

HOUSE No. 4656

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 25, 2018.

The committee on Public Health to whom was referred the a petition (accompanied by bill, House, No. 1245) 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. 4656) ought to pass.

For the committee,

KATE HOGAN.

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In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to protect children, families, and firefighters 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, residential upholstered
12 furniture or window treatment.

13 “Department”, the department of environmental protection.

14 “Engineered nanoobject”, a material with one, two or three external dimensions in the
15 nanoscale.

16 “Manufacturer”, a person or entity that produces, imports or distributes covered products.

17 “Nanoscale”, Size range from approximately 1 nanometers to 100 nanometers.

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

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

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

26 (b) A manufacturer or retailer shall not sell, offer or manufacture for sale, distribute in
27 commerce or import into the commonwealth a covered product, except for inventory
28 manufactured prior to January 1, 2019, that contains any of the following chemical flame
29 retardants or a chemical analogue the total weight of which exceeds 1,000 parts per million for
30 any component part of the covered product:

31 (i) Tris(1,3-dichloro-2-propyl)phosphate (TDCPP) (Chemical Abstracts Service number
32 13674-87-8);

- (ii) Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number 115–1496–8);
- (iii) Antimony trioxide (Chemical Abstracts Service number 1309–64–4);
- (iv) Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number 25637–99–4);
- (v) Bis(2-Ethylhexyl)-3,4,5,6- tetrabromophthalate (TBPH) (Chemical Abstracts Service number 26040–51–7);
- (vi) 2-Ethylhexyl-2,3,4,5-tetrabromobenzoate (TBB) (Chemical Abstracts Service number 183658–27–7);
- (vii) Chlorinated paraffins (Chemical Abstracts Service number 85535–84–8);
- (viii) Tris (1-chloro-2-propyl) phosphate (TCPP) (Chemical Abstracts Service number 13674–84–5);
- (ix) pentaBDE (Chemical Abstracts Service number 32534-81-9);
- (x) octaBDE (Chemical Abstracts Service number 32536-52-0);
- (xi) Tetrabromobisphenol A (TBBPA) (Chemical Abstracts Service number 79-94-7);
- and
- (xii) 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 is known to: (i) harm the normal development of a fetus or child or cause other developmental toxicity; (ii) cause cancer, genetic damage or reproductive harm; (iii) disrupt the endocrine system; (iv) damage the nervous system, immune system or an organ or cause other systemic toxicity; or (v) is found to be a persistent, bioaccumulative and toxic or very persistent and very bioaccumulative substance.

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 covered product, 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 covered product. Provided, however, that if the chemical flame retardant is an engineered nanoobject a manufacturer or retailer shall not sell, offer or manufacture for sale, distribute in commerce or import into the commonwealth any covered product, except for inventory manufactured prior to the effective date of the promulgated rule, that contains the chemical flame retardant in any amount.

(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 covered product manufactured before January 1, 2019 and any covered product that contains chemicals prohibited under this section due to the presence of recycled materials used during the manufacture of the product covered.

(f) (1) A manufacturer or retailer who violates this section shall be subject to civil penalties as follows:

(A) for the first violation, a fine of not more than \$100 per covered product, not to exceed a total of \$5,000;

(B) for the second violation, a fine of not more than \$250 per covered product, not to exceed a total of \$25,000; and

(C) for the third or subsequent violation, a fine of not more than \$1,000 per covered product, not to exceed a total of \$50,000.

For purposes of calculating a penalty under this subsection, a collection of covered products that are sold as a set shall constitute 1 covered product.

(2) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph:

(A) Not later than December 1, 2019, and December 1 of each fifth calendar year thereafter, the department shall prescribe and publish in a manner easily accessible to the public a schedule of maximum authorized penalties that shall apply for violations of this section that occur after January 1 of the year immediately following such publication.

(B) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding 5 years. Any increase determined under the preceding sentence shall be rounded to:

(i) in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the nearest multiple of \$1,000; and

(ii) in the case of penalties greater than \$10,000 but less than or equal to \$50,000, the nearest multiple of \$5,000.

(C) For purposes of this paragraph:

(i) The term “Consumer Price Index” shall mean the Consumer Price Index for all-urban consumers published by the federal Department of Labor.

(ii) The term “cost-of-living adjustment for the preceding 5 years” shall mean the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(3) A manufacturer or retailer who knowingly violates this section shall be subject to a civil penalty equal to three times the amount of the fine imposed for such violation pursuant to paragraph (1).

(4) A civil penalty for a violation of this section imposed pursuant to this subsection shall be waived by the department if the department determines that a manufacturer or retailer acted in good faith to be in compliance with this section, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

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

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

120 SECTION 2. A manufacturer of a covered product as defined in section 27 of chapter
121 21A of the General Laws that contains a chemical flame retardant prohibited by said section 27
122 of said chapter 21A shall provide notice to retailers and other persons that sell covered products
123 in the commonwealth of the passage of this act within six months of the effective date of this act.

124 SECTION 3. This act shall take effect on January 1, 2019.