

# July 30, 2015 Advisory Council Meeting Materials Packet

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**BUREAU OF ELECTRONIC AND APPLIANCE REPAIR  
HOME FURNISHINGS AND THERMAL INSULATION**  
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**ADVISORY COUNCIL MEETING  
NOTICE & AGENDA  
Teleconference Meeting  
Thursday, July 30, 2015, 9:00 a.m.**  
Bureau of Electronic and Appliance Repair,  
Home Furnishings and Thermal Insulation

**Meeting Location:** Department of Consumer Affairs  
DCA HQ 2, Hearing Room 186  
1747 North Market Blvd. Sacramento, CA 95834

**Teleconference Phone Number: 866-842-2981  
Participant Passcode #: 4598662**

**Advisory Council Members**

Sharron Bradley, Industry	David Spears, Industry
Burt Grimes, Industry	Joanne Mikami, Public
Linda Hinojosa, Industry	<i>Vacant, Public</i>
David Velasquez, Industry	<i>Vacant, Public</i>
Timothy Hawkins, Industry	

Unless noticed for a specific time, items may be heard at any time during the period of the Council meeting.

The Bureau welcomes and encourages public participation in its meetings. The public may take appropriate opportunities to comment on any issue before the Bureau at the time the item is heard. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment.

1. Welcome and Introductions – Justin Paddock, Bureau Chief

***Electronic and Appliance Repair Agenda Items***

2. Business URL and DBA issues – Justin Paddock
3. Service Contract Working Group – Karen Skelton, Licensing and Policy Manager
4. Public Comment on Electronic and Appliance Repair Items not on the Agenda

***General Bureau Business Agenda Items***

5. Legislative Update – Yeaphana La Marr, Department of Consumer Affairs  
Legislative Analyst
  - a. AB 1175 (Ridley-Thomas) Bureau fees.
  - b. SB 763 (Leno) Juvenile products: flame retardant chemicals.
6. AB 2740 (Bonilla, Chapter 428, Statutes of 2014) Legislative Report  
Update
  - a. CPS HR Survey Findings – Terri Rice, Policy Analyst
  - b. Regulatory Needs – Karen Skelton
  - c. Operational Updates – Dale Chessey, Operations Manager
  - d. Laboratory Updates – Carrie Cathalifaud, Laboratory Manager
  - e. Law Label Percentages and TB 133 – Justin Paddock
7. Regulatory Update – Karen Skelton
8. Licensing and Enforcement Update – Dale Chessey
9. Bureau Website Changes – Donald Watts, Licensing Analyst
10. Bureau Outreach – Dale Chessey
11. Public Comment on Items not on the Agenda

**Recess until 1:00 p.m.**

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**The Advisory Council will reconvene at 1:00 p.m.**

***Home Furnishing and Thermal Insulation Agenda Items***

12. San Francisco Dept. of the Environment, Breathe Easy Campaign – TBD
13. SB 1019 Implementation
  - a. Frequently Asked Questions Update – Justin Paddock
  - b. Inter-Agency Agreement and Planning Update – Justin Paddock
  - c. Department of Toxic Substances Control Protocol – Myrto Petreas, DTSC Environmental Chemistry Branch Chief
  - d. Document Request Update – Justin Paddock
14. Clarification on Customer Owned Material Practices: appropriate law label, TB 117-2013, and SB 1019 compliance – Carrie Cathalifaud, Laboratory Manager

15. Barrier Research Study Update - Said Nurbakhsh, Ph.D., Flammability Research Test Engineer

16. Home Furnishing Retail Advertisement Regulations Concept – Justin Paddock

The Bureau will present an initial regulatory concept on how to update 16 CCR sections 1300-1316. The Bureau hopes to receive public and stakeholder feedback on this concept as it continues to develop the regulatory package and determine what additional information it needs to obtain.

17. Thermal Insulation Regulation Updates – Steve Fischer, Ph.D., Chemist

18. Public Comment on Home Furnishings and Thermal Insulation Items not on the Agenda

19. Adjournment

**This meeting facility is accessible to the physically disabled. A person who needs a disability-related accommodation or modifications in order to participate in the meeting may make a request by contacting Victoria Hernandez at (916) 999-2055 or, for the hearing impaired, TDD (800) 326-2297; or by sending a written request to the Bureau at 4244 South Market Court, Suite D, Sacramento, CA 95834-1243, Attention: Victoria. Providing at least five working days' notice before the meeting will help ensure the availability of accommodations or modifications.**

Interested parties should call the Bureau at (916) 999-2055 to confirm.

**Agenda Item 2:  
Business URL and DBA Issues**

**Title 16. Professional and Vocational Regulations**  
**Division 27. Bureau of Electronic and Appliance Repair**  
**Article 2. Registration of Service Dealers**

**§ 2716. Name Style -Service Dealer's Registration.**

No service dealer's registration shall be issued in a fictitious name which the Bureau determines to be confusingly similar to that of another registrant, nor shall a service dealer's registration be issued in a name which is likely to be confused with that of an electronic or appliance product manufacturer, a governmental agency or trade association.

Note: Authority cited: Section 9814, Business and Professions Code. Reference: Sections 9814, 9830, and 9841, Business and Professions Code.

**§ 2717. Limitation Regarding Name Style.**

No registration shall be issued in the same name or in a name style which the Bureau determines is confusingly similar to the name of a firm whose registration has been suspended or revoked without the prior written approval of the Bureau.  
A service dealer shall not use the telephone number and/or name style of a firm whose registration has been suspended or revoked without the prior written approval of the Bureau.

Note: Authority cited: Section 9814, Business and Professions Code. Reference: Sections 9814, 9830, and 9841, Business and Professions Code.

**Agenda Item 3:  
Service Contract  
Working Group**

## **Service Contract Working Group**

**Background:** If you're buying an electronic device, a major appliance, or many other products for that matter, you may be offered the chance to buy an "extended warranty" or a service contract for the product. Both service contracts and warranties provide repair or maintenance of a product for a specific time. A service contract is an additional cost, which may or may not be provided by the manufacturer, retailer, or separate third-party company. The Bureau has regulated consumer service contracts since 1994.

Bureau staff has noticed a recent increase in issues related to service contracts. Specifically, the Bureau is seeing an increase in questions and complaints as new offerings, business relationships, contract provisions, and transfers of obligations occur that were not originally envisioned when existing statute and regulation were developed.

**Purpose of the Working Group:** Based on these recent trends, the Bureau plans to convene a working group of industry and consumer protection experts to:

- review existing statutes and regulations;
- review trade practices, changes in the industry, and other state's regulations; and
- develop recommendations for changes in existing rules and operations for the Bureau.

### **Tentative Working Group Time Line**

Solicit Participation in the Working Group – August and September 2015  
Working Group Kick Off Meeting – October 6, 2015 (tentative)  
Final Report to the Bureau, October 2016

# **Agenda Item 5: Legislative Update**

**Assembly Bill No. 1175**

\_\_\_\_\_

Passed the Assembly May 11, 2015

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_

Passed the Senate July 9, 2015

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 9873 and 19170 of the Business and Professions Code, relating to consumer affairs.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1175, Ridley-Thomas. Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

Existing law, the Electronic Appliance Repair Dealer Registration Law and the Home Furnishings and Thermal Insulation Act, provides for the licensure and regulation of, among others, electronic appliance and repair dealers, upholstered furniture and bedding retailers, and upholstered furniture and bedding wholesalers by the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation and makes a failure to comply with its provisions a crime. Existing law establishes the bureau under the supervision and control of the Director of Consumer Affairs. Existing law requires the director to administer and enforce those provisions relating to the licensure and regulation of electronic and appliance repair service dealers and persons engaged in various businesses associated with home furnishings. Existing law also requires the director to set certain fees by regulation.

Existing law establishes the maximum amount for the initial registration fee for each place of business in the state of an electronic repair industry service dealer, an appliance repair industry service dealer, a service contractor, a person who is engaged in business as both an electronic repair industry service dealer and appliance repair industry service dealer, a service contractor who is engaged in business as either an electronic repair industry service dealer or an appliance industry service dealer, and a service contractor who engages in both the electronic repair industry and the appliance repair industry as a service dealer. Existing law requires a service dealer or service contractor who does not operate a place of business in the state, but engages in at least some of these activities in the state to pay these fees as if he or she had a place of business in the state.

This bill would increase the maximum amounts of the initial registration fees for each of the above described persons, as specified, but would prohibit the director from adopting regulations to increase these fees before January 1, 2017.

Existing law also establishes, among other things, the maximum amount for the annual registration renewal fee for each place of business for an electronic repair industry service dealer, an appliance repair industry dealer, a service contractor, and a service dealer who is engaged in business as both an electronic repair industry service dealer and an appliance repair industry service dealer.

This bill would increase the maximum amount for each of these annual registration renewal fees, as specified, but would prohibit the director from adopting regulations to increase these fees before January 1, 2017.

Existing law also requires the chief of the bureau, with the approval of the director, to set, within specified maximum and minimum amounts, the license issuance and biennial renewal fees for an importer, furniture and bedding manufacturer, wholesale furniture and bedding dealer, supply dealer, custom upholsterer, sanitizer, retail furniture and bedding dealer, retail furniture dealer, and retail bedding dealer.

This bill would increase the maximum amount for each of these issuance and biennial renewal fees, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 9873 of the Business and Professions Code, as amended by Section 19 of Chapter 428 of the Statutes of 2014, is amended to read:

9873. The fees prescribed by this chapter shall be set by the director by regulation, according to the following schedule:

(a) (1) The initial registration fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than two hundred five dollars (\$205) for each place of business in this state. The initial registration fee for a service contractor is not more than ninety-five dollars (\$95) for each place of business in this state.

(2) The initial registration fee for a person who engages in business as both an electronic repair industry service dealer and

an appliance repair industry service dealer is not more than four hundred five dollars (\$405) for each place of business in this state. The initial registration fee for a person who is a service contractor and engages in business as either an electronic repair industry service dealer or an appliance repair industry service dealer is not more than three hundred dollars (\$300) for each place of business in this state.

(3) The initial registration fee for a person who engages in both the electronic repair industry and the appliance repair industry as a service dealer and is a service contractor is not more than five hundred dollars (\$500) for each place of business in this state.

(4) A service dealer or service contractor who does not operate a place of business in this state, but engages in the electronic repair industry, the appliance repair industry, or sells, issues, or administers service contracts in this state shall pay the registration fee specified herein as if he or she had a place of business in this state.

(b) (1) The annual registration renewal fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than two hundred five dollars (\$205) for each place of business in this state, if renewed prior to its expiration date. The annual registration renewal fee for a service contractor is ninety-five dollars (\$95) for each place of business in this state, if renewed prior to its expiration date.

(2) The annual renewal fee for a service dealer who engages in the business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than four hundred dollars (\$400) for each place of business in this state.

(3) The annual renewal fee for a service dealer who engages in the electronic repair industry and the appliance repair industry and is a service contractor is not more than four hundred seventy-five dollars (\$475) for each place of business in this state.

(4) A service dealer or service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, the appliance repair industry, or sells or issues service contracts in this state shall pay the registration fee specified herein as if he or she had a place of business in this state.

(c) The delinquency fee is an amount equal to 50 percent of the renewal fee for a license in effect on the date of renewal of the license, except as otherwise provided in Section 163.5.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2019, deletes or extends that date.

(e) Notwithstanding any other law, the director shall not adopt any regulation to increase any fee provided for in this section before January 1, 2017.

SEC. 2. Section 9873 of the Business and Professions Code, as amended by Section 20 of Chapter 428 of the Statutes of 2014, is amended to read:

9873. The fees prescribed by this chapter shall be set by the director by regulation, according to the following schedule:

(a) The initial registration fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than two hundred five dollars (\$205) for each place of business in this state. The initial registration fee for a person who engages in business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than four hundred five dollars (\$405).

(b) The annual registration renewal fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than two hundred five dollars (\$205) for each place of business in this state, if renewed prior to its expiration date. The annual renewal fee for a service dealer who engages in the business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than four hundred dollars (\$400).

(c) The delinquency fee is an amount equal to 50 percent of the renewal fee for a license in effect on the date of renewal of the license, except as otherwise provided in Section 163.5.

(d) This section shall become operative on January 1, 2019.

SEC. 3. Section 19170 of the Business and Professions Code is amended to read:

19170. (a) The fee imposed for the issuance and for the biennial renewal of each license granted under this chapter shall be set by the chief, with the approval of the director, at a sum not more nor less than that shown in the following table:

	Maximum	Minimum
	fee	fee
Importer's license .....	\$940	\$120

Furniture and bedding manufacturer's license .....	940	120
Wholesale furniture and bedding dealer's license .....	675	120
Supply dealer's license .....	675	120
Custom upholsterer's license .....	450	80
Sanitizer's license .....	450	80
Retail furniture and bedding dealer's license .....	300	40
Retail furniture dealer's license .....	150	20
Retail bedding dealer's license .....	150	20

(b) Individuals who, in their own homes and without the employment of any other person, make, sell, advertise, or contract to make pillows, quilts, quilted pads, or comforters are exempt from the fee requirements imposed by subdivision (a). However, these individuals shall comply with all other provisions of this chapter.

(c) Retailers who only sell “used” and “antique” furniture as defined in Sections 19008.1 and 19008.2 are exempt from the fee requirements imposed by subdivision (a). Those retailers are also exempt from the other provisions of this chapter.

(d) A person who makes, sells, or advertises upholstered furniture and bedding as defined in Sections 19006 and 19007, and who also makes, sells, or advertises furniture used exclusively for the purpose of physical fitness and exercise, shall comply with the fee requirements imposed by subdivision (a).

(e) A person who has paid the required fee and who is licensed either as an upholstered furniture and bedding manufacturer or a custom upholsterer under this chapter shall not be required to additionally pay the fee for a sanitizer's license.



