

**HOUSE . . . . . No. 3500****The Commonwealth of Massachusetts**

PRESENTED BY:

***Marjorie C. Decker****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, families, and firefighters from harmful flame retardants.

PETITION OF:

| NAME:                      | DISTRICT/ADDRESS:                  |
|----------------------------|------------------------------------|
| <i>Marjorie C. Decker</i>  | <i>25th Middlesex</i>              |
| <i>Louis L. Kafka</i>      | <i>8th Norfolk</i>                 |
| <i>Joseph A. Boncore</i>   | <i>First Suffolk and Middlesex</i> |
| <i>Lori A. Ehrlich</i>     | <i>8th Essex</i>                   |
| <i>Brian W. Murray</i>     | <i>10th Worcester</i>              |
| <i>Carolyn C. Dykema</i>   | <i>8th Middlesex</i>               |
| <i>Brian M. Ashe</i>       | <i>2nd Hampden</i>                 |
| <i>Bruce J. Ayers</i>      | <i>1st Norfolk</i>                 |
| <i>Ruth B. Balser</i>      | <i>12th Middlesex</i>              |
| <i>Christine P. Barber</i> | <i>34th Middlesex</i>              |
| <i>Jennifer E. Benson</i>  | <i>37th Middlesex</i>              |
| <i>David Biele</i>         | <i>4th Suffolk</i>                 |
| <i>Natalie M. Blais</i>    | <i>1st Franklin</i>                |
| <i>Paul Brodeur</i>        | <i>32nd Middlesex</i>              |
| <i>Peter Capano</i>        | <i>11th Essex</i>                  |
| <i>Gerard J. Cassidy</i>   | <i>9th Plymouth</i>                |
| <i>Tackey Chan</i>         | <i>2nd Norfolk</i>                 |
| <i>Michelle L. Ciccolo</i> | <i>15th Middlesex</i>              |

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| <i>Mike Connolly</i>               | <i>26th Middlesex</i>                  |
| <i>Brendan P. Crighton</i>         | <i>Third Essex</i>                     |
| <i>Claire D. Cronin</i>            | <i>11th Plymouth</i>                   |
| <i>Michael S. Day</i>              | <i>31st Middlesex</i>                  |
| <i>Linda Dean Campbell</i>         | <i>15th Essex</i>                      |
| <i>Sal N. DiDomenico</i>           | <i>Middlesex and Suffolk</i>           |
| <i>Mindy Domb</i>                  | <i>3rd Hampshire</i>                   |
| <i>Michelle M. DuBois</i>          | <i>10th Plymouth</i>                   |
| <i>James B. Eldridge</i>           | <i>Middlesex and Worcester</i>         |
| <i>Nika C. Elugardo</i>            | <i>15th Suffolk</i>                    |
| <i>Dylan A. Fernandes</i>          | <i>Barnstable, Dukes and Nantucket</i> |
| <i>Ann-Margaret Ferrante</i>       | <i>5th Essex</i>                       |
| <i>William C. Galvin</i>           | <i>6th Norfolk</i>                     |
| <i>Sean Garballey</i>              | <i>23rd Middlesex</i>                  |
| <i>Denise C. Garlick</i>           | <i>13th Norfolk</i>                    |
| <i>Carmine Lawrence Gentile</i>    | <i>13th Middlesex</i>                  |
| <i>Carlos Gonzalez</i>             | <i>10th Hampden</i>                    |
| <i>Kenneth I. Gordon</i>           | <i>21st Middlesex</i>                  |
| <i>Tami L. Gouveia</i>             | <i>14th Middlesex</i>                  |
| <i>James K. Hawkins</i>            | <i>2nd Bristol</i>                     |
| <i>Stephan Hay</i>                 | <i>3rd Worcester</i>                   |
| <i>Jonathan Hecht</i>              | <i>29th Middlesex</i>                  |
| <i>Natalie M. Higgins</i>          | <i>4th Worcester</i>                   |
| <i>Kate Hogan</i>                  | <i>3rd Middlesex</i>                   |
| <i>Russell E. Holmes</i>           | <i>6th Suffolk</i>                     |
| <i>Bradley H. Jones, Jr.</i>       | <i>20th Middlesex</i>                  |
| <i>Mary S. Keefe</i>               | <i>15th Worcester</i>                  |
| <i>Kay Khan</i>                    | <i>11th Middlesex</i>                  |
| <i>David Henry Argosky LeBoeuf</i> | <i>17th Worcester</i>                  |
| <i>Jack Patrick Lewis</i>          | <i>7th Middlesex</i>                   |
| <i>Jason M. Lewis</i>              | <i>Fifth Middlesex</i>                 |
| <i>David Paul Linsky</i>           | <i>5th Middlesex</i>                   |
| <i>Adrian C. Madaro</i>            | <i>1st Suffolk</i>                     |
| <i>Elizabeth A. Malia</i>          | <i>11th Suffolk</i>                    |
| <i>Paul W. Mark</i>                | <i>2nd Berkshire</i>                   |
| <i>Joseph W. McGonagle, Jr.</i>    | <i>28th Middlesex</i>                  |
| <i>Paul McMurtry</i>               | <i>11th Norfolk</i>                    |
| <i>Christina A. Minicucci</i>      | <i>14th Essex</i>                      |
| <i>Liz Miranda</i>                 | <i>5th Suffolk</i>                     |

