

SENATE RULES COMMITTEE

SB 1019

Office of Senate Floor Analyses
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UNFINISHED BUSINESS

Bill No: SB 1019
Author: Leno (D), et al.
Amended: 8/22/14
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 6-0, 4/2/14

AYES: Hill, Gaines, Hancock, Jackson, Leno, Pavley

NO VOTE RECORDED: Fuller, Vacancy, Vacancy

SENATE BUSINESS, PROF. & ECON. DEV. COMM.: 9-0, 4/21/14

AYES: Lieu, Wyland, Berryhill, Block, Corbett, Galgiani, Hernandez, Hill,
Padilla

SENATE APPROPRIATIONS COMMITTEE: 6-1, 5/23/14

AYES: De León, Gaines, Hill, Lara, Padilla, Steinberg

NOES: Walters

SENATE FLOOR: 29-6, 5/28/14

AYES: Beall, Berryhill, Block, Cannella, Corbett, Correa, De León, DeSaulnier,
Evans, Fuller, Gaines, Galgiani, Hancock, Hernandez, Hill, Hueso, Jackson,
Lara, Leno, Lieu, Liu, Mitchell, Monning, Padilla, Pavley, Roth, Steinberg,
Wolk, Wyland

NOES: Huff, Knight, Morrell, Nielsen, Vidak, Walters

NO VOTE RECORDED: Anderson, Calderon, Torres, Wright, Yee

ASSEMBLY FLOOR: 56-17, 8/27/14 - See last page for vote

SUBJECT: Upholstered furniture: flame retardant chemicals

SOURCE: CAL FIRE Local 2881
California Professional Firefighters
Center for Environmental Health

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Natural Resources Defense Council

DIGEST: This bill requires upholstered furniture to include a label indicating whether the product has added flame retardant chemicals. This bill also directs the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau) to ensure compliance with labeling and documentation and to assess fines for violations.

Assembly Amendments add coauthors; define “flame retardant chemical,” “molecular identity,” and “chemical” for purposes of this bill; require the Bureau to reimburse the Department of Toxic Substances Control (DTSC) for the cost of testing for the presence of added flame retardant chemicals in covered products marked “contain NO added flame retardant chemicals;” require, no later than August 1 of each fiscal year, the Bureau to assess available resources and determine the number of tests to be conducted in the corresponding fiscal year, as specified; update legislative findings and declarations; and make other clarifying and technical changes.

ANALYSIS:

Existing law:

1. Establishes the Home Furnishings and Thermal Insulation Act (Act), administered by the Bureau within the Department of Consumer Affairs (DCA). The Bureau is under the supervision and control of a Chief appointed by the Governor, and the Chief is under the supervision and control of the Director of DCA.
2. Specifies the Act provides for the licensing and inspection of businesses that manufacture and sell upholstered furniture, bedding and thermal insulation, and requires all mattresses and box springs manufactured for sale in this state to be fire retardant, as defined to meet the federal standards for resistance to open-flame test, and authorizes the Bureau to adopt regulations to implement those standards.
3. Specifies the Act requires other bedding products to comply with regulations adopted by the Bureau specifying that those products be resistant to open-flame ignition; requires all seating furniture to be fire retardant and labeled as specified.

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4. Requires all flexible polyurethane foam, except as specified, that is offered for retail sale to be fire retardant, and defines “fire retardant” to mean a product that meets the regulations adopted by the Bureau.
5. Authorizes the Chief, subject to the approval of the Director of DCA, to exempt items of upholstered furniture which are deemed not to pose a serious fire hazard from the fire retardant requirements.
6. Requires that, Bureau regulations, beginning January 1, 2015, require all filling materials and cover fabrics contained in upholstered furniture sold in California to meet certain smolder resistant testing standards, and to be labeled as specified. Specifically, the Bureau regulations require filling materials and cover fabrics contained in any article of upholstered furniture and added to reupholstered furniture to be tested and meet the requirements of Technical Bulletin (TB) 117-2013.

