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## FISCAL IMPACT REPORT

SPONSOR Thomson ORIGINAL DATE 02/24/17  
LAST UPDATED \_\_\_\_\_ HB 450  
SHORT TITLE Fire Retardant Safety Act SB \_\_\_\_\_  
ANALYST Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY17 | FY18                      | FY19                      | 3 Year<br>Total Cost      | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|---------------------------|---------------------------|---------------------------|------------------------------|------------------|
| <b>Total</b> |      | Indeterminate<br>Increase | Indeterminate<br>Increase | Indeterminate<br>Increase | Recurring                    | General<br>Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB453

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

House Bill 450 proposes the Fire Retardant Safety Act which prohibits manufacturers of upholstered residential furniture and children's products to sell, offer for sale, distribute for sale or offer or distribute items containing 13 listed flame retardant chemicals in amounts greater than 1,000 parts per million beginning July 1, 2018.

It prohibits the replacement of banned chemicals with other chemicals that are known or suspected with a high degree of probability to (1) harm normal fetal or child development, (2) cause cancer, genetic damage or reproductive hard, (3) disrupt endocrine or hormone systems; or (4) damage the nervous system, immune system or organs or cause other systemic toxicity. The bill requires the manufacturers to recall banned products by March 31, 2018. Sale or offer for sale of previously owned products are exempt for the provisions of the Act.

The civil penalties to manufacturers or wholesalers for violation of the Act are not to exceed \$5 thousand for each violation for a first offense, and not to exceed \$10 thousand for a second or subsequent violation.

## **House Bill 450 – Page 2**

The bill makes a violation of the Fire Retardant Act a violation of the Unfair Practices Act and it allows the Attorney General or the appropriate District Attorney to bring action against any person to restrain and prevent a violation of the Act.

The effective date of the bill is January 1, 2018.

### **FISCAL IMPLICATIONS**

The Office of the Attorney General (OAG) in its response to SB453 states that because the bill requires it to enforce its provisions funding will be needed and the bill provides none.

### **ADMINISTRATIVE IMPLICATIONS**

The Administrative Office of the District Attorneys (AODA) reports that the District Attorneys throughout New Mexico are struggling now to keep up with burgeoning caseloads and face more sophisticated criminal defendants and increasingly complex cases and trials with limited resources. That has made it necessary for most of the DA's and their assistants to specialize in criminal law. They have little or no experience in civil cases or pursuing injunctive relief so would not be the best group to try to restrain and prevent a potential violation that the bill would make available.

### **SIGNIFICANT ISSUES**

The Administrative Office of the Courts (AOC) point out that HB450 does not clearly identify who is required to impose the penalties or who may bring an action seeking a civil penalty. Some penalty provisions of the bill mirror provisions of the Unfair Practices Act and others do not, and there is no indication that the actions and remedies of the Unfair Practices Act are the exclusive remedies available when there is a violation of the bill. HB450 is confusing as to who is to bring the action in which the civil penalty may be imposed, and upon whose behalf.

AODA believes that whether the product(s) meet that standard will be challenging and is virtually certain to require expensive laboratory testing if the suspected violator does not admit their product(s) is not in compliance. Investigation of the nationally approved products will require expertise in identifying those items, and information regarding their approval status.

AODA states there is no guidance on who would determine whether the evidence is "credible" or what standards they should use in making that determination. States may have differing findings about the health risk of a chemical. It's also possible that a person might be found in violation of the Act for unlawfully making a product, distributing it to others, offering it for sale, and selling it even though only one item (or only one group of items?) would be involved. The principle of lenity is usually applied in criminal cases but it's less certain it would apply for civil sanctions.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates SB453 Fire Retardant Act

**TECHNICAL ISSUES**

AOC suggests Section 4(A) and (B) provide for civil penalties. If each offense can contain multiple violations, then the final sentence of subsections A and B, could read, “A second or subsequent offense shall subject the manufacturer to a civil penalty not to exceed ten thousand dollars (\$10,000) for each repeat violation,” unless another intent is desired.

**OTHER SUBSTANTIVE ISSUES**

AODA states that under the Unfair Practices Act the Attorney General is already responsible for enforcing, although NMAG can delegate enforcement authority to a district attorney when appropriate. See, Sect. 57-12-15, NMSA 1978.

There are currently 20 states, including New Mexico with bills banning the use of certain chemicals in manufacturing.

The New Mexico Environment Department states it does not have jurisdiction with regard to the provisions in this bill.

ABS/sb/jle