

House File 457 - Introduced

HOUSE FILE 457

BY ISENHART

A BILL FOR

1 An Act prohibiting the manufacture and sale of certain products
2 containing specified chemical flame retardants in the state,
3 providing civil penalties, and including effective date
4 provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 455F.12 Chemical flame retardants
2 — prohibition on manufacture and sale.

3 1. As used in this section, unless the context otherwise
4 requires:

5 a. "*Bedding*" means any residential or commercial bedding
6 material including but not limited to a mattress, mattress pad,
7 mattress cover, sheeting, pillow, blanket, comforter, duvet
8 cover, sleeping bag, or any other item stuffed with bedding
9 material used for recycling or sleeping.

10 b. "*Carpeting*" means residential or commercial fabric floor
11 covering, including carpet padding.

12 c. "*Children's product*" means a consumer product
13 manufactured or marketed for use by individuals twelve years
14 of age or younger.

15 d. "*Covered product*" means bedding, carpeting, children's
16 products, residential upholstered furniture, or window
17 treatments.

18 e. "*Manufacturer*" means a person who manufactures or
19 produces a covered product for resale in this state.

20 f. "*Residential upholstered furniture*" means any residential
21 furniture product that consists in whole or in part of
22 cushioning material enclosed within a covering consisting of
23 fabric or any other textile.

24 g. "*Retailer*" means a person offering for sale or selling a
25 covered product to the ultimate consumer, within this state.

26 h. "*Window treatment*" means residential or commercial
27 curtain materials, blinds, or shades.

28 2. A manufacturer or retailer shall not sell, offer for
29 sale, or manufacture for sale a covered product that contains
30 the following chemical flame retardants with a concentration
31 level that exceeds one thousand parts per million by weight for
32 any component part of the covered product:

33 a. Tris (1,3-dichloro-2-propyl) phosphate (TDCPP).

34 b. Tris (2-chloroethyl) phosphate (TCEP).

35 c. Antimony trioxide.

- 1 *d.* Hexabromocyclododecane (HBCD).
- 2 *e.* Bis (2-Ethylhexyl)-3,4,5,6-tetrabromophthalate (TBPH).
- 3 *f.* 2-Ethylhexyl-2,3,4,5-tetrabromobenzoate (TBB).
- 4 *g.* Chlorinated paraffins.
- 5 *h.* Tris (1-chloro-2-propyl) phosphate (TCPP).
- 6 *i.* pentaBDE.
- 7 *j.* octaBDE.
- 8 *k.* Any other chemical flame retardant identified by the
- 9 department pursuant to subsection 3.

10 3. *a.* The department shall conduct a review every three
11 years to identify any additional chemical flame retardants to
12 be added to the list of prohibited chemical flame retardants
13 provided in subsection 2, provided, however, that the
14 department shall demonstrate that the chemical flame retardant
15 is harmful to health and is present in human bodily tissue
16 or fluid, the home environment, or in a covered product, as
17 determined through scientific sampling and analysis. For
18 purposes of this subsection, "*harmful to health*" means any of
19 the following:

- 20 (1) Harming the normal development of a fetus or child or
- 21 cause other developmental toxicity.
- 22 (2) Causing cancer, genetic damage, or reproductive harm.
- 23 (3) Disrupting the endocrine system.
- 24 (4) Damaging the nervous system, immune system, or an organ
- 25 or cause other systemic toxicity.
- 26 (5) Constituting a persistent, bioaccumulative, and toxic
- 27 substance.

28 *b.* If the department determines that a chemical flame
29 retardant meets the conditions provided in paragraph "*a*",
30 the department shall promulgate rules to restrict the sale,
31 offer for sale, or manufacture for sale of any covered product
32 containing the chemical flame retardant pursuant to subsection
33 2 within nine months after making such determination.

34 4. This section shall not apply to any of the following:

- 35 *a.* A covered product manufactured prior to January 1, 2018.

1 *b.* A covered product containing a chemical flame retardant
2 identified in subsection 2 due to the presence of recycled
3 material used to manufacture the covered product.

4 *c.* Motor vehicles as defined in section 321.1, watercraft,
5 aircraft, all-terrain vehicles as defined in section 321.1,
6 motorized bicycles as defined in section 321.1, or any
7 component part thereof.

