

SENATE No. 1931

The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen
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SENATE, Thursday, November 21, 2013

The committee on Public Health to whom was referred the petition (accompanied by bill, Senate, No. 351) of Cynthia S. Creem, Carolyn C. Dykema and Tom Sannicandro for legislation to protect children and families from harmful flame retardants reports the accompanying bill of the same title (Senate, No. 1931).

For the committee,
John F. Keenan

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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 94B of the General Laws is hereby amended by adding the
2 following 4 sections:-

3 Section 23. As used in sections 23 to 26, inclusive, the following terms shall have the
4 following meanings unless the context clearly requires otherwise:

5 "Chemical of high concern", a chemical identified by the United States Environmental
6 Protection Agency, the Toxics Use Reduction Institute or any other authoritative government
7 entity that is known to: (i) harm the normal development of a fetus or child or cause other
8 developmental toxicity; (ii) cause cancer, genetic damage or reproductive harm; (iii) disrupt the
9 endocrine system; damage the nervous system, immune system or organs or cause other systemic
10 toxicity; (iv) be persistent, bioaccumulative and toxic; (iv) or be very persistent and very
11 bioaccumulative.

12 "Children's product", a consumer product intended, made or marketed for use by children
13 12 years of age or under.

14 "DecaBDE", decabromodiphenyl ether or any technical mixture in which a
15 decabromodiphenyl ether is a congener.

16 "Department", the department of environmental protection.

17 "Manufacturer", a person, firm, association, partnership, corporation, governmental
18 entity, organization, combination or joint venture which produces a consumer product containing
19 a priority chemical substance or an importer or domestic distributor of a consumer product
20 containing a priority chemical substance and that is produced in a foreign country; provided,
21 however, that for a consumer product made with components made by different

22 manufacturers, “manufacturer” shall mean the manufacturer who produced the component
23 containing the priority chemical substance; provided further, that for a consumer product or
24 component produced in a foreign country, “manufacturer” shall mean the importer or domestic
25 distributor; and provided further, that if a company from whom an importer purchases the
26 consumer product or component has a United States presence or assets, that company shall be
27 considered the manufacturer.

28 “OctaBDE”, octabromodiphenyl ether or any technical mixture in which
29 octabromodiphenyl ether is a congener.

30 “PBDE”, polybrominated diphenyl ether, including DecaBDE, OctaBDE and PentaBDE.

31 “PentaBDE”, pentabromodiphenyl ether or any technical mixture in which a
32 pentabromodiphenyl ether is a congener.

33 “Principal importer”, the first importer of residential household furniture or children’s
34 products not manufactured in the United States; provided, however, that only persons who are
35 incorporated, licensed or doing business in the United States shall be principal importers.

36 "Residential upholstered furniture", residential seating products intended for indoor use
37 in a home or other dwelling intended for residential occupancy that consists in whole or in part
38 of resilient cushioning materials enclosed within a covering consisting of fabric or related
39 materials.

40 "Retailer", a person who offers a product for sale at retail through any means including,
41 but not limited to, remote offerings such as sales outlets, catalogs or the internet, but not
42 including a sale that is a wholesale transaction with a distributor or a retailer; provided, however,
43 that “retailer” shall not include a person, firm, association, partnership, corporation,
44 governmental entity, organization or joint venture that both manufactures and sells a product at
45 retail.

46 “Technical mixture”, a PBDE mixture that is sold to a manufacturer and is named for the
47 predominant congener in the mixture but is not exclusively made up of that congener.

48 "TRIS", (i) TDCPP [tris(1,3-dichloro-2-propyl)phosphate], chemical abstracts service
49 number 13674-87-8; (ii) TCEP [tris(2-chloroethyl) phosphate], chemical abstracts service
50 number 115-96-8; and (iii) TCPP [tris(2-chloro-1-methylethyl)phosphate], chemical abstracts
51 service number 13674-84-5.

52 Section 24. (a) Except for inventory manufactured prior to January 1, 2014, no person,
53 other than a retailer, shall manufacture or knowingly sell, offer for sale, distribute for sale or
54 distribute for use in the commonwealth, any children’s product or residential upholstered
55 furniture containing TRIS in amounts greater than 1,000 parts per 1,000,000 in any product
56 component.

57 (b) A retailer shall not knowingly sell or offer for sale in the commonwealth any
58 children's product or residential upholstered furniture that contains TRIS in amounts greater than
59 1,000 parts per 1,000,000 in any product component.

60 (c) No manufacturer, wholesaler, principal importer or retailer shall manufacture or
61 knowingly sell, offer for sale, distribute for sale or distribute for use in the commonwealth any
62 product containing PBDEs in a concentration greater than .1 per cent by weight.

63 (d) No manufacturer, wholesaler, principal importer or retailer shall manufacture or
64 knowingly sell or offer for sale, distribute for sale or distribute for use in the commonwealth any
65 children's product or residential upholstered furniture containing flame retardants other than
66 TRIS and PBDEs that are identified as chemicals of high concern in concentrations deemed to be
67 harmful as determined by the United States Environmental Protection Agency, the Toxics Use
68 Reduction Institute or other authoritative government entity.

69 (e) Sections 23 to 26 inclusive shall not apply to motor vehicles and their component
70 parts, watercraft and their component parts, aircraft and their component parts, all-terrain
71 vehicles and their component parts, off-highway motorcycles and their component parts or to the
72 sale or purchase of any previously-owned product containing a chemical restricted under this
73 section.

74 Section 25. A manufacturer, wholesaler, principal importer or retailer of products
75 containing TRIS, PBDEs or other identified chemicals of high concern in violation of sections 23
76 to 26, inclusive, shall be subject to a civil penalty of up to \$1,000 for each item of residential
77 upholstered furniture, children's product or other product sold or offered for sale in violation of
78 said sections 23 to 26, inclusive, and any additional civil penalties as may be determined by the
79 rules and regulations of the department. Manufacturers, wholesalers, principal importers or
80 retailers who are accused of second or subsequent violations shall be subject to a civil penalty by
81 a fine of up to \$5,000 for each item in each subsequent offense and any additional civil penalties
82 as may be determined by the rules and regulations of the department.

83 Section 26. The department may promulgate such rules and regulations as it deems
84 necessary to implement sections 23 to 25, inclusive.

85 SECTION 2. A manufacturer, wholesaler or principal importer of products containing
86 TRIS, PBDEs or other identified chemicals of high concern that are restricted under this section
87 shall provided notice to retailers and other persons that sell the manufacturer's products in the
88 commonwealth of the enactment of sections 23 to 26, inclusive, of chapter 94B of the General
89 Laws not less than 90 days before the effective date of those sections.

90 SECTION 3. Subsection (b) of section 24 of chapter 94B of the General Laws shall take
91 effect on January 1, 2015.

SECTION 4. Except as otherwise provided, this act shall take effect on January 1, 2014.