This bill:

1. Requires a manufacturer of covered products to indicate whether or not a product contains added flame retardant chemicals, by including a specified statement on the product label.
2. Defines terms including “covered products” to mean any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that must meet the test requirements of TB-117.
3. Requires the manufacturer of a covered product sold in California to retain documentation to show whether flame retardant chemicals were added.
4. Provides that a written statement by the supplier of each component covered by TB-117 attesting either that flame retardant chemicals were added or not added shall be sufficient documentation.
5. Requires, within 30 days of a request by the Bureau, a manufacturer of a product sold in California to provide the Bureau with the documentation establishing the accuracy of the flame retardant chemical statement on the label.
6. Requires the Bureau to assess fines of not less than \$2,500 but not more than \$15,000, in accordance with specified factors, for the failure of the manufacturer of the covered product to maintain the documentation required by this bill. These fines shall replace any other fines for a violation of the

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documentation requirements. This does not alter or amend any other penalty imposed.

7. Provides that a manufacturer of covered products and component suppliers shall be jointly and severally liable for violations of the documentation required by this bill.
8. Requires the Bureau to provide the DTSC with a selection of samples from covered products marked “contain NO added flame retardant chemicals” for testing for the presence of added flame retardant chemicals. The samples shall be from the components identified in this bill. The Bureau shall select samples based on consultation with DTSC, taking into account a range of manufacturers and types of covered products. The Bureau and the DTSC shall consult on the tests to be conducted by DTSC. The DTSC shall provide the results of any completed test to the Bureau.
9. Require the Bureau to reimburse the Department of Toxic Substances Control (DTSC) for the cost of testing for the presence of added flame retardant chemicals in covered products marked “contain NO added flame retardant chemicals”
10. Require, no later than August 1 of each fiscal year, the Bureau to assess available resources and determine the number of tests to be conducted in the corresponding fiscal year, as specified
11. Specifies that the Bureau shall make information about any citation issues pursuant to this bill, available to the public on its Internet Web site.
12. Specifies that it shall be the duty of the Bureau to receive complaints from consumers regarding covered products sold in California.
13. Authorizes the Bureau to adopt regulations to carry out the provisions of the bill.
14. States that it is the intent of the Legislature that enacting this bill will provide California consumers clear information about the furniture products they are purchasing, specifically concerning compliance with fire safety standards and the absence or presence of added flame retardant chemicals.

Background

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TB 117. In 1975, California adopted TB 117, requiring that each component material (such as polyurethane foam used to fill furniture) be able to withstand a small open flame, equivalent to a candle, for at least 12 seconds. The Bureau is responsible for publishing and enforcing TB 117. This performance-based standard did not prescribe the use of flame-retardant chemicals, manufacturing methods, or specific materials to meet the standards. However, furniture manufacturers typically meet TB 117 with additive halogenated organic flame retardants. California is the only state to have established such a standard, and since California provides such a large portion of the national market many manufacturers have chosen to meet TB 117 in products that they distribute across the United States.

The Bureau requires manufacturers to make upholstered furniture and bedding products sold in California flame-retardant. The Bureau encourages the industry to use innovative solutions and products to achieve flame resistance without compromising the environment. Manufacturers must strictly adhere to state and federal laws governing the manufacture and sale of upholstered furniture and bedding products.

Significant concern has been raised in recent years with the TB 117 standard and the environmental and health impacts of the chemicals that are used by manufacturers to meet the standard.

New TB 117-2013 Flammability Standard. In 2012, Governor Brown directed the Bureau to revise flammability standards for upholstered furniture sold in the state. The Governor asked the Bureau to review the state's four-decade-old flammability standards and recommend changes to reduce toxic flame retardants while continuing to ensure fire safety.

“Toxic flame retardants are found in everything from high chairs to couches and a growing body of evidence suggests that these chemicals harm human health and the environment,” stated Governor Brown. “We must find better ways to meet fire safety standards by reducing and eliminating wherever possible dangerous chemicals.”

