AN ACT

RELATING TO PUBLIC SAFETY; ENACTING THE FIRE RETARDANT SAFETY ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Fire Retardant Safety Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Fire Retardant Safety Act:

A. "child" means a person under twelve years of age;

B. "children's product" means a product primarily designed or intended by a manufacturer to be used by or for a child, including any article used as a component of such a product, but excluding a food, beverage, dietary supplement, pharmaceutical product or biologic, children's toys that are
subject to the most recent version of the American Society for Testing and Materials F963, Standard Consumer Safety Specification for Toy Safety, a medical device as defined in the Federal Food, Drug, and Cosmetic Act, United States Code, Title 21, Section 321(h), products listed under Section 116.9405, Clauses (10) and (11) and products listed under Sections 325F.03 and 325F.04; and

C. "upholstered residential furniture" means furniture with padding, coverings and cushions intended and sold for use in the home or places of lodging.

SECTION 3. [NEW MATERIAL] PROHIBITIVE USE OF FIRE RETARDANTS--SUBSTITUTE CHEMICALS--NOTICE--RECALL--EXCEPTION.--

A. Beginning July 1, 2018, no manufacturer, wholesaler or retailer shall manufacture, sell, offer for sale, distribute for sale or offer or distribute for use in New Mexico children's products or upholstered residential furniture containing any of the following flame retardants in amounts greater than one thousand parts per million in any product component:

(1) TDCPP (tris(1,3-dichloro-2-propyl)phosphate), chemical abstracts service number 13674-87-8;

(2) TCEP (tris(2-chloroethyl)phosphate), chemical abstracts service number 115-96-8;

(3) tetrabromobisphenol A, chemical abstracts .206831.1
service number 79-94-7;

(4) deca bromodiphenyl ether, chemical
abstracts service number 1163-19-5;

(5) hexabromocyclododecane, chemical abstracts
service number 25637-99-4;

(6) tetrabromophthalate (TBPH), chemical
abstracts service number 26040-51-7;

(7) tetrabromobenzoate (TBB), chemical
abstracts service number 183658-27-7;

(8) tris(1-chloro-2-propyl)phosphate
(TCPP), chemical abstracts service number 13674-84-5;

(9) triphenyl phosphate (TPP), chemical
abstracts service number 115-86-6;

(10) bis(chloromethyl) propane-1,3-
diyltetrakis (2-chloroethyl) bisphosphate (V6), chemical
abstracts service number 385051-10-4;

(11) antimony, chemical abstracts service
number 7440-36-0;

(12) chlorinated paraffins, chemical abstracts
service number 85535-84-8; and

(13) isopropylated triphenyl phosphate
(IPTPP), chemical abstracts service number 68937-41-7.

B. A manufacturer shall not replace a chemical
whose use is prohibited pursuant to Subsection A of this
section with a chemical identified on the basis of credible
.206831.1
scientific evidence by a state, federal or international agency
as being known or suspected with a high degree of probability
to:

(1) harm the normal development of a fetus or
child or cause other developmental toxicity;

(2) cause cancer, genetic damage or
reproductive harm;

(3) disrupt the endocrine or hormone system;
or

(4) damage the nervous system, immune system
or organs or cause other systemic toxicity.

C. A manufacturer in New Mexico that manufactures a
product that is prohibited pursuant to this section shall
notify a person who sells the product in New Mexico of the
prohibition by March 31, 2018.

D. A manufacturer that produces, sells or
distributes a product that is prohibited pursuant to this
section shall recall the product by March 31, 2018 and
reimburse the retailer or any other purchaser for the product.

E. The sale or offer for sale of any previously
owned product containing a chemical restricted pursuant to this
section is exempt from the provisions of this section.

SECTION 4. [NEW MATERIAL] PENALTY--ENFORCEMENT.--

A. A manufacturer that manufactures or distributes
a product intended for use by a child or in a residence in
violation of a provision of the Fire Retardant Safety Act shall be subject to a civil penalty not to exceed five thousand dollars ($5,000) for each violation in the case of a first offense. A second or subsequent violation shall subject the manufacturer to a civil penalty not to exceed ten thousand dollars ($10,000) for each repeat offense.

B. A wholesaler or retailer that sells, offers for sale, distributes for sale or offers or distributes for use in New Mexico a product intended for use by a child or in a residence in violation of a provision of the Fire Retardant Safety Act shall be subject to a civil penalty not to exceed five thousand dollars ($5,000) for each violation in the case of a first offense. A second or subsequent violation shall subject the wholesaler or retailer to a civil penalty not to exceed ten thousand dollars ($10,000) for each repeat offense.

C. A violation of the Fire Retardant Safety Act constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act.

D. The attorney general and the district attorney of any county may bring an action in the name of the state against any person to restrain and prevent a violation of the Fire Retardant Safety Act.

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2018.