

Submitted by: Assembly Chair Croft,
Assembly Member LaFrance, and
Assembly Member Dunbar
Prepared by: Assembly Counsel
For reading: February 26, 2019

ANCHORAGE, ALASKA
AO No. 2019-15(S), As Amended

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY TO PROTECT THE HEALTH OF CHILDREN AND FIREFIGHTERS BY AMENDING THE ANCHORAGE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.100, *CONSUMER PRODUCTS*, AND A NEW SECTION TO PROHIBIT CERTAIN CONSUMER PRODUCTS CONTAINING FLAME RETARDANT CHEMICALS HARMFUL TO HUMAN HEALTH AND DEVELOPMENT.

1 **WHEREAS**, certain flame retardant chemicals are added to many consumer
2 products, including children’s products, toys, and furniture, and are harmful to human
3 health. The manufacturing industry has generally phased out the commercial use of
4 polybrominated diphenyl ethers (PBDE) flame retardants, and replaced them with use
5 of alternative chemicals such as organohalogenated, organophosphorus and
6 organonitrogen flame retardants (collectively, “toxic flame retardants”); and
7

8 **WHEREAS**, the known adverse health effects of these chemicals to consumers
9 include: reproductive impairment (e.g., abnormal gonadal development, reduced
10 number of ovarian follicles, reduced sperm count, and increased time to pregnancy);
11 neurological impacts (e.g., decreased IQ in children, impaired memory, learning
12 deficits, altered motor behavior, and hyperactivity); endocrine disruption and
13 interference with thyroid hormone action (potentially contributing to diabetes and
14 obesity); genotoxicity; cancer; and immune disorders; and
15

16 **WHEREAS**, scientific studies show that the addition of **[non-polymer]** flame
17 retardant chemicals to consumer products does not provide proven fire safety
18 benefits, and they make the products more hazardous while in use and more toxic if
19 they do catch fire; and
20

21 **WHEREAS**, the United States Centers for Disease Control and Prevention (CDC)
22 has identified harmful toxic flame retardants in the bodies of more than 90% of
23 Americans; and
24

25 **WHEREAS**, research has found infants, children, pregnant women, firefighters,
26 indigenous communities, and people with compromised immune systems and
27 chemical sensitivities are especially vulnerable to toxic flame retardant chemical
28 exposures and effects; and
29

30 **WHEREAS**, firefighters are at particular risk for exposure to carcinogenic flame
31 retardants and associated combustion products (such as dioxins and furans) through
32 inhalation, absorption, and ingestion. Recent studies show that firefighters have up
33 to three times the levels of these chemicals in their bodies than the general
34 population, and a National Institute for Occupational Safety and Health (NIOSH)
35 study of cancer incidence among 30,000 career firefighters found higher rates of

1 several types of cancer; and

2
3 **WHEREAS**, the federal Consumer Product Safety Commission (CPSC) began a
4 rulemaking process in 2017 to ban the use of the entire class of organohalogen flame
5 retardants from children’s toys and child care articles, mattresses and mattress pads,
6 upholstered household furniture, and the outer plastic casings for electronics; and

7
8 **WHEREAS**, the CPSC issued a public warning and guidance requesting that
9 manufacturers of the products “eliminate the use of such chemicals in these
10 products.” The CPSC also determined “These chemicals have a disproportionately
11 negative health effect on vulnerable populations, including children”; and

12
13 **WHEREAS**, the federal Toxic Substances Control Act of 1976 (TSCA) was recently
14 amended by Congress by the Frank R. Lautenberg Chemical Safety for the 21st
15 Century Act of 2016 (LCSA), 15 U.S.C. § 2601 *et seq.*, to streamline toxicity
16 guidelines and promote a national framework for chemical substances regulation,
17 ~~but includes a ceiling preemption provision barring states and municipalities~~
18 ~~from regulating chemicals more strictly than the Environmental Protection~~
19 ~~Agency].~~ The EPA has not yet acted to restrict use of or regulate any additive flame
20 retardants under this enactment. The federal rulemaking **of the CPSC and EPA** may
21 take years to complete, so it is incumbent upon local jurisdictions and states to take
22 more immediate action to enact measures to protect the health of their residents from
23 toxic flame retardants, particularly children and firefighters at risk of exposure; and

24
25 **WHEREAS**, numerous local governments are taking leadership in protecting their
26 residents by passing legislation to phase out the use of toxic flame retardants in
27 consumer products where better alternatives exist; and

28
29 **WHEREAS**, forty-one policies have been passed by thirteen states and local
30 governments and forty more policies are being considered in seventeen additional
31 jurisdictions; and

32
33 **WHEREAS**, retailers and manufacturers around the nation are phasing these
34 chemicals out of their products and producing safe alternatives at no higher cost; and

35
36 **WHEREAS**, Alaskans are at higher risk from exposure to flame retardants due to the
37 amount of time residents spend indoors in highly insulated and low ventilation areas.
38 The inhalation and ingestion of household dust is an important route of exposure.
39 Toddlers aged 1-4 years of age have about three times higher levels of toxic flame
40 retardants in their blood compared with their mothers. Alaskans also receive higher
41 exposures as a result of the global distillation process that transports chemicals
42 northward, such as toxic flame retardants, where they concentrate in our northern
43 and Arctic region; and

44
45 **WHEREAS**, birth defects in Alaska are twice as high as the national average, and
46 Alaska Native infants have twice the incidence of birth defects as non-Native infants
47 in Alaska; and

48

1 **WHEREAS**, people have a right not to be involuntarily exposed to flame retardant
2 chemicals and to be informed so they can make safer purchasing choices; and
3