In recognition of TB 117's inadequacy in addressing the flammability performance of upholstery cover fabric and its interactions with underlying filling materials and the health concerns over the use of these chemicals, the Bureau published TB 117-2013 to allow for a smolder standard that does not require the use of flame retardant chemicals to be in compliance. TB117-2013 supersedes TB 117.

The updated method of TB117-2013 changes from the open flame method of testing to a smoldering test. These test methods consist of four tests used to evaluate the cigarette ignition resistance of upholstery cover fabrics, barrier (interliner) materials, resilient filling materials, and decking materials (used for support under loose seat cushions) used in the manufacture of upholstered furniture.

The new TB117-2013 flammability standard applies to upholstered furniture sold in California. Bedding products such as mattresses, comforters, mattress pads, bed pillows as well as decorative pillows are not subject to TB117-2013. They must, however, otherwise carry a label as required by law. According to the Bureau, the TB117-2013 standard incorporates smoldering tests for several components of upholstered furniture. However, none of the components are tested by themselves as was done under TB117. TB117-2013 is a “semi-composite” test in which components are combined with standard test materials to construct a test specimen.

The new TB117-2013 became effective on January 1, 2014. Manufacturers will have a year to complete the transition and must come into full mandatory compliance on January 1, 2015.

Under California law, it is ultimately the responsibility of the furniture manufacturers to ensure products meet TB117-2013 and the labeling requirements. However, wholesalers, importers and retailers are also required to ensure products that they sell meet all the applicable requirements. Retailers in California may continue to sell furniture that meets the old standard until their stock is depleted. Starting January 1, 2015, California retailers must purchase products that meet the new TB117-2013 standard. Business and Professions Code Section 19072 states: “Responsibility for compliance with this chapter rests not only with the manufacturer but also with the importer, wholesaler, retailer, or any person having in his/her possession with the intent to sell.”

Flame-Retardant Chemicals and Public Health Hazards. Manufacturers of consumer products commonly add flame retardant chemicals to plastics and other flammable materials to reduce the risk of fire. These chemicals are released into the environment during manufacture, use, and disposal of products. The following are the types of flame retardants that were used (banned) or are currently used:

PCBs. The earliest flame retardants, PCBs (polychlorinated biphenyls) were banned in the United States in 1977 when it was determined that they are toxic. With the ban, industries shifted to using brominated flame retardants.

PBDEs. The most studied of the brominated flame retardants are the PBDEs (polybrominated diphenyl ethers), which were first introduced into the market over 30 years ago. PBDEs are closely related in structure and behavior to PCBs.

PCBs are known to have neurotoxic and carcinogenic effects and were banned by Congress in 1977. Because of similarity of the chemical's molecular structures, concerns were raised about potential biological hazards of PBDEs.

Studies in laboratory animals and humans have linked PBDEs to thyroid disruption, memory and learning problems, delayed mental and physical development, lower IQ, advanced puberty, and reduced fertility.

A 2009 *in vivo* animal study conducted by the United States Environmental Protection Agency noted that PBDEs are particularly toxic to the developing brains of animals. Peer-reviewed studies have shown that even a single dose administered to mice during development of the brain can cause permanent changes in behavior, including hyperactivity.

A 1998 study in Sweden found the first evidence of potential for breast milk contamination from PBDEs. In the Swedish study, archived samples collected between 1972 and 1997 were analyzed for the presence of PBDEs to get an overall summed total of PBDEs in milk. The data from Sweden show a drastic increase in the quantity of PBDEs detected in women's breast milk from 1972 to 1997, with concentrations doubling every five years. Sweden's voluntary phase-out of PBDEs by companies and branches of the government began as early as 1990, and the Swedish government strongly encouraged the European Union to ban PBDEs outright.

Since Sweden's voluntary PBDE controls were established, a number of changes have been noted. Total PBDE levels in Swedish women's breast milk fell about 30% between 1997 and 2000. The European Union has banned several types of PBDEs as of 2008; 10 years after the Swedish discovered that they were accumulating in breast milk.

Sweden is the only nation with a comprehensive breast milk monitoring program, so it has been difficult to track PBDE concentration trends elsewhere. However, in regions where bans and restrictions have not been established, available studies are showing that PBDE concentrations in breast milk have risen far past Sweden's 1997 peak.

