

SENATE No. 2555

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Thursday, June 14, 2018

The committee on Ways and Means to whom was referred the Senate Bill to protect children and families from harmful flame retardants (Senate, No. 1175),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2555).

For the committee,
Karen E. Spilka

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An Act to protect children and families 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 27. (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Bedding”, a mattress, mattress pad, mattress cover, sheeting, pillow, blanket, comforter,
6 duvet cover, sleeping bag or other stuffed item intended to be used for reclining or sleeping.

7 “Carpeting”, fabric floor covering, including padding or cushioning laid beneath another
8 fabric floor covering.

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, a children’s product, residential upholstered
12 furniture or window treatment.

13 “Department”, the department of environmental protection.

14 “Engineered nano-object”, 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 another product that: (i) is intended for
18 indoor or outdoor use in or at a home or other dwelling intended for residential occupancy; and
19 (ii) 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 not including 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 January 1, 2019, that contains any of the following chemical flame
28 retardants or a chemical analogue the total weight of which exceeds 1,000 parts per million for
29 any component part of the covered product:

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

- 32 (ii) Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number
33 115-1496-8);
- 34 (iii) Antimony trioxide (Chemical Abstracts Service number 1309-64-4);
- 35 (iv) Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number
36 25637-99-4);
- 37 (v) Bis(2-Ethylhexyl)-3,4,5,6- tetrabromophthalate (TBPH) (Chemical Abstracts
38 Service number 26040-51-7);
- 39 (vi) 2-Ethylhexyl-2,3,4,5-tetrabromobenzoate (TBB) (Chemical Abstracts
40 Service 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
43 number 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-
47 7); and
- 48 (xii) any other chemical flame retardants specified by the department pursuant to
49 subsection (c).

50 (c) Every 3 years, the department shall, in consultation with the Toxics Use Reduction
51 Institute and the Science Advisory Board established in section 6 of chapter 21I, review and
52 recommend, if applicable, other chemical flame retardants to be prohibited under subsection (b);
53 provided, however, that in recommending another chemical flame retardant be prohibited, the
54 department shall demonstrate that the chemical flame retardant: (i) is known to: (A) harm the
55 normal development of a fetus or child or cause other developmental toxicity; (B) cause cancer,
56 genetic damage or reproductive harm; (C) disrupt the endocrine system; (D) damage the nervous
57 system, immune system or an organ or cause other systemic toxicity; or (E) is found to be a
58 persistent, bioaccumulative and toxic substance or a very persistent and very bioaccumulative
59 substance; and (ii): (A) is documented in peer-reviewed biomonitoring studies that demonstrate
60 the presence of the chemical in human umbilical cord blood, human breast milk, human urine or
61 another bodily tissue or fluid; (B) is present in household dust, indoor air, drinking water or
62 elsewhere in the home environment; or (C) is present in a covered product.

63 If the department determines that a recommendation to prohibit a chemical flame
64 retardant has met the conditions of this subsection, it shall promulgate rules to restrict the
65 manufacture, sale, distribution in commerce and importation of any children's product or
66 residential upholstered furniture that contains the chemical flame retardant within 9 months of
67 making the determination. 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 a total weight that exceeds 1,000 parts per million for any component
71 part of the covered product; provided, however, that if the chemical flame retardant is an
72 engineered nano-object, a manufacturer or retailer shall not sell, offer or manufacture for sale,

73 distribute in commerce or import into the commonwealth any covered product, except for
74 inventory manufactured prior to the effective date of the promulgated rule, that contains the
75 chemical flame retardant in any amount.

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

80 (e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease,
81 distribution or use of any covered product manufactured before January 1, 2019 or to any
82 covered product that contains chemicals prohibited under this section due to the presence of
83 recycled materials used during the manufacture of the product covered.

84 (f) A manufacturer or retailer of products that contains a chemical flame retardant
85 prohibited by subsection (b) shall be subject to a first offense civil penalty of not more than
86 \$1,000 for each item of covered product sold in violation of subsections (a) to (c), inclusive. If a
87 manufacturer or retailer has been found responsible for a violation of this section and
88 subsequently sells a covered product in violation of this section, the manufacturer or retailer shall
89 be subject to a civil penalty of \$5,000 for each item of covered product sold; provided, however,
90 that a retailer shall only be liable under this subsection if the retailer knew or should have known
91 that a covered product was being sold with a chemical flame retardant prohibited by said
92 subsection (b).

93 (g) The department may establish a labeling program for any covered product that meets
94 relevant fire safety standards and does not contain a chemical flame retardant prohibited by
95 subsection (b).

96 (h) The department may promulgate the rules and regulations necessary to implement this
97 section.

98 SECTION 2. A manufacturer of a covered product, as defined in section 27 of chapter
99 21A of the General Laws, that contains a chemical flame retardant prohibited by said section 27
100 of said chapter 21A shall provide notice to retailers and other persons that sell covered products
101 in the commonwealth of the presence of the prohibited chemical flame retardant in the covered
102 product not later than October 1, 2018.

103 SECTION 3. Section 1 shall take effect on January 1, 2019.