

SAFER OCCUPANCY FURNITURE FLAMMABILITY ACT

DECEMBER 16, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 2647]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2647) to adopt a certain California flammability standard as a Federal flammability standard to protect against the risk of upholstered furniture flammability, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 2647, the “Safer Occupancy Furniture Flammability Act” or “SOFFA”, was introduced on May 9, 2019, by Reps. Matsui (D-CA), Griffith (R-VA), Rush (D-IL), and Cárdenas (D-CA) and referred to the Committee on Energy and Commerce. H.R. 2647 requires the adoption of the California upholstered furniture flammability

standard known as Technical Bulletin 117–2013 as a national flammability standard for upholstered furniture. Technical Bulletin 117–2013 is an updated standard that protects consumers against the risk of upholstered furniture fires while omitting previous performance requirements that were typically satisfied through the addition of flame-retardant chemicals, which have been associated with adverse health effects.¹ Additionally, an existing patchwork of regulations across the country currently create a difficult and burdensome framework for furniture manufacturers. Adopting Technical Bulletin 117–2013 is critical to address such patchwork and ensure all consumers enjoy the same fire safety protections for upholstered furniture.

II. BACKGROUND AND NEED FOR LEGISLATION

According to the latest available report from the Consumer Product Safety Commission (CPSC) on residential fire loss estimates, upholstered furniture poses a significant fire safety risk.² From 2014 to 2016, an estimated annual average of 470 deaths were associated with upholstered furniture.³

Since the 1970s, flame-retardant chemicals have been added to many consumer and industrial products, including upholstered furniture, to reduce their flammability and to slow or prevent the start or growth of fire.⁴ Driving the use of flame-retardant chemicals in upholstered furniture was California’s original upholstered furniture flammability standard, known as Technical Bulletin 117. This standard was introduced in 1975 and required the concealed filling materials of upholstered furniture to withstand an open-flame test and a smolder test.⁵ Furniture manufacturers met this standard predominantly by using foam treated with flame-retardant chemicals. Testing by the CPSC and other independent scientists, however, show that flame-retardant chemicals, as used in upholstered furniture, provide no meaningful fire safety benefit and do not provide a meaningful difference in egress time.⁶

In addition, while science has yet to establish a causal link between all flame retardants and resultant disease, a growing body of evidence shows that flame-retardant chemicals could elicit adverse health effects. According to the CPSC’s September 2017 guidance on organohalogen flame retardants (OFRs), “The known adverse health effects of [OFRs] to consumers include: Reproductive impairment (e.g., abnormal gonadal development, reduced number of ovarian follicles, reduced sperm count, increased time to pregnancy); neurological effects (e.g., decreased IQ in children, impaired memory, learning deficits, altered motor behavior, hyperactivity); endocrine disruption and interference with thyroid hormone action

¹National Institute of Environmental Health Sciences, *Flame-retardants* (www.niehs.nih.gov/health/topics/agents/flame_retardants/index.cfm).

²Consumer Product Safety Commission, *2014–2016 Residential Fire Loss Estimates* (July 2019) (www.cpsc.gov/s3fs-public/2014_to_2016_Residential_Fire_Loss_Estimates07292019.pdf).

³See note 2.

⁴See note 1.

⁵State of California Bureau of Household Goods and Services, *Technical Bulletin 117—Residential Upholstered Furniture Standard Fact Sheet* (bhgs.dca.ca.gov/industry/tb_117_fa_q_sheet.pdf).

⁶Consumer Product Safety Commission, *Upholstered Furniture Full Scale Chair Tests—Open Flame Ignition Results and Analysis* (May 9, 2012) (www.cpsc.gov/s3fs-public/openflame.pdf); Chicago Tribune, *Testing shows treated foam offers no safety benefit* (May 6, 2012) (www.chicagotribune.com/news/ct-met-flames-barriers-20120506-story.html).

(potentially contributing to diabetes and obesity); genotoxicity; cancer; and immune disorders.”⁷

The CPSC’s September 2017 guidance also states that human exposure to OFRs occurs when flame-retardant chemicals migrate out of furniture and into household dust and other surfaces where they persist in an indoor environment.⁸ Further, the CPSC has been presented with scientific evidence that OFRs, due to their inherent physical properties, have also been shown to bioaccumulate or build up in people over time because they do not easily break down.⁹ Babies and children are more likely to be exposed because of their increased hand-to-mouth behavior and time spent on the floor.¹⁰ They may also be particularly vulnerable to the toxic effects of these chemicals because their bodies are still developing.¹¹ At least one study shows that firefighters have a greater exposure to flame-retardants than the general population.¹² They may also face additional risks due to the unique exposure from the combustion of flame-retardant chemicals in firefighting settings.

In June 2013, California published an updated standard, Technical Bulletin 117–2013, which took effect January 2015. This updated standard tests the smolder resistance of cover fabrics and the interaction of upholstery components. The new standard provides consumers with a greater level of fire protection against smoldering sources, the leading ignition sources of fires,¹³ and eliminates the unnecessary use of flame-retardant chemicals.

