924

An act to add Article 5.5 (commencing with Section 19100) to Chapter 3 of Division 8 of the Business and Professions Code, relating to business.

[Approved by Governor September 29, 2018. Filed with Secretary of State September 29, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2998, Bloom. Consumer products: flame retardant materials.

Existing law, the Home Furnishings and Thermal Insulation Act, a violation of which is a misdemeanor, provides for the regulation of persons engaged in businesses relating to upholstered furniture, bedding and filling materials, and insulation, and provides for the enforcement and administration of those provisions by a chief under the Director of Consumer Affairs. Existing law authorizes the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation to establish grades, specifications, and tolerances for materials used in upholstered furniture and bedding or filling materials and requires a manufacturer of upholstered furniture to indicate whether a product contains flame retardant chemicals.

This bill, on and after January 1, 2020, would prohibit a person, including a manufacturer, from selling or distributing in commerce in this state new, not previously owned juvenile products, mattresses, or upholstered furniture that contains, or a constituent component of which contains, covered flame retardant chemicals, as defined, at levels above 1,000 parts per million, except as specified, and would prohibit a custom upholsterer from, among other things, repairing upholstered furniture or reupholstered furniture using replacement components that contain covered flame retardant chemicals at levels above 1,000 parts per million, except as specified. The bill would authorize the director to adopt regulations and rules to implement and enforce the bill's provisions. The bill would require the bureau to (1) enforce and ensure compliance with these requirements, (2) provide the Department of Toxic Substances Control with a selection of samples from products regulated by the bill's provisions for testing, and (3) reimburse the department for certain testing costs. The bill would also authorize the bureau to assess fines against manufacturers for a violation of the bill's provisions, as specified. The bill would require the bureau to receive complaints from consumers concerning these regulated products that are sold in this state. The bill would require the International Sleep Products Association to conduct surveys of mattress producers, including those registered with the bureau, and to submit a survey report with prescribed information to the bureau by January 31, 2020, and every 3 years thereafter. The bill would require registered producers of new mattresses to respond to the survey. The bill would require the association to submit to the bureau a list of any producers who fail to respond to the survey and to post the list of nonresponders on its Internet Web site. The bill would define various other terms for these purposes. The bill would also make various findings and declarations in this regard.

Because a violation of the bill's provisions would be a misdemeanor, 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(a) The State of California has found that flame retardant chemicals are not needed to provide fire safety. The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation (hereafter bureau) is charged with developing state flammability standards for adoption via regulation. From 1975 to 2013, flame retardant chemicals were commonly used in upholstered furniture to meet flammability standard, Technical Bulletin 117 (TB-117). In 2013, California updated its flammability standard with the adoption of Technical Bulletin 117-2013 (TB 117-2 but it is 520 013). Compliance with TB 117-2013 is widely being achieved without the use of flame retardant chemicals. However, some product manufacturers still use flame retardant chemicals in upholstered furniture and juvenile products, even though these chemicals are not necessary for fire safety or compliance with TB 117-2013.

(b) In 2013, the bureau exempted 18 juvenile products from having to meet any flammability standard because the bureau determined that these products "are not prone to cause or sustain a serious fire if ignited." The following types of juvenile products that are exempted from state flammability standards include bassinets, highchair pads, nursing pads, booster seats, infant bouncers, nursing pillows, car seats, infant carriers, playpen side pads, changing pads, infant seats, playards, floor playmats, infant swings, portable hook-on chairs, highchairs, infant walkers, and strollers.

(c) In 2017, the United States Consumer Product Safety Commission issued a guidance document based on the overwhelming scientific evidence presented to the commission to alert the public to serious concerns about the toxicity of organohalogen flame retardants added to children's products, furniture, mattresses, and plastic casings surrounding electronics. The commission requested that manufacturers eliminate the use of these chemicals in their products. It also recommended that retailers obtain assurance from manufacturers that their products do not contain these chemicals and that consumers, especially those who are pregnant or with young children, avoid products containing these chemicals.

