

SENATE No. 2702

Senate, December 31, 2018 – Text of the Senate amendment (Senator Creem) to the House Bill to protect children, families and firefighters from harmful flame retardants (House, No. 5024).

The Commonwealth of Massachusetts

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

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

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

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; provided, however, that for the purposes of this section, “children’s
11 product” shall not include: (i) batteries; (ii) inaccessible components of a consumer product that,
12 during the reasonably foreseeable use and abuse of the children’s product, would not come into
13 direct contact with a child’s skin or mouth; and (iii) consumer electronic and electrical products
14 including, but not limited to, personal computers, audio and video equipment, calculators,

15 wireless telephones, game consoles, power cords, electric chargers and hand-held devices
16 incorporating a video screen used to access interactive software and associated peripherals.

17 “Covered product”, bedding, carpeting, children’s product, residential upholstered
18 furniture or window treatment.

19 “Department”, the department of environmental protection.

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

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

22 “Nanoscale”, a size range from approximately 1 nanometer to 100 nanometers.

23 “Residential upholstered furniture”, seating or other upholstered products intended for
24 indoor or outdoor use in or at a home or other dwelling intended for residential occupancy that
25 consists in whole or in part of resilient cushioning materials enclosed within a covering
26 consisting of fabric or other textile; provided, however, that for the purposes of this section,
27 “residential upholstered furniture” shall not include furniture for which the core functionality
28 depends on upon the utilization of electric or electronic components subject to various
29 underwriters laboratories other comparable flammability standards, including, but not limited to,
30 massage chairs, assisted lift chairs and home theater seating.

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

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

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

40 (i) Tris(1,3-dichloro-2-propyl)phosphate (TDCPP) (Chemical Abstracts Service number
41 13674-87-8);

42 (ii) Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number 115-
43 1496-8);

44 (iii) Antimony trioxide (Chemical Abstracts Service number 1309-64-4);

45 (iv) Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number 25637-99-
46 4);

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

49 (vi) 2-Ethylhexyl-2,3,4,5-tetrabromobenzoate (TBB) (Chemical Abstracts Service
50 number 183658-27-7);

51 (vii) Chlorinated paraffins (Chemical Abstracts Service number 85535-84-8);

52 (viii) Tris (1-chloro-2-propyl) phosphate (TCPP) (Chemical Abstracts Service number
53 13674-84-5);

54 (ix) pentaBDE (Chemical Abstracts Service number 32534-81-9);

55 (x) octaBDE (Chemical Abstracts Service number 32536-52-0);
56 (xi) Tetrabromobisphenol A (TBBPA) (Chemical Abstracts Service number 79-94-7); or
57 (xii) any other chemical flame retardants specified by the department pursuant to
58 subsection (c).

59 (c) Every 3 years the department shall, in consultation with the Toxics Use Reduction
60 Institute at the University of Massachusetts Lowell and its Science Advisory Board established
61 in section 6 of chapter 21I, review, identify and recommend other chemical flame retardants that
62 should be prohibited under subsection (b); provided, however, that the department shall
63 demonstrate that the chemical flame retardant is known to: (i) harm the normal development of a
64 fetus or child or cause other developmental toxicity; (ii) cause cancer, genetic damage or
65 reproductive harm; (iii) disrupt the endocrine system; (iv) damage the nervous system, immune
66 system or an organ or cause other systemic toxicity; or (v) is found to be a persistent,
67 bioaccumulative and toxic.

68 If the department determines that a chemical flame retardant meets the conditions of this
69 subsection, it shall promulgate rules to restrict the manufacture, sale, distribution in commerce or
70 importation of any children's product or residential upholstered furniture containing the chemical
71 flame retardant within 9 months after making such determination and upon such determination
72 send notice to the General Court. A manufacturer or retailer shall not sell, offer or manufacture
73 for sale, distribute in commerce or import into the commonwealth any covered product, except
74 for inventory manufactured prior to the effective date of the promulgated rule, that contains the
75 chemical flame retardant in a total weight that exceeds 1,000 parts per million for any component
76 part of the covered product; provided, however, that if the chemical flame retardant is an

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

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

84 (e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease,
85 distribution or use of any covered product manufactured before June 1, 2019 or any covered
86 product that contains chemicals prohibited under this section due to the presence of recycled
87 materials used during the manufacture of the product covered.

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

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

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

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

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

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

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

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

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

110 SECTION 2. A manufacturer of a covered product as defined in section 28 of chapter
111 21A of the General Laws that contains a chemical flame retardant prohibited by said section 28
112 of said chapter 21A shall provide notice to retailers and other persons that sell covered products
113 in the commonwealth of the passage of this act not later than April 15, 2019.