

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 447

(Senator Guzzone, *et al.*)

Finance

Health and Government Operations

Public Health - Products Containing a Flame-Retardant Chemical

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 “flame-retardant chemicals,” as specified. A person who willfully 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 take certain factors into account when assessing a civil penalty for a violation. The Maryland Department of Health (MDH) must adopt regulations to implement the bill by June 1, 2021. **The bill takes effect January 1, 2021.**

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill’s civil penalty provisions. Assuming enforcement is complaint based, MDH can adopt regulations and likely enforce the bill with existing resources, as discussed below.

Local Effect: Assuming MDH primarily enforces the bill’s prohibition, the bill is not anticipated to materially affect local government finances or operations.

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 act as a synergist to chemicals that resist or inhibit the spread of fire, including any chemical for which the term “flame-retardant” appears on a safety

data sheet developed in accordance with federal regulations, as specified and (2) 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 pad, 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 upholstered or reupholstered furniture other than cover fabric, barrier material, resilient filling material, and decking material; (3) thread or fiber used to stitch mattress components together; or (4) except for foam, a component of an “adult mattress.” An “adult mattress” means any mattress other than a toddler mattress, a crib mattress, or any other infant sleep product.

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 June 1, 2021, 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, and identify hazards, first-aid measures, and fire-fighting measures.

Background: California 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. Maine prohibits the sale of new upholstered furniture containing more than one-tenth of 1% of a flame-retardant chemical or more than one-tenth of 1% of a mixture that includes flame-retardant chemicals. Certain upholstered furniture for public use in public facilities is exempt.

State Expenditures: MDH’s Prevention and Health Promotion Administration estimates that general fund expenditures increase by an average of \$76,700 annually to conduct outreach and enforce the bill’s prohibition, with additional expenditures in the first full year. The Department of Legislative Services (DLS) disagrees. Based on past estimates for similar bans, and assuming enforcement is largely complaint based, DLS anticipates that MDH can likely implement the bill with existing budgeted staff and resources. However, to the extent that MDH engages in more robust enforcement and outreach, additional staff is needed.

Small Business Effect: Although existing measures in other states similarly limit the sale of affected products containing more than one-tenth of 1% of flame-retardant chemicals by mass, the impact on small businesses may be meaningful as the bill provides only limited time to phase out existing stock. Small business revenues decrease due to not being allowed to sell affected juvenile products on or after January 1, 2021. It is unclear whether the prohibition would be enforced on that date or on June 1, 2021, the date by which the regulations must be adopted.

Additional Information

Prior Introductions: HB 1264 of 2019, a similar bill, received a hearing in the House Health and Government Operations Committee but was withdrawn. Its cross file, SB 902, was referred to the Senate Rules Committee. 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, a similar bill, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Designated Cross File: HB 424 (Delegate Cullison, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Association of County Health Officers; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Maryland Department of Health; California Legislative Information; Maine Legislature; Department of Legislative Services

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