

# SENATE . . . . . No. 351

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Cynthia S. 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 and families from harmful flame retardants.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>

# SENATE . . . . . No. 351

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 351) of Cynthia S. Creem, Carolyn C. Dykema and Tom Sannicandro for legislation to protect children and families from harmful flame retardants. Environment, Natural Resources and Agriculture.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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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 94B of the General Laws is hereby amended by adding the  
2 following 3 sections:-

3           Section 23. As used in sections 23 to 26, inclusive, the following terms shall, unless the  
4 context clearly requires otherwise, have the following meanings:

5           "Chemical of high concern", a chemical identified by the United States Department of  
6 Environmental Protection, the Massachusetts Toxics Use Reduction Institute or another  
7 authoritative government entity, which is known to: harm the normal development of a fetus or  
8 child or cause other developmental toxicity; cause cancer, genetic damage, or reproductive harm;  
9 disrupt the endocrine system; damage the nervous system, immune system, or organs or cause  
10 other systemic toxicity; be persistent, bio-accumulative, and toxic; or be very persistent and very  
11 bio-accumulative.<sup>[SEP]</sup>

12           "Children's products", a consumer product intended for, made for or marketed for use by  
13 children 12 years of age or under.

14           "DecaBDE", decabromodiphenyl ether or any technical mixture in which a  
15 decabromodiphenyl ether is a cogener.

16           "Department", the department of environmental protection.

17           "Manufacturer", any person, firm, association, partnership, corporation, governmental  
18 entity, organization, combination or joint venture which produces a consumer product containing  
19 a priority chemical substance or an importer or domestic distributor of a consumer product

containing a priority chemical substance and that is produced in a foreign country; provided that, for a consumer product made with components made by different manufacturers, “manufacturer” shall be the manufacturer who produced the component containing the priority chemical substance; provided, further that for a consumer product or component produced in a foreign country, “manufacturer” shall be the importer or domestic distributor; provided, however, that if a company from whom an importer purchases the consumer product or component has a United States presence or assets, that company shall be considered to be the manufacturer.

“OctaBDE”, octabromodiphenyl ether or any technical mixture in which octabromodiphenyl ether is a congener.

“PBDE”, polybrominated diphenyl ether including DecaBDE, OctaBDE, and PentaBDE.

“PentaBDE”, pentabromodiphenyl ether or any technical mixture in which a pentabromodiphenyl ether is a congener.

“Principal importer”, the first importer of residential household furniture or children’s products not manufactured in the United States. Only persons who are incorporated, licensed, or doing business in the United States may be principal importers.

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

“Retailer”, a person who offers a product for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but shall not include a sale that is a wholesale transaction with a distributor or a retailer; provided, however that “retailer” shall not include a person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that both manufactures and sells a product at retail.

“Technical mixture”, a PBDE mixture that is sold to a manufacturer and is named for the predominant congener in the mixture, but is not exclusively made up of that congener.

“TRIS”, TDCPP [tris(1,3-dichloro-2-propyl)phosphate], chemical abstracts service number 13674-87-8, as of the effective date of this section; or TCEP [tris(2-chloroethyl)phosphate], chemical abstracts service number 115-96-8 as the effective date of this section; or TCPP [tris(2-chloro-1-methylethyl)phosphate], chemical abstracts service number 13674-84-5, as of the effective date of this section.

Section 24. (a) No manufacturer, wholesaler, principal importer or retailer may manufacture, knowingly sell, offer for sale, distribute for sale or distribute for use in this state,

children's products or residential upholstered furniture, containing TRIS in amounts greater than 50 parts per 1,000,000 in any product component.

(b) No manufacturer, wholesaler, principal importer or retailer may manufacture, knowingly sell, offer for sale, distribute for sale or distribute for use in the commonwealth any products containing PBDEs in a concentration greater than .1 per cent by weight.

(c) No manufacturer, wholesaler, principal importer or retailer may manufacture, knowingly sell or offer for sale, distribute for sale or distribute for use in this state, children's products or residential upholstered furniture containing flame retardants other than TRIS and PBDEs that are identified as chemicals of high concerning concentrations deemed to be harmful as determined by the United States Department of Environmental Protection, the Massachusetts Toxics Use Reduction Institute, or another authoritative government entity an authoritative government entity.

(d) The sale or purchase of any previously owned product containing a chemical restricted under this section made in casual or isolated sales, shall be exempt from this section.

Section 25. A manufacturer, wholesaler or principal importer of products containing TRIS, PBDEs or other identified chemicals of high concern in violation of sections 23 to 26, inclusive, shall be subject to a civil penalty, by a fine of up to \$1,000 for each item of residential upholstered furniture or children's product, in the case of a first offense. Manufacturers, wholesalers or principal importers who are repeat violators shall be subject to a civil penalty by a fine of up to \$5,000 for each repeat offense.

Section 26. The Department is authorized to promulgate such rules and regulations as it deems necessary to implement the provisions of this section.

SECTION 2. A manufacturer, wholesaler or principal importer of products containing TRIS, PBDEs or other identified chemicals of high concern that are restricted under this section shall notify retailers and other persons that sell the manufacturer's products in this state about sections 23 to 26, inclusive of chapter 94B of the General Laws not less than 90 days prior to the effective date of those sections.

A manufacturer, wholesaler or principal importer who violates these sections 23 to 26 may also be subject to civil penalties as determined by rules and regulations of the department.

SECTION 3. This act shall take effect on January 1, 2014.