

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 648

Short Title: Prohibit Toxic Flame Retardants in Bedding. (Public)

Sponsors: Representatives McGrady, Harrison, Jeter, and Glazier (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Regulatory Reform, if favorable, Judiciary II, if favorable, Finance.

April 14, 2015

A BILL TO BE ENTITLED
AN ACT TO RESTRICT THE SALE AND DISTRIBUTION OF BEDDING THAT
CONTAIN TOXIC FLAME RETARDANTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 106 of the General Statutes is amended by adding a new
Article to read:

"Article 4I.

"Prohibit Bedding that Contains Certain Flame Retardants.

"§ 106-65.110. Legislative findings; purpose.

(a) The General Assembly finds all of the following:

- (1) The safety and efficacy of organohalogen and organophosphorus flame retardants when used in bedding is doubtful when their exposure impact on human health is compared with any purported fire safety benefits.
- (2) Organohalogen and organophosphorus flame retardants migrate from consumer products and can be inhaled, ingested, or absorbed through the skin. The United States Centers for Disease Control and Prevention estimates that ninety-seven percent (97%) of the population has measurable quantities of organohalogen or organophosphorus flame retardants in their bodies. Scientific research indicates concentrations of these flame retardants are increasing in human tissues, including breast milk, and children carry the highest concentrations per unit of body weight.
- (3) Organohalogen and organophosphorus flame retardants have been found in sediments, air, surface water, and wildlife including fish, birds, and mammals. Scientific research indicates the concentrations of these flame retardants are increasing in the environment.
- (4) Organohalogen and organophosphorus flame retardants as a class are toxic due to their physical, chemical, and biological properties. Exposure to organohalogen and organophosphorus flame retardants is linked to many adverse human health impacts, including reproductive impairment, endocrine disruption, immune disorders, and neurological impacts such as decreased IQ in children, impaired memory, and learning deficits. Exposure to some organohalogen and organophosphorus flame retardants has produced cancer in laboratory animals and several forms of organohalogen and organophosphorus are recognized by state and federal agencies as probable human carcinogens.



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(5) Because of results from scientific studies on laboratory animals that indicate negative health impacts from exposure to organohalogen and organophosphorus flame retardants, the U.S. Environmental Protection Agency and several states have phased out the use of some organohalogen and organophosphorus flame retardants in many applications.

(6) Effective alternatives for achieving fire safety appear to be available for most current applications of halogenated flame retardants.

(b) The purpose of this Article is to protect the public health and the environment from exposure to organohalogen flame retardants and organophosphorus flame retardants in bedding.

"§ 106-65.115. Definitions.

As used in this Article, the following definitions apply:

- (1) Bedding. – Defined in G.S. 106-65.95.
- (2) Commissioner. – The Commissioner of the Department of Agriculture and Consumer Services.
- (3) Congener. – Any of two or more chemical substances related to each other by origin, structure, or function.
- (4) DecaBDE. – Decabromo diphenyl ether or any commercial or technical mixture in which decabromo diphenyl ether is a significant congener.
- (5) Flame retardant. – Any chemical that is added to a plastic, foam, textile, or other material to inhibit flame formation.
- (6) HBCD. – Hexabromocyclododecane.
- (7) Manufacturer. – Any person or enterprise that manufactures bedding containing a regulated flame retardant or any person or enterprise whose brand name is affixed to bedding containing a regulated flame retardant. Manufacturer includes, in the case of bedding that was imported into the United States, the importer or domestic distributor of the bedding when the person who manufactured or assembled the bedding, or whose brand name is affixed to the bedding, does not have a presence in the United States.
- (8) Organohalogen flame retardant. – Any chemical containing the elements fluorine, bromine, chlorine, or iodine that is added to plastic, foam, or textile to inhibit flame formation, including, but not limited to, HBCD, TBBPA, decabromodiphenyl ethane, TCEP, TDCPP, TCPP, PBDE, DecaBDE, and any significant congener of PBDE or DecaBDE.
- (9) Organophosphorus flame retardant. – Any chemical containing the element phosphorus that is added to plastic, foam, or textile to inhibit flame formation, including, but not limited to, TPP or RDP.
- (10) PBDE. – Polybrominated diphenyl ether.
- (11) RDP. – Resorcinol bis(diphenyl phosphate).
- (12) Regulated flame retardant. – Any organohalogen flame retardant or organophosphorus flame retardant.
- (13) Renovate or renovated. – The reworking or remaking of used bedding or the making of bedding from materials from which previous use has been made.
- (14) Significant. – Any congener of a PBDE mixture greater than four percent (4%).
- (15) TBBPA. – Tetrabromobisphenol A.
- (16) TCEP. – Tris(2-chloroethyl)phosphate.
- (17) TCPP. – Tris (1-chloro-2-propyl) phosphate.
- (18) TDCPP. – Tris(1,3-dichloro-2-propyl)phosphate.
- (19) TPP. – Triphenylphosphate.

"§ 106-65.120. Sale or distribution of bedding that contain regulated flame retardants prohibited.

(a) A person shall not manufacture, sell, offer for sale, or distribute for sale any bedding that contains regulated flame retardants in this State.

(b) This section shall not apply to the sale of used or renovated bedding.

(c) No manufacturer shall replace any regulated flame retardant with any chemicals of similar concern due to their toxicity, bioaccumulation, persistence, or long-range transport as identified or listed by any one of the following agencies:

(1) The United States Environmental Protection Agency Toxic Release Inventory List of Persistent, Bioaccumulative, and Toxic Chemicals.

(2) The United States Department of Health and Human Services.

(3) The Washington Department of Ecology List of Persistent, Bioaccumulative, and Toxic Chemicals.