Approved \_\_\_\_\_, 2015

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*Governor*

AMENDED IN ASSEMBLY JULY 8, 2015  
AMENDED IN ASSEMBLY JUNE 19, 2015  
AMENDED IN SENATE JUNE 2, 2015  
AMENDED IN SENATE MAY 7, 2015  
AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 763**

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**Introduced by Senator Leno**

February 27, 2015

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An act to add Sections 19095 and 19161.4 to the Business and Professions Code, relating to home furnishings.

LEGISLATIVE COUNSEL'S DIGEST

SB 763, as amended, Leno. Juvenile products: flame retardant chemicals.

Existing federal law requires the Consumer Product Safety Commission to institute proceedings for the determination of an appropriate flammability standard if the commission finds that such a standard, including labeling, for a mattress, a fabric, related material, or product, may be needed to protect the public. Existing federal law authorizes a state to establish a flammability standard if, among other things, it provides a higher degree of protection from the risk of fire.

Existing state law, the Home Furnishings and Thermal Insulation Act, provides for the licensure and regulation of upholstered furniture manufacturers by the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation. Existing state law requires every upholstered-furniture manufacturer to hold a furniture and bedding manufacturer's license. Existing state law also requires every

upholstered-furniture retailer to hold a retail furniture dealer's license. A violation of the act is a crime.

Existing state law requires upholstered furniture and bedding to contain a specified label that is securely fastened in a manner approved by the bureau in an area open to visible view. Existing state law establishes a standard to produce upholstered furniture which is safer from the hazards associated with smoldering ignition. The standard provides methods for smolder resistance of cover fabrics, barrier materials, resilient filling materials, and decking materials for use in upholstered furniture.

This bill would require a manufacturer of juvenile products, as defined, sold in California to indicate whether or not the product contains added flame retardant chemicals, as defined, by including a specified statement on a label, that meets certain labeling requirements, securely attached to the product. ~~For sales in California over the Internet and paper catalog sales to California, the bill would require the retailer of juvenile products in California to display the flame retardant chemical statement on their Internet Web site and catalogue pages in a specified manner.~~

The bill would require the manufacturer of the juvenile product to retain sufficient documentation to show whether flame retardant chemicals were added to a juvenile product or component. The bill would provide that a written statement by the supplier of each component attesting that flame retardant chemicals were added or not added is sufficient to make this showing. The bill would require the bureau to assess a fine for a violation of the documentation requirement or for failure to provide, upon request, the required documentation to the bureau, as specified.

The bill would require a manufacturer of a juvenile product sold in California, upon request, to provide to the bureau, within 30 days of the request, documentation establishing the accuracy of the flame retardant chemical statement on the label. The bill would require the bureau to provide the Department of Toxic Substances Control with samples of the juvenile product or components thereof sold in California from products marked "contains NO added flame retardant chemicals" for testing for the presence of added flame retardant chemicals, as specified. If the department's testing shows that a juvenile product labeled as "contains NO added flame retardant chemicals" is mislabeled because it contains added flame retardant chemicals, the bill would

authorize the bureau to assess fines for violations against manufacturers of the juvenile product and component manufacturers, as specified.

The bill would require the bureau to make information about any citation issued pursuant to its provisions available to the public on its Internet Web site. The bill would also make it the duty of the bureau to receive consumer complaints.

The bill would authorize the bureau to adopt regulations to carry out these provisions. *The bill would provide that these provisions would apply to juvenile products manufactured on and after July 1, 2016, for retail sale in the state.*

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The Home Furnishings and Thermal Insulation Act requires that all mattresses and mattress sets manufactured for sale in this state, and all seating furniture sold or offered for sale for use in this state, be fire retardant, as defined. Existing law requires that all bedding products, other than mattresses and mattress sets, that the bureau determines to contribute to mattress bedding fires comply with specified regulations adopted by the bureau.

Existing law authorizes the chief of the bureau, subject to specified approval, to exempt items of upholstered furniture that are not deemed to be a serious fire hazard from these fire retardant requirements. Existing regulation exempts from these fire retardant requirements specified articles of upholstered furniture that include bassinets, booster seats, and car seats that are not used for, or in, facilities designed for the care or treatment of humans.

This bill would exempt from the aforementioned fire retardant requirements under the act specified articles of juvenile products, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 19095 is added to the Business and  
2 Professions Code, to read:

3 19095. (a) For the purposes of this section, the following  
4 definitions shall apply:

5 (1) "Component" means the separate constituent parts of juvenile  
6 products sold in California, specifically cover fabrics, barrier  
7 materials, resilient filling materials, and plastic parts.

8 (2) "Juvenile product" means a product subject to the Home  
9 Furnishings and Thermal Insulation Act and intended for use by  
10 infants and children under 12 years of age, such as a bassinet,  
11 booster seat, infant car seat, changing pad, floor play mat,  
12 highchair, highchair pad, infant bouncer, infant carrier, infant seat,  
13 infant swing, infant walker, nursing pad, nursing pillow, playpen  
14 side pad, playard, portable hook-on chair, stroller, children's nap  
15 mat, and infant foam crib mattress. Products subject to the  
16 requirements of Section 19094 are not subject to the requirements  
17 of this section. "Juvenile product" does not include products  
18 required to meet federal flammability standards contained in Part  
19 1632 or 1633 of Title 16 of the Code of Federal Regulations.

20 (3) "Added flame retardant chemicals" means flame retardant  
21 chemicals that are present in any juvenile product or component  
22 thereof at levels above 1,000 parts per million.

23 (4) "Flame retardant chemical" means any chemical or chemical  
24 compound for which a functional use is to resist or inhibit the  
25 spread of fire. Flame retardant chemicals include, but are not  
26 limited to, halogenated, phosphorous-based, nitrogen-based, and  
27 nanoscale flame retardants, flame retardant chemicals listed as  
28 "designated chemicals" pursuant to Section 105440 of the Health  
29 and Safety Code, and any chemical or chemical compound for  
30 which "flame retardant" appears on the substance Safety Data  
31 Sheet (SDS) pursuant to Section 1910.1200(g) of Title 29 of the  
32 Code of Federal Regulations.

33 (5) "Chemical" means either of the following:

34 (A) An organic or inorganic substance of a particular molecular  
35 identity, including any combination of those substances occurring,  
36 in whole or in part, as a result of a chemical reaction or occurring  
37 in nature, and any element, ion, or uncombined radical, and any

1 degrade, metabolite, or reaction product of a substance with a  
2 particular molecular identity.

3 (B) A chemical ingredient, which means a substance comprising  
4 one or more substances described in subparagraph (A).

5 (6) "Molecular identity" means the substance's properties listed  
6 below:

7 (A) Agglomeration state.

8 (B) Bulk density.

9 (C) Chemical composition, including surface coating.

10 (D) Crystal structure.

11 (E) Dispersibility.

12 (F) Molecular structure.

13 (G) Particle density.

14 (H) Particle size, size distribution, and surface area.

15 (I) Physical form and shape, at room temperature and pressure.

16 (J) Physicochemical properties.

17 (K) Porosity.

18 (L) Solubility in water and biologically relevant fluids.

19 (M) Surface charge.

20 (N) Surface reactivity.

21 (7) "Department" means the Department of Toxic Substances  
22 Control.

23 (8) "Consumer Price Index" means the Consumer Price Index  
24 for All Urban Consumers published by the Bureau of Labor  
25 Statistics.

26 (b) (1) ~~(A)~~—A manufacturer of juvenile products sold in  
27 California shall have a label securely attached to the product, in  
28 plain view, stating the following:

29

30 "The State of California has determined that this product does  
31 not pose a serious fire hazard. The state has identified many flame  
32 retardant chemicals as being known to, or strongly suspected of,  
33 adversely impacting human health or development.

34 The fabric, filling, and plastic parts of this product:

35 \_\_\_\_\_contains added flame retardant chemicals

36 \_\_\_\_\_contains NO added flame retardant chemicals"

37

38 ~~(B)~~

1 (2) A manufacturer of juvenile products sold in California shall  
2 indicate the absence or presence of added flame retardant chemicals  
3 by placing an “X” in one of the appropriate blanks.

4 (C)

5 (3) The label for juvenile products shall comply with the labeling  
6 requirements of subdivisions (a), (b), and (e) of Section 1126 of  
7 Title 4 of the California Code of Regulations. The type on the label  
8 need not be in all capital letters.

9 ~~(2) (A) For sales of juvenile products sold in California via an  
10 Internet Web site, the retailer of juvenile products in California  
11 shall place the flame retardant chemical statement clearly and  
12 conspicuously, and in close proximity to the juvenile product’s  
13 price, on each Internet Web site page that contains a detailed  
14 description of the juvenile product and its price. The statement  
15 shall be sized and placed so as to remain clear and conspicuous to  
16 a consumer viewing the page.~~

17 ~~(B) For sales of juvenile products sold in California through  
18 paper catalogs, the retailer of juvenile products in California shall  
19 place the flame retardant chemical statement clearly and  
20 conspicuously, and in close proximity to the juvenile product’s  
21 price, on each page that contains a detailed description of the  
22 juvenile product and its price. The statement shall be sized and  
23 placed so as to remain clear and conspicuous to consumers.~~

24 (c) (1) The manufacturer of the juvenile product sold in  
25 California shall retain documentation to show whether flame  
26 retardant chemicals were added. A written statement by the supplier  
27 of each component of a juvenile product attesting either that flame  
28 retardant chemicals were added or not added shall be sufficient  
29 documentation.

30 (2) The bureau shall ensure compliance with the labeling and  
31 documentation requirements in this section.

32 (3) (A) Upon request, a manufacturer of a juvenile product sold  
33 in California shall provide to the bureau, within 30 days of the  
34 request, documentation establishing the accuracy of the flame  
35 retardant chemical statement on the label required by subdivision  
36 (b).

37 (B) The bureau shall assess fines of not less than two thousand  
38 five hundred dollars (\$2,500) but not more than fifteen thousand  
39 dollars (\$15,000) in accordance with the factors described in  
40 subdivision (d) for the failure of the manufacturer of the juvenile

1 product to maintain the documentation required by this section,  
2 or for the failure of the manufacturer of the juvenile product to  
3 provide, upon request, the documentation required by this section  
4 to the bureau. These fines shall replace any other fines in this article  
5 for a violation of the documentation requirements of this section.  
6 This subparagraph does not alter or amend any other penalty  
7 otherwise imposed by this article.

8 (C) A manufacturer of juvenile products sold in California and  
9 component suppliers shall be jointly and severally liable for  
10 violations of the documentation required in this section.

11 (D) (i) The bureau shall provide the Department of Toxic  
12 Substances Control with a selection of samples from juvenile  
13 products marked “contains NO added flame retardant chemicals”  
14 for testing for the presence of added flame retardant chemicals.  
15 The samples shall be from the components identified in paragraph  
16 (1) of subdivision (a). The bureau shall select samples based on  
17 consultation with the department, taking into account a range of  
18 manufacturers and types of juvenile products. The bureau and the  
19 department shall consult on the tests to be conducted by the  
20 department. The department shall provide the results of any  
21 completed test to the bureau. The bureau shall reimburse the  
22 department for the cost of testing for the presence of added flame  
23 retardant chemicals in juvenile products marked “contains NO  
24 added flame retardant chemicals.”

25 (ii) No later than August 1 of each fiscal year, the bureau shall  
26 assess available resources and determine the number of tests to be  
27 conducted in the corresponding fiscal year, pursuant to this  
28 subparagraph.

29 (E) (i) If the department’s testing shows that a juvenile product  
30 labeled as “contains NO added flame retardant chemicals” is  
31 mislabeled because it contains added flame retardant chemicals,  
32 the bureau may assess fines for violations against manufacturers  
33 of the juvenile product and component manufacturers to be held  
34 jointly and severally liable for the violation.

35 (ii) A fine for a violation of this subparagraph relating to  
36 mislabeling shall be assessed in accordance with the factors  
37 described in subdivision (d) and the following schedule:

38 (I) The fine for the first violation shall be not less than one  
39 thousand dollars (\$1,000) but not more than two thousand five  
40 hundred dollars (\$2,500).

1 (II) The fine for the second violation shall be not less than two  
2 thousand five hundred dollars (\$2,500) but not more than five  
3 thousand dollars (\$5,000).

4 (III) The fine for the third violation shall be not less than five  
5 thousand dollars (\$5,000) but not more than seven thousand five  
6 hundred dollars (\$7,500).

7 (IV) The fine for any subsequent violation shall be not less than  
8 seven thousand five hundred dollars (\$7,500) but not more than  
9 ten thousand dollars (\$10,000).

10 (iii) The fines in clause (ii) shall replace any other fines in this  
11 article for a violation of the testing requirements of this section.  
12 This clause does not alter or amend any other penalty otherwise  
13 imposed by this article.

14 (iv) If the department's testing shows that a juvenile product  
15 labeled as "contains NO added flame retardant chemicals" is  
16 mislabeled because it contains added flame retardant chemicals,  
17 in addition to a fine or any other request, the bureau may request  
18 that the label required by subdivision (b) for juvenile products that  
19 belong to the same stock keeping unit (SKU) currently produced  
20 by the manufacturer be corrected to reflect that flame retardant  
21 chemicals are added to the juvenile product.

22 (v) If the department's testing shows that a juvenile product  
23 labeled as "contains NO added flame retardant chemicals" is  
24 mislabeled because it contains added flame retardant chemicals,  
25 in addition to a fine or any other request, the bureau may request  
26 additional testing of more products belonging to the same stock  
27 keeping unit (SKU) at the manufacturer's expense to verify the  
28 accuracy of the label required by subdivision (b) for juvenile  
29 products if the manufacturer wishes to retain the "contains NO  
30 added flame retardant chemicals" designation on the label required  
31 by subdivision (b).

32 (d) (1) The bureau shall make information about any citation  
33 issued pursuant to this section available to the public on its Internet  
34 Web site.

35 (2) In determining the amount of the fine for violations of this  
36 section, the bureau shall consider the following factors:

37 (A) The nature and severity of the violation.

38 (B) The good or bad faith of the cited person.

39 (C) The history of previous violations.

