HOUSE BILL 450

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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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

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1 subject to the most recent version of the American Society for

2 Testing and Materials F963, Standard Consumer Safety

3 Specification for Toy Safety, a medical device as defined in

4 the Federal Food, Drug, and Cosmetic Act, United States Code,

5 Title 21, Section 321(h), products listed under Section

6 116.9405, Clauses (10) and (11) and products listed under

7 Sections 325F.03 and 325F.04; and

8 　　　　C. "upholstered residential furniture" means

9 furniture with padding, coverings and cushions intended and

10 sold for use in the home or places of lodging.

11 　　SECTION 3. [NEW MATERIAL] PROHIBITIVE USE OF FIRE

12 RETARDANTS--SUBSTITUTE CHEMICALS--NOTICE--RECALL--EXCEPTION.--

13 　　　　A. Beginning July 1, 2018, no manufacturer,

14 wholesaler or retailer shall manufacture, sell, offer for sale,

15 distribute for sale or offer or distribute for use in New

16 Mexico children's products or upholstered residential furniture

17 containing any of the following flame retardants in amounts

18 greater than one thousand parts per million in any product

19 component:

20 　　　　　　　　(1) TDCPP (tris(1,3-dichloro-2-

21 propyl)phosphate), chemical abstracts service number

22 13674-87-8;

23 　　　　　　　　(2) TCEP (tris(2-chloroethyl)phosphate),

24 chemical abstracts service number 115-96-8;

25 　　　　　　　　(3) tetrabromobisphenol A, chemical abstracts

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underscored material = new
[bracketed material] = delete

service number 79-94-7;

(4) decabromodiphenyl 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

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1   scientific evidence by a state, federal or international agency

2   as being known or suspected with a high degree of probability

3   to:

4   (1)   harm the normal development of a fetus or

5   child or cause other developmental toxicity;

6   (2)   cause cancer, genetic damage or

7   reproductive harm;

8   (3)   disrupt the endocrine or hormone system;

9   or

10   (4)   damage the nervous system, immune system

11   or organs or cause other systemic toxicity.

12   C.   A manufacturer in New Mexico that manufactures a

13   product that is prohibited pursuant to this section shall

14   notify a person who sells the product in New Mexico of the

15   prohibition by March 31, 2018.

16   D.   A manufacturer that produces, sells or

17   distributes a product that is prohibited pursuant to this

18   section shall recall the product by March 31, 2018 and

19   reimburse the retailer or any other purchaser for the product.

20   E.   The sale or offer for sale of any previously

21   owned product containing a chemical restricted pursuant to this

22   section is exempt from the provisions of this section.

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

24   A.   A manufacturer that manufactures or distributes

25   a product intended for use by a child or in a residence in

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1   violation of a provision of the Fire Retardant Safety Act shall

2   be subject to a civil penalty not to exceed five thousand

3   dollars ($5,000) for each violation in the case of a first

4   offense. A second or subsequent violation shall subject the

5   manufacturer to a civil penalty not to exceed ten thousand

6   dollars ($10,000) for each repeat offense.

7   B.   A wholesaler or retailer that sells, offers for

8   sale, distributes for sale or offers or distributes for use in

9   New Mexico a product intended for use by a child or in a

10   residence in violation of a provision of the Fire Retardant

11   Safety Act shall be subject to a civil penalty not to exceed

12   five thousand dollars ($5,000) for each violation in the case

13   of a first offense. A second or subsequent violation shall

14   subject the wholesaler or retailer to a civil penalty not to

15   exceed ten thousand dollars ($10,000) for each repeat offense.

16   C.   A violation of the Fire Retardant Safety Act

17   constitutes an unfair or deceptive trade practice pursuant to

18   the Unfair Practices Act.

19   D.   The attorney general and the district attorney

20   of any county may bring an action in the name of the state

21   against any person to restrain and prevent a violation of the

22   Fire Retardant Safety Act.

23   SECTION 5.   EFFECTIVE DATE.--The effective date of the

24   provisions of this act is January 1, 2018.

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