

SENATE BILL 67

By Gilmore

AN ACT to amend Tennessee Code Annotated, Title 47,  
Chapter 18 and Title 68, relative to flame  
retardants.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 131, is amended by adding  
the following new part:

**68-131-501.**

As used in this part:

(1) "Chemical" means either of the following:

(A) An organic or inorganic substance of a particular molecular  
identity, including any combination of those substances occurring, in  
whole or in part, as a result of a chemical reaction or occurring in nature,  
and any element, ion, or uncombined radical, and any degradate,  
metabolite, or reaction product of a substance with a particular molecular  
identity; or

(B) A chemical ingredient, which means a substance comprising  
one (1) or more substances described in subdivision (1)(A);

(2) "Consumer price index" means the consumer price index for all urban  
consumers published by the United States department of labor, bureau of labor  
statistics;

(3) "Covered flame retardant chemical":

(A) Means any chemical that meets the following criteria:

(i) 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 maintained pursuant to subdivision (g) of § 1910.1200 of title 29 of the Code of Federal Regulations as it read on January 1, 2019;

(ii) The chemical is one (1) of the following:

(a) A halogenated, organophosphorus, organonitrogen, or nanoscale chemical;

(b) A chemical defined as a designated chemical;

or

(c) A chemical listed on the Washington state department of ecology's list of chemicals of high concern to children in § 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;

(B) As used in this subdivision (3):

(i) "Designated chemical" means a chemical that is known to, or strongly suspected of, adversely impacting human health or development, based upon scientific, peer-reviewed animal, human, or in vitro studies, and consists of only those substances including chemical families or metabolites that are included in the federal centers for disease control and prevention studies that are known collectively as the national reports on human exposure to environmental chemicals program;

(ii) "Halogenated chemical" means any chemical that contains one (1) or more halogen elements, including fluorine, chlorine, bromine, or iodine;

(iii) "Organonitrogen chemical" means any chemical that contains one (1) or more carbon elements and one (1) or more nitrogen elements;

(iv) "Organophosphorus chemical" means any chemical that contains one (1) or more carbon elements and one (1) or more phosphorus elements; and

(4) "Department" means the department of agriculture;

(5) "Juvenile product":

(A) Means a product subject to this part and designed for residential use by infants and children under twelve (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; and

(B) Does not include any of the following:

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

(ii) Products subject to part 571 of title 49 of the Code of Federal Regulations regarding parts and products used in vehicles and aircraft;

(6) "Mattress" has the same meaning as defined in § 1632.1 of title 16 of the Code of Federal Regulations;

(7) "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

(8) "Upholstered furniture" means any flexible polyurethane foam or upholstered or reupholstered furniture sold in this state.

**68-131-502.**

(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 one thousand (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 one thousand (1,000) parts per million.

(c) The prohibitions in subsections (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 cover fabrics, barrier materials, resilient filling materials, and decking materials;

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

(4) Components of adult mattresses other than foam. As used in this subdivision (c)(4), "adult mattress" means a mattress other than a toddler mattress, crib mattress, or other infant sleep product.

**68-131-503.**

(a) The department shall enforce and ensure compliance with this part. The department may adopt rules necessary or appropriate for the implementation and enforcement of this part.

(b)

(1) The department shall provide the department of environment and conservation with a selection of samples from products regulated under this part to test for compliance with this part. The department shall select samples based on consultation with the department of environment and conservation, taking into account a range of manufacturers and types of products regulated under this part.

(2)

(A) The department of environment and conservation shall test samples provided by the department pursuant to this section. If the department of environment and conservation's testing shows that any reupholstered furniture or new, not previously owned juvenile products, mattresses, or upholstered furniture is in violation of this part, the department may assess fines for violations against manufacturers of the product for the violation. The department shall reimburse the department

of environment and conservation for the cost of testing for the presence of covered flame retardant chemicals pursuant to this part.

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

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

(1) The fine for the first violation must 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 must 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 must be not less than five thousand dollars (\$5,000), but not more than seven thousand five hundred dollars (\$7,500);  
and

(4) The fine for any subsequent violation must 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 department 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; and
- (5) The extent to which the cited person or entity has cooperated with the

department.

(e)

(1) The department shall adjust all minimum and maximum fines imposed by this section for inflation every five (5) years.

(2) The adjustment must 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 subsection (e) must be rounded as follows:

(A) In multiples of ten dollars (\$10.00) 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); and

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

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

**68-131-504.**

(a) The department shall work with the International Sleep Products Association to conduct a survey of mattress producers, including those that are registered with the

department as of January 1, 2020, and shall complete the survey report on or before January 31, 2020. The department, with the aid of the International Sleep Products Association, shall also conduct a new survey of mattress producers, including, but not limited to, registered mattress producers, to be completed on or before January 31, 2024, and every three (3) years thereafter. A survey report must 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 and any other materials used in each component for meeting flammability standards other than chemicals identified under subdivision (a)(2). The specific brand name or producer of the fire barrier need not be identified;

(2) The identity of each covered flame retardant chemical, as described in § 68-131-501(3)(A)(i), contained in each mattress component in an amount over one thousand (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; and

(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 department, commencing January 1, 2020, and thereafter, shall respond to the survey conducted pursuant to subsection (a). The department shall post the list of nonresponders to the survey on its website.

(c) The department shall post the reports described in this section on its website.

SECTION 2. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2019, the public welfare requiring it.