40 (D) Evidence that the violation was willful.

1 (E) The extent to which the cited person or entity has cooperated  
2 with the bureau.

3 (3) (A) The bureau shall adjust all minimum and maximum  
4 fines imposed by this section for inflation every five years.

5 (B) The adjustment shall be equivalent to the percentage, if any,  
6 that the Consumer Price Index at the time of adjustment exceeds  
7 the Consumer Price Index at the time this section goes into effect.  
8 Any increase determined under this paragraph shall be rounded as  
9 follows:

10 (i) In multiples of ten dollars (\$10) in the case of penalties less  
11 than or equal to one hundred dollars (\$100).

12 (ii) In multiples of one hundred dollars (\$100) in the case of  
13 penalties greater than one hundred dollars (\$100) but less than or  
14 equal to one thousand dollars (\$1,000).

15 (iii) In multiples of one thousand dollars (\$1,000) in the case  
16 of penalties greater than one thousand dollars (\$1,000).

17 (4) It shall be the duty of the bureau to receive complaints from  
18 consumers concerning juvenile products sold in California.

19 (e) The bureau may adopt regulations pursuant to the  
20 Administrative Procedure Act (Chapter 3.5 (commencing with  
21 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
22 Code) to carry out this section.

23 (f) *Electric and electronic units or components, including, but*  
24 *not limited to, power cords or power supply units, motor*  
25 *assemblies, bluetooth modules, vibration units, light and sound*  
26 *units, circuit boards and wiring, are excluded when determining*  
27 *whether a product contains added flame retardants for purposes*  
28 *of the labeling requirements of this section. The chief may, at his*  
29 *or her discretion, subject to the approval of the director, clarify*  
30 *this list in regulation.*

31 (g) *This section shall apply to juvenile products manufactured*  
32 *on and after July 1, 2016, for retail sale in the state.*

33 SEC. 2. Section 19161.4 is added to the Business and  
34 Professions Code, to read:

35 19161.4. The requirements of Section 19161 shall not apply  
36 to juvenile products, as defined in Section 19095.

37 SEC. 3. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty  
2 for a crime or infraction, within the meaning of Section 17556 of  
3 the Government Code, or changes the definition of a crime within  
4 the meaning of Section 6 of Article XIII B of the California  
5 Constitution.

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**Agenda Item 6:  
AB 2740 (Bonilla, Chapter 428,  
Statutes of 2014)  
Legislative Report Update**

# Response to Issues and Recommendations Pursuant to the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation's 2014 Sunset Review



BUREAU OF ELECTRONIC & APPLIANCE REPAIR,  
HOME FURNISHINGS & THERMAL INSULATION

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## EXECUTIVE SUMMARY

### **INTRODUCTION**

The Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (Bureau) underwent the sunset review process in 2014. The Bureau was found to be in good standing, however, the Assembly Business, Professions and Consumer Protection Committee and the Senate Business, Professions and Economic Development Committee identified several areas they wished the Bureau to comment on after further study and review.

Assemblymember Susan Bonilla authored AB 2740 (Chapter 428, Statutes of 2014) as part of the sunset review process. Among other provisions, AB 2740 required the Bureau to report to the Legislature by July 1, 2015, on all of the following<sup>1</sup>:

- While the Bureau is in good fiscal standing, its revenues are projected to stay the same over the next few years and the cost of doing business is projected to rise over time, potentially leading to a long-term deficit. The Bureau should report to the committees any planned efforts to increase its revenues and reduce its expenditures, and whether, or when, it might seek a statutory fee increase in the future.
- For the 2013–14 fiscal year, the Bureau’s Electronic and Appliance Repair Fund and the Home Furnishings and Thermal Insulation Fund are expected to spend roughly 37 percent and 19 percent of their budgets, respectively, on the pro rata costs to the department. The Bureau should advise the committees about the bases upon which pro rata costs are calculated, and whether it could achieve cost savings by dealing with more of its consumer complaints in-house.
- Currently, electronic and appliance repair and service contract registrations as well as thermal insulation licenses are renewed annually, and home furnishings licenses are renewed biennially. The Bureau should examine the pros and cons of requiring biennial renewals instead of annual license renewals for all licensees.
- In its last sunset review report in 1995, the department studied both the electronic and appliance repair market and the home furnishings and thermal insulation market to determine whether regulatory activities were appropriate, necessary, and should be continued, and recommended areas of deregulation and areas to monitor in order to better target resources and evaluate consumer risk and impact. The Bureau should conduct market condition assessments to study both of these markets and determine if current statutes and regulations reflect the needs of the markets, where risk to consumers is the greatest, where resources could be refocused or expanded, and whether continued regulation is clearly necessary across all segments of these markets.
- The Bureau issues a separate furniture retailer license, bedding retailer license, combination furniture and bedding retailer license, sanitizer license, and custom upholsterer license. The Bureau may consider whether it should consolidate any of its licenses, and whether it should continue to regulate, or issue, stand-alone licenses to sanitizers and custom upholsterers.

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<sup>1</sup> AB 2740 Section 1(a)(7), Legislative Findings and Declarations.

- The Bureau has reported high product failure rates, which are primarily attributed to technical violations of flammability, product labeling, and feather and down standards. The Bureau should reexamine its testing protocols to ensure that it has the information it needs to appropriately identify areas of highest risk to consumers, and reexamine its standards, especially feather and down and product labeling standards, to determine if some standards could be relaxed, presuming there is no appreciable impact on consumer safety, whether standards should be clarified or better advertised, or whether penalties for violations are too low to act as a proper deterrent.
- The Bureau is scheduled to go live on the department's BreEZe system in late 2015. The Bureau should update the committees on the status of its implementation of BreEZe, including whether the system will accommodate the Bureau's current and future needs.

## **OVERVIEW**

Since the passage of AB 2740 last fall, the Bureau has undergone an extensive review of its existing statutes, regulations, and testing procedures; reviewed its budget and administrative practices; closely consulted on fee legislation introduced this year; contracted with CPS HR Consulting to conduct a market assessment of applicable industries; and met with consumer, environmental, and industry groups in order to address the issues raised in AB 2740. The following report is a summary of the Bureau's findings and recommendations.

### **Bureau Revenue and Expenditures**

The Bureau's Home Furnishings and Thermal Insulation Fund is projected to become insolvent in Fiscal Year (FY) 2017-18 and the Electronic and Appliance Repair Fund is projected to become insolvent in FY 2019-20. Assemblymember Sebastian Ridley-Thomas has introduced AB 1175 this year to raise most of the Bureau's licensing fees by 25 percent. If this legislation is enacted, the Bureau will promulgate regulations in 2016 to raise most home furnishing license fees by 15 percent. The Bureau is also likely to promulgate regulations in 2017 that would raise license fees for electronic and appliance repair, as well as services contract licensees, by 15 percent.

### **Department of Consumer Affairs Pro Rata**

The Bureau pays the Department of Consumer Affairs (Department) pro rata for various services it receives (e.g. publications, human resources, and complaint resolution). Some services are paid for based on the position authority of the Bureau's two funds; other services are paid for based on the workload the Bureau sent to various programs in the previous year or previous two years.

The Complaint Resolution Program (Program) is one area where the Bureau does pay a significant amount of its pro rata costs. However, that Program handles roughly 900 cases annually and resolves over 95 percent without the need for additional Bureau resources. The Department is instituting several cost cutting measures so future year costs for that Program are expected to be significantly lower.

### **Biennial and Annual License Renewals and License Consolidation**

Based on the Bureau's Market Assessment Study conducted by CPS HR Consulting and interactions with the Bureau's numerous licensees, the Bureau recommends all of its license types be renewed annually. The Bureau further recommends that the Importer, Wholesaler, and Manufacturer license types for the home furniture and bedding industries be consolidated into two license types: Wholesaler and Manufacturer. These changes would require legislation.

### Market Condition Assessment

The Bureau contracted with CPS HR Consulting to study many aspects of the Bureau and the industries it regulates. Specifically, CPS HR Consulting completed a market condition assessment to study the policies, relevant statutes and regulations, and current resources of the Bureau's programs. Based on this review, the Bureau will be updating several regulatory sections, including rules governing advertising of traditional sales as well as "going out of business sales," examining Bureau operational procedures, and conducting outreach to industry, stakeholders, and consumers.

### Flammability, Labeling, and Other Bureau Testing Standards

With the recent adoption of Technical Bulletin (TB) 117-2013, there has been a dramatic decrease in upholstered furniture failure rates. Historically, the Bureau applied the TB 117 performance standard to upholstered furniture products. This standard required products to withstand an open flame test and smolder resistance test. In order to pass these tests, manufacturers were predominantly using products treated with flame retardant chemicals. TB 117 was superseded by TB 117-2013 in 2013 because the standard did not adequately address the predominant source of upholstered furniture fires and losses today, which are smoldering ignition sources. The intent of the new standard is to produce upholstered furniture that is safer from the hazards associated with smoldering ignition. Since the implementation of TB 117-2013, upholstered furniture failure rates have dramatically decreased to approximately 2 percent.

TB 133 is a standard that is required of various upholstered products that are used in public spaces, such as hotels and hospitals. Furniture manufacturers and health care providers have sought amendments to this standard because of its rigorous open flame test. However, Bureau regulations, as well as the California Building Standards code, include exceptions from this requirement that address the concerns raised. Interested stakeholders may wish to seek changes in how local fire authorities determine the applicability of TB 133.

The open flame federal standard for mattresses has an average 19 percent failure rate (after two failure tests, the Bureau places a "hold" on a specific mattress type so that it cannot be sold in California until the issue is resolved).

Minor product labeling violations for non-plumage products constitute approximately 80 percent of the overall failure rates for bedding materials. These minor violations entail incorrect label or font size, or when minor information is missing from the label. The Bureau initially seeks to fix the issue directly with the manufacturer prior to commencing an enforcement action. In the vast majority of cases, this communication resolves the labeling issue. For major labeling violations, e.g. inaccurate product contents or material percentages for feather and down products where those ratios have a direct impact on the product's cost to the consumer, the Bureau will place a "hold" on the product so that it cannot be sold until the issue(s) regarding the product and its disclosures are resolved.

Plumage products also must meet cleanliness requirements to ensure there is a low presence of organic materials such as plant material. The current standard in Bureau regulations is 20 grams of oxygen per 100,000 grams of sample. As a result of industry updates to cleanliness testing and manufacturing procedures, as well as a review of national and international standards, the Bureau will seek to heighten its compliance standard to 10 grams of oxygen per 100,000 grams of sample prior to its next sunset review.

Feathers are also inspected to determine if they are intact or damaged. Bureau regulations prescribe specific maximums for damaged feathers that cannot be exceeded. Based on industry updates and manufacturing processes, the Bureau will explore changing this standard from a hard and fast threshold to a sliding scale standard currently used by the International Down and Feather Bureau.

Furniture manufacturers have also repeatedly sought for the Bureau to reduce product labeling requirements for upholstered furniture, specifically, the need to identify exact percentages of various materials found within upholstered furniture. Until further information is available, the Bureau will not seek to change these requirements.

#### BreEZe

The Bureau is currently scheduled to transition to BreEZe in Release 3, which is not yet scheduled. The Department is currently working on implementing Release 2 of the project, after which the Department will conduct a cost benefit analysis on the overall project. Based on the cost benefit findings, the Department will implement Release 3. A review of the Bureau's programmatic needs found that BreEZe will be able to meet the Bureau's licensing and enforcement requirements.

## BUREAU REVENUE AND EXPENDITURES

*AB 2740 Sec. 1(a)(7)(A): While the bureau is in good fiscal standing, its revenues are projected to stay the same over the next few years and the cost of doing business is projected to rise over time, potentially leading to a long-term deficit. The bureau should report to the committees any planned efforts to increase its revenues and reduce its expenditures, and whether, or when, it might seek a statutory fee increase in the future.*

Efforts to Reduce Expenditures: The Bureau has been able to maintain fiscal solvency without a statutory fee increase for many of its license types for over 17 years. Specifically, the last statutory fee increase for the electronic appliance and repair industry occurred in 1997 (SB 780, Chapter 401, Statutes of 1997) and the last statutory fee increase for the home furnishings industry was for the Manufacturers and Importers licenses in 2001 (AB 603, Chapter 199, Statutes of 2001).

The Bureau has consistently found ways to direct its resources to maximize cost efficiencies in its operations over the years by sharing staff in response to workload, co-habitation of facilities and equipment, and sharing one Bureau Chief, even prior to the official merger of the Bureaus in 2009. However, the Bureau is now facing a long-term deficit. The Bureau continues to seek additional ways to reduce expenditures, such as forestalling purchases of major equipment; however, there are few areas within the Bureau's operation where additional cost savings will be effective and still ensure the Bureau upholds its mission to protect and serve consumers. Fundamentally, the cost of doing business for the past several decades has risen, while the revenue stream from licensing fees has been relatively flat.

Efforts to Increase Revenues: The Bureau has worked with Assemblymember Ridley-Thomas, who introduced legislation to raise revenues by increasing the statutory fee caps for most license and registration types. This legislation, AB 1175 (Ridley-Thomas, 2015), is currently on the Senate Floor.

AB 1175 would increase most of the Bureau's licensing statutory fee caps by 25 percent. If the bill takes effect, the Bureau will immediately prepare a regulation proposal to raise home furnishings license fees by 15 percent because the Home Furnishings and Thermal Insulation Fund is projected to become insolvent in FY 2017-18. The bill would also prohibit the Department from promulgating a regulation that would raise the fees of electronic and appliance repair and service contract licenses until January 1, 2017. The Bureau wishes to minimize its impact on regulated businesses and the Electronic and Appliance Repair Fund is not projected to become insolvent until FY 2019-20. It is likely the Bureau will prepare a regulation package in 2017 to raise license fees for the electronic and appliance repair license types by no more than 15 percent.

