

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1264 (Delegate Cullison, *et al.*)
Health and Government Operations

**Public Health - Products Containing a Flame-Retardant Chemical - Prohibition
on Import or Sale**

This bill prohibits a person from importing, selling, or offering for sale any “juvenile product,” mattress, upholstered furniture, or reupholstered furniture that contains more than one-tenth of 1% by mass of a “flame-retardant chemical,” as specified. However, if the Secretary of Health determines that the fire safety benefits of a flame-retardant chemical are greater than the health risks associated with the chemical, the Secretary may suspend implementation of the prohibition. A person who violates the bill’s prohibition is subject to a civil penalty of up to \$2,500 for a first violation, up to \$5,000 for a second violation, up to \$7,500 for a third violation, and up to \$10,000 for any subsequent violation. The Secretary of Health must adjust these penalties for inflation every five years. The Maryland Department of Health (MDH) must adopt regulations to implement the bill by January 1, 2020.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill’s civil penalty provisions. MDH can adopt the required regulations using existing resources.

Local Effect: Assuming enforcement is complaint based, enforcement can likely be handled with existing resources. However, if complaint volume is high, local health department workloads may increase. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A “flame-retardant chemical” means a chemical that (1) is used to resist or inhibit the spread of fire or acts as a synergist to chemicals that resist or inhibit the spread of fire and (2) for which the term “flame-retardant” appears on a safety data sheet developed in accordance with federal regulations, as specified, and is a nanoscale chemical or contains one or more of several listed elements.

A “juvenile product” is a consumer product intended for use by a child younger than age 12 and includes a bassinet, booster seat, changing pad, children’s nap mat, floor playmat, high chair, high chair pad, infant bouncer, infant carrier, infant seat, infant swing, infant walker, nursing pad, nursing pillow, playpen side yard, play yard, portable hook-on chair, and stroller. A “juvenile product” does *not* include (1) a product that is not primarily intended for use in the home, including a product that is, or is a component part of, a motor vehicle, a watercraft, an aircraft, or any other vehicle; (2) a product regulated under 49 C.F.R. Part 571; (3) a consumer electronic product; or (4) a product regulated under § 24-306 of the Health-General Article, which prohibits selling child care products that contain certain flame-retardant chemicals.

The bill’s prohibition does not apply to a juvenile product, mattress, upholstered furniture, or reupholstered furniture that is resold, offered for resale, or distributed by a consumer for consumer use. The bill’s prohibition also does not apply to (1) electronic components or their casing of a juvenile product, mattress, upholstered furniture, or reupholstered furniture; (2) a component of a mattress, upholstered or reupholstered furniture other than cover fabric, barrier material, resilient filing material, and decking material; (3) thread or fiber used to stitch mattress components together; or (3) except for foam, a component of a mattress intended for use by an individual age 12 or older.

In addition to the civil penalties established under the bill, a court may enjoin an action prohibited under the bill.

The bill amends the definition of “child care product” to exclude the prohibitions established under the bill. MDH must also adopt regulations to carry out existing prohibitions relating to the sale of child care products by January 1, 2020, rather than by January 1, 2015.

Current Law: A “child care product” is a consumer product – including a baby product, toy, car seat, nursing pillow, crib mattress, and stroller – intended for use by a child younger than age three.

A person may not import, sell, or offer for sale any child care product that contains more than one-tenth of 1% (by mass) of (1) tris (1, 3-dichloro-2-propyl) phosphate (TDCPP) or

(2) tris (2-chloroethyl) phosphate (TCEP). A person who violates this prohibition is subject to a civil penalty of up to \$1,000 for a first violation and \$2,500 for each subsequent violation. Further, a court may enjoin any prohibited action. The prohibition does not apply to the sale or distribution of a child care product that is resold, offered for resale, or distributed by a consumer for consumer use. The Secretary of Health may suspend implementation of the prohibition if the Secretary determines that the fire safety benefits of TDCPP or TCEP are greater than the associated health risks.

Under 16 C.F.R. §1632.1, a “mattress” is a ticking filled with a resilient material used alone or in combination with other products or promoted for sleeping upon. Under 29 C.F.R. 1910.1200(g) chemical manufacturers and importers must obtain or develop a safety data sheet for each hazardous chemical they produce or import. Safety data sheets must contain certain information and headings including identification of the chemical, identify hazards, first-aid measures, and fire-fighting measures.

Background: The Governor of California signed a similar measure into law in October 2018. California’s law, on or after January 1, 2020, prohibits a person from selling or distributing in commerce any reupholstered furniture or any new juvenile products, mattresses, or upholstered furniture that contain, or a constituent component of which contains, covered flame-retardant chemicals above specified levels. Additionally, according to the Maryland Department of the Environment, similar prohibitions passed in Maine and San Francisco in 2017.

Small Business Effect: Although existing measures in other states similarly limit the sale of affected products containing more than one-tenth of 1% of a flame-retardant chemical by mass, the impact on small businesses may be meaningful as the bill does not provide for any phasing out of existing stock. Small business revenues decrease due to not being allowed to sell affected juvenile products on or after October 1, 2019.

Additional Information

Prior Introductions: HB 84 of 2018, a similar bill, received a hearing in the House Health and Government Operations Committee, but no further action was taken. HB 206 of 2017, also a similar bill, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Cross File: SB 902 (Senator Hayes) - Rules.

Information Source(s): Maryland Department of the Environment; Maryland Department of Health; Maryland Association of County Health Officers; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2019
mm/jc

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