HOUSE . . . . . No. 5024

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, December 28, 2018.

The committee on Ways and Means, to whom was referred the Bill to protect children, families and firefighters from harmful flame retardants. (House, No. 4656), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 5024).

For the committee,

JEFFREY SÁNCHEZ.

FILED ON: 12/28/2018

HOUSE . . . . . No. 5024

The Commonwealth of Massachusetts

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

An Act to protect children, families, and firefighters from harmful flame retardants.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to regulate certain flame retardants, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

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 28. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

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

"Carpeting", residential or commercial fabric floor covering, including carpet padding.

"Children's product", a consumer product intended, made or marketed for use by children 12 years of age or under. For the purposes of this section, "children's product" shall not include:

(i) batteries;

(ii) inaccessible components of a consumer product that, during a reasonably foreseeable use and abuse of the children's product, would not come into direct contact with a child's skin or mouth; and

(iii) consumer electronic and electrical products, including but not limited to personal computers, audio and video equipment, calculators, wireless telephones, game consoles, power cords, electric chargers and hand-held devices incorporating a video screen used to access interactive software and associated peripherals.

"Covered product", bedding, carpeting, children's product, residential upholstered furniture or window treatment.

"Department", the department of environmental protection.

"Engineered nanoobject", a material with 1, 2 or 3 external dimensions in the nanoscale.

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

"Nanoscale", a size range from approximately 1 nanometer to 100 nanometers.

"Residential upholstered furniture", seating or other upholstered products intended for indoor or outdoor use in or at 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. For the purposes of this section, "residential upholstered furniture" shall not include furniture for which the core functionality depends on upon the utilization of electric or electronic components subject to various underwriters laboratories other

comparable flammability standards, including but not limited to massage chairs, assisted lift chairs and home theater seating.

"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.

"Window treatment", residential or commercial curtain materials, blinds or shades.

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

(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) 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); or

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

(c) Every 3 years the department shall, in consultation with the Toxics Use Reduction Institute and the Science Advisory Board established in section 6 of chapter 21I, review, identify and recommend 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.

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 or 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) A manufacturer or retailer who violates the provisions of subsection (b), or any regulations promulgated thereunder, shall be subject to the following civil penalties:

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

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

(iii) 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.

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

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.

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

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

SECTION 2. A manufacturer of a covered product as defined in section 28 of chapter 21A of the General Laws that contains a chemical flame retardant prohibited by said section 28 of said chapter 21A shall provide notice to retailers and other persons that sell covered products in the commonwealth of the passage of this act on or before June 30, 2019.

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