(d) Scientists have found that many of the flame retardant chemicals commonly used in furniture exhibit one or more of the key characteristics of a class of synthetic chemicals commonly referred to as Persistent Organic Pollutants (POPs). These chemicals accumulate in our bodies and in the environment, persist in the environment for long periods of time, are capable of long-range transport, and are toxic to humans and animals. Flame retardant chemicals have been found in remote regions such as the Arctic and in deep sea life. Flame retardant chemicals have been detected in the atmosphere, seawater, freshwater, sediments, and a variety of wildlife.

(e) Firefighters are at particular risk from flame retardant chemicals. Numerous studies document increased cancer rates and deaths amongst firefighters due to occupational exposures. The cancers that are elevated in firefighters include four types (multiple myeloma, non-Hodgkin's lymphoma, prostate, and testicular) that are potentially related to exposure to cancer-causing chemicals called dioxins. Dioxins are formed when products burn in a fire and the presence of flame retardant chemicals can result in more toxic smoke containing dioxins and furans to which firefighters are exposed. Studies have found firefighters' blood levels of certain flame retardants to be three times higher than levels in other Americans, and twice as high as levels among California residents.

(f) Children living in California have some of the highest documented blood concentrations of certain flame retardant chemicals compared to other children in the United States. Scientists recognize the urgency of reducing the exposure of vulnerable populations, particularly young children, to flame retardant chemicals. A consensus statement issued by the Project Targeting Environmental Neuro-Developmental Risks (Project TENDR) found that certain flame retardant chemicals are associated with loss of IQ, attention problems, and other developmental problems in children, and called for action to reduce exposures to toxic chemicals, such as flame retardants, that contribute to the prevalence of neurodevelopmental disabilities in children.

(g) Flame retardant chemicals migrate out of products over their lifetime and end up in household dust. Inhalation and ingestion of indoor dust, often from hand to mouth behaviors, is a common route of human exposure to flame retardant chemicals. Studies have shown that indoor dust contains anywhere from 1.5 to 50 times greater concentration of flame retardant chemicals than the outdoor environment. Given that humans spend 90 percent of their time indoors, human exposure to flame retardant chemicals can be significant. Children have been found to have three to five times higher levels of certain flame retardant chemicals than their mothers.

(h) The federal government has failed to adequately regulate the use of flame retardant chemicals. In 2016, Congress passed the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Public Law 114-182), which adds to the responsibilities of the United States Environmental Protection Agency (EPA) under the federal Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) to assess and regulate chemicals. The EPA has yet to restrict use of any flame retardant chemicals under this enactment.

(i) In the absence of federal action, California and other states have taken steps to limit or ban the use of certain flame retardant chemicals. In 2017, the State of Maine passed legislation that prohibits the sale of residential upholstered furniture containing flame retardants. In fall of 2017, the City and County of San Francisco passed an ordinance that prohibits the sale of upholstered and reupholstered furniture as well as children's products containing flame retardant chemicals. The State of Rhode Island also passed legislation that will ban the sale of furniture or residential upholstered bedding with any added organohalogen flame retardants.

(j) Studies demonstrate that mattresses also contribute significantly to the flame retardant levels in indoor air and dust. Studies also find that removing flame-retarded products from indoor environments reduces air and dust contamination. Therefore, decreasing the amount of flame-retarded products in buildings would result in decreased human exposures.

(k) While many categories of products and materials that are not covered by this act contain flame retardant chemicals, which pose health risks—as the United States Consumer Product Safety Commission has recognized, for example—this act takes an incremental approach to addressing these health risks and focuses on those categories of products and materials with which the bureau has prior experience in addressing the presence of flame retardant chemicals.

SEC. 2. Article 5.5 (commencing with Section 19100) is added to Chapter 3 of Division 8 of the Business and Professions Code, to read:

Article 5.5. Juvenile Products, Upholstered Furniture, and Mattresses

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 19100.1200 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.

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) 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.

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

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

(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 Section 19101, after notice of the violation is posted on the bureau's Internet Web site, 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 Web site, and shall develop a process for keeping interested persons informed about updates to notices of violation posted on the bureau's Internet Web site.

(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.

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.

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.