

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Eduardo Garcia, Chair

SB 1063 (Skinner) – As Amended June 20, 2022

SENATE VOTE: 27-9

SUBJECT: Energy: appliance standards and cost-effective measures

SUMMARY: Permits the California Energy Commission (CEC) to implement specified appliance efficiency standards sooner if the CEC first makes a specified good cause finding. Specifically, **this bill**:

- 1) Authorizes CEC to adopt an appliance efficiency standard sooner than one year after adoption or revision if the CEC adopts a finding of good cause.
- 2) Requires CEC to consider the following factors when making a finding of good cause:
 - a) The availability of products on the market that meet the adopted or revised standard;
 - b) The impact of an earlier effective date on the manufacturers;
 - c) The health and safety benefits of an earlier effective date; and,
 - d) The impact on innovation resulting from a one-year delay between the date of adoption or revision and the effective date of the standard.
- 3) Defines “sold or offered for sale in the state” to mean the sale of an appliance for end use in the state, regardless of the seller’s physical location.

EXISTING LAW:

- 1) Requires the CEC to establish appliance efficiency standards (Title 20 standards) based on a reasonable use pattern. The CEC may prescribe other cost-effective measures, including incentive programs, fleet averaging, energy and water consumption labeling not preempted by federal labeling law, and consumer education programs, to promote the use of energy and water efficient appliances whose use requires a significant amount of energy or water use on a statewide basis. An appliance manufactured on or after the effective date of these standards may not be offered for sale in California unless it complies with the standards. Appliance efficiency standards may not become effective sooner than one year after the CEC adopts or revises the standards. (Public Resources Code § 25402 [c][1])
- 2) Requires the CEC to adopt standards for appliances to facilitate the deployment of flexible demand technologies. These standards may include labeling provisions to promote the use of appliances with flexible demand capabilities. The flexible demand appliance standards must be based on the ability of the appliance’s functions to be scheduled, shifted, or curtailed to reduce greenhouse gas (GHG) emissions associated with electricity generation. The standards shall become effective no sooner than one year after the date of their adoption or updating. (Public Resources Code § 25402 [f])

- 3) Prohibits a new appliance manufactured on or after the effective date of the standards to be sold or offered for sale in the state unless it is certified to be in compliance with the appliance regulations. (Public Resources Code § 25402 [c][1][a])
- 4) Authorizes the CEC to adopt regulations establishing an administrative enforcement process for appliance efficiency violations, and allows the CEC to assess a civil money penalty for violations up to \$2,500 for each violation. Penalties assessed for appliance efficiency violations are deposited into the CEC's Appliance Efficiency Enforcement Subaccount and fund the CEC's appliance efficiency enforcement activities upon appropriation by the Legislature. (Public Resources Code § 25402.11)

FISCAL EFFECT:

According to the Senate Appropriations Committee, this bill has negligible state costs.

BACKGROUND:

California Code of Regulations, Title 20 – The CEC first developed appliance energy efficiency standards in 1977. They apply to appliances sold or are offered for sale in California. These standards include minimum levels of operating efficiency, and other cost-effective measures, to promote the use of energy- and water-efficiency appliances.

After standards are adopted, the CEC informs stakeholders and manufacturers of the final appliance efficiency testing requirements, certification instructions, and procedures to comply with the standards.

To be sold or offered for sale in California it is the responsibility of appliance manufacturers selling their products to test them at CEC-approved laboratories and receive third-party certification. Once certified, manufacturers are required to submit their documentation and data to the CEC to be uploaded into the agency's online Modernized Appliance Efficiency Database System (MAEDbS). A regulated appliance that is not certified cannot be legally sold or offered for sale in the state of California.

Products regulated for efficiency under Title 20 include central air conditioners, central heat pumps, computers, cooking and washing products, electronics, fans and dehumidifiers, heating products, landscape irrigation equipment, lighting and water heaters.

