

Date of Hearing: April 29, 2025

**ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS**

Damon Connolly, Chair

AB 455 (Ortega) – As Introduced February 6, 2025

**SUBJECT:** Real estate: environmental hazards: thirdhand smoke

**SUMMARY:** Provides that it is the sole responsibility of the seller of a single-family residential property to disclose knowledge of thirdhand smoke residue to the buyer; requires the Department of Toxic Substances Control (DTSC) to update the Homeowners' Guide to Environmental Hazards, to include a section on thirdhand smoke. Specifically, **this bill:**

- 1) Makes the following findings and declarations:
  - a) That "thirdhand smoke" is the toxic chemical residue left by tobacco smoke, and that it accumulates in carpets, walls, and furniture, and becomes embedded in building materials, persisting for years after smoking stops; and,
  - b) That thirdhand smoke-polluted buildings expose occupants to more than ten toxic chemicals listed under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).
- 2) Provides that it is the sole responsibility of a seller of a single-family residential property who has actual knowledge of the existence of any residue from smoking or vaping tobacco or nicotine products, or any history of occupants smoking or vaping tobacco or nicotine products on the property, to disclose that knowledge to the buyer in writing.
- 3) Defines "thirdhand smoke" to mean the toxic chemical residue left behind by tobacco smoke.
- 4) Requires, as existing resources permit, or as private resources are made available, DTSC to update the Homeowners' Guide to Environmental Hazards to include a new section on thirdhand smoke; requires DTSC to do both of the following:
  - a) Delegate responsibility for the update to the Center for Tobacco and the Environment at San Diego State University, using existing center personnel and research resources, to offset costs associated with updating the Homeowners' Guide to Environmental Hazards; and,
  - b) Review the update proposed by the Center for Tobacco and the Environment, to ensure the update adequately educates and informs consumers on thirdhand smoke as a common environmental hazard; the significance of thirdhand smoke as a common environmental hazard and how hazards can be mitigated; and, sources that can provide more information on thirdhand smoke.

**EXISTING LAW:**

- 1) Requires a seller of a single-family residential property or their agent to provide to a prospective buyer a completed Transfer Disclosure Statement (TDS), and various other disclosures. (Civil Code (CIV) § 1102-1102.19)

- 2) Requires a seller to disclose and describe, as part of the TDS, whether the single-family residence has any significant defects or malfunctions in various components of the home. (CIV § 1102.6.)
- 3) Requires a seller of any single-family residence to deliver required disclosures:
  - a) As soon as practicable before transfer of title, in the case of a sale; and,
  - b) As soon as practicable before execution of the contract in the case of a sale by a real property sales contract, a lease together with an option to purchase, or a ground lease coupled with improvements. (CIV § 1102.3)
- 4) Specifies that no transfer of a single-family residence shall be invalidated solely because of the failure to comply with the disclosure requirements, but that a person who willfully or negligently violates or fails to perform the disclosure duties shall be liable for actual damages. (CIV § 1102.13)
- 5) Requires the Department of Real Estate (DRE) to develop the Residential Environmental Hazards Disclosure Booklet to educate and inform consumers on the following:
  - a) Common environmental hazards that are located on, and affect, real property; the types of common environmental hazards shall include, but not be limited to the following: asbestos, radon gas, lead-based paint, formaldehyde, fuel and chemical storage tanks, and water and soil contamination;
  - b) The significance of common environmental hazards and what can be done to mitigate them; and,
  - c) Sources that can provide more information on common environmental hazards for the consumer. (Business and Professions Code (BPC) § 10084.1(a))
- 6) Requires DTSC to seek the advice and assistance of departments within the California Natural Resources Agency in writing the Homeowners' Guide to Environmental Hazards, prepared pursuant to state law pertaining to the Residential Environmental Hazards Disclosure Booklet. (BPC § 10084.2)
- 7) Specifies that if the Residential Environmental Hazards Disclosure Booklet is delivered to a buyer in connection with the sale of real property, a seller or broker is not required to provide additional information, and that the booklet provides adequate disclosure to the buyer regarding common environmental hazards that can affect real property. (CIV § 2079.7)
- 8) Prohibits, under Proposition 65, a person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. (Health and Safety Code § 25249.6)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Need for the bill:* According to the author:

