

SENATE No. 2338

The Commonwealth of Massachusetts

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

SENATE, September 16, 2019

The committee on Ways and Means to whom was referred the Senate Bill to protect children, families, and firefighters from harmful flame retardants (Senate, No. 1230),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2338).

For the committee,
Michael J. Rodrigues

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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 is hereby amended by adding the
2 following section:-

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

5 “Bedding”, any bedding material including, but not limited to, mattresses, mattress pads,
6 mattress covers, sheets, pillows, blankets, comforters, duvet covers, sleeping bags and any other
7 stuffed item intended to be used for reclining or sleeping.

8 “Carpeting”, fabric floor covering, including carpet padding or cushioning that is laid
9 beneath the fabric floor covering.

10 “Children’s product”, a consumer product intended, made or marketed for use by children
11 12 years of age or under.

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

14 “Department”, the department of environmental protection.

15 “Engineered nano-object”, a material with 1, 2 or 3 external dimensions in the nanoscale.

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

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

18 “Residential upholstered furniture”, seating or any other upholstered product that: (i) is
19 intended for indoor or outdoor use at a home or other dwelling intended for residential
20 occupancy; and (ii) consists in whole or in part of resilient cushioning materials enclosed within
21 a covering consisting of fabric or other textile.

22 “Retailer”, a person or entity that offers a product for sale at retail; provided, however,
23 that sale at retail shall include, but not be limited to, remote offerings using sales outlets, catalogs
24 or the internet; and provided further, that sale at retail shall not include a wholesale transaction
25 with a distributor or another retailer.

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

27 (b) A manufacturer or retailer shall not sell, offer or manufacture for sale, distribute in
28 commerce or import into the commonwealth a covered product, except for inventory
29 manufactured prior to August 31, 2020, that contains any of the following chemical flame
30 retardants or a chemical analogue the total weight of which exceeds 1,000 parts per million for
31 any component part of the covered product:

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

- 34 (ii) Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number
35 115-1496-8);
- 36 (iii) Antimony trioxide (Chemical Abstracts Service number 1309-64-4);
- 37 (iv) Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number
38 25637-99-4);
- 39 (v) Bis(2-Ethylhexyl)-3,4,5,6-tetrabromophthalate (TBPH) (Chemical Abstracts
40 Service number 26040-51-7);
- 41 (vi) 2-Ethylhexyl-2,3,4,5-tetrabromobenzoate (TBB) (Chemical Abstracts
42 Service number 183658-27-7);
- 43 (vii) Chlorinated paraffins (Chemical Abstracts Service number 85535-84-8);
- 44 (viii) Tris (1-chloro-2-propyl) phosphate (TCPP) (Chemical Abstracts Service
45 number 13674-84-5);
- 46 (ix) PentaBDE (Chemical Abstracts Service number 32534-81-9);
- 47 (x) OctaBDE (Chemical Abstracts Service number 32536-52-0);
- 48 (xi) Tetrabromobisphenol A (TBBPA) (Chemical Abstracts Service number 79-
49 94-7); or
- 50 (xii) any other chemical flame retardants specified by the department pursuant to
51 subsection (c).

52 (c) Not less than every 3 years the department shall, in consultation with the Toxics Use
53 Reduction Institute at the University of Massachusetts at Lowell, its Science Advisory Board
54 established in section 6 of chapter 21I and any other relevant state agency, review, identify and
55 recommend, if applicable, other chemical flame retardants that should be prohibited under
56 subsection (b); provided, however, that in recommending another chemical flame retardant to be
57 prohibited, the department shall demonstrate through documentation that the chemical flame
58 retardant is known or reasonably anticipated to be known to: (i) harm the normal development of
59 a fetus or child or cause other developmental toxicity; (ii) cause cancer, genetic damage or
60 reproductive harm; (iii) disrupt the endocrine system; (iv) damage the nervous system, immune
61 system or an organ of the body or cause other systemic toxicity; or (v) be a persistent,
62 bioaccumulative and toxic substance.

63 Upon making a determination that a recommendation to prohibit a chemical flame
64 retardant meets the conditions of this subsection, the department shall send notice to the general
65 court. Within 9 months after making such determination, the department shall promulgate
66 regulations to restrict the manufacture, sale, distribution in commerce and importation of any
67 covered products that contains such chemical flame retardant. A manufacturer or retailer shall
68 not sell, offer or manufacture for sale, distribute in commerce or import into the commonwealth
69 any covered product, except for inventory manufactured prior to the effective date of the
70 regulations, that contains the chemical flame retardant in an amount the total weight of which
71 exceeds 1,000 parts per million for any component part of the covered product or such lower
72 amount that the department may establish; provided, however, that if the chemical flame
73 retardant is an engineered nano-object a manufacturer or retailer shall not sell, offer or
74 manufacture for sale, distribute in commerce or import into the commonwealth any covered

75 product, except for inventory manufactured prior to the effective date of the regulations, that
76 contains any amount of the chemical flame retardant.

77 (d) This section shall not apply to products in: (i) motor vehicles, watercraft, aircraft, all-
78 terrain vehicles, off-highway motorcycles or any component parts thereof; (ii) the sale or
79 purchase of any previously-owned product containing a chemical flame retardant prohibited
80 under this section; (iii) electronic devices; and (iv) electronic components of covered products.

81 (e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease,
82 distribution or use of any covered product manufactured before August 31, 2020 or any covered
83 product that contains chemicals prohibited under this section due to the presence of recycled
84 materials used during the manufacture of the product covered.

85 (f) A manufacturer or retailer who violates this section shall be subject, for a first offense,
86 to a civil penalty of not more than \$1,000 for each item sold in violation of this section. For a
87 second or subsequent offense, the manufacturer or retailer shall be subject to a civil penalty of
88 \$5,000 for each item sold in violation of this section; provided, however, that no penalty shall be
89 imposed under this subsection unless the department finds that the manufacturer or retailer knew
90 or should have known that the covered product was being sold with a chemical flame retardant
91 prohibited by this section.

92 (g) The department shall promulgate regulations to implement this section.

93 (h) The department may establish a labeling program for any children's product or
94 covered product that meets the relevant fire safety standards and does not contain a chemical
95 flame retardant prohibited by this section.

96 SECTION 2. A manufacturer of a covered product, as defined in section 28 of chapter
97 21A of the General Laws, that contains a chemical flame retardant prohibited by said section 28
98 of said chapter 21A shall provide notice to retailers as defined in said section 28 of said section
99 21A of the requirements of this act within 90 days of the effective date of this section.

100 SECTION 3. Section 1 shall take effect on July 1, 2020.