H.R. 2647 is needed to protect all consumers from the risk of upholstered furniture fires and to eliminate unnecessary consumer exposure to flame-retardant chemicals, which have been associated with adverse health effects. Adopting Technical Bulletin 117–2013 as the national standard ensures all consumers, no matter which state they reside in, enjoy the same fire safety protections for upholstered furniture.

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearings were used to develop or consider H.R. 2647:

The Subcommittee on Consumer Protection and Commerce held an oversight hearing on June 9, 2019, entitled, “Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?” The Subcommittee received testimony from the following witnesses:

- The Honorable Ann Marie Buerkle, Acting Chairman, Consumer Product Safety Commission;
- The Honorable Elliot F. Kaye, Commissioner, Consumer Product Safety Commission;

⁷ Consumer Product Safety Commission, *Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame-retardants in Certain Consumer Products*, 82 Fed. Reg. 45268 (Sept. 28, 2017) (Guidance document).

⁸ See note 7.

⁹ See note 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² Susan D. Shaw et al., *Persistent organic pollutants including polychlorinated and polybrominated dibenzo- p-dioxins and dibenzofurans in firefighters from Northern California*, *Chemosphere* (Feb. 2013).

¹³ See note 2.

- The Honorable Robert S. Adler, Commissioner, Consumer Product Safety Commission;
- The Honorable Dana Baiocco, Commissioner, Consumer Product Safety Commission;
- The Honorable Peter A. Feldman, Commissioner, Consumer Product Safety Commission;
- Rachel Weintraub, Legislative Director and General Counsel, Consumer Federation of America;
- Nancy Cowles, Executive Director, Kids in Danger; and
- Remington A. Gregg, Counsel for Civil Justice and Consumer Rights, Public Citizen.

On June 13, 2019, the Subcommittee on Consumer Protection and Commerce held a legislative hearing on H.R. 2647, the “Safer Occupancy Furniture Flammability Act”, along with six other bills. The hearing was entitled, “Keeping Kids and Consumers Safe from Dangerous Products.” The Subcommittee received testimony from the following witnesses:

- Will Wallace, Manager, Home & Products Policy, Consumer Reports;
- Crystal Ellis, Founding Member Parents Against Tip-Overs;
- Chris Parsons President, Minnesota Professional Fire Fighters; and
- Charles A. Samuels, Member, Mintz.

IV. COMMITTEE CONSIDERATION

H.R. 2647, the “Safer Occupancy Furniture Flammability Act” or “SOFFA”, was introduced by Rep. Matsui (D–CA) on May 9, 2019 and referred to the Committee on Energy and Commerce. Subsequently, the bill was referred to the Subcommittee on Consumer Protection and Commerce on May 10, 2019. Following hearings, the Subcommittee met on July 10, 2019, in open markup session, pursuant to notice, to consider H.R. 2647. No amendments were offered during its consideration and a motion by Ms. Schakowsky, Chairwoman of the subcommittee, to forward favorably H.R. 2647 to the full Committee, without amendment, was agreed to by a voice vote.

The full Committee met in open markup session on July 17, 2019, pursuant to notice, to consider H.R. 2647. No amendments were offered to the bill and subsequently, a motion by Mr. Pallone, Chairman of the committee, to order H.R. 2647 reported favorably to the House, without amendment, was agreed to by a voice vote, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on H.R. 2647, including a motion by Mr. Pallone ordering H.R. 2647 reported favorably to the House, without amendment.

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested by not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to help protect consumers against the risk of upholstered furniture fires and to eliminate unnecessary consumer exposure to flame-retardant chemicals, which have been associated with adverse health effects.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 2647 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 2647 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Safer Occupancy Furniture Flammability Act” or “SOFFA”.

Sec. 2. Adoption of California flammability standard as a Federal standard

Subsection (a) of this section defines terms used throughout the bill, including the terms “bedding product”, “California standard”, “foundation”, “mattress”, and “upholstered furniture”. The term “California standard” means the standard set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117–2013, entitled “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture.” The term “upholstered furniture” is defined to mean all seating furniture that (1) is intended for indoor use; (2) is movable or stationary; (3) is constructed with a contiguous upholstered seat and back or arm; (4) is made or sold with a cushion or pillow or may be stuffed or filled with any material; and (5) can be used to support the body of an individual, or the limbs and feet of an individual. The term specifically does not include any mattresses, foundations, bedding product, or furniture that is used exclusively for the purpose of physical fitness and exercise.

Subsection (b) of this section directs the CPSC to adopt the California standard as a flammability standard promulgated by the CPSC under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193) beginning on the date that is 180 days after the date of enactment of this Act. This subsection further specifies that any fabric, related material, or product to which the California standard applies as a result of the new promulgated standard shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)).

Subsection (c) of this section specifies that no state or political subdivision of a state may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture. This subsection further clarifies that nothing in this Act or the Flammable Fabrics Act may be construed to preempt or otherwise affect (1) any State or local law, regulation, code, standard, or requirement that concerns health risks associated with upholstered furniture and is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture; (2) sections 1374 through 1374.3 of title 4, California Code of Regulations, which

specify the adoption of the California standard, as well as product labeling requirements; or (3) the California standard.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes to existing law made by the bill H.R. 2647.