8 5. *a.* A manufacturer or retailer who sells, offers for
9 sale, or manufactures for sale a covered product in violation
10 of subsection 2 shall be subject to a civil penalty of one
11 thousand dollars for each covered product manufactured, sold,
12 or offered for sale for a first offense, and a civil penalty of
13 five thousand dollars for each covered product manufactured,
14 sold, or offered for sale for a second or subsequent offense.

15 *b.* Notwithstanding paragraph "a", a retailer shall only be
16 liable under this subsection if the retailer had knowledge or
17 in the exercise of reasonable diligence should have known that
18 the retailer was selling or offering for sale a covered product
19 in violation of subsection 2.

20 6. The department may adopt rules pursuant to chapter 17A to
21 administer this section.

22 Sec. 2. NEW SECTION. 455F.13 Notification.

23 The manufacturer of a covered product that contains a
24 prohibited chemical flame retardant identified in section
25 455F.12 shall provide initial notice of the prohibitions
26 identified in that section to any known retailer selling
27 the covered product in the state no later than October 3,
28 2017. The department shall establish by rule notification
29 requirements applicable to the identification of additional
30 chemical flame retardants following the review and
31 determination process provided in section 455F.12.

32 Sec. 3. EFFECTIVE DATE.

33 1. The section of this Act requiring manufacturers to
34 provide notice of this Act to retailers, being deemed of
35 immediate importance, takes effect upon enactment.

1 2. The remaining sections of this Act take effect January
2 1, 2018.

3

EXPLANATION

4 The inclusion of this explanation does not constitute agreement with
5 the explanation's substance by the members of the general assembly.

6 This bill prohibits the manufacture and sale of certain
7 products containing specified chemical flame retardants in the
8 state.

9 The bill contains several definitions. The bill defines
10 "bedding", "carpeting", "children's product", "covered
11 product", "manufacturer", "residential upholstered furniture",
12 "retailer", and "window treatment".

13 The bill provides that a manufacturer or retailer shall
14 not manufacture, sell, or offer for sale a covered product in
15 the state containing a chemical flame retardant listed in the
16 bill that has a concentration level that exceeds 1,000 parts
17 per million by weight for any component part of the covered
18 product.

19 The bill provides that the department of natural resources
20 shall conduct a review every three years to identify any
21 additional chemical flame retardants to include in the list of
22 prohibited chemical flame retardants contained in the bill. To
23 do so the department must demonstrate that the chemical flame
24 retardant is harmful to health, as defined in the bill, and
25 is determined through scientific sampling and analysis to be
26 present in human bodily tissue or fluid, the home environment,
27 or in a covered product. If the department determines that a
28 chemical flame retardant meets these conditions, the department
29 must adopt rules to restrict the sale and manufacture of such
30 chemical flame retardant within nine months of making its
31 determination.

32 The bill provides that the bill does not apply to any of the
33 following: a covered product manufactured prior to January
34 1, 2018; a covered product containing a prohibited chemical
35 flame retardant due to the presence of recycled material

1 used to manufacture the covered product; and motor vehicles,
2 watercraft, aircraft, all-terrain vehicles, motorized bicycles,
3 or any component part thereof.

4 The bill provides that a manufacturer or retailer that
5 manufactures, sells, or offers to sell a covered product
6 prohibited by the bill shall be subject to a civil penalty of
7 \$1,000 for each covered product manufactured, sold, or offered
8 for sale for a first offense, and a civil penalty of \$5,000 for
9 each covered product manufactured, sold, or offered for sale
10 for a second or subsequent offense. However, a retailer may
11 only be liable if the retailer had knowledge or in the exercise
12 of reasonable diligence should have known that the retailer was
13 selling or offering to sell a covered product in violation of
14 the bill.

15 The bill requires a manufacturer of a covered product
16 containing a prohibited chemical flame retardant identified
17 in the bill to provide initial notice of the prohibition to
18 any known retailer selling the covered product in the state
19 no later than October 3, 2017, and to establish notification
20 procedures for subsequently identified prohibitions by rule.
21 The section of the bill containing this requirement takes
22 effect upon enactment.

23 The section of the bill prohibiting the manufacture or sale
24 of certain covered products containing prohibited chemical
25 flame retardants takes effect January 1, 2018.