Below are several fund condition scenarios for both Bureau funds. For each fund, there is a status quo scenario that identifies when the fund will become insolvent if AB 1175 is not enacted. In addition, there is a scenario that assumes a regulatory fee increase of 15 percent takes effect July 1, 2016, for home furnishings and thermal insulation industries and July 1, 2017, for the electronic and appliance repair industries.

Home Furnishings and Thermal Insulation		
	Fiscal Year	Months in Reserve
Status Quo Scenario*	2015-16	3.7
	2016-17	1.8
	2017-18	<b>-0.1</b>
15 % Fee Increase on July 1, 2016 Scenario	2015-16	3.7
	2016-17	3.3
	2017-18	2.8
	2018-19	2.0
	2019-20	1.1

Electronic and Appliance Repair		
	Fiscal Year	Months in Reserve
Status Quo Scenario*	2015-16	7.1
	2016-17	5.6
	2017-18	4.0
	2018-19	2.2
	2019-20	0.3
15 % Fee Increase on July 1, 2017 Scenario	2015-16	7.1
	2016-17	5.6
	2017-18	5.6
	2018-19	5.3
	2019-20	4.8

## DEPARTMENT OF CONSUMER AFFAIRS PRO RATA

*AB 2740 Sec. 1(a)(7)(B): For the 2013–14 fiscal year, the Bureau’s Electronic and Appliance Repair Fund and the Home Furnishings and Thermal Insulation Fund are expected to spend roughly 37 percent and 19 percent of their budgets, respectively, on the pro rata costs to the department. The bureau should advise the committees about the bases upon which pro rata costs are calculated, and whether it could achieve cost savings by dealing with more of its consumer complaints in-house.*

**Pro Rata Cost Calculations:** The Bureau’s Pro Rata Costs can be broken down into several categories, which differ based on the fund and program area utilizing the Department’s services. The Bureau’s costs for each of these categories is calculated in one of two ways: 1) the number of authorized positions associated with the Bureau’s Electronic and Appliance Repair Fund or the Home Furnishings and Thermal Insulation Fund, or 2) a prorated share of cost based on the past year or two-year actual workload for service received by certain Departmental units. Below is a detailed breakdown of the various services the Bureau utilizes and the methodology used to determine the Bureau’s costs.

	Departmental Service	Cost Methodology	FY 13-14 Actual Cost	% of Total Budget	EAR Cost	% Total of Budget	HFTI Cost	% Total of Budget
Consumer and Client Services Division	Administrative Services (Executive, Legal, Legislative, Training Services, Human Resources, Accounting, Budgets, and Business Services Offices)	Authorized Position Count	\$618,902	9.06%	\$206,964	8.72%	\$411,938	9.25%
	Information Technology Services	Multiple: Based on Authorized Position Count & Previous Year Workload	\$631,346	9.25%	\$282,165	11.89%	\$349,181	7.84%
Communication Division	Public Information and Outreach	Authorized Position Count	\$16,329	0.24%	\$5,812	0.24%	\$10,517	0.24%
	Consumer Information Center	Previous Year Workload	\$9,710	0.14%	\$9,570	0.40%	\$140	0.00%
	Correspondence Unit	Previous Year Workload	\$9,819	0.14%	\$9,170	0.39%	\$649	0.01%
	Publications	Fund Position Authority	\$15,575	0.23%	\$5,204	0.22%	\$10,371	0.23%
Complaint Resolution Program		Previous Year Workload	\$638,174	9.35%	\$430,115	18.12%	\$208,059	4.67%
Division of Investigations	Investigations	Two-Year Roll Forward	\$0	0.00%	\$0	0.00%	\$0	0.00%
	Investigations and Services Team	Authorized Position Count	13,654	0.20%	\$4,560	0.19%	\$9,094	0.20%
Total Pro Rata			\$1,953,509	28.61%	\$953,560	40.18%	\$999,949	22.45%

Impacts Associated with Bureau Internal Intake of Consumer Complaints: The Bureau utilizes the Department's Complaint Resolution Program to handle the majority of its complaints. The intent of using this Program is to provide a cost-effective means of resolving complaints received, as well as ensuring timely investigations and enforcement outcomes. Specifically, in FY 2013-14, the Complaint Resolution Program received 860 Bureau-related complaints, of which 830 were closed and 30 (less than four percent) were referred to the Bureau for final resolution. The Bureau is currently staffed with four Enforcement Analysts who work cases primarily driven by field inspections, laboratory testing results, and Internet searches performed as part of their duties. While the Bureau's laboratory staff spend some time each week answering manufacturers' questions on proper labeling and compliance, enforcement staff are not often involved with consumer complaints unless a complaint is received at the Department that triggers an investigation by one of the Bureau's field staff (five Electronic and Appliance Repair Field Representatives and six Home Furnishings Inspectors).

In 2012, the Department hired an independent consulting firm to perform an organizational review of the Complaint Resolution Program. Based on the findings and recommendations in this review, the Department closed the South El Monte and Hayward Complaint Offices in 2014. Furthermore, the Department will also be closing the Riverside Complaint Office effective August 1, 2015, and transferring a portion of the positions to the Sacramento Complaint Office. The Department will continue to monitor the Program's caseload and operating cost to see if further action needs to be taken to efficiently conduct its services. The Department has reduced the positions allocated to the Program from a total of 25.6 on July 1, 2013, to 17 positions effective August 1, 2015.

The Bureau and the Department are currently working to determine whether it will be more cost-effective in future budget years for the Bureau to handle consumer complaints in-house or continue to use the Program. A final decision on this matter is expected in January after the Department has been able to finalize budget change proposals and project long-term cost savings from recent Program reductions. The Department and Bureau will ensure the final decision and rationale are provided to the Legislature as part of the 2016-17 Budget review process.

## BIENNIAL AND ANNUAL LICENSE RENEWALS AND LICENSE CONSOLIDATION

*AB 2740 Sec. 1(a)(7)(C): Currently, electronic and appliance repair and thermal insulation licenses are renewed annually, and home furnishings licenses are renewed biennially. The bureau should examine the pros and cons of requiring biennial renewals instead of annual license renewals for all licensees.*

...

*AB 2740 Sec. 1(a)(7)(E): The bureau issues a separate furniture retailer license, bedding retailer license, combination furniture and bedding retailer license, sanitizer license, and custom upholsterer license. The bureau may consider whether it should consolidate any of its licenses, and whether it should continue to regulate, or issue, stand-alone licenses to sanitizers and custom upholsterers.*

As part of the Bureau's market assessment activities, which are discussed in further detail in the next section of this report, the Bureau contracted with CPS HR Consulting to study many aspects of the Bureau and the industries it regulates. Specifically, CPS HR Consulting completed a market condition assessment to study the policies, relevant statutes and regulations, and current resources of the Bureau's programs. Further, the market condition assessment examined whether program resources should be refocused or expanded and identified greatest industry risks to consumers. The market assessment also determined if current rules were appropriate and necessary for today's market, if market segments should be consolidated or deregulated, and potential impacts for biennial or annual license renewal augmentations.

Based on the results of the market assessment study and the rationale below, the Legislature may wish to examine and augment the following during the Bureau's next sunset review in 2018:

- 1. Move all Bureau license types to an annual renewal cycle, adjusting statutory fee maximums appropriately (e.g., change a furniture retailer's biennial renewal fee of \$240 to annual renewal fee of \$120).**
- 2. Consolidate three existing home furnishings license types – Wholesalers, Importers, and Manufacturers – into two license types: Wholesalers and Manufacturers.**

Justification for Annual Renewal Cycle: The Bureau licenses approximately 39,500 licensees; 45 percent of the population is renewed annually (electronic and appliance repair, service contracts sellers and administrators, and thermal insulation industries) and the remaining 55 percent (home furnishings industry) is renewed biennially.

Based on conversations with the home furnishings industry, particularly small business retailers, there is a consistent preference to pay a smaller annual fee rather than a larger fee every two years. From the industry's perspective, this is more advantageous for several reasons.

Historically, home furnishings retailers locked into multiple year leases for their retail facilities and warehouses, but since the economic downturn, profit margins have become unstable and many retailers are now in month-to-month agreements with facilities. Due to potential changes in locations, the need to be creative in keeping costs down and having a consistent annual tax write off, many businesses prefer an annual renewal.

Additionally, one of the most consistent responses the Bureau receives in an enforcement citation review conference for a delinquent license is that because the license is renewed every two years rather than annually, the owner forgets. They have commented that the license renewal should be annual like the others to be consistent and easier to remember.

Switching to an annual renewal will also provide a more consistent revenue base for the Bureau. With biennial renewals, there can be a peak year and a valley year, which presents challenges in estimating available resources and the potential for reserve, whereas annual renewals make it easier to make projections and accurately budget.

In addition, annual renewals tend to ensure more effective enforcement. With a two-year license cycle and very transient populations (especially retail furniture/bedding locations), companies move locations or are out of business before the Bureau receives information for another year. Subsequently more field hours are spent trying to track down businesses when more recent information would have been available with a shorter time frame for renewal. If the Legislature decides to make all license types an annual renewal, fees should also be adjusted appropriately. For example, a furniture retailer's biennial renewal fee of \$240 should be changed to an annual renewal fee of \$120.

Background on Wholesaler, Importer, and Manufacturer License Types: Under existing law, any business that manufactures or wholesales a product made outside of the United States must obtain an Importer license. A business that manufactures or wholesales a product made in the United States, however, must obtain either a Wholesaler or Manufacturer license. In effect, an overseas furniture manufacturer is considered an Importer under existing law.

Justification for License Consolidation: Existing law has often led to confusion from applicants over when a Manufacturing license or an Importer license is required. In addition, Uniform Registry Numbers, which are recognized and granted reciprocity between states, are only intended for use by companies that manufacture furniture or bedding and must appear on the law labels for those products. The Uniform Registry Number identifies the issuing state and the manufacturing plant location – state or country – via the number suffix and is intended to be designated for the furniture or bedding manufactured at one specific location. Issuing a registry number to an Importer can lead to misuse by manufacturers that avoid licensure by using their Importers Registry Number. Limiting issuance of a registry number only to Manufacturer licensees will reduce cases of inappropriate licensure and make the law more consistent and clear for other regulating entities to identify the activities allowed under the license type.

For these reasons, the Bureau recommends that the Importer license type be abolished and businesses that wholesale products internationally should be required to obtain a Wholesaler license. Similarly, businesses that manufacture products internationally should be required to obtain a Manufacturer license, which would be the only license type allowed to obtain a registry number and import products.

#### Stand-Alone Sanitizer and Custom Upholsterer Licenses

Sanitizers provide a critical role in the health and safety of consumers with used and rebuilt mattresses or bedding that contains any secondhand filling material, which must be sanitized before it is offered for sale. The methods utilized to address public safety are the usage of a dry heat method with specific requirements that ensure the product is sanitized or an application of a specified chemical disinfectant (Steri-Fab), in a prescriptive manner that achieves complete disinfection.

While the licensing population is low, the work they do is unique to that segment of the industry, and it is extremely vital to providing an adequate level of consumer protection. Companies that use the dry heat method are mattress rebuilders who supply rebuilt mattresses to retailers and other entities. There is not a comparable license type that they could be combined with, as the nature of their business is primarily to ensure the sanitization of bedding. The chemical disinfectant method may be used under other license types, such as a mattress retailer that sanitizes their own mattresses that are returned and are not required to have an additional license.

Custom Upholsterers are also unique in that they rebuild a piece of furniture with materials obtained from other sources, as a manufacturer would. Consequently, they are obligated to disclose the filling, fabric, and other information that defines what was done to the product to the consumer on the invoice. They are responsible for obtaining proper filling materials, labeling, and invoices, which are critical in ensuring the consumer gets an appropriate product. While custom upholsterers are somewhat similar to a manufacturer, combining them with a manufacturer's license in which the volume is traditionally high, would put an undue burden of a higher priced license. These licensees are generally small, family run businesses, with a relatively small volume of product, as each piece must be custom upholstered, as opposed to mass producing products.

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## MARKET CONDITION ASSESSMENT

*AB 2740 Sec. 1(a)(7)(D): In its last sunset review report in 1995, the department studied both the electronic and appliance repair market and the home furnishings and thermal insulation market to determine whether regulatory activities were appropriate, necessary, and should be continued, and recommended areas of deregulation and areas to monitor in order to better target resources and evaluate consumer risk and impact. The bureau should conduct market condition assessments to study both of these markets and determine if current statutes and regulations reflect the needs of the markets, where risk to consumers is the greatest, where resources could be refocused or expanded, and whether continued regulation is clearly necessary across all segments of these markets.*

As previously discussed, the Bureau contracted with CPS HR Consulting to perform the Market Condition Assessment. In conducting the assessment, CPS HR Consulting did the following:

- Reviewed pertinent legislation, regulations, organizational structure, operating statistics, and past performance;
- Interviewed the following critical stakeholders:
  - Bureau management;
  - Bureau Advisory Council members;
  - Industry officials;
  - A representative sample of California consumers; and
- Collected and analyzed secondary market research of the industries under the Bureau's oversight.

### Consumer Feedback:

- Less than half of the responses indicated familiarity with the Department and its mission, and even fewer were familiar with the Bureau and its various responsibilities.
- Most responses were generally positive about the Department's role and consumer protections provided; relatively few responses were negative or dismissive of the Department mission and roles.
- Many respondents were not very informed about the Department and specific programs and services outside the limited scope of this consumer survey.
- Many respondents believed there is a need for stronger and more varied outreach, visibility, communication, and publicizing of Department programs and services using a wide variety of media.
- A moderate number of respondents expressed the view that, in retrospect, they wished they had more knowledge of the Department when they experienced consumer issues or problems in the past.
- The majority of respondents were at least somewhat satisfied with service contracts of products also regulated by the Bureau.

### Secondary Market Research Findings:

- The Bureau needs to keep its website updated with the latest legislative changes and the names of violators to encourage compliance<sup>2</sup>.
- The Bureau needs to improve outreach and industry/consumer education through more direct mail, webinars, teleconferences, podcasts, and workshops in Northern and Southern California.

