

Acts (2020)

Chapter 261

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:

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 have the following meanings unless the context clearly requires otherwise:

“Bedding”, any 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”, any 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.

“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.

“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; provided, however, that sale at retail shall not include a sale that is a wholesale transaction with a distributor or a retailer.

“Window treatment”, 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 December 31, 2021, 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 115–96–8);

(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) Not less than every 3 years, the department shall, in consultation with the Toxics Use Reduction Institute at the University of Massachusetts at Lowell, the Science Advisory Board established in section 6 of chapter 21I and any other relevant state agency, review, identify and recommend, if applicable, other chemical flame retardants that should be prohibited under subsection (b); provided, however, that in recommending another chemical flame retardant to be prohibited, the department shall determine through scientific documentation that the chemical flame retardant is known or reasonably anticipated to present a toxic hazard to people through 1 or more potential routes of exposure; provided further, that a toxic hazard may include, but shall not be limited to: (i) harming the normal development of a fetus or child or causing other developmental

toxicity; (ii) causing cancer, genetic damage or reproductive harm; (iii) disrupting the endocrine system; (iv) damaging the nervous system, immune system or an organ or causing other systemic toxicity; (v) being persistent, bioaccumulative and toxic; or (vi) having health and environmental impacts.

If the department determines that a chemical flame retardant meets the conditions of this subsection, it shall promulgate regulations to restrict the manufacture, sale, distribution in commerce or importation of any covered product containing the chemical flame retardant within 9 months after making such determination and upon such determination the department shall send notice of the determination to the joint committee on public health. 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 regulation 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 regulation 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; (ii) the sale or purchase of any previously-owned product containing a chemical flame retardant prohibited under this section; (iii) electronic devices; and (iv) electronic components of

covered products.

(e) Subsections (a) to (c), inclusive, shall not apply to the sale, purchase, lease, distribution or use of any covered product manufactured before December 31, 2021 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 this section, or any regulation promulgated pursuant to this section, 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 section, 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 under this subsection.

A civil penalty for a violation of this section shall be waived 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 this section.

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 not later than July 1, 2021.

Approved, January 1, 2020.