The highest recorded PBDE levels in humans have been in the United States. A 2002 study of PBDEs in San Francisco Bay Area women's breast fat reported an average of 21.5 times higher than Sweden's 1997 peak. Studies of PBDEs in maternal blood and milk in Texas and Indiana from 2001 and 2002 reported levels similar to those found in the San Francisco Bay Area.

In 2003, concerned about the hazards posed by two types of PBDEs, especially to breast-fed infants, California enacted a ban on these chemicals (AB 302, Chan, Chapter 205, Statutes of 2003).

Chlorinated Tris. Chlorinated Tris (TDCPP) has been in use since the 1960s. TDCPP was banned from use in children's pajamas in 1977, when it was found to be mutagenic, but remains in use as a foam additive in furniture, car seats, and other products. Its use has increased in the United States following the 2006 ban on the common flame retardant PentaPBDE.

According to studies conducted in rats, TDCPP is associated with increased tumor rates in kidneys and testes, some of which were cancerous. Evidence further suggests that there may be an impact on fertility by influencing hormone levels and semen quality in men. A recently published study found that TDCPP was a neurotoxin to brain cells. In an assessment conducted by the Consumer Product and Safety Commission, TDCPP was found to pose a threat to human health. Under Proposition 65, the State of California has listed TDCPP as a chemical known to cause cancer.

On March 13, 2014, DTSC named TDCPP in children's foam padded sleep products as a priority product to be evaluated in the Safer Consumer Products Program for potential regulatory action.

Because of molecular similarity, other flame retardants are similarly linked to cancer and other above-listed adverse health effects. It has also been noted that many flame retardants may degrade into compounds that are also toxic. This could arguably make the chemical a danger even after its useful life as a flame retardant is over.

Exposure to Flame Retardant Chemicals. People can be exposed to flame retardants through several routes, including diet, inhalation of dust from consumer products in the home, vehicle, or workplace, or environmental contamination near their home or workplace.

Infants and toddlers are particularly exposed to flame retardants found in breast milk and dust. Because many halogenated flame retardants are fat-soluble, they accumulate in fatty areas such as breast tissue and are mobilized into breast milk, delivering high levels of flame retardants to breast-feeding infants.

As consumer products age, small particles of material become dust particles in the air and land on surfaces around the home, including the floor. Young children crawling and playing on the floor frequently bring their hands to their mouths, ingesting about twice as much house dust as adults per day in the United States. Young children in the United States tend to carry higher levels of flame retardants per unit body weight than do adults.

Some occupations expose workers to higher levels of halogenated flame retardants and their degradation products. Studies of foam recyclers and carpet installers, who handle padding made from recycled polyurethane foam often, have shown elevated levels of flame retardants in their tissues. Workers in electronics recycling plants were also found to have elevated body levels of flame retardants relative to the general population.

U.S. firefighters also show elevated levels of PBDEs and high levels of brominated furans, toxic degradation products of brominated flame retardants.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, ongoing costs, in the high hundreds of thousands to low millions of dollars, from the Home Furnishing and Thermal Insulation Fund (special) to the Bureau for testing associated with enforcing the labeling requirements of upholstered furniture.

SUPPORT: (Verified 8/27/14)

CAL FIRE Local 2881 (co-source)
California Professional Firefighters (co-source)
Center for Environmental Health (co-source)
Natural Resources Defense Council (co-source)
Alliance for Toxic-Free fire Safety
American Cancer Society - Cancer Action Network
American College of Obstetricians and Gynecologists, District IX California
American Home Furnishings Alliance
Architects, Designers and Planners for Social Responsibility
Asian Pacific Environmental Network