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<sup>2</sup> This function is already available on the Bureau's licensee lookup function, which can be found at <http://www.bearhfti.ca.gov/enforcement/index.shtml>.

Industry Feedback:

Home Furnishings

- Enforcement focus should shift from retailers to wholesalers and manufacturers in order to better use limited resources. For products manufactured outside of the United States, the focus should be placed on the importer of record.
- Furniture testing should be limited to cushion samples so that an entire piece of furniture is not lost for testing.
- The Bureau should evaluate advertising regulations for all industry sectors.
- The Bureau should consider hiring retired furniture sales staff for inspection work.

Electronic and Appliance Repair

- The Bureau should shift its focus from registering applicants to adopting a Contractors' State License Board model where applicants must meet licensing and certification requirements.
- The Bureau should develop a customer satisfaction assessment method, such as a survey application for mobile devices.
- The Bureau should standardize enforcement and outreach for all industry sectors, as well as increase outreach efforts through media and social media.

Service Contracts

- The Bureau should eliminate the prescriptive requirement for consumers to file a service contract claim.

In general, feedback from all stakeholders indicates that augmentations should be made either in the Bureau's practice acts or in operations, but there were no areas identified that required substantial reform. The Bureau's next steps and future efforts based on this assessment are incorporated in the conclusion of this report.

## FLAMMABILITY, LABELING, AND OTHER BUREAU STANDARDS

*AB 2740 Sec. 1(a)(7)(F): The bureau has reported high product failure rates, which are primarily attributed to technical violations of flammability, product labeling, and feather and down standards. The bureau should reexamine its testing protocols to ensure that it has the information it needs to appropriately identify areas of highest risk to consumers, and reexamine its standards, especially feather and down and product labeling standards, to determine if some standards could be relaxed, presuming there is no appreciable impact on consumer safety, whether standards should be clarified or better advertised, or whether penalties for violations are too low to act as a proper deterrent.*

Flammability Standards: As seen in the statistics below, the Bureau's high failure rate for flammability testing is primarily due to the previous TB 117 flammability standard. Data from the past 12 years reveals a fail rate of approximately 50 percent on upholstered furniture products tested that were required to meet the TB 117 (2000 version) standard. The fail rate was primarily due to each component contained in the article having to meet requirements of different sections of TB 117.

As of January 1, 2014, manufacturers could utilize the new or old standard. As of January 1, 2015, all manufacturers must meet the new standard for upholstered furniture sold in California. Since the implementation of TB 117-2013, which requires a more stringent smolder test and has no open flame component, the Bureau has noticed a considerably lower failure rate in upholstered furniture products. Additionally, TB 117-2013 allows options on how a product may be manufactured in order to comply, e.g. outside cover fabric can fail if a compliant barrier is used. For these reasons, it is more likely the Bureau will see a much higher compliance rate. As of March 25, 2015, test statistics indicate a two percent fail rate. The Bureau anticipates that this fail rate will range between 2-10 percent, which is a reasonable value based on manufacturing process variables and improved understanding of the standard.

The open flame standard conducted on mattresses and mattress sets, as required by Title 16 of the Code of Federal Regulations section 1633 (16 CFR 1633), indicates an average pass rate of 81 percent. The smoldering test conducted on mattresses and mattress pads, as required by 16 CFR 1632, indicates an average pass rate of 95 percent. Thermal insulation products are tested for both flammability and physical properties and have continued to indicate an average pass rate of 82 percent.

Below are compliance testing statistics for the past four fiscal years and the current fiscal year as of March 2015:

Data for FY 2010-11

Type Test	Completed Samples			
	07/01/10 -06/30/11			
	Pass		Fail	
	No.	%	No.	%
TB 117 (upholstered furniture)	69	63	40	37
16 CFR 1633 (mattress/mattress sets)	36	86	6	14
16 CFR 1632 (mattress/mattress pads)	4	100	0	0
Plumage (Feather & Down)	6	43	8	57
Thermal Insulation	87	86	14	14
*Bedding (no flammability test)	-9	N/A	0	N/A
**Labeling	24	15	135	85
Total <sup>1</sup>	202	75	68	25

Data for FY 2011-12

Type Test	Completed Samples			
	07/01/11 -06/30/12			
	Pass		Fail	
	No.	%	No.	%
TB 117 (upholstered furniture)	99	47	110	53
16 CFR 1633 (mattress/mattress sets)	28	82	6	18
16 CFR 1632 (mattress/mattress pads)	2	100	0	0
Plumage (Feather & Down)	12	40	18	60
Thermal Insulation	23	88	3	12
*Bedding (no flammability test)	-12	N/A	0	N/A
**Labeling	26	9	261	91
Total <sup>1</sup>	164	54	137	46

Note: The laboratory adjusted sample flow for our facility move; therefore very few samples were received between Feb-April, 2012.

Data for FY 2012-13

Type Test	Completed Samples			
	07/01/12 -06/30/13			
	Pass		Fail	
	No.	%	No.	%
TB 117 (upholstered furniture)	67	51	65	49
16 CFR 1633 (mattress/mattress sets)	44	81	10	19
16 CFR 1632 (mattress/mattress pads)	5	83	1	17
Plumage (Feather & Down)	19	46	22	54
Thermal Insulation	26	79	7	21
*Bedding (no flammability test)	-30	N/A	0	N/A
**Labeling	47	18	216	82
Total <sup>1</sup>	161	61	105	39

Data for FY 2013-14

Type Test	Completed Samples			
	07/01/13 - 06/30/14			
	Pass		Fail	
	No.	%	No.	%
TB 117 (upholstered furniture)	25	78	7	22
TB 117-2013 (upholstered furniture)	1	50	1	50
16 CFR 1633 (mattress/mattress sets)	92	75	31	25
16 CFR 1632 (mattress/mattress pads)	60	94	4	6
Plumage (Feather & Down)	10	31	22	69
Thermal Insulation	45	82	10	18
*Bedding (no flammability test)	-89	N/A	0	N/A
**Labeling	48	13	312	87
Total <sup>1</sup>	233	76	75	24

Data for FY 2014-15 to Date

Type Test	Completed Samples			
	07/01/14 - 03/25/15			
	Pass		Fail	
	No.	%		%
TB 117 (upholstered furniture)	2	100	0	0
TB 117-2013 (upholstered furniture)	62	98	1	2
16 CFR 1633 (mattress/mattress sets)	83	81	20	19
16 CFR 1632 (Mattress/mattress pads)	14 <sup>2</sup>	100	0	0
Plumage (Feather & Down)	3	43	4	57
Thermal Insulation	20	77	6	23
*Bedding (no flammability test)	-34	N/A	0	N/A
**Labeling	37	16	188	84
Total <sup>1</sup>	184	86	31	14

<sup>1</sup> Total results do not include bedding or labeling.

<sup>2</sup> Eleven of the 14 samples were rebuilt mattresses.

\* Comforter, bed pillows, decorator pillows, quilts, body pillow or any other type of product that does not require flammability testing or plumage analysis.

\*\* This category includes labeling results for products with the exception of Thermal Insulation products.

TB 133: Several Industry Associations, as well as health care providers, have asked the Bureau to update TB 133, which is an open flame test procedure designed to test seating furniture used in public occupancy areas (e.g. health care facilities, public auditoriums, and hotels). This standard is not intended to test any residential product.

In order to meet this standard, manufacturers must often utilize barriers, highly fire resistant component materials, or both in their products. However, the Bureau's existing regulations allow for owners of public occupancy spaces to utilize TB 117-2013 when those spaces meet specified fire sprinkler standards (4 CCR 1374(e)). In addition, the California Building Standards Code recognizes the same exemption (24 CCR Part 9, 805.2-805.4). There appears to be discretion, however, for local fire authorities to require the TB 133 standard to be met even in instances where the fire sprinkler exception is also met. Interested stakeholders may wish to address this issue with the Office of the State Fire Marshal during the California Building Standards Code development process.

Product Labeling; Non-Plumage (Non-Feather and Down) Products: The majority of product labeling discrepancies for non-plumage products are minor violations that are addressed by notifying the manufacturer of the discrepancy. Some examples of minor label violations are letter height, label size, capital letter requirements, finished size, missing or incorrect net weight of filling materials (as required for particular bedding products), incorrect label material, differences in percent components, or unacceptable component terminology. Minor label discrepancies on regulated items constitute about 80 percent of the total labeling non-compliance rate. Manufacturers do not receive a notice of violation or citation when a minor label violation is found. The Bureau provides education to the manufacturer to allow the manufacturer time to correct the next production of labels that will be printed and attached to their products.

Major labeling violations are generally addressed during an actual Bureau inspection. The inspector may withhold products from sale when law labels and/or flammability labels are not attached, if registry numbers are missing or incorrect on the law label, and when product manufacturers are not licensed with the Bureau. Once the manufacturer/retailer addresses the issues and all Bureau requirements are met, the Bureau inspector may lift the "withhold from sale" on those particular products and they may be offered for sale once again.

The Bureau has been actively communicating with the industry to educate manufacturers regarding product label requirements and plans to continue this outreach effort. The Bureau will be posting label examples on the website that adhere to the actual required font and label size, as suggested by the Bureau's Advisory Committee. The Bureau has recently published Frequently Asked Questions on the newly adopted standards per TB 117-2013 and SB 1019 regarding flame retardant chemicals. The industry has expressed gratitude on several occasions for the posting of helpful tools such as this on the Bureau website.

Product Labeling; Plumage (Feather and Down) Products: Plumage products are offered for sale considering performance, features, safety, price, and effectiveness. Specifically, down products are known for their insulating, lightweight, and compact properties. Therefore, the down content is typically very important to consumers who are considering buying these products, which makes accurate product labeling especially significant. Product labeling discrepancies for plumage products are considered major violations when the discrepancy involves a difference in the percentage of what the manufacturer claims is contained in the product and what is actually in the product. Bureau regulations do not allow any variance in the amount of down claimed (Title 4, California Code of Regulations, Article 5, 1193(f)). Other types of plumage contained in the product must not exceed the allowable maximums unless those

maximums are properly documented on the label. In instances when components exceed maximums, the percentage of such components must be labeled. Allowing a variance in the down may cause industry to produce lower quality products for the California consumer. Typically, the labeled percentage of down in plumage products are not allowed a variance, however, Canada permits some variance while Japan, like California, does not. The International Feather and Down Laboratory has testing labs throughout the world and their testing techniques include double testing. Double testing allows for an inherent variance in the average of the test results. To allow a variance in down content may cause the manufacturer to “shoot” for the tolerance, therefore intentionally being deceptive, as opposed to unintentional variations in the manufacturing process. The Bureau test results show that plumage failures can be attributed to low down content; however, allowing a tolerance would not be beneficial to the consumer. Further, given the high cost of plumage products, having strict standards minimizes economic harm to consumers.

For these reasons, the Bureau does not plan to amend this existing regulatory standard.

Cleanliness of Plumage (Feather and Down) Products: The cleanliness requirements for plumage products are stated in Title 4, CCR, Article 5, 1193(h) as, “Cleanliness. All plumage products must have an oxygen number not exceeding 20 grams of oxygen per 100,000 grams of sample.” The oxygen number test determines the cleanliness of plumage products, meaning the presence of organic material such as plants, insects, blood, etc., on the surface of the down and feathers; the lower the oxygen number, the cleaner the down and feather material.

The American Down and Feather Council (ADFC) is a voluntary organization that self regulates the industry. The ADFC has many members from the feather and down industry who may file a complaint regarding labeling or other regulated concerns that will start a lengthy testing process that can lead to voluntary product withholds and reporting non-compliant issues to regulating states where the products are offered for sale. The ADFC requires the oxygen number be less than 10. In the United States, the accepted industry standard for the oxygen number is 4.8 or less. To qualify as “clean,” in California, the oxygen number must be less than 20, while most other states require less than 10. By comparison, Europe requires 20 and Japan requires 4.8 or less.

The Federal Trade Commission (FTC) states, “because modern mass production techniques allow the industry to produce feather and down materials efficiently with oxygen numbers below 10, cleanliness of feather and down filling should be consistent with an oxygen number of less than 10, no matter how it is measured.” In August 1998, the FTC rescinded its feather and down guidelines; however, the FTC still has policies regarding truth in advertising and claims made on products must be truthful, accurate, and substantiated.

In the past 20 years, Bureau testing results have shown plumage samples to be less than 5 grams of oxygen per 100,000 grams of sample; therefore the Bureau plans to update its regulations to reflect the more stringent oxygen number not exceeding 10 grams of oxygen per 100,000 grams of sample. The update will reflect international standards and ensure the utmost cleanliness for the consumer as a value of 10 indicates a cleaner plumage product.

Damaged Feathers; Maximum Allowed in Plumage (Feather and Down) Products: Bureau statistics show that plumage products have approximately a 50 percent failure rate based on labeling violations alone. The majority of failures are due to both low down content on products claiming specific down percentages and damaged feathers exceeding the maximums allowed in California regulations.

The International Down and Feather Bureau (IDFB) is the international trade association of the down/feather industry (processors of raw material and/or producers of finished articles, filled with down/feathers). The IDFB's goal is to develop and promote international standards for down and feather fillings, including definitions and testing regulations. The IDFB developed a sliding scale for maximums allowed for damaged feathers in blended waterfowl feather and down products. The sliding scale is accepted by the industry and creates a more realistic standard for manufacturers. The acceptance of the sliding scale for the maximum requirement for damaged feathers will not impose hardship on the industry, but provide a more realistic producible product based on the blended products.

The Bureau proposes adopting the sliding scale maximums for damaged feathers for blended waterfowl feather and down products. This will provide more realistic and obtainable standards for the plumage industry and will not cause economic or health and safety hazards to the consumer.

Percentage Requirements on the Law Label: Existing law requires that manufacturers include specific information on their product law labels. Specifically, the materials used must be listed in order of predominance and the label must identify the percentage, by weight, of each item in the product. Industry representatives have posed the following questions regarding the percentage requirements on the law label:

- Why do we need percentages listed on the law label?
- What are the consumer benefits and/or protections in providing the percentage components?
- Is there harm posed if the percentages are not listed?
- Is this necessary or an undue burden on the industry?
- Food industry labeling includes highest volumes listed in order, but does not have percentages listed. Why is furniture held to a higher standard than products we ingest?

