

California Enacts Broad Prohibitions on Flame Retardant Use



California Governor Jerry Brown has signed into law Assembly Bill (A.B.) 2998, restricting the sale of flame retardant-containing children products and furniture. Effective January 1, 2020, A.B. 2998 prohibits any person from selling or distributing new juvenile products (*i.e.*, products used by infants and children under the age of 12), mattresses, and upholstered furniture that contain a designated flame retardant chemical at levels above 1,000 parts per million. The law also prohibits, beginning on January 1, 2020, a custom upholsterer from repairing or reupholstering upholstered furniture using replacement components that contain more than 1,000 ppm of a designated flame retardant chemical.

A.B. 2998 designates a broad range of flame retardant chemicals as subject to the law’s restrictions. It defines the term “covered flame retardant chemical” to mean any chemical in one of the following categories that is used to resist or inhibit the spread of fire, or is a synergist to chemicals that are used to resist or inhibit the spread of fire:

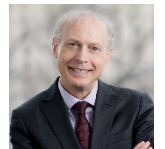
- ◆ Halogenated, organophosphorus, organonitrogen or nanoscale chemicals.
- ◆ Chemicals defined as “designated chemicals” under California’s Environmental Contaminant Biomonitoring Program.
- ◆ Chemicals listed on the Washington Department of Ecology’s Chemicals of High Concern to Children list that are identified as a flame retardant or synergist to a flame retardant in the rationale for including in the list.

October 11, 2018

AUTHORS

Mark Duvall

Principal
+1.202.789.6090
mduvall@bdlaw.com



Lauren Hopkins

Principal
+1.415.262.4013
lhopkins@bdlaw.com



Aminah Famili

Associate
+1.415.262.4019
afamili@bdlaw.com



Kate Tipple

Associate
+1.415.262.4015
ktipple@bdlaw.com



ABOUT B&D

Beveridge & Diamond’s over 100 lawyers in eight U.S. offices focus on environmental and natural resources law, litigation and alternative dispute resolution. We help clients around the world resolve critical environmental and sustainability issues relating to their products, facilities, and operations.

Learn more at bdlaw.com

The law contains several notable exceptions including, among other things, electronic components (and their associated casings) of regulated products, certain other furniture components, thread or fiber used to stitch mattress components together, as well as any components of adult mattresses other than foam.

A.B. 2998 also directs the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation to provide the California Department of Toxic Substances Control (DTSC) with a "selection of samples" from regulated products for compliance testing. The Bureau is authorized to assess penalties against manufacturers (and certain retailers and distributors) of products that are found through DTSC's testing to have a designated flame retardant chemical above the threshold level of 1,000 ppm.

In addition, A.B. 2998 requires the International Sleep Products Association (ISPA) to monitor the use of flame retardant chemicals in the mattress industry after implementation of the new restrictions. ISPA is required to conduct a baseline survey of mattress producers, and submit a survey report to the Bureau by January 31, 2020, regarding the use of flame retardant chemicals in the surveyed producers' mattresses and mattress components. ISPA must conduct a new survey and submit a survey report with the results to the Bureau every three years thereafter, and the Bureau is required to post the reports on its website.

A.B. 2998 is the latest chemical restriction bill to become law at the state level. As Beveridge & Diamond [previously reported](#), state legislatures across the country have been actively introducing and enacting legislation restricting the use of chemicals in various products. Given the scope of regulated products subject to the ban, in conjunction with the breadth of chemicals covered, A.B. 2998 is arguably one of the most restrictive state-level flame retardant laws to date.

Within the state of California, A.B. 2998 adds to a patchwork of laws and regulations that are geared toward reducing toxic chemicals in consumer products. Separately, California also regulates products through its ambitious Safer Consumer Products Program.

Locally, A.B. 2998 supplements similar recent efforts by the City and County of San Francisco. It creates potential compliance issues for manufacturers without any clarifying language on the issue of preemption. On November 3, 2017, the City and County of San Francisco enacted the [Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products Ordinance](#). Although A.B. 2998 and the San Francisco Ordinance are similarly structured and have identical objectives, they differ in scope in several substantive respects. Most notably, although exempt under the state law, electronic components of children's products and furniture are regulated by San Francisco's Ordinance.

Manufacturers and producers that continue to use certain flame retardant chemicals, especially organohalogens which are being specifically targeted in many other states, will need to stay current on each state's unique requirements as well as similar initiatives at the local level.

Beveridge & Diamond's [Chemicals Regulation](#) practice group and [Chemicals](#) industry group provide strategic, business-focused advice to the global chemicals industry. We work with large and small chemical companies whose products and activities are subject to EPA's broad chemical regulatory authority under TSCA and state chemical restrictions. For more information, please contact the authors.

Manufacturers and producers will need to stay current on each state's unique requirements.