

HOUSE No. 4900

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 4, 2020.

The committee on Ways and Means, to whom was referred the Bill to protect children, families, and firefighters from harmful flame retardants (House, No. 3500), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4900).

For the committee,

AARON MICHLEWITZ.

HOUSE No. 4900

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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

8 “Carpeting”, any 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 1, 2 or 3 external dimensions in the nanoscale.

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

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

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

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

25 “Window treatment”, 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 December 31, 2021, 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);
- 47 (xi) Tetrabromobisphenol A (TBBPA) (Chemical Abstracts Service number 79-94-7); or
- 48 (xii) any other chemical flame retardants specified by the department pursuant to
49 subsection (c).
- 50 (c) Every 3 years, the department shall, in consultation with the Toxics Use Reduction
51 Institute at the University of Massachusetts at Lowell and its Science Advisory Board established

52 in section 6 of chapter 21I, review, identify and recommend, if applicable, other chemical flame
53 retardants that should be prohibited under this section; provided, however, that the department
54 shall demonstrate that the chemical flame retardant is known or reasonably anticipated to be
55 known to: (i) harm the normal development of a fetus or child or cause other developmental
56 toxicity; (ii) cause cancer, genetic damage or reproductive harm; (iii) disrupt the endocrine
57 system; (iv) damage the nervous system, immune system or an organ or cause other systemic
58 toxicity; or (v) is found to be persistent, bioaccumulative and toxic.

59 If the department determines that a chemical flame retardant meets the conditions of this
60 subsection, it shall promulgate regulations to restrict the manufacture, sale, distribution in
61 commerce or importation of any children's product or residential upholstered furniture
62 containing the chemical flame retardant within 9 months after making such determination and
63 upon such determination send notice to the joint committee on public health. 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 regulation, that contains the chemical flame retardant in a total weight
67 that exceeds 1,000 parts per million for any component part of the covered product; provided,
68 however, that if the chemical flame retardant is an engineered nanoobject a manufacturer or
69 retailer shall not sell, offer or manufacture for sale, distribute in commerce or import into the
70 commonwealth any covered product, except for inventory manufactured prior to the effective
71 date of the promulgated regulation, that contains the chemical flame retardant in any amount.

72 (d) This section shall not apply to products in: (i) motor vehicles, watercraft, aircraft, all-
73 terrain vehicles, off-highway motorcycles or any component parts; or (ii) the sale or purchase of

74 any previously-owned product containing a chemical flame retardant prohibited under this
75 section.

76 (e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease,
77 distribution or use of any covered product manufactured before December 31, 2021 or any
78 covered product that contains chemicals prohibited under this section due to the presence of
79 recycled materials used during the manufacture of the product covered.

80 (f) A manufacturer or retailer who violates the provisions of this section, or any
81 regulations promulgated thereunder, shall be subject to the following civil penalties:

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

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

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

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

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

93 A civil penalty for a violation of this section shall be waived if the department determines
94 that a manufacturer or retailer acted in good faith to be in compliance with this section, pursued

95 compliance with due diligence and promptly corrected any noncompliance after discovery of the
96 violation.

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

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

102 SECTION 2. A manufacturer of a covered product, as defined in section 28 of chapter
103 21A of the General Laws, that contains a chemical flame retardant prohibited by said section 28
104 of said chapter 21A shall provide notice to retailers and other persons that sell covered products
105 in the commonwealth of the passage of this act on or before July 1, 2021.