Industry is requesting to eliminate the percentage requirement and allow manufacturers to only list materials in order of predominance. The exception would be to keep current labeling requirements for plumage products where percentages affect quality control and cost to the consumer.

Additional arguments for eliminating the percentage labeling requirement:

- The requirement is antiquated, burdensome, and costly for manufacturers;
- Only four states (according to one association), including California, require percentages to be listed;
- Percentages do not equate to quality or comfort;
- Percentages are not used in marketing of the upholstered furniture products;
- Component changes (foam density/fiber weight) result in inaccurate percentages and subjects the manufacturer to unwarranted enforcement penalties;
- It is not reasonable or efficient for manufacturers to reprint labels each time there is a change in percentages (these changes are not meaningful);
- Consumers do not have a reference point for comparison of products based on percentages;
- Attempts to calculate, or comprehend different percentages create confusion in the marketplace; and
- Each manufacturer must stock large quantities of a variety of labels with differing percentages and apply them appropriately.

**Potential Counterarguments:**

With the exclusion of feather and down products, which shall always require percentages based on the economic harm, below are possible arguments for continuing to require percentages of components in the “All new material consisting of” section of the law label.

- Consumers cannot differentiate between low and high quality materials and exactly how much of each is contained in the product. For example, a listed polyurethane foam pad could contain shredded polyurethane foam, which is a lower quality product, but the label would not indicate how much of the product is shredded foam versus a higher quality material;
- Economic harm caused to the consumer from not being properly informed;
- Durable goods, such as a sofa or loveseat, are much more costly than food items or other non-durable goods. These items are intended for long-term use, which makes quality more important to the consumer. Listing material percentages enables consumers to make informed choices when investing in high-priced items;
- Food and hygiene products tend to have many components as compared to furniture products, which generally have less than five;
- Food items list important percentages, such as the percentages of fat, sodium, carbohydrates, and protein, expressed in grams; and
- Key regulating states require percentage of components (Ohio, Texas, and Utah).

**States that Require Percentages:**

According to the charts provided by International Sleep Products Association (ISPA) and located in the 2013 Manual of Labeling Laws, there are 32 states that require some type of labeling and 21 of those require a statement of materials used showing percentages by weight. However, a Bureau survey requested through International Association of Bedding and Furniture Law Officials only confirmed California, Ohio, Texas, and Utah require the label to state percentages of product components.

The Bureau recommends amending 4 CCR Section 1113, Deviations from Percentages Stated, to allow more variance in percent differences. This change is anticipated to not have an impact on consumer safety or cause economic harm and will allow more variance in the manufacturing process and by default, provide more compliance in labeling for industry.

The Bureau does not intend to update these percentage requirements until additional information is available that ensures consumers will not be harmed by this change in disclosures.

**Penalties for Violation:**

The Bureau finds that minor first offenses are best resolved by treating them in a similar fashion as a “fix-it” ticket. Many Bureau licensees are businesses that need to be made aware of requirements. For this reason, the Bureau allows the business 30 days to enter into compliance and if they do so, does not levy fines or penalties.

For more significant violations, the Bureau always has the ability to withhold products that are in violation from sale and levy citation fines. Further, for particularly egregious violations of unlicensed activity, the Bureau may seek to have the licensee’s phone disconnected. Authority it regained recently in SB 1243 (Lieu, Chapter 395, Statutes of 2014). For the most egregious cases, the Bureau also partners with local district attorneys to pursue criminal convictions. These tools seem to offer more than sufficient deterrence in the majority of the Bureau’s cases.

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## BREEZE

*AB 2740 Sec. 1(a)(7)(G): The bureau is scheduled to go live on the department’s BreEZe system in late 2015. The bureau should update the committees on the status of its implementation of BreEZe, including whether the system will accommodate the bureau’s current and future needs.*

At present, the Department continues to support the Bureau’s legacy systems as the Bureau’s transition to BreEZe in Release 3 is not currently scheduled. The Department will conduct a formal cost-benefit analysis of BreEZe, in conformance with the State Auditor’s Report, prior to moving forward with Release 3. Unless the cost-benefit analysis indicates otherwise, the goal remains to have a single integrated licensing and enforcement system. The Department and Bureau are awaiting the outcome of that analysis prior to planning the Bureau’s transition to BreEZe.

The Bureau has paid a share of the initial hardware and software investment costs, and will continue to contribute to the remaining non-Accenture project costs, but will not pay Accenture project costs for Release 1 and 2. BreEZe project costs are allocated among the boards and bureaus based upon their respective share of the Department’s overall annual initial licensing application and license renewal transactions.

Bureau BreEZe Costs

	Total Costs	% of Total Budget	EAR Costs	% of Total Fund Budget	HFTI Costs	% of Total Fund Budget
FY 2013-14	\$147,434	2.15%	\$60,955	2.56%	\$86,479	1.93%
FY 2014-15	\$75,378	0.94%	\$29,305	1.02%	\$46,073	0.90%
FY 2015-16	\$208,307	2.69%	\$82,397	2.92%	\$125,910	2.55%
FY 2016-17	\$183,677	2.33%	\$72,560	2.54%	\$111,117	2.22%

Based on a review of the Bureau’s existing infrastructure and operational needs, its strategic plan, various 2014 sunset documents, and the materials associated with this report, the Bureau is confident that BreEZe will meet the Bureau’s current and future needs. Based on lessons learned from Release 1 Programs, the Bureau is committed to having a thorough and involved design phase process to ensure all needs are met.

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## CONCLUSION

Due to this extensive review, the Bureau has identified several key tasks it will pursue prior to its next sunset review in 2018.

- Regulatory Proposals
  - Update the Bureau's advertising regulations to ensure industries can easily understand compliance requirements and the Bureau can effectively enforce violations of those requirements.
  - Evaluate changing the plumage cleanliness requirement from 20 grams of oxygen to 10 grams of oxygen per 100,000 grams of sample.
  - Evaluate changing current maximums allowed for damaged feathers for blended waterfowl feather and down products to a sliding scale requirement for maximum damaged feathers contained in blended waterfowl feather and down products.
  - Raise home furnishing industry license fees 15 percent in 2016.
  - Raise electronic and appliance repair and service contractor industry license fees 15 percent in 2017.
- Operational Updates
  - Explore cost savings opportunities from utilizing the Department's Complaint Resolution Program.
  - Explore altering enforcement focus to increase the number of Wholesaler, Importer, and Manufacturer compliance inspections.
  - Continue to monitor TB 117-2013 failure rates to evaluate whether Bureau projections are accurate or to determine what, if any, issues arise with the new standard.
  - Continue to assess programmatic needs and devote resources at the appropriate time to the BreEZe design phase process when Release 3 project development commences.
- Outreach Opportunities
  - Update the Bureau's website to be more user-friendly and provide various documents requested by industry in the market assessment study.
  - Conduct three Bureau Advisory Committee meetings annually to ensure licensees and interested stakeholders are apprised of Bureau operations and efforts. Further, when budget constraints are alleviated, consider council meetings outside the Sacramento Region.
  - Provide YouTube content to numerous regulated small business entities in English, Spanish, and Mandarin on Bureau requirements such as TB 117-2013 and flame retardant chemical disclosure rules.
  - Look for opportunities to conduct outreach on compliance requirements in a uniform fashion for all Bureau license types.

Additionally, there are items raised by stakeholders that the Legislature may wish to examine and augment in the Bureau's next sunset review in 2018.

- Require all home furnishings license types to renew their licenses annually rather than biennially.
- Consolidate three home furnishings license categories: Wholesaler, Importer, and Manufacture into two license types: Wholesaler and Manufacturer.

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**Appendices to this report can be seen at:**  
**[http://www.bearhfti.ca.gov/about\\_us/ab\\_2740\\_report.pdf](http://www.bearhfti.ca.gov/about_us/ab_2740_report.pdf)**

# **Agenda Item 7: Regulatory Update**

BEARHFTI Regulatory Update

Program	Subject	Issue	CCR Section(s)	Priority	Status
EAR	Interlock Ignition Devices	Outlines service dealer requirements	2744, 2744.1	High	
HFTI	Licensing Fee Increases	Raise HFTI licensing fees following passage of AB1175	1107	High	Bureau currently drafting
EAR	Citation Fee Cap Increase	Align citation fees with allowed fines in general statute	1383.2	High	In Departmental Review
HFTI	Citation Fee Cap Increase	Align citation fees with allowed fines in general statute	2775	Medium	Bureau currently drafting
EAR	Disciplinary Guidelines	Update with additional probationary provisions	2775	Medium	Bureau will begin drafting in Fall 2015
HFTI	Disciplinary Guidelines	Update with additional probationary provisions	1379	Medium	Bureau will begin drafting in Fall 2015
EAR	Advertising	Update advertising regulations to address current market practices	2751 et seq	Medium	Research and discussion phase
HFTI	Advertising	Update advertising regulations to address current market practices	1300 et seq	Medium	Research and discussion phase
EAR	Obsolete technology	Remove references to picture tube grading and other technology that is no longer relevant	2727 et seq	Low	Bureau will submit package Fall 2015
EAR	Service Contract Application	Revise to no longer require in regulation	2756	High	Package to be submitted to DCA in August
HFTI	Labeling Updates	Revise to make language current	1125 et seq	Medium	Research and discussion phase
HFTI	Thermal Insulation	Revise in concert with Energy Commission	TBD	High	On hold – working with Energy Commission
HFTI	Water Beds	Remove and update references	TBD	Low	Research and discussion phase
HFTI	TB 133 Changes	Review prior drafts for relevancy	1374	Medium	Research and discussion phase
HFTI	Laboratory Terminology	Update to include current materials	TBD	Medium	Research and discussion phase
HFTI	Plumage	Update cleanliness requirements, evaluate oxygen standard	1193(h)	Low	Research and discussion phase
HFTI	Damaged Feathers	Assess current damaged feather failure rate and evaluate changing current standard to sliding scale	1193(b), 1193(c)	Low	Research and discussion phase

**Agenda Item 12:  
San Francisco Department  
of the Environment,  
Breathe Easy Campaign**

# SF Breathe Easy Campaign

<http://www.sfenvironment.org/article/business/furniture-retailers-choosing-furniture-without-flame-retardant-chemicals>



**Breathe easy.**

## Safer couch, happy customer.

Help your customers breathe easy by offering furniture without flame retardant chemicals.

[Get listed as a business offering furniture without flame-retardant chemicals.](#)

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In 1975, the state of California implemented a flame retardant standard for upholstered furniture. Flame retardant chemicals were used to meet this standard. Various studies since then have linked exposure to flame retardant chemicals to hormone disruption, lower IQ, attention problems, reproductive issues, and cancer.

In 2012, Governor Brown asked for a review of the state's flammability standards and recommended changes to help reduce the use of harmful flame retardant chemicals while continuing to ensure fire safety. Manufacturers can now make furniture that meets safety standards without using flame retardant chemicals.

Many manufacturers have promised to stop adding flame retardant chemicals to polyurethane foam used in their products.

Offer flame-retardant furniture to your customers.

- [Get signage for your store: poster, table tent, label \(PDF\)](#)
- [Answer your customer's questions. \(PDF\)](#)
- [Get listed as a business offering furniture without flame-retardants.](#)

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### Resources

[FAQs for Retailers Selling Upholstered Home Furniture in San Francisco \(PDF\)](#) - Learn about the new flammability standards and labeling requirements.

[Health and Risk Summary \(PDF\)](#)

[Legislation Summary \(PDF\)](#)

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**Agenda Item 13:  
SB 1019 Implementation**

State of California  
Department of Consumer Affairs



**Senate Bill (SB) 1019**

Upholstered Furniture; Flame Retardant Chemicals

**FREQUENTLY ASKED QUESTIONS  
(FAQs)**

November 2014  
**(Updated July 2015)**

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## Adoption and Implementation

1. **Q: When will the SB 1019 label requirement be implemented?**

A: SB 1019 enacts Business and Professions (B&P) Code section 19094 which becomes effective on January 1, 2015. The Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (BEARHFTI) expects to implement the law on this date. In addition, BEARHFTI is currently beginning discussions with the Department of Toxic Substances Control to prepare a memorandum of understanding (MOU) to test samples of products that are marked “contain NO added flame retardant chemicals.” BEARHFTI anticipates that the MOU and process will be in place by the fall of 2015.

## General Compliance

2. **Q: Does the “flame retardant chemical statement” apply to outdoor upholstered furniture?**

A: B&P Code section 19094 specifically applies to “covered products” which means any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin 117-2013 (TB117-2013), entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*. Currently, upholstered furniture intended or expected to be used exclusively for outdoors is not required to meet TB117-2013.

3. **Q: Does the “flame retardant chemical statement” apply to mattresses or mattress pads?**

A: B&P Code section 19094 specifically applies to “covered products” which means any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin 117-2013 (TB117-2013), entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*. Mattresses and mattress sets are not required to meet the TB117-2013 flammability requirement. However, a foam topper (mattress pad) without a cover and comprised of polyurethane foam must meet the TB117-2013 Section 3 and must contain a compliant TB117-2013 flammability label that will include the “flame retardant chemical statement”.

4. **Q: Will the “flame retardant chemical statement” be applicable to the products that are already labeled as compliant with TB117-2013?**

A: B&P Code section 19094 will not be retroactive and the existing furniture (furniture manufactured before January 1, 2015) can be sold without the flame retardant chemical labeling.

5. **Q: What materials in the upholstered furniture must contain no prescribed flame retardants in order to indicate “Contains NO added flame retardant chemicals”?**

A: This is described in B&P Code section 19094, paragraph (1) of subdivision (a), which states: “Component” means separate constituent parts of upholstered furniture sold in California, as identified in TB117-2013, specifically cover fabrics, barrier materials, resilient filling materials, and decking materials.