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|--------------------------------|---------------------------------------|
| <i>James M. Murphy</i>         | <i>4th Norfolk</i>                    |
| <i>Harold P. Naughton, Jr.</i> | <i>12th Worcester</i>                 |
| <i>Tram T. Nguyen</i>          | <i>18th Essex</i>                     |
| <i>Patrick M. O'Connor</i>     | <i>Plymouth and Norfolk</i>           |
| <i>Denise Provost</i>          | <i>27th Middlesex</i>                 |
| <i>Angelo J. Puppolo, Jr.</i>  | <i>12th Hampden</i>                   |
| <i>Rebecca L. Rausch</i>       | <i>Norfolk, Bristol and Middlesex</i> |
| <i>David Allen Robertson</i>   | <i>19th Middlesex</i>                 |
| <i>David M. Rogers</i>         | <i>24th Middlesex</i>                 |
| <i>John H. Rogers</i>          | <i>12th Norfolk</i>                   |
| <i>Daniel J. Ryan</i>          | <i>2nd Suffolk</i>                    |
| <i>Jon Santiago</i>            | <i>9th Suffolk</i>                    |
| <i>Thomas M. Stanley</i>       | <i>9th Middlesex</i>                  |
| <i>José F. Tosado</i>          | <i>9th Hampden</i>                    |
| <i>Paul F. Tucker</i>          | <i>7th Essex</i>                      |
| <i>Steven Ultrino</i>          | <i>33rd Middlesex</i>                 |
| <i>John C. Velis</i>           | <i>4th Hampden</i>                    |
| <i>RoseLee Vincent</i>         | <i>16th Suffolk</i>                   |
| <i>Tommy Vitolo</i>            | <i>15th Norfolk</i>                   |
| <i>Thomas P. Walsh</i>         | <i>12th Essex</i>                     |
| <i>Donald H. Wong</i>          | <i>9th Essex</i>                      |

# HOUSE . . . . . No. 3500

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By Ms. Decker of Cambridge, a petition (accompanied by bill, House, No. 3500) of Marjorie C. Decker and others relative to certain flame retardants. Public Health.

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## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninety-First General Court  
(2019-2020)  
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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, as amended by section 5 of chapter 209  
2 of the acts of 2018, is hereby further amended by adding the 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.

“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 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 June 1, 2020 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:

30 (i) Tris(1,3-dichloro-2-propyl)phosphate (TDCPP) (Chemical Abstracts Service number  
31 13674-87-8);

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

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

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

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

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

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

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

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

45 (x) octaBDE (Chemical Abstracts Service number 32536-52-0);

46 (xi) Tetrabromobisphenol A (TBBPA) (Chemical Abstracts Service number 79-94-7); or

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

(c) Every 3 years the department shall, in consultation with the Toxics Use Reduction Institute at the University of Massachusetts Lowell and its 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 or reasonably anticipated to be 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 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 and upon such determination send notice to the General Court. 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 June 1, 2020 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.



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

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

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

100 SECTION 2. A manufacturer of a covered product as defined in section 28 of chapter  
101 21A of the General Laws that contains a chemical flame retardant prohibited by said section 28  
102 of said chapter 21A shall provide notice to retailers and other persons that sell covered products  
103 in the commonwealth of the passage of this act on or before December 31, 2019.