

SENATE No. 2985

The Commonwealth of Massachusetts

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

SENATE, December 23, 2020.

The committee on Senate Ways and Means to whom was referred the House Bill to protect children, families, and firefighters from harmful flame retardants (House, No. 4900); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2985; and by striking out the title and inserting in place thereof the following title: "An Act to protect children and families from harmful flame retardants."

For the committee,
Michael J. Rodrigues

The Commonwealth of Massachusetts

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

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

8 “Carpeting”, any 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;
23 provided, however, that sale at retail shall not include a sale that is a wholesale transaction with a
24 distributor or a retailer.

25 “Window treatment”, curtain materials, blinds or shades.

26 (b) A manufacturer or retailer shall not sell, offer or manufacture for sale, distribute in
27 commerce or import into the commonwealth a covered product, except for inventory
28 manufactured prior to December 31, 2021, that contains any of the following chemical flame
29 retardants or a chemical analogue the total weight of which exceeds 1,000 parts per million for
30 any component part of the covered product:

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

33 (ii) Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number 115-96-
34 8);

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

36 (iv) Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number 25637-99-
37 4);

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

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

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

43 (viii) Tris (1-chloro-2-propyl) phosphate (TCPP) (Chemical Abstracts Service number
44 13674-84-5);

45 (ix) PentaBDE (Chemical Abstracts Service number 32534-81-9);

46 (x) OctaBDE (Chemical Abstracts Service number 32536-52-0);

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

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

50 (c) Not less than every 3 years, the department shall, in consultation with the Toxics Use
51 Reduction Institute at the University of Massachusetts at Lowell, the Science Advisory Board
52 established in section 6 of chapter 21I and any other relevant state agency, review, identify and
53 recommend, if applicable, other chemical flame retardants that should be prohibited under
54 subsection (b); provided, however, that in recommending another chemical flame retardant to be
55 prohibited, the department shall determine through scientific documentation that the chemical

56 flame retardant is known or reasonably anticipated to present a toxic hazard to people through 1
57 or more potential routes of exposure; provided further, that a toxic hazard may include, but shall
58 not be limited to: (i) harming the normal development of a fetus or child or causing other
59 developmental toxicity; (ii) causing cancer, genetic damage or reproductive harm; (iii) disrupting
60 the endocrine system; (iv) damaging the nervous system, immune system or an organ or causing
61 other systemic toxicity; (v) being persistent, bioaccumulative and toxic; or (vi) having health and
62 environmental impacts.

63 If the department determines that a chemical flame retardant meets the conditions of this
64 subsection, it shall promulgate regulations to restrict the manufacture, sale, distribution in
65 commerce or importation of any covered product containing the chemical flame retardant within
66 9 months after making such determination and upon such determination the department shall
67 send notice of the determination to the joint committee on public health. A manufacturer or
68 retailer shall not sell, offer or manufacture for sale, distribute in commerce or import into the
69 commonwealth any covered product, except for inventory manufactured prior to the effective
70 date of the promulgated regulation that contains the chemical flame retardant in a total weight
71 that exceeds 1,000 parts per million for any component part of the covered product; provided,
72 however, that if the chemical flame retardant is an engineered nanoobject, a manufacturer or
73 retailer shall not sell, offer or manufacture for sale, distribute in commerce or import into the
74 commonwealth any covered product, except for inventory manufactured prior to the effective
75 date of the promulgated regulation that contains the 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; or (ii) the sale or purchase of any
78 previously-owned product containing a chemical flame retardant prohibited under this section.

79 (e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease,
80 distribution or use of any covered product manufactured before December 31, 2021 or any
81 covered product that contains chemicals prohibited under this section due to the presence of
82 recycled materials used during the manufacture of the product covered.

83 (f) A manufacturer or retailer who violates this section, or any regulation promulgated
84 pursuant to this section, shall be subject to the following civil penalties:

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

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

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

91 For purposes of calculating a penalty under this section, a collection of covered products
92 that are sold as a set shall constitute 1 covered product.

93 A manufacturer or retailer who knowingly violates this section shall be subject to a civil
94 penalty equal to 3 times the amount of the fine imposed for such violation under this subsection.

95 A civil penalty for a violation of this section shall be waived if the department determines
96 that a manufacturer or retailer acted in good faith to be in compliance with this section, pursued
97 compliance with due diligence and promptly corrected any noncompliance after discovery of the
98 violation.

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

101 (h) The department may establish a labeling program for any covered product that meets
102 relevant fire safety standards and does not contain a chemical flame retardant prohibited by this
103 section.

104 SECTION 2. A manufacturer of a covered product, as defined in section 28 of chapter
105 21A of the General Laws, that contains a chemical flame retardant prohibited by said section 28
106 of said chapter 21A shall provide notice to retailers and other persons that sell covered products
107 in the commonwealth of the passage of this act not later than July 1, 2021.