

Office of Policy and Legal Analysis

Date: May 21, 2021

To: Joint Standing Committee on Environment and Natural Resources

From: Dan Tartakoff, Legislative Analyst

Re: LD 1662, An Act To Update Maine's Sales Prohibition on Upholstered Furniture Treated with Flame-retardant Chemicals (Dillingham)

Summary of bill

This bill amends the law restricting the sale of residential upholstered furniture treated with flame-retardant chemicals (full text of that law appended to the end of this analysis) to align Maine's requirements with standards enacted in California. The bill also specifies that the Department of Environmental Protection is authorized, rather than required, to adopt rules to implement the section of law governing residential upholstered furniture.

List of legislators/entities that submitted written testimony and/or spoke at the hearing

Proponents – Representative Dillingham, Retail Association of Maine, additional members of the public.

Opponents – Defend Our Health, additional members of the public.

Neither for nor against – Department of Environmental Protection.

Notes, issues and proposed amendments

1. *CA vs. ME standard* – there was a good deal of testimony at the hearing regarding the CA standard for flame-retardants in upholstered furniture. Bill opponents suggested that the ME standard is generally stricter than the CA standard, primarily in terms of the scope of the definition of “flame retardant” in both laws (provided below).

CALIFORNIA DEFINITION – “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.

MAINE DEFINITION – “a chemical or chemical compound for which a functional use is to resist or inhibit the spread of fire. "Flame-retardant chemical" includes, but is not limited to, halogenated, phosphorus-based, nitrogen-based and nanoscale flame retardants and any chemical or chemical compound for which "flame retardant" appears on the substance safety data sheet required under 29 Code of Federal Regulations, Section 1910.1200(g) (2015).”

It should also be noted that ME law prohibits the sale of furniture with more than 0.1% of a flame-retardant chemical or more than 0.1% of a mixture that includes flame-retardant chemicals. CA law prohibits the sale of furniture containing flame retardants at levels above 1,000 parts per million (which is equivalent to 0.1%).

A number of persons expressed concerns that the ME 0.1% threshold for “a mixture that includes flame-retardant chemicals” could be interpreted to prohibit the sale of furniture with any amount of flame retardants, even if less than 0.1%.

2. *NH law* – it was noted that NH has enacted a similar law that, unlike ME’s, allows compliance with the CA law to satisfy the requirements of the NH law. From that law (NH RSA ch. 359-Q:7(II)):

II. Products that meet the following requirements shall be deemed in compliance with this chapter:

(a) Upholstered furniture bearing a label or accompanied by a certificate indicating compliance with California BPC section 19101, as amended.

(b) Upholstered furniture bearing a label, as prescribed by California BPC section 19094 (2014), indicating that the product's upholstery materials "contain NO added flame retardant chemicals."

3. *DEP position* (NFNA) – suggests that aligning compliance in ME with other states, particularly those with a greater market impact than ME, provides for more efficient program administration and this change would streamline DEP’s implementation of the prohibition.

4. *Retail Association of Maine, proposed amendment* – suggests exempting from the prohibition electronic components in furniture and any associated casing of such components.

Fiscal information

Not yet available from OFPR.

Title 38, Section 1609-A

§1609-A. Residential upholstered furniture

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Flame-retardant chemical" means a chemical or chemical compound for which a functional use is to resist or inhibit the spread of fire. "Flame-retardant chemical" includes, but is not limited to, halogenated, phosphorus-based, nitrogen-based and nanoscale flame retardants and any chemical or chemical compound for which "flame retardant" appears on the substance safety data sheet required under 29 Code of Federal Regulations, Section 1910.1200(g) (2015). [PL 2017, c. 311, §1 (NEW).]

B. "Upholstered furniture" means residential furniture intended for indoor use in a home or other dwelling intended for residential occupancy that consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or related materials. [PL 2017, c. 311, §1 (NEW).]

2. Sales prohibition. Except as otherwise provided in section 1609, subsection 4, beginning January 1, 2019, a person may not sell or offer to sell or distribute for promotional purposes upholstered furniture containing in its fabric or other covering or in its cushioning materials more than 0.1% of a flame-retardant chemical or more than 0.1% of a mixture that includes flame-retardant chemicals.
[PL 2017, c. 311, §1 (NEW).]

3. Exemptions. The restrictions in subsection 2 do not apply to the following upholstered furniture products containing flame-retardant chemicals:

A. Used upholstered furniture; [PL 2017, c. 311, §1 (NEW).]

B. Upholstered furniture purchased for public use in public facilities, including, but not limited to, schools, jails and hospitals, that is required by the State of California to meet the flammability standard in California Department of Consumer Affairs, Bureau of Home Furnishings and Thermal Insulation Technical Bulletin 133, "Flammability Test Procedure for Seating Furniture for Use in Public Occupancies," dated January 1991; and [PL 2017, c. 311, §1 (NEW).]

C. New upholstered furniture otherwise subject to the prohibition in subsection 2 that is sold, offered for sale or distributed for promotional purposes in the State by a retailer or

wholesaler on or after January 1, 2019 and that was imported into the State or otherwise purchased or acquired by the retailer or wholesaler for sale or distribution in the State prior to January 1, 2019. [PL 2017, c. 311, §1 (NEW).]

4. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2017, c. 311, §1 (NEW).]