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Association of Regional Center Agencies
Blue Green Alliance
Breast Cancer Fund
California Furniture Manufacturers Association
California Labor Federation
California League of Conservation Voters
California Medical Association
California Nurses Association
California School Employees Association
CALPIRG
CHANGE - Californians for a Healthy and Green Economy
City and County of San Francisco
Clean Water Action
Coalition for Clean Air
Comite Civico
Commonweal Biomonitoring Resource Center
Communication Workers of America, AFL-CIO District 9
Consumer Federation of California
Consumers Union
EarthJustice
Environment California
Environmental Working Group
Esperanza Community Housing Corporation
Friends of the Earth
Health Care Without Harm
Health Officers Association of California
Healthy African American Families, Phase II
Humane Society of the United States
Instituto de Educacion Popular del Sur de California
International Alliance of Firefighters
Just Transition Alliance
Kaiser Permanente
Long Beach Firefighters, Local 372
Los Angeles County Firefighters, Local 1014
North American Home Furnishings Association
NRDC LA Leadership Council
Perkins + Will
Pesticide Action Network
Physicians for Social Responsibility - Sacramento
Physicians for Social Responsibility - Los Angeles
Physicians for Social Responsibility - San Francisco Bay Area

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Polyurethane Foam Association
Sierra Club
Stockton Professional Firefighters, Local 456
Trauma Foundation
United Firefighters of Los Angeles City, Local 112
United States Green Building Council
Upholstered Furniture Action Council
Kirby Walker and James Redford, Producers/Directors of *Toxic Hot Seat*

OPPOSITION: (Verified 8/27/14)

American Chemistry Council
American Cleaning Institute
California Chamber of Commerce
California Farm Bureau Federation
California Manufacturers & Technology Association
California Metals Coalition
Chemical Industry Council of California
Consumer Specialty Products Association
Grocery Manufacturers Association
International Fragrance Association
National Federation of Independent Businesses
San Diego Industrial and Environmental Association
Styrene Information and Research Council
TechNet
Toy Industry Association
Western Plant Health Association

ARGUMENTS IN SUPPORT: The California Professional Firefighters (CPF) Association states that this bill promotes a consumer's right to know by making information readily accessible and disclosing whether upholstered furniture contains added flame retardant chemicals, strengthening the truth in labeling provisions. CPF is concerned not only with the health and safety of consumers, but also with the health and safety of firefighters, who are routinely exposed to toxic substances. CPF indicates that in a residential fire, large amounts of cancer-causing dioxins and furans are produced by the combustion of materials containing these chemicals and the exposure to these compounds contributes to the high rates of cancer among firefighters.

ARGUMENTS IN OPPOSITION: A joint letter of opposition by the American Chemistry Council, California Chamber of Commerce, California Manufacturers

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& Technology Association, California Industry Council of California, and the National Federation of Independent Businesses argues, “These new requirements lack scientific justification, conflict with existing California consumer product and chemical safety laws and regulations, and as proposed, would mislead consumers about the safety of products that contain flame retardant chemicals.”

The letter contends that this bill will unnecessarily alarm consumers over the safety of products they may purchase, and further conflicts with current Proposition 65 warning labels for hazardous chemicals. The letter also objects to the array of reporting requirements on manufacturers which could expose them to a number of punitive monetary penalties, and states, “California should be enacting policies that encourage manufacturing, not imposing yet another state-specific requirement that will only slow economic growth and recovery.”

ASSEMBLY FLOOR: 56-17, 8/27/14

AYES: Achadjian, Alejo, Ammiano, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chesbro, Cooley, Dababneh, Dahle, Dickinson, Eggman, Fong, Fox, Frazier, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Hagman, Hall, Roger Hernández, Holden, Jones-Sawyer, Levine, Linder, Lowenthal, Maienschein, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Pan, John A. Pérez, V. Manuel Pérez, Quirk, Rendon, Rodriguez, Salas, Skinner, Stone, Ting, Wieckowski, Williams, Yamada, Atkins

NOES: Allen, Conway, Donnelly, Beth Gaines, Gray, Grove, Jones, Logue, Mansoor, Nestande, Patterson, Perea, Quirk-Silva, Ridley-Thomas, Wagner, Waldron, Wilk

NO VOTE RECORDED: Bigelow, Chávez, Daly, Harkey, Olsen, Weber, Vacancy

RM:e 8/27/14 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****