(4) The California Environmental Protection Agency.

(5) The European Parliament Annex XIV concerning the Registration, Evaluation, Authorization, and Restriction of Chemicals.

"§ 106-65.125. Exemptions.

(a) The Commissioner may grant an exemption to any provisions of this Article for a term not to exceed two years. The exemption shall be renewable upon written application if the specific use of the regulated flame retardant continues to meet the criteria of this section and the manufacturer or other persons comply with the conditions of its original approval. The Secretary may grant an exemption for a specific use of the regulated flame retardant with or without conditions, upon finding that the applicant has demonstrated one or more of the following:

(1) A technically feasible alternative is not available at comparable cost.

(2) The potential harm to public health and the environment directly posed by a technically feasible alternative is greater than the potential harm caused by the regulated flame retardant.

(b) A fee to apply for an exemption under this section shall be imposed and shall be paid to the Department of Agriculture and Consumer Services. This fee shall not exceed five thousand dollars (\$5,000). Fees collected under this subsection shall be used by the Department for the costs to administer this Article.

"§ 106-65.130. Labeling requirements.

The Commissioner may establish a "Meets fire safety standards without the use of chemical flame retardants" labeling program for bedding that meet fire safety standards and do not contain regulated flame retardants. The Commissioner may establish partnerships with manufacturers to enhance the market for bedding designed to retard fire without the use of regulated flame retardants and reduce the use of other potentially hazardous flame retardants in bedding. The Commissioner may develop an awards program in conjunction with the Department of Environment and Natural Resources' Environmental Stewardship Initiative to recognize the accomplishments of North Carolina manufacturers who exceed the requirements of this Article and who excel at reducing or eliminating regulated flame retardants in bedding.

"§ 106-65.135. Education and outreach.

(a) The Commissioner shall develop a program to inform and educate bedding retailers regarding the requirements of this Article and methods for identifying bedding that contains regulated flame retardants.

(b) The Commissioner may participate in a regional, multistate clearinghouse to do all of the following:

(1) Assist in the implementation of the requirements of this section.

(2) Help coordinate public education and outreach activities.

(3) Review risk assessments.

(4) Review alternatives to regulated flame retardants in bedding.

(5) Implement other activities related to the administration of this Article.

"§ 106-65.140. Reporting.

No later than January 15, the Department of Agriculture and Consumer Services shall annually report to the Environmental Review Commission regarding the use and regulation of regulated flame retardants in bedding in the State, in other states, and nationwide. The report shall include recommended additional actions to protect the public health and the environment from exposure to regulated flame retardants in bedding and the availability to manufacturers of technological and design advances and nonchemical alternatives to regulated flame retardants. This report shall also consider whether the provisions of this Article are accomplishing the purposes of this Article.

"§ 106-65.145. Certificate of compliance; injunctive relief; and civil penalties.

(a) If the Commissioner reasonably suspects that bedding containing a regulated flame retardant is being manufactured, sold, offered for sale, or distributed for sale in violation of this Article, the Commissioner may request the manufacturer of the bedding to provide the Commissioner with a certificate of compliance. Within 10 days of receipt of the request for a certificate of compliance, the manufacturer shall do at least one of the following:

- (1) Provide the Commissioner with a certificate declaring that the bedding complies with the requirements of this Article.
- (2) Notify persons that sell the manufacturer's bedding in the State that the sale of the bedding is prohibited and submit to the Commissioner a list of the names and addresses of those notified.

(b) If a manufacturer fails to comply with the requirements under this Article, the Commissioner may take enforcement action against the bedding manufacturer by assessing civil penalties under subsection (c) of this section, requesting the Attorney General to initiate immediate injunction proceedings to prevent the sale of the bedding, or both.

(c) Subject to subsections (d) and (e) of this section, a person who violates this Article is subject to the following civil penalties:

- (1) If the violation is the person's first offense under this Article, a civil fine of not more than one hundred dollars (\$100.00) per article of bedding, not to exceed five thousand dollars (\$5,000) total.
- (2) If the violation is the person's second offense under this Article, a civil penalty of not more than five hundred dollars (\$500.00) per article of bedding, not to exceed a total of twenty-five thousand dollars (\$25,000).
- (3) If the violation is the person's third or subsequent offense under this Article, a civil penalty of not more than one thousand dollars (\$1,000) per article of bedding, not to exceed a total of fifty thousand dollars (\$50,000).
- (4) For purposes of calculating a penalty under this section, a collection of bedding items that are sold as a set shall collectively constitute one article of bedding.

(d) If a person knowingly violates this Article, the person is subject to a civil penalty equal to three times the amount of the penalty under subdivision (3) of subsection (c) of this section.

(e) A civil fine imposed under this section shall be waived if it is determined that a person acted in good faith to be in compliance with this Article, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

"§ 106-65.150. Rule making.

The Board of Agriculture and the Department of Agriculture and Consumer Services shall adopt rules to implement this Article."

SECTION 1.(b) G.S. 106-65.97 reads as rewritten:

"§ 106-65.97. Manufacture regulated.

1 All materials used in the manufacture of bedding in this State or used in manufactured
2 bedding to be sold in this State shall be free of toxic materials and shall be made from new
3 ~~materials.~~ materials and shall comply with Article 4I of this Chapter."

4 **SECTION 2.** The first report required pursuant to G.S. 106-65.140, as enacted by
5 Section 1 of this act, is due no later than January 15, 2016.

6 **SECTION 3.** Section 1 of this act becomes effective January 1, 2017, and applies
7 to bedding manufactured, offered for sale, or distributed in North Carolina on or after that date.
8 The remainder of this act is effective when it becomes law.