COMMENTS:

- 1) *Author's Statement.* California is a mecca for technological innovation – home to global tech companies innovating the newest devices. This includes state-of-the-art efficient and “green” appliance technologies that help California's homeowners and business owners use less energy and water and fight climate change. Despite the fast pace of innovation, California's appliance standards process requires strict waiting periods before new technology standards are adopted.

SB 1063 will help California access new technologies more quickly by allowing new appliance standards to be applied more quickly, if the California Energy Commission makes a “good cause” finding that accelerated adoption is warranted.

- 2) *Manufacturer Notice of New Appliance Standards.* The main question before this committee is the length of notice an appliance manufacturer should be provided before new efficiency standards are imposed on an appliance as a condition of sale in California. Under current law appliance standards cannot take effect sooner than one year after the CEC adopts or revises the standard to provide manufacturers with time to adjust to the new standards and give retailers time to sell off old stock. The author opines that:

...long grace periods also result in lost potential energy savings. These losses are unnecessary in circumstances where most manufacturers are voluntarily complying before the enforcement deadline. For example, in 2018, the CEC updated standards for portable electric spas. At the time of adoption, more than 77% of the models available has already complied with the new standard. CEC estimates that the yearlong delay in implementation for the remaining manufacturers resulted a loss of potential energy savings worth up to \$22 million per year. However, the result under this bill would be that 23% of manufacturers would be required to immediately cease the sale of their products until they could come into compliance with the title 20 standard. Under current law, they would have one year's notice to bring the appliance into conformance.

This bill would allow the CEC to shorten the effective date of new and revised appliance standards to less than one year if it makes a finding of good cause, based on specified factors. These factors include product availability, impacts on manufacturers, health and safety concerns, and impacts associated with allowing the sale noncompliant products for a year.

The bill has four factor's (page 6, lines 27-35) the CEC must consider before shortening the one-year notice requirement one of which is "the impact of an earlier date on manufacturers." If the notice was shortened, the primary impact would fall on manufacturers and retailers which would have to immediately remove all products from store shelves and revise online sale software to prohibit the mailing of those covered appliances to a California address. The Association of Home Appliance Manufacturers writes in opposition to the bill that it would be:

...unreasonable for appliance manufacturers as it would provide manufacturers no time to change their products to meet any new standard. Under Federal law, manufacturers have five years to comply with Department of Energy (DOE) energy conservation standards for new products and three years to comply with amended energy conservation standards, both of which allow for redesign, retooling of factories, pilot product testing, safety testing, and many other requirements to ensure the product is ready for the market.

- 3) *What's In, What's Out...of State.* This bill also defines "sale or offered for sale" in the context of the sale of an appliance that falls under Title 20 appliance standards. State and federal courts have spent some time on this issue particularly in reference to California's ban on the sale of foie gras. The issue is primarily presented because of internet, fax and phone transactions done when the buyer is in California and the seller is in another state or country. Factors being litigated that can effect when a sale occurs include the location

of the buyer, the location of the seller, location of the product when it is purchased, whether a third-party delivery service is used, and others.

The Ninth Circuit¹ recently relied on the UCC definition of a sale in its consideration of the foie gras. This bill clarifies that the UCC definition is not applicable to the sale of Title 20 appliances and means “any sale of or offer to sell an appliance for end use in the state, regardless of the seller’s physical location, and includes, without limitation, internet, telephone, and mail order transactions.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Efficiency + Demand Management Council
Environment California
Weideman, Dba Weideman Group, Inc.; Mark D.

Opposition

Association of Home Appliance Manufacturers

Oppose Unless Amended

Air Conditioning, Heating and Refrigeration Institute
California Energy Alliance
San Diego Gas & Electric

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¹ *Association Des Eleveurs de Canards et D'Oiesdu Quebec v Bonta*, (9th Cir. May 6, 2022, Nos. 20-55882, 20-55944) ____ F.3d ____.