

SENATE No. 2302

Senate, May 19, 2016 -- Text of the Senate Bill to protect children and families from harmful flame retardants (Senate, No. 2302) (being the text of Senate, No. 2293, printed as amended)

The Commonwealth of Massachusetts

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

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 21A of the General Laws is hereby amended by adding the
2 following section:-

3 Section 27. (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Bedding”, any residential or commercial bedding material including, but not limited to,
6 a mattress, mattress pad, mattress cover, sheeting, pillow, blanket, comforter, duvet cover,
7 sleeping bag or any other stuffed item intended to be used for reclining or sleeping.

8 “Carpeting”, residential or commercial 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 or window treatment.

12 “Department”, the department of environmental protection.

13 "Manufacturer", a person or entity that produces, imports or distributes covered products.

14 "Residential upholstered furniture", seating or other upholstered products intended for
15 indoor or outdoor use in or at a home or other dwelling intended for residential occupancy that
16 consists in whole or in part of resilient cushioning materials enclosed within a covering
17 consisting of fabric or other textile.

18 "Retailer", a person or entity that offers a product for sale at retail through any means
19 including, but not limited to, remote offerings such as sales outlets, catalogs or the internet but
20 shall not include a sale that is a wholesale transaction with a distributor or a retailer.

21 “Window treatment”, residential or commercial curtain materials, blinds or shades.

22 (b) A manufacturer or retailer shall not sell, offer or manufacture for sale, distribute in
23 commerce or import into the commonwealth a covered product, except for inventory
24 manufactured prior to January 1, 2017, that contains any of the following chemical flame
25 retardants or a chemical analogue the total weight of which exceeds 1,000 parts per million for
26 any component part of the covered product:

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

29 (ii) Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number
30 115-1496-8);

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

- 32 (iv) Antimony trioxide (Chemical Abstracts Service number 1309–64–4);
- 33 (v) Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number
34 25637–99–4);
- 35 (vi) Bis(2-Ethylhexyl)-3,4,5,6- tetrabromophthalate (TBPH) (Chemical Abstracts
36 Service number 26040–51–7);
- 37 (vii) 2-Ethylhexyl-2,3,4,5-tetrabromobenzoate (TBB) (Chemical Abstracts
38 Service number 183658–27–7);
- 39 (viii) Chlorinated paraffins (Chemical Abstracts Service number 85535–84–8);
- 40 (ix) Tris (1-chloro-2-propyl) phosphate (TCPP) (Chemical Abstracts Service
41 number 13674–84–5);
- 42 (x) PBDEs including but not limited to pentaBDE (Chemical Abstracts Service
43 number 32534-81-9), octaBDE (Chemical Abstracts Service number 32536-52-0), and decaBDE
44 (Chemical Abstracts Service number 1163-19-5); and
- 45 (xi) any other chemical flame retardants specified by the department pursuant to
46 subsection (c).

47 (c) The department shall, in consultation with the Toxics Use Reduction Institute and the
48 Science Advisory Board established in section 6 of chapter 21I, every 3 years review and
49 identify other chemical flame retardants that should be prohibited under subsection (b); provided,
50 however, that the department shall demonstrate that the chemical flame retardant: (i) is known
51 to: (A) harm the normal development of a fetus or child or cause other developmental toxicity;
52 (B) cause cancer, genetic damage or reproductive harm; (C) disrupt the endocrine system; (D)

53 damage the nervous system, immune system or an organ or cause other systemic toxicity; or (E)
54 is found to be a persistent, bioaccumulative and toxic or very persistent and very
55 bioaccumulative substance; and (ii) meets any of the following criteria: (A) is documented in
56 peer-reviewed biomonitoring studies that demonstrate the presence of the chemical in human
57 umbilical cord blood, human breast milk, human urine or other bodily tissues or fluid; (B) is
58 present in household dust, indoor air, drinking water or elsewhere in the home environment as
59 determined through sampling and analysis; or (C) is present in a covered product.

60 If the department determines that a chemical flame retardant meets the conditions of this
61 subsection, it shall promulgate rules to restrict the manufacture, sale, distribution in commerce or
62 importation of any children's product or residential upholstered furniture containing the
63 chemical flame retardant within 9 months after making such determination. A manufacturer or
64 retailer shall not sell, offer or manufacture for sale, distribute in commerce or import into the
65 commonwealth any covered product, except for inventory manufactured prior to the effective
66 date of the promulgated rule, that contains the chemical flame retardant in a total weight that
67 exceeds 1,000 parts per million for any component part of the covered product.

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

71 (e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease,
72 distribution or use of any covered product manufactured before January 1, 2017 and any
73 covered product that contains chemicals prohibited under this section due to the presence of
74 recycled materials used during the manufacture of the product covered.

75 (f) A manufacturer or retailer of products containing a chemical flame retardant
76 prohibited by subsection (b) shall be subject to a first offense civil penalty of up to \$1,000 for
77 each item of covered product sold in violation of subsections (a) to (c), inclusive, and any
78 additional civil penalties as may be determined by the rules and regulations of the department. If
79 a manufacturer or retailer has been found responsible for a violation of this section and
80 subsequently sells a covered product in violation of this section, the manufacturer or retailer shall
81 be subject to a civil penalty of \$5,000 for each item of covered product sold and any additional
82 civil penalties as may be determined by the rules and regulations of the department; provided,
83 however, that a retailer shall only be liable under this subsection if the retailer knew or should
84 have known that a covered product was being sold with a chemical flame retardant prohibited by
85 said subsection (b)

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

88 (h) The department may establish a labeling program for any covered product that meets
89 relevant fire safety standards and does not contain a chemical flame retardant prohibited by
90 subsection (b).

91 SECTION 2. A manufacturer of a covered product as defined in section 27 of chapter
92 21A of the General Laws that contains a chemical flame retardant prohibited by said section 27
93 of said chapter 21A shall provide notice to retailers and other persons that sell covered products
94 in the commonwealth of the passage of this act not later than October 3, 2016.

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