"Thirdhand smoke refers to the toxic residue left behind by tobacco products. When smoking or vaping takes place inside, particles and gasses expelled into the air absorb into the floors, walls, furniture, and other household surfaces. Thirdhand smoke contains more than 26 chemicals included on the Prop 65 List because they are known to cause cancer and/or reproductive or developmental harm; exposure to thirdhand smoke has been shown to cause a wide range of negative health impacts, including DNA damage, asthma exacerbation, an increased risk of cancer, and a weakened immune system. Currently, Californians looking to buy a home have no way of knowing whether this quiet killer is present in their future home, and research has shown that more than 96% of Californians want to know if the home they are about to buy or rent contains thirdhand smoke. AB 455 will help potential homeowners be more aware of the dangers of thirdhand smoke and aerosols and be fully informed before buying property that may be contaminated with this hazard. AB 455 accomplishes this goal in two ways:

- 1) AB 455 requires that if the seller of a single-family residential property knows that there is residue from smoking or vaping on the property and/or knows that there has been smoking or vaping on the property, the seller must disclose that knowledge in writing to the buyer of the property.
- 2) AB 455 requires [DTSC] to update the Homeowners' Guide to Environmental Hazards to include thirdhand smoke as a hazard."

*Thirdhand smoke.* According to "Thirdhand Smoke," a 2017 fact sheet from the California Department of Public Health (CDPH; 2017 Fact Sheet), thirdhand smoke is "tobacco smoke residue that remains in indoor environments, reacts with air to make additional pollutants, and re-emits from surfaces back into the air." All tobacco products, including cigarettes, hookah, electronic cigarettes, and smokeless tobacco have been shown to leave nicotine and/or tobacco smoke residue in indoor environments. CDPH refers to thirdhand smoke as a distinct public health problem, and summarizes the following findings from the research literature:

- Smoke from tobacco products sticks to indoor surfaces such as walls, windows, furniture, and floors, and does not simply blow away;
- Thirdhand smoke sticks to skin, hair, and clothing, and can be transferred into environments where smoking is not allowed;
- Layers of thirdhand smoke residue can build up over time on surfaces and in household dust, and can remain in place for years. In places where substantial smoking has occurred, renovations such as replacing wall boards and furnishings may be necessary to reduce thirdhand smoke levels;
- Common cleaning methods such as vacuuming, wiping surfaces, and airing out rooms do not completely remove thirdhand smoke; and,
- People can be exposed to thirdhand smoke via inhalation; skin absorption, when they touch contaminated surfaces; or ingestion, when they place contaminated objects (e.g., eating utensils and toothbrushes) into their mouths. Infants and children may have higher risks of exposure, due to age-specific behaviors such as crawling, mouthing, and active playing near the floor.

*Health hazards of thirdhand smoke.* In its 2017 Factsheet, CDPH further summarizes the following key findings from research studies on the health impacts of thirdhand smoke:

- Some chemicals found in thirdhand smoke differ from those found in fresh smoke, because thirdhand smoke can change over time and become progressively more toxic;
- Elevated levels of nicotine and cancer-causing chemicals from tobacco in house dust have been found in the homes of former smokers six months after they quit smoking;
- Thirdhand smoke is a source of long-term exposure to harmful pollutants that have been shown to damage human cells and DNA, and may be associated with short- and long-term health problems such as asthma and cancer; and,
- Mice exposed to thirdhand smoke develop health problems in their respiratory, digestive, circulatory, and reproductive systems.

*Real estate disclosures.* California state law imposes disclosure obligations on sellers of residential real property. Sellers are required to disclose whether the property is located in designated hazard zones, including fault zones, flood zones, and areas of high fire severity. Additional disclosures are mandated when a property is near industrial operations, former military ordnance sites, or abandoned oil and gas wells. State law obligates sellers to disclose, via the TDS, any known significant defects affecting the property's structural components and systems, including the roof, foundation, plumbing, electrical, and sewer systems. The TDS also includes a checklist of appliances and other fixtures, and requires sellers to answer detailed questions about any known environmental, legal, or physical conditions that may affect the property. Importantly, sellers are only required to disclose information within their actual knowledge; they are not obligated to conduct independent investigations or testing to uncover unknown hazards. Existing law further specifies if a consumer information booklet is delivered to a buyer in connection with the sale of real property, a seller or broker is not required to provide additional information; the booklet is deemed to provide adequate disclosure to the buyer regarding common environmental hazards that can affect real property. The Homeowners' Guide to Environmental Hazards fulfills this requirement.

