

SENATE No. 1230

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect children, families, and firefighters from harmful flame retardants.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/23/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/24/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/24/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>1/28/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/28/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/28/2019</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/29/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/29/2019</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>1/29/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/30/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/30/2019</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>1/30/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/31/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/31/2019</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>1/31/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/31/2019</i>

<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/31/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>1/31/2019</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/1/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/1/2019</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/1/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/1/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/1/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/1/2019</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>2/1/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/7/2019</i>

SENATE No. 1230

By Ms. Creem, a petition (accompanied by bill, Senate, No. 1230) of Cynthia Stone Creem, Lori A. Ehrlich, Jason M. Lewis, Michael D. Brady and other members of the General Court for legislation to protect children and families from harmful flame retardants. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1175 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to protect children, families, and firefighters from harmful flame retardants.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21A of the General Laws, as amended by section 5 of chapter 209
2 of the acts of 2018, is hereby further amended by adding the following section:-

3 Section 28. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:-

5 “Bedding”, any residential or commercial bedding material including, but not limited to,
6 a mattress, mattress pad, mattress cover, sheeting, pillow, blanket, comforter, duvet cover,
7 sleeping bag or any other stuffed item intended to be used for reclining or sleeping.

8 “Carpeting”, residential or commercial fabric floor covering, including carpet padding.

9 “Children’s product”, a consumer product intended, made or marketed for use by children
10 12 years of age or under.

11 “Covered product”, bedding, carpeting, children’s product, residential upholstered
12 furniture or window treatment.

13 “Department”, the department of environmental protection.

14 “Engineered nanoobject”, a material with 1, 2 or 3 external dimensions in the nanoscale.

15 “Manufacturer”, a person or entity that produces, imports or distributes covered products.

16 “Nanoscale”, a size range from approximately 1 nanometer to 100 nanometers.

17 “Residential upholstered furniture”, seating or other upholstered products intended for
18 indoor or outdoor use in or at a home or other dwelling intended for residential occupancy that
19 consists in whole or in part of resilient cushioning materials enclosed within a covering
20 consisting of fabric or other textile.

21 “Retailer”, a person or entity that offers a product for sale at retail through any means
22 including, but not limited to, remote offerings such as sales outlets, catalogs or the internet but
23 shall not include a sale that is a wholesale transaction with a distributor or a retailer.

24 “Window treatment”, residential or commercial curtain materials, blinds or shades.

25 (b) A manufacturer or retailer shall not sell, offer or manufacture for sale, distribute in
26 commerce or import into the commonwealth a covered product, except for inventory
27 manufactured prior to June 1, 2020 that contains any of the following chemical flame retardants

28 or a chemical analogue the total weight of which exceeds 1,000 parts per million for any
29 component part of the covered product:

30 (i) Tris(1,3-dichloro-2-propyl)phosphate (TDCPP) (Chemical Abstracts Service number
31 13674-87-8);

32 (ii) Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number 115-
33 1496-8);

34 (iii) Antimony trioxide (Chemical Abstracts Service number 1309-64-4);

35 (iv) Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number 25637-99-
36 4);

37 (v) Bis(2-Ethylhexyl)-3,4,5,6- tetrabromophthalate (TBPH) (Chemical Abstracts Service
38 number 26040-51-7);

39 (vi) 2-Ethylhexyl-2,3,4,5-tetrabromobenzoate (TBB) (Chemical Abstracts Service
40 number 183658-27-7);

41 (vii) Chlorinated paraffins (Chemical Abstracts Service number 85535-84-8);

42 (viii) Tris (1-chloro-2-propyl) phosphate (TCPP) (Chemical Abstracts Service number
43 13674-84-5);

44 (ix) pentaBDE (Chemical Abstracts Service number 32534-81-9);

45 (x) octaBDE (Chemical Abstracts Service number 32536-52-0);

46 (xi) Tetrabromobisphenol A (TBBPA) (Chemical Abstracts Service number 79-94-7); or

47 (xii) any other chemical flame retardants specified by the department pursuant to
48 subsection (c).