### **SB 1019 in Other States**

6. **Q: Will the “flame retardant chemical statement” be applicable in any other states?**

A: The Bureau has no jurisdictional authority in other states and to date we are not aware of adoption of this statement elsewhere. You may contact the appropriate authorities in other states to find out their requirements, if any.

### **Documentation Requirements**

7. **Q: What type of documentation must the manufacturer/supplier provide upon request by the Bureau?**

A: The law requires the manufacturer of the covered product to retain sufficient documentation to show whether flame retardant chemicals were added to the products and/or components. In this case, sufficient means: written statements and/or test results of each component attesting flame retardant chemicals were added or not added.

8. **Q: Who carries the burden of responsibility for determining flame retardant chemical content of COM?**

A: The manufacturer of a piece of COM furniture is obligated to maintain documentation that no added flame retardant is contained in a piece of furniture. This obligation is met if the manufacturer has written documentation from all suppliers of components attesting that no added flame retardants are in the supplied components. In the absence of this information, or independent testing, it would be inappropriate to identify the product as containing no added flame retardants.

9. **Q: How long do manufacturers need to retain documents?**

A: Statute does not specify how long records must be retained. However, as a matter of practice, the Bureau does not generally seek documentation on products that were sold more than three years ago.

10. **Q: If the Bureau requests documentation establishing the accuracy of flame retardant chemical labeling, within how many days must the manufacturer/supplier provide this information?**

A: The manufacturer/supplier shall provide to the Bureau, within 30 days of the request, documentation establishing the accuracy of the flame retardant chemical statement on the label.

**11. Q: If violations or citations are issued by the Bureau, will this be public information?**

A: The violations/citations will be posted on the BEARHFTI web site at [www.bearhfti.ca.gov](http://www.bearhfti.ca.gov).

**12. Q: Who is liable for violations of the documentation requirement?**

A: Both the manufacturer and component suppliers for the upholstered furniture products are jointly and severally liable for documentation.

### **Labeling**

**13. Q: According to B&P Code section 19094, should the “flame retardant chemical statement” be added to the TB117-2013/TB116/TB133 label?**

A: B&P Code section 19094 specifically applies to “covered products” which means any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin 117-2013, entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*. Therefore, the “flame retardant chemical statement” will be added to the TB117-2013, TB116/TB117-2013 compliant flammability labels. The compliant TB133 flammability label does not require the “flame retardant chemical statement” because upholstered furniture for use in public occupancies does not fall under the definition of “covered product” in B&P Code section 19094.

**14. Q: Does the Type No. 8 law label (intended for bulk materials used or which can be used in articles of upholstered furniture) as shown in the examples in Article 2, 1126(f), 1126(d)(11) and invoices 1126(d)(12) need to include the “flame retardant chemical statement”?**

A: SB 1019 does not address law labels or required invoice information found in Article 2, 1126, therefore the SB 1019 “flame retardant chemical statement” is not required on Type No. 8 law label or invoices.

**15. Q: What is the font size required for the “flame retardant chemical statement”? Do the letters have to be in capital letters?**

A: The font size must be a minimum height of 1/8 inch; however, the statement need not be in all capital letters. The 1/8 inch height will be measured from the lowest measuring lower case letter.

**16. Q: What is the label size requirement for the “flame retardant chemical statement”?**

A: The “flame retardant chemical statement” shall follow the TB117-2013 flammability label verbiage. The minimum label size requirement for the flammability labels is 2 x 3 inches. Therefore, you may technically add this statement to the bottom of the flammability label and if you are able to meet the font size and capital letter (for flammability label portion) requirements it may be included in the 2 x 3 inches. The flammability label must be a minimum size of 2 x 3 inches, minimum size of type shall be 1/8 inch in height and type shall be in capital letters.

17. **Q: Can the B&P Code section 19094 label be on a separate label?**

A: No, this statement shall follow the compliant flammability label verbiage.

18. **Q: Must the “flame retardant chemical statement” directly follow the compliant flammability verbiage?**

A: The “flame retardant chemical statement” must follow the compliant flammability label verbiage. It may be separated by a black line, located below or to the right of the compliant flammability label. It must be printed on the same label as the compliant flammability label.

19. **Q: Does the label have to be permanently attached to the product?**

A: Yes.

20. **Q: Shall the “flame retardant chemical statement” be located to the left / right / top / bottom of the flammability label?**

A: The “flame retardant chemical statement” may be located to the right or at the bottom of the compliant flammability label; either way, it may be separated by a black line. The statement must not be located to the left or top of the compliant flammability label.

21. **Q: What is the specific wording required for the B&P Code section 19094 label?**

A: The specific wording of the law is as follows:

“The upholstery materials in this product:

\_\_\_\_\_contain added flame retardant chemicals

\_\_\_\_\_contain NO added flame retardant chemicals

The State of California has updated the flammability standard and determined that the fire safety requirements for this product can be met without adding flame retardant chemicals. The state has identified many flame retardant chemicals as being known to, or strongly suspected of, adversely impacting human health or development.”

22. **Q: Does the “flame retardant chemical statement” require both the “contain” and “does not contain” statements or may we print only the statement that applies?**

A: Both statements must appear with an “X” indicated to the left of the statement that applies to the product.

23. **Q: Is it acceptable to use a box instead of a line in front of the flame retardant chemical statement that applies?**

A: You may use either a box or line, as long as both statements appear and an “X” is indicated next to the statement that applies to the product.

24. **Q: Can the B&P Code section 19094 label be stickered on below the compliant flammability statement until new labels are made?**

A: Yes, if it is permanently adhered and all other legal labeling requirements are met.

25. **Q: Do you have examples of the new label requirements?**

A: Examples are provided below. Please keep in mind that these are only examples included to assist you. As discussed in FAQ #16 and #18, the formats of the labels may differ so long as they comply with applicable laws and regulations.

**Label Examples:**

(a) This label to be attached to every article of upholstered furniture complying ONLY with flammability requirements of Technical Bulletin 117-2013.

(b) This label to be attached to every article of upholstered furniture complying with both Technical Bulletin 116 and Technical Bulletin 117-2013.

NOTICE

THIS ARTICLE MEETS THE  
FLAMMABILITY REQUIREMENTS OF  
CALIFORNIA BUREAU OF ELECTRONIC  
AND APPLIANCE REPAIR, HOME  
FURNISHINGS AND THERMAL  
INSULATION TECHNICAL BULLETIN  
117-2013. CARE SHOULD BE  
EXERCISED NEAR OPEN FLAME OR  
WITH BURNING CIGARETTES.

The upholstery materials in this product:  
\_\_\_\_ contain added flame retardant  
chemicals  
\_\_\_\_ contain NO added flame retardant  
chemicals

The State of California has updated the  
flammability standard and determined that  
the fire safety requirements for this product  
can be met without adding flame retardant  
chemicals. The State has identified many  
flame retardant chemicals as being known  
to, or strongly suspected of, adversely  
impacting human health or  
development.

NOTICE

THIS ARTICLE MEETS ALL  
FLAMMABILITY REQUIREMENTS OF  
CALIFORNIA BUREAU OF ELECTRONIC  
AND APPLIANCE REPAIR, HOME  
FURNISHINGS AND THERMAL  
INSULATION TECHNICAL BULLETINS  
116 AND 117-2013. CARE SHOULD BE  
EXERCISED NEAR OPEN FLAME OR  
WITH BURNING CIGARETTES.

The upholstery materials in this product:  
\_\_\_\_ contain added flame retardant  
chemicals  
\_\_\_\_ contain NO added flame retardant  
chemicals

The State of California has updated the  
flammability standard and determined that  
the fire safety requirements for this product  
can be met without adding flame retardant  
chemicals. The State has identified many  
flame retardant chemicals as being known  
to, or strongly suspected of, adversely  
impacting human health or  
development.

## Exempt Products

26. **Q: Does the “flame retardant chemical statement” apply to upholstered furniture exempt from the TB117-2013?**

A: B&P Code section 19094 does not apply to exempt upholstered furniture. B&P Code section 19094 specifically applies to “covered products” which means any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin 117-2013, entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*.

## Flame Retardant Chemicals / Proposition 65

27. **Q: Can I manufacture products without flame retardants now that TB117-2013 standard has been adopted?**

A: The Bureau’s flammability standards are performance standards and do not prescribe or prohibit the use of any specific materials or manufacturing methods to meet the flammability standards. It is the responsibility of the manufacturer (and all other related parties; supplier, retailer, etc.) to comply with the TB117-2013 flammability requirement. B&P Code section 19094 requires a statement specifying whether the product contains or does not contain flame retardant chemicals. It is at the manufacturer’s discretion to decide whether his/her products will/or will not contain flame retardant chemicals and label them accurately.

28. **Q: Do I have to label my product as containing FR chemicals or treatments?**

A: SB 1019 was signed by the Governor and chaptered on September 30, 2014, making it law. Therefore, labels attached to upholstered furniture sold in the state of California must contain true statements, in accordance with B&P Code section 19094, regarding the flame retardant chemicals in products.

29. **Q: If my product is labeled “contain added flame retardant chemicals,” do I also need a Proposition 65 label attached to my product?**

A: There may be labeling and/or notice requirements under CA Proposition 65. For questions and issues related to specific detection levels in flame retardant chemicals and hazardous materials labeling, contact the California Environmental Protection Agency (Cal EPA) and/or Office of Environmental Health Hazard Assessment (OEHHA), the State agencies responsible for overseeing provisions of Proposition 65. You may visit the following links for additional Proposition 65 information:

Proposition 65 Web-site:

<http://oehha.ca.gov/prop65/background/p65plain.html>

Link to Proposition 65 List of Chemicals:

[http://oehha.ca.gov/prop65/prop65\\_list/files/P65single060614.pdf](http://oehha.ca.gov/prop65/prop65_list/files/P65single060614.pdf)

Questions about Proposition 65:

<http://www.oehha.ca.gov/prop65.html>

30. **Q: May I combine my Proposition 65 label with the Law Label, Flammability Label, and/or the B&P Code section 19094 flame retardant chemical statement?**

A: The Proposition 65 label must be a separate label.

31. **Q: What types of flame retardant chemicals are being identified under the B&P Code section 19094?**

A: The law specifies the following:

(3) "Flame retardant chemical" means any chemical or chemical compound for which a functional use is to resist or inhibit the spread of fire. Flame retardant chemicals include, but are not limited to, halogenated, phosphorous-based, nitrogen-based, and nanoscale flame retardants, flame retardant chemicals listed as "designated chemicals" pursuant to Section 105440 of the Health and Safety Code, and any chemical or chemical compound for which "flame retardant" appears on the substance Safety Data Sheet (SDS) pursuant to Section 1910.1200(g) of Title 29 of the Code of Federal Regulations.

(4) "Chemical" means either of the following:

(A) An organic or inorganic substance of a particular molecular identity, including any combination of those substances occurring, in whole or in part, as a result of a chemical reaction or occurring in nature, and any element, ion, or uncombined radical, and any degradate, metabolite, or reaction product of a substance with a particular molecular identity.

(B) A chemical ingredient, which means a substance comprising one or more substances described in subparagraph (A).

(5) "Molecular identity" means the substance's properties listed below:

(A) Agglomeration state.

(B) Bulk density.

(C) Chemical composition, including surface coating.

(D) Crystal structure.

(E) Dispersability.

(F) Molecular structure.

(G) Particle density.

(H) Particle size, size distribution, and surface area.

(I) Physical form and shape, at room temperature and pressure.

(J) Physicochemical properties.

(K) Porosity.

(L) Solubility in water and biologically relevant fluids.

(M) Surface charge.

(N) Surface reactivity.

(6) "Added flame retardant chemicals" means flame retardant chemicals that are present in any covered product or component thereof at levels above 1,000 parts per million.

32. **Q: B&P Code section 19094, (a)(3), (6), defines “flame retardant chemical”. What is a “flame retardant chemical”?**

A: A “flame retardant chemical” is any chemical or chemical compound, as defined in B&P Code section 19094, (a)(3), for which a functional use is to resist or inhibit the spread of fire, that is present in any listed component (see below) contained within a covered product at levels above 1000 ppm. Flame retardant chemicals include, but are not limited to, the following:

- Halogenated, phosphorous-based, nitrogen-based, and nanoscale flame retardants,
- Flame retardant chemicals listed as "designated chemicals" pursuant to Section 105440 of the Health and Safety Code, (see <http://biomonitoring.ca.gov/chemicals/designated-chemicals>) and
- Any chemical or chemical compound for which "flame retardant" appears on the substance Safety Data Sheet (SDS) pursuant to Section 1910.1200(g) of Title 29 of the Code of Federal Regulations. (An SDS is required to be provided by the chemical manufacturer, distributor, or importer with the product or upon request)

In assessing a potential violation of this legislation the Bureau will treat cases individually and look at all circumstances. For example, it is unlikely that the presence of water or sand in a covered product would constitute a violation because while one may argue that these compounds may resist or inhibit fire, the Bureau has no evidence that this is a functional use of these products in SB 1019 covered products and components at this time.

33. **Q: B&P Code section 19094, (a) (6), states “Added flame retardant chemical” means flame retardant chemicals that are present in any covered product or component thereof at levels above 1000 parts per million (ppm). Is the 1000 ppm limit a cumulative or individual chemical content limit?**

The 1000 ppm is a cumulative limit when multiple flame retardant chemicals are used within an individual component or covered product. Component means the separate constituent parts of upholstered furniture; cover fabrics, barrier materials, resilient filling materials, and decking materials.

Example 1: Three components of a Sofa are being tested.  
Component 1 is found to have 900 ppm of Chemical A.  
Component 2 is found to have 900 ppm of Chemical B.  
Component 3 is found to have 900 ppm of Chemical C.

No violation: This example would not constitute a violation of SB 1019.

Example 2: Three components of a Sofa are being tested.  
Component 1 is found to have 900 ppm of Chemical A.  
Component 2 is found to have 900 ppm of Chemical B.  
Component 3 is found to have 3,000 ppm of Chemical C.