*The Homeowners' Guide to Environmental Hazards:* The Homeowners' Guide to Environmental Hazards—referenced in some places in state law as the "Residential Environmental Hazards Booklet"—was originally mandated by AB 983 (Bane, Chapter 969, Statutes of 1989), which required the DRE to prepare a consumer guide on environmental hazards affecting residential property, including asbestos, radon, lead-based paint, formaldehyde, fuel and chemical storage, and soil and water contamination. State law pertaining to the Homeowners' Guide to Environmental Hazards has been updated several times since 1989, most recently by AB 225 (Grayson, Chapter 420, Statutes of 2023), which requires—as existing resources permit, or as private resources are made available—the booklet to be updated to include new sections on wildfires, climate change, and sea level rise.

*California's Proposition 65:* In 1986, California voters approved a ballot initiative, the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly referred to as Proposition 65, to address concerns that "hazardous chemicals pose a serious potential threat to their health and well-being, [and] that state government agencies have failed to provide them with adequate protection..." Proposition 65 requires the state to publish a list of chemicals known to cause

cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, currently includes approximately 900 chemicals. Proposition 65 also prohibits businesses from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity, without first giving clear and reasonable warning, which can take the form of product labels or notices. The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program, including an evaluation of all currently available scientific information on substances considered for placement on the Proposition 65 list.

Several chemicals present in thirdhand smoke are on OEHHA's Proposition 65 list. For example, in the 2017 literature review, "Thirdhand smoke: New evidence, challenges, and future directions," published in *Chemical Research in Toxicology*, authors report that thirdhand smoke contains chemicals such as nicotine and 4-(N-Nitrosomethylamino)-1-(3-pyridyl)1-butanone (NNK). According to OEHHA, nicotine is listed under Proposition 65 because it can cause birth defects or other reproductive harm; NNK is listed because it can cause cancer.

*This bill:* AB 455 provides that it is the sole responsibility of the seller of a single-family residential property to disclose knowledge of thirdhand smoke residue to the buyer, and requires DTSC to update the Homeowners' Guide to Environmental Hazards to include a section on thirdhand smoke. This bill represents a novel step in California's longstanding policy of requiring disclosures in real estate transactions, and draws upon research showing that thirdhand smoke is human health hazard.

*Arguments in support:* According to Public Health Advocates:

"'Thirdhand smoke' refers to the toxic residue left behind by tobacco smoke or vape. When smoking or vaping occurs indoors, thirdhand smoke spreads through the HVAC system, accumulates in the carpets, walls, and building materials of a home, and remains there for years, even after the smoking or vaping stops. Thirdhand smoke is hard to remove, requiring deep cleaning at best and professional remediation or renovation at worst. Thirdhand smoke polluted buildings expose occupants to toxic chemicals and carcinogens, including some listed on California's Prop 65 warnings. Despite these dangers, disclosure of smoking or vaping is not currently required in the sale of residential properties in California, leaving individuals and families unaware of a serious hazard that may be present in their current or future home. AB 455 will require that thirdhand smoke be included in the [Homeowners' Guide to Environmental Hazards] and will require that all residential property sales include a disclosure if there has been smoking or vaping on the property. These measures will help potential homeowners be more aware of the dangers of thirdhand smoke and be fully informed before buying property that may be contaminated with this hazard."

*Arguments in opposition:* None on file.

*Related legislation:*

1) AB 225 (Grayson, Chapter 420, Statutes of 2023). Requires, as existing resources permit, or as private resources are made available, the Homeowners' Guide to Environmental Hazards to be updated and include new sections on wildfire, climate change, and sea level rise, as specified.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Center for Environmental Health  
Cleaneearth4kids.org  
Public Health Advocates

**Opposition**

None on file.

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