SENATE . . . . . No. 2200

The Commonwealth of Massachusetts

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

SENATE, Thursday, March 31, 2016

The committee on Public Health to whom was referred the petition (accompanied by bill, Senate, No. 1132) of Cynthia S. Creem, Kathleen O'Connor Ives, Jay R. Kaufman, Chris Walsh and other members of the General Court for legislation to protect children and families from harmful flame retardants,- reports the accompanying bill (Senate, No. 2200).

For the committee,
Jason M. Lewis

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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:

SECTION 1. The Massachusetts 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 mean the importer or domestic distributor; and provided further, that if a company from whom an importer purchases

the product or component has a United States presence or assets, that company shall be considered the manufacturer.

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

Section 2. (a) It shall be unlawful for any manufacturer, distributor, or retailer to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the commonwealth any children’s product or residential upholstered furniture, except for inventory manufactured prior to January 1, 2017, that contains one or more flame retardants specified in subsection (b) the total weight of which exceeds 1,000 parts per million for any component part of the product or furniture.

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

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

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

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

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

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

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

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

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

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

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

(11) PBDEs including but not limited to pentaBDE (chemical abstract service number 32534-81-9), octaBDE (chemical abstract service number 32536-52-0), and decaBDE (chemical abstract service number 1163-19-5).

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

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

1. Harm the normal development of a fetus or child or cause other developmental toxicity;

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

3. Disrupt the endocrine system;

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

5. Be persistent, bioaccumulative, and toxic; or

6. Be very persistent and very bioaccumulative.

And one or more of the following is true:

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

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

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

If it the Department determines that one or more chemical flame retardants identified meets any of the criteria in c (1-6) and any of the criteria in c (7-9) it shall promulgate rules to restrict the chemical flame retardant within 180 days of such determination.

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

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

Section 3. A manufacturer, wholesaler, principal importer or retailer of products containing a chemical identified in section 2 in violation of sections 1 to 4, inclusive, shall be subject to a civil penalty of up to $1,000 for each item of residential upholstered furniture, children's product or other product sold or offered for sale in violation of said sections 1 to 4, inclusive, and any additional civil penalties as may be determined by the rules and regulations of the department. Manufacturers, wholesalers, principal importers or retailers who are accused of second or subsequent violations shall be subject to a civil penalty by a fine of up to $5,000 for each item in each subsequent offense and any additional civil penalties as may be determined by the rules and regulations of the department.

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

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

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

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