HOUSE . . . . . No. 4241

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 5, 2016.

The committee on Public Safety and Homeland Security to whom was referred the petition (accompanied by bill, House, No. 2119) of Marjorie C. Decker and others for the establishment of a chronic hazard advisory panel to study and make recommendations relative to children's products and upholstered furniture containing certain flame retardants, reports recommending that the accompanying bill (House, No. 4241) ought to pass.

For the committee,

HAROLD P. NAUGHTON, JR.

HOUSE DOCKET, NO. FILED ON: 3/16/2016

HOUSE . . . . . No. 4241

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to protect children, firefighters 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:

SECTION 1. The Massachsuetts General Laws is hereby amended by inserting, after Chapter 21, Chapter 21½ comprised of the following 4 sections:-

Section 1. As used in sections 1 to 4, inclusive, the following terms shall have the following meanings unless the context clearly requires otherwise:

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

“Department”, the department of environmental protection.

"Manufacturer", a person, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture which produces residential upholstered furniture or a children’s product or an importer or domestic distributor of residential upholstered furniture or a children’s product that is produced in a foreign country; provided further, that for a product or component produced in a foreign country, “manufacturer” shall

13 mean the importer or domestic distributor; and provided further, that if a company from whom
14 an importer purchases the product or component has a United States presence or assets, that
15 company shall be considered the manufacturer.

16 “Principal importer”, the first importer of residential upholstered furniture or
17 children’s products not manufactured in the United States; provided, however, that only persons
18 who are incorporated, licensed or doing business in the United States shall be principal
19 importers.

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

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

30 Section 2. (a) It shall be unlawful for any manufacturer, distributor, or retailer to
31 sell, offer for sale, manufacture for sale, distribute in commerce, or import into the
32 commonwealth any children’s product or residential upholstered furniture, except for inventory
33 manufactured prior to January 1, 2017, that contains one or more flame retardants specified in

34 subsection (b) the total weight of which exceeds 1,000 parts per million for any component part
35 of the product or furniture.

36 (b) The flame retardants specified in this subsection are the following:

37 (1) Tris(1,3-dichloro-2-propyl)phosphate (TDCPP) (chemical abstracts service number
38 13674–87–8).

39 (2) Tris(2-chloroethyl)phosphate (TCEP) (chemical abstracts service number 115–1496–
40 8).

41 (3) Tetrabromobisphenol A (TBBPA) (chemical abstracts service number 79–94–7).

42 (4) Decabromodiphenyl ether (chemical ab- stracts service number 1163–19–5).

43 (5) Antimony trioxide (chemical abstracts serv- ice number 1309–64–4).

44 (6) Hexabromocyclododecane (HBCD) (chem- ical abstracts service number 25637–99–
45 4).

46 (7) Bis(2-Ethylhexyl)-3,4,5,6- tetrabromophthalate (TBPH) (chemical abstract service
47 number 26040–51–7).

48 (8) 2-EthylhexYl-2,3,4,5-tetrabromobenzoate (TBB) (chemical abstract service number
49 183658– 27–7).

50 (9) Chlorinated paraffins (chemical abstract services number 85535–84–8).

51 (10) Tris (1-chloro-2-propyl) phosphate (TCPP) (chemical abstract service number
52 13674–84–5).

53 (11) PBDEs including but not limited to pentaBDE, octaBDE and decaBDE.

54 (12) Such other chemical flame retardants as the Department may specify by rule under
55 subsection (c).

56 (c) The Department shall review the list specified in subsection (b) not more than every 3
57 years and, in consultation with the Toxics Use Reduction Institute and Toxics Use Reduction Act
58 Science Advisory Board, identify, on the basis of credible scientific evidence, other chemical
59 flame retardants that are known to do one or more of the following:

60 1, Harm the normal development of a fetus or child or cause other developmental
61 toxicity;

62 2. Cause cancer, genetic damage, or reproductive harm;

63 3. Disrupt the endocrine system;

64 4. Damage the nervous system, immune system, or organs or cause other systemic
65 toxicity;

66 5. Be persistent, bioaccumulative, and toxic; or

67 6. Be very persistent and very bioaccumulative.

68 And one or more of the following is true:

69 7. The chemical has been found through biomonitoring studies that demonstrate the
70 presence of the chemical in human umbilical cord blood, human breast milk, human urine, or
71 other bodily tissues or fluid;

72 8. The chemical has been found through sampling and analysis to be present in household
73 dust, indoor air, drinking water, or elsewhere in the home environment; or

74 9. The chemical has been added to or is present in a consumer product used or present in
75 the home.

76 If it the Department determines that one or more chemical flame retardants identified
77 meets any of the criteria in c (1-6) and any of the criteria in c (7-10) it shall promulgate rules to
78 restrict the chemical flame retardant within 180 days of such determination.

79 (e) Sections 1 to 4 inclusive shall not apply to motor vehicles and their
80 component parts, watercraft and their component parts, aircraft and their component parts, all-
81 terrain vehicles and their component parts, off-highway motorcycles and their component parts
82 or to the sale or purchase of any previously-owned product containing a chemical restricted
83 under this section.

84 (f) Sections 1 to 4 inclusive shall not apply to the sale, purchase, lease,
85 distribution, or use of any product manufactured before January 1, 2017, and any product that
86 contains chemicals restricted under this section due to the presence of recycled materials used
87 during the manufacture of the product.

88 Section 3. A manufacturer, wholesaler, principal importer or retailer of products
89 containing a chemical identified in section 2 in violation of sections 1 to 4, inclusive, shall be
90 subject to a civil penalty of up to $1,000 for each item of residential upholstered furniture,
91 children's product or other product sold or offered for sale in violation of said sections 1 to 4,
92 inclusive, and any additional civil penalties as may be determined by the rules and regulations of
93 the department. Manufacturers, wholesalers, principal importers or retailers who are accused of

94 second or subsequent violations shall be subject to a civil penalty by a fine of up to $5,000 for
95 each item in each subsequent offense and any additional civil penalties as may be determined by
96 the rules and regulations of the department.

97 Section 4. The department may promulgate such rules and regulations as it
98 deems necessary to implement sections 1 to 3, inclusive.

99 SECTION 2. A manufacturer, wholesaler or principal importer of products
100 containing chemicals restricted under Section 1 shall provide notice to retailers and other persons
101 that sell the manufacturer's products in the commonwealth of the enactment of sections 1 to 4,
102 inclusive, of chapter 21 1/2 of the General Laws not less than 90 days before the effective date of
103 those sections.

104 SECTION 3. Subsection (b) of section 1 of chapter 12 1/2 of the General Laws
105 shall take effect on January 1, 2017.

106 SECTION 4. Except as otherwise provided, this act shall take effect on January
107 1, 2017.