

**SENATE . . . . . No. 1175**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Cynthia S. Creem***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

| NAME:                          | DISTRICT/ADDRESS:                   |                  |
|--------------------------------|-------------------------------------|------------------|
| <i>Cynthia S. Creem</i>        | <i>First Middlesex and Norfolk</i>  |                  |
| <i>Carmine L. Gentile</i>      | <i>13th Middlesex</i>               | <i>1/23/2017</i> |
| <i>Frank A. Moran</i>          | <i>17th Essex</i>                   | <i>1/25/2017</i> |
| <i>John W. Scibak</i>          | <i>2nd Hampshire</i>                | <i>1/25/2017</i> |
| <i>José F. Tosado</i>          | <i>9th Hampden</i>                  | <i>1/25/2017</i> |
| <i>Jason M. Lewis</i>          | <i>Fifth Middlesex</i>              | <i>1/26/2017</i> |
| <i>Jack Lewis</i>              | <i>7th Middlesex</i>                | <i>1/26/2017</i> |
| <i>William N. Brownsberger</i> | <i>Second Suffolk and Middlesex</i> | <i>1/26/2017</i> |
| <i>James B. Eldridge</i>       | <i>Middlesex and Worcester</i>      | <i>1/26/2017</i> |
| <i>Diana DiZoglio</i>          | <i>14th Essex</i>                   | <i>1/26/2017</i> |
| <i>Lori A. Ehrlich</i>         | <i>8th Essex</i>                    | <i>1/26/2017</i> |
| <i>James R. Miceli</i>         | <i>19th Middlesex</i>               | <i>1/27/2017</i> |
| <i>Michael D. Brady</i>        | <i>Second Plymouth and Bristol</i>  | <i>1/27/2017</i> |
| <i>Marjorie C. Decker</i>      | <i>25th Middlesex</i>               | <i>1/30/2017</i> |
| <i>Barbara A. L'Italien</i>    | <i>Second Essex and Middlesex</i>   | <i>1/30/2017</i> |
| <i>Patrick M. O'Connor</i>     | <i>Plymouth and Norfolk</i>         | <i>1/31/2017</i> |
| <i>Daniel J. Ryan</i>          | <i>2nd Suffolk</i>                  | <i>1/31/2017</i> |
| <i>Louis L. Kafka</i>          | <i>8th Norfolk</i>                  | <i>2/2/2017</i>  |

|                               |                                      |                  |
|-------------------------------|--------------------------------------|------------------|
| <i>Joan B. Lovely</i>         | <i>Second Essex</i>                  | <i>2/2/2017</i>  |
| <i>Steven S. Howitt</i>       | <i>4th Bristol</i>                   | <i>2/2/2017</i>  |
| <i>Sal N. DiDomenico</i>      | <i>Middlesex and Suffolk</i>         | <i>2/2/2017</i>  |
| <i>Michael O. Moore</i>       | <i>Second Worcester</i>              | <i>2/3/2017</i>  |
| <i>Paul R. Heroux</i>         | <i>2nd Bristol</i>                   | <i>2/3/2017</i>  |
| <i>Juana Matias</i>           | <i>16th Essex</i>                    | <i>2/3/2017</i>  |
| <i>Eileen M. Donoghue</i>     | <i>First Middlesex</i>               | <i>2/3/2017</i>  |
| <i>Denise Provost</i>         | <i>27th Middlesex</i>                | <i>2/3/2017</i>  |
| <i>Walter F. Timitly</i>      | <i>Norfolk, Bristol and Plymouth</i> | <i>2/3/2017</i>  |
| <i>David M. Rogers</i>        | <i>24th Middlesex</i>                | <i>2/3/2017</i>  |
| <i>Michelle M. DuBois</i>     | <i>10th Plymouth</i>                 | <i>2/3/2017</i>  |
| <i>Kathleen O'Connor Ives</i> | <i>First Essex</i>                   | <i>2/3/2017</i>  |
| <i>Jay R. Kaufman</i>         | <i>15th Middlesex</i>                | <i>2/3/2017</i>  |
| <i>Patricia D. Jehlen</i>     | <i>Second Middlesex</i>              | <i>2/3/2017</i>  |
| <i>William C. Galvin</i>      | <i>6th Norfolk</i>                   | <i>2/3/2017</i>  |
| <i>Jennifer L. Flanagan</i>   | <i>Worcester and Middlesex</i>       | <i>2/10/2017</i> |
| <i>Michael J. Barrett</i>     | <i>Third Middlesex</i>               | <i>2/14/2017</i> |
| <i>Carolyn C. Dykema</i>      | <i>8th Middlesex</i>                 | <i>5/5/2017</i>  |
| <i>Donald F. Humason, Jr.</i> | <i>Second Hampden and Hampshire</i>  | <i>7/18/2017</i> |

**SENATE . . . . . No. 1175**

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 1175) of Cynthia S. Creem, Carmine L. Gentile, Frank A. Moran, John W. Scibak and other members of the General Court for legislation to protect children and families from harmful flame retardants. Public Health.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1132 OF 2015-2016.]

**The Commonwealth of Massachusetts**

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

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, 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, 2018, 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);

33 (ii) Tris(2-chloroethyl)phosphate (TCEP) (Chemical Abstracts Service number 115-  
34 1496-8);

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

36 (iv) Hexabromocyclododecane (HBCD) (Chemical Abstracts Service number 25637-99-  
37 4);

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

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

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

43 (viii) Tris (1-chloro-2-propyl) phosphate (TCPP) (Chemical Abstracts Service number  
44 13674-84-5);

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

46 (x) octaBDE (Chemical Abstracts Service number 32536-52-0);,; and

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

49 (c) The department shall, in consultation with the Toxics Use Reduction Institute and the  
50 Science Advisory Board established in section 6 of chapter 21I, every 3 years review and  
51 identify other chemical flame retardants that should be prohibited under subsection (b); provided,  
52 however, that the department shall demonstrate that the chemical flame retardant: (i) is known  
53 to: (A) harm the normal development of a fetus or child or cause other developmental toxicity;  
54 (B) cause cancer, genetic damage or reproductive harm; (C) disrupt the endocrine system; (D)  
55 damage the nervous system, immune system or an organ or cause other systemic toxicity; or (E)  
56 is found to be a persistent, bioaccumulative and toxic or very persistent and very  
57 bioaccumulative substance; and (ii) meets any of the following criteria: (A) is documented in  
58 peer-reviewed biomonitoring studies that demonstrate the presence of the chemical in human  
59 umbilical cord blood, human breast milk, human urine or other bodily tissues or fluid; (B) is  
60 present in household dust, indoor air, drinking water or elsewhere in the home environment as  
61 determined through sampling and analysis; or (C) is present in a covered product.

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

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

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

77 (e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease,  
78 distribution or use of any covered product manufactured before January 1, 2018 and any covered  
79 product that contains chemicals prohibited under this section due to the presence of recycled  
80 materials used during the manufacture of the product covered.

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

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

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

97 SECTION 2. A manufacturer of a covered product as defined in section 27 of chapter  
98 21A of the General Laws that contains a chemical flame retardant prohibited by said section 27  
99 of said chapter 21A shall provide notice to retailers and other persons that sell covered products  
100 in the commonwealth of the passage of this act not later than October 3, 2017.

101 SECTION 3. This act shall take effect on January 1, 2018.