SENATE . . . . . No. 2293

The Commonwealth of Massachusetts

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

SENATE, Thursday, May 12, 2016

The committee on Ways and Means, to whom was referred the Senate Bill to protect children and families from harmful flame retardants (Senate, No. 2200),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2293).

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:

SECTION 1. Chapter 21A of the General Laws is hereby amended by adding the following section:-

Section 27. (a) As used in this section, the following words 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 or entity that produces, imports or distributes residential upholstered furniture or children’s products.

"Residential upholstered furniture", seating or other upholstered 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 other textile.

"Retailer", a person or entity that 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.

(b) A manufacturer or retailer shall not sell, offer or manufacture for sale, distribute in commerce or import into the commonwealth a children's product or residential upholstered furniture, except for inventory manufactured prior to January 1, 2017, that contains any of the following chemical flame retardants the total weight of which exceeds 1,000 parts per million for any component part of the product or furniture:

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

(ii) Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number 115–1496–8);

(iii) Decabromodiphenyl ether (Chemical Abstracts Service number 1163–19–5);

(iv) Antimony trioxide (Chemical Abstracts Service number 1309–64–4);

(v) Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number 25637–99–4);

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

(vii) 2-EthylhexYl-2,3,4,5-tetrabromobenzoate (TBB) (Chemical Abstracts Service number 183658– 27–7);

(viii) Chlorinated paraffins (Chemical Abstracts Service number 85535–84–8);

(ix) Tris (1-chloro-2-propyl) phosphate (TCPP) (Chemical Abstracts Service number 13674–84–5);

(x) PBDEs including but not limited to pentaBDE (Chemical Abstracts Service number 32534-81-9), octaBDE (Chemical Abstracts Service number 32536-52-0), and decaBDE (Chemical Abstracts Service number 1163-19-5); and

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

(c) The department shall, in consultation with the Toxics Use Reduction Institute and the Science Advisory Board established in section 6 of chapter 21I, every 3 years review and identify other chemical flame retardants that should be prohibited under subsection (b); provided, however, that the department shall demonstrate that the chemical flame retardant: (i) is known to: (A) harm the normal development of a fetus or child or cause other developmental toxicity; (B) cause cancer, genetic damage or reproductive harm; (C) disrupt the endocrine system; (D) damage the nervous system, immune system or an organ or cause other systemic toxicity; or (E) is found to be a persistent, bioaccumulative and toxic or very persistent and very bioaccumulative substance; and (ii) meets any of the following criteria: (A) is documented in peer-reviewed 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; (B) is present in household dust, indoor air, drinking water or elsewhere in the home environment as determined through sampling and analysis; or (C) is present in a children’s product or residential upholstered furniture.

If the department determines that a chemical flame retardant meets the conditions of this subsection, it shall promulgate rules to restrict the manufacture, sale, distribution in commerce or importation of any children's product or residential upholstered furniture containing the chemical flame retardant within 9 months after making such determination. A manufacturer or retailer shall not sell, offer or 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 the effective date of the promulgated rule, that contains the chemical flame retardant in a total weight that exceeds 1,000 parts per million for any component part of the children's product or residential upholstered furniture.

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

(e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease, distribution or use of any residential upholstered furniture or children's product manufactured before January 1, 2017 and any residential upholstered furniture or children's product that contains chemicals prohibited under this section due to the presence of recycled materials used during the manufacture of the product.

(f) A manufacturer or retailer of products containing a chemical flame retardant prohibited by subsection (b) shall be subject to a first offense civil penalty of up to $1,000 for each item of residential upholstered furniture or children's product sold in violation of subsections (a) to (c), inclusive, and any additional civil penalties as may be determined by the rules and regulations of the department. If a manufacturer or retailer has been found responsible

for a violation of this section and subsequently sells a residential upholstered furniture or children's product in violation of this section, the manufacturer or retailer shall be subject to a civil penalty of $5,000 for each item of residential upholstered furniture or children's product sold and any additional civil penalties as may be determined by the rules and regulations of the department.

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

SECTION 2. A manufacturer of residential upholstered furniture or children's product containing a chemical flame retardant prohibited under section 27 of chapter 21A of the General Laws shall provide notice to retailers and other persons that sell residential upholstered furniture and children's products in the commonwealth of the passage of this act not later than October 3, 2016.

SECTION 3. This act shall take effect on January 1, 2017.