49 (c) Every 3 years the department shall, in consultation with the Toxics Use Reduction
50 Institute at the University of Massachusetts Lowell and its Science Advisory Board established
51 in section 6 of chapter 21I, review, identify and recommend other chemical flame retardants that
52 should be prohibited under subsection (b); provided, however, that the department shall
53 demonstrate that the chemical flame retardant is known or reasonably anticipated to be known to:
54 (i) harm the normal development of a fetus or child or cause other developmental toxicity; (ii)
55 cause cancer, genetic damage or reproductive harm; (iii) disrupt the endocrine system; (iv)
56 damage the nervous system, immune system or an organ or cause other systemic toxicity; or (v)
57 is found to be persistent, bioaccumulative and toxic.

58 If the department determines that a chemical flame retardant meets the conditions of this
59 subsection, it shall promulgate rules to restrict the manufacture, sale, distribution in commerce or
60 importation of any children's product or residential upholstered furniture containing the chemical
61 flame retardant within 9 months after making such determination and upon such determination
62 send notice to the General Court. A manufacturer or retailer shall not sell, offer or manufacture
63 for sale, distribute in commerce or import into the commonwealth any covered product, except
64 for inventory manufactured prior to the effective date of the promulgated rule, that contains the
65 chemical flame retardant in a total weight that exceeds 1,000 parts per million for any component
66 part of the covered product; provided, however, that if the chemical flame retardant is an
67 engineered nanoobject a manufacturer or retailer shall not sell, offer or manufacture for sale,
68 distribute in commerce or import into the commonwealth any covered product, except for

69 inventory manufactured prior to the effective date of the promulgated rule, that contains the
70 chemical flame retardant in any amount.

71 (d) This section shall not apply to: (i) motor vehicles, watercraft, aircraft, all-terrain
72 vehicles, off-highway motorcycles or any component parts; or (ii) the sale or purchase of any
73 previously-owned product containing a chemical flame retardant prohibited under this section.

74 (e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease,
75 distribution or use of any covered product manufactured before June 1, 2020 or any covered
76 product that contains chemicals prohibited under this section due to the presence of recycled
77 materials used during the manufacture of the product covered.

78 (f) A manufacturer or retailer who violates the provisions of subsection (b), or any
79 regulations promulgated thereunder, shall be subject to the following civil penalties:

80 (i) for the first violation, a fine of not more than \$100 per covered product, not to exceed
81 a total of \$5,000;

82 (ii) for the second violation, a fine of not more than \$250 per covered product, not to
83 exceed a total of \$25,000; and

84 (iii) for the third or subsequent violation, a fine of not more than \$1,000 per covered
85 product, not to exceed a total of \$50,000.

86 For purposes of calculating a penalty under this subsection, a collection of covered
87 products that are sold as a set shall constitute 1 covered product.

88 A manufacturer or retailer who knowingly violates this section shall be subject to a civil
89 penalty equal to 3 times the amount of the fine imposed for such violation pursuant to the first
90 paragraph.

91 A civil penalty for a violation of this section imposed pursuant to this subsection shall be
92 waived by the department if the department determines that a manufacturer or retailer acted in
93 good faith to be in compliance with this section, pursued compliance with due diligence and
94 promptly corrected any noncompliance after discovery of the violation.

95 (g) The department may promulgate such rules and regulations as it deems necessary to
96 implement this section.

97 (h) The department may establish a labeling program for any covered product that meets
98 relevant fire safety standards and does not contain a chemical flame retardant prohibited by
99 subsection (b).

100 SECTION 2. A manufacturer of a covered product as defined in section 28 of chapter
101 21A of the General Laws that contains a chemical flame retardant prohibited by said section 28
102 of said chapter 21A shall provide notice to retailers and other persons that sell covered products
103 in the commonwealth of the passage of this act on or before December 31, 2019.