Violation: Component 3 exceeds the 1,000 ppm limit. The covered product would violate SB 1019.

Example 3: Three components of a Sofa are being tested.  
Component 1 is found to have 900 ppm of Chemical A and 200 ppm of Chemical B.  
Component 2 is found to have 900 ppm of Chemical B.  
Component 3 is found to have 900 ppm of Chemical C.

Violation: Component 1 has a cumulative 1,100 ppm chemical content, it exceeds the 1,000 ppm limit. The covered product would violate SB 1019.

Example 4: Three components of a Sofa are being tested.  
Component 1 is found to have 700 ppm of Chemical A and 200 ppm of Chemical B.  
Component 2 is found to have 900 ppm of Chemical B.  
Component 3 is found to have 900 ppm of Chemical C.

No Violation: Component 1 has a cumulative 900 ppm chemical content, it does not exceed the 1,000 ppm limit. The covered product would not violate SB 1019.

## **COMPLYING WITH NEW CALIFORNIA LAW (SB 1019): MEASURING FLAME RETARDANTS**

**Myrto Petreas, Ph.D., MPH**

**Environmental Chemistry Laboratory  
California Department of Toxic Substances Control**

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### **Outline**

- DTSC's role
- Measuring FRs in furnishings
  - Conventional methods
  - Screening methods
  - QA/QC
- Reports

2

## DTSC's Abilities

- Long history of measuring FRs in products, dust, tissues, blood, etc.
- Advanced equipment:
  - Gas Chromatography/Mass Spectrometry (GC/MS);
  - Liquid Chromatography/Time-of-Flight (LC-TOF)
- Skilled staff
- Analytical methods for many FRs available

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## What to measure?

- Many classes of chemical FRs
- Few are compatible with fabric and PUF
- FRs containing Br, Cl, P are of highest concern
  - Toxic
  - Can escape from products
  - Well studied
- As newer FR are introduced and studied, the FR list expands

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## How do we expand FR analyte list?

- Exploratory analysis by LC-TOF
  - Semi-quantitative methodology
  - Tentatively identified FRs would need confirmation
- Chemical Standards
- Validated methodology by GC/MS or LC/MS
  
- Networking with other scientists, sharing methodologies, exchanging samples

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## What will we report to BEARHFTI?

- Br-, Cl- and P- containing FRs
- Quantitative measurements (QA/QC)
- Not exhaustive list; if results exceed 1000 ppm we stop further analyses

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## Need for a Screening Method

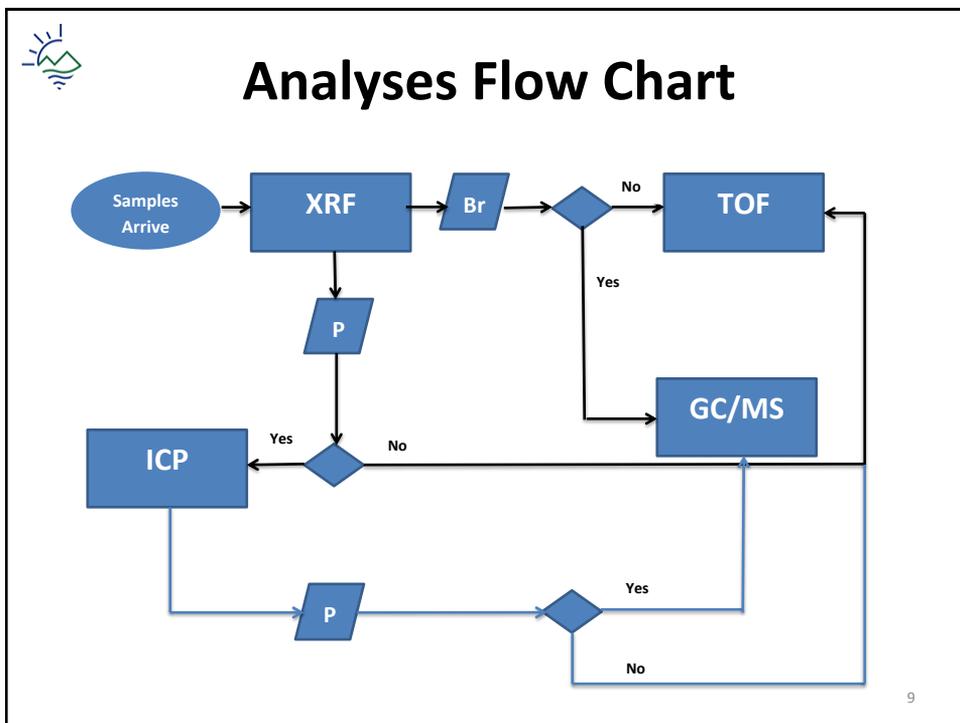
- Improve throughput by limiting number of samples for analysis
- Make method available to commercial labs with standard equipment
  - Manufacturers, suppliers
  - Consumers
- Reliable method (sensitivity, selectivity)

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## Methodologies

Elements	Specific Chemicals
<ul style="list-style-type: none"> <li>• ICP (quantitative):               <ul style="list-style-type: none"> <li>– P, Sb</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• GC-MS/MS (quantitative):               <ul style="list-style-type: none"> <li>– BFRs, OPFRs, Total P</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• XRF (semi-quantitative):               <ul style="list-style-type: none"> <li>– Br, Cl, P, Sb</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• LC-TOF (semi-quantitative):               <ul style="list-style-type: none"> <li>– Identifying unknowns</li> </ul> </li> </ul>

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## Experimental approach

- Consult with BEARHFTI
- Received 40 samples of foam, fabric, fill
- Analyzed by screening methods (XRF, ICP) and by advanced methods (GC-MS/MS, LC-TOF)
- Compared screening and MS results

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## QA/QC

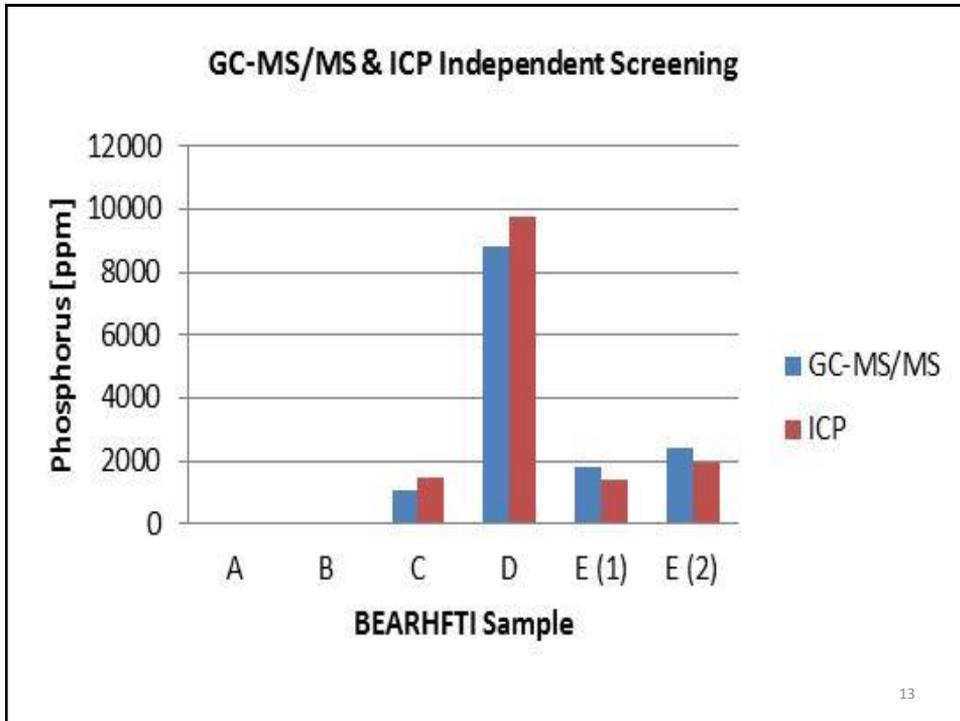
- FR-free foam used as method blank
- Validated methods for ICP and GC-MS/MS
- Exploratory methods for XRF, LC-TOF
  - No standards available
- Exchanged samples with Duke University
  - Good agreement

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## Results

- Only 4/40 BEARHFTI samples had FRs > 1,000 ppm
- Another 6 had measurable FRs (2.5-900 ppm)
- 3/5 Duke samples had FRs > 1,000 ppm
- Using LC-TOF tentative identification of:
  - Other FRs, not in our current method
  - Melamine, Thermolin 101, TBPH

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Results from 40 samples	Sensitivity	Selectivity	Predictive Value (+)	Predictive Value (-)
P by ICP for OPFRs	1	0.79	0.38	1
P by XRF for OPFRs	0.9	0.77	0.53	0.96
Br by XRF for BFRs	1	0.81	0.2	1

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## Acknowledgment

- BEARHFTI staff for providing samples and consultation
- Drs. Cooper and Stapleton (Duke University) for sample exchange, consultation
- Dr. Covaci (Antwerp University, Belgium) for consultation

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**Agenda Item 14:  
Clarification on Customer  
Owned Material Practices**



**State of California  
Department of Consumer Affairs**



**Clarification on Customer Owned  
Material Practices**

1

**Customer Owned Material (COM)**

- Common Industry Examples of COM
- Proper Law Label Use  
(White v. Green Law Labels)
- TB 117-2013 Compliance
- SB 1019 Compliance

2

## Common Industry Examples of COM

- Reupholster
  - Ex. 1 – Consumer brings in a product and requests filling material or cover fabric be replaced.
  - Ex. 2 – Consumer requests all components of the product be replaced except for the frame.



3

## Common Industry Examples of COM

- Commercial or Custom Orders – All components are new but some are provided by designers or decorators.
  - Examples: High-end cost custom furniture or large commercial orders for hotel, hospital, etc.

4

## **Proper Law Label Use** **(White v. Green Law Labels)**

- Green Label Only
  - Reupholster replacing some components but not all components, with the exception of structural components.
- Green or White Label
  - Reupholster replacing all components except structural components.
- White Label Only
  - Commercial or Custom Orders.

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## **Proper Law Label Use** **(White v. Green Law Labels)**

- Green label means furniture must comply with all requirements in Article 14 of Regulations (4 CCR § § 1375-1379)
- Some requirements include:
  - Estimate and Work Order Requirements
  - If new fabric, fiber content, amount of yards required, width of fabric, price of fabric per yard.
- Note: You must know your customer.

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## **TB 117-2013 Compliance**

- Green Law Label
  - All new components must meet TB 117-2013
  - No labeling requirements
- White Law Label
  - All components must meet TB 117-2013
  - Must affix TB 117-2013 flammability label

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## **SB 1019 Compliance**

- Green Law Label
  - Only newly added components and not existing components subject to TB 117-2013. Therefore, not subject to SB 1019.
- White Law Label
  - Subject to TB 117-2013 and SB 1019
- When in doubt
  - Seek customer declaration
  - If not feasible, check “Yes.”

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## **Bureau Assistance**

- Call (916) 999-2041
  - Ask to speak to laboratory staff to discuss compliance, etc.
- Or email: [Homeproducts@dca.ca.gov](mailto:Homeproducts@dca.ca.gov)
  - Attn: Laboratory Unit

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**Agenda Item 16:  
Home Furnishing  
Retail Advertisement  
Regulations Concept**

# Truth in Advertising for Furniture Retailers Regulatory Proposal

**Problem:** Existing Regulations make it difficult to determine:

- “prevailing market price” for sale mark downs;
- whether a business is truly liquidating; or
- whether a store is closing or owner is going out of business

## Proposed Solution to Prevailing Market Price

Prevailing market price is prescribed by statute and defined as: the predominating price that may be obtained for merchandise similar to the article in question on the open market within the community where the article is sold.

Retailers and the Bureau cannot easily determine what the prevailing market price should be at any specific time or location.

Through regulation the Bureau may be able to create a formula to apply statewide. In essence a base standard a retailer must abide by when calculating mark down of materials. In other words, the advertised price may comply with base standard but may still not be “prevailing market price” but anything that does not comply with base standard is clear and apparent violation.

### Proposed Formula

$(\text{Retailer's Purchase Price of Item}) \times 2 \times [1 - (\text{Percent Markdown})] \geq \text{Advertised Price}$

Example: Purchased a chair at \$50 and now plan to advertise it at 40% off.

$$\$50 \times 2 \times (1 - 0.40) = \$60$$

The actual price of that chair in this sale cannot exceed \$60.

Outstanding Issues:

- Is it fair to hold retailer in Beverly Hills (higher overhead) to same number as retailer in Sacramento?
  - Both Retailers can still advertise a “was” price and “now” price.
- Is the “2” multiplier (i.e. 200% of purchase price, also commonly notes as “100% markup”) sufficient? Does more flexibility need to be included? (Bureau will be seeking significant input statewide).

### Documentation Requirements

- All retailers must retain records of inventory purchases of all items in the store and make them available upon request to inspectors.
- For “was” and “is” sales, must retain records of dates and advertised price of all products advertised in this fashion and make them available upon request to inspectors.

## **Proposed Solution to Liquidation, Closing, and Going Out of Business Sales**

### **Use of Terms**

Use of the term “Liquidation” in advertising is limited to retailers that are attempting to sell inventory of a particular type or at a particular location and has no plans to make future purchases of these products to sell to consumers.

Use of the term “Closing” in advertising is limited to retailers that are closing a location or locations of their business and is not planning to move a significant portion of the location’s inventory to a different location.

Use of the term “Going out of Business” in advertising is limited to retailers that plan to close all locations and discontinue the sale of home furnishing products under the Bureau’s jurisdiction.

### **Notification**

Furniture retailer must notify the Bureau within 10 calendar days of the commencement of one of the sales described above. The Bureau will develop a simple straightforward form and enable retailers to email, fax, or mail the notification.

### **Restrictions on Sales**

- Sales described above cannot last longer than 6 months.
- No location may have more than one of these sales in a 2-year period.