4 **WHEREAS**, the Municipality has demonstrated its commitment to defending young
5 children against harmful neurotoxic chemicals through the Healthy Babies, Bright
6 Futures “Bright City” program and through the Children’s Environmental Health
7 proclamation of 2016 and 2018; now, therefore,
8

9 **THE ANCHORAGE ASSEMBLY ORDAINS:**

10
11 **Section 1.** Anchorage Municipal Code is amended by adding a new chapter
12 15.100 to read as follows:
13

14 CHAPTER 15.100 – CONSUMER PRODUCTS

15 Sections
16

17
18 **15.100.010 Flame retardant chemicals – prohibition.**
19

20 A. After January 1, 2020 no person shall manufacture, sell, offer for sale,
21 or distribute within the municipality any covered product that
22 contains, or a constituent component of which contains, a prohibited
23 flame retardant chemical at levels above 1,000 parts per million.
24

25 1. For purposes of this subsection, any consumer product safety
26 standard adopted under federal law that establishes allowable
27 levels of a prohibited flame retardant chemical that covered
28 products may contain is presumed to establish the maximum
29 allowable level of the chemical that may be used in a covered
30 product~~[children's products]~~ that are sold or offered for sale in
31 the municipality, and the federally established level if equally or
32 more protective is hereby incorporated by reference and may
33 be enforced under this section.
34

35 B. Prohibited flame retardant chemicals include, but are not limited to, any
36 chemical that meets both of the following criteria:
37

38 1. A functional use for the chemical is to resist or inhibit the spread
39 of fire, or as a synergist to such chemicals, including, but not
40 limited to, any chemical for which the term “flame retardant,” or
41 a synonymous term, appears on the Occupational Safety and
42 Health Administration substance safety data sheet pursuant to
43 subdivision (g) of Section 1910.1200 of Title 29 of the Code of
44 Federal Regulations~~[as it read on January 1, 2019]~~.
45

46 2. The chemical is one of the following:
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

- a. a halogenated, organophosphorus, organonitrogen, or nanoscale flame retardant chemical;
- b. the penta or octa mixtures of polybrominated diphenyl ethers, the deca mixture of polybrominated diphenyl ethers (PBDEs), or decabromodiphenyl ether (chemical abstracts service number 1163-19-5);
- c. antimony (chemical abstracts service number 7440-36-0);
- d. a chemical defined as a “designated chemical” under Section 105440 of the California Health and Safety Code; or
- e. a chemical listed on the Washington State Department of Ecology's list of Chemicals of High Concern to Children in Section 173-334-130 of Title 173 of the Washington Administrative Code~~[as of January 1, 2019]~~, and identified as a flame retardant or as a synergist to flame retardants in the rationale for inclusion in the list.

C. **[Replacement of regulated flame retardants. A manufacturer of a covered product shall not replace or substitute, and a distributor or retailer shall not sell or offer to sell a covered product in which a manufacturer replaced or substituted, a chemical flame retardant whose use is prohibited under subsection B with a chemical that is:**

- 1. classified as “known to be a human carcinogen” or “reasonably anticipated to be a human carcinogen” in the most recent report on carcinogens by the National Toxicology Program in the U.S. Department of Health and Human Services;**
- 2. classified as “carcinogenic to humans” or “likely to be carcinogenic to humans” in the U.S. Environmental Protection Agency’s most recent list of chemicals evaluated for carcinogenic potential;**
- 3. identified by the U.S. Environmental Protection Agency or the National Institutes of Health as causing birth defects, hormone disruption, neurotoxicity, or harm to reproduction or development; or**
- 4. otherwise identified on the basis of credible, peer-reviewed scientific evidence by any state, federal, or international agency as being known or suspected with a high degree of**

probability to:

a. harm the normal development of a fetus or child or cause other developmental toxicity;

b. cause cancer, genetic damage, or reproductive harm;

c. disrupt the endocrine or hormone system; or

d. damage the nervous system, immune system, or organs, or cause other systemic toxicity.

D.] The prohibitions contained in this section shall not apply to the following:

1. the sale, offer for sale, or distribution of a covered product by a retailer who purchased or acquired the product before January 1, 2020;
2. any transactional activity involving a covered product that occurs subsequent to the first sale at retail; or
3. a person granted a waiver from compliance with the prohibitions of this section by the department, so long as the waiver is in effect.

D[E]. Labeling. A manufacturer of a covered product, excluding juvenile products, that is sold, offered for sale, or distributed in the municipality and which would be required to have a label under the California Business & Professions Code § 19094 (a upholstered or reupholstered furniture product required to meet the test requirements of California Technical Bulletin 117-2013) shall place on a label affixed to the product the same [a] statement as required by the state of California. [substantially in the following form: "The materials in this product contain [or do not contain] added flame retardant chemicals."

E[F]. Proof of compliance; waivers.

1. A person who distributes, sells or offers to sell a covered product in the municipality may demonstrate compliance with this section by retaining and making available for inspection upon request a written statement from the product manufacturer or supplier attesting that a specific [the] covered product does not contain a prohibited flame retardant chemical. The statement shall include contact information and identify specific product(s) by name, model year(s), and SKU or UPC number(s). When requested during an inspection or after

1 service of a notice of violation under chapter 15.05,
2 d[~~D~~]istributors and retailers shall have 60 days to obtain the
3 statement from the product manufacturer or supplier. The
4 department may accommodate other reasonable means of
5 demonstrating compliance, including proof used to comply
6 with similar requirements in place in other states or
7 localities.
8

- 9
- 10 2. A person who manufactures, distributes, sells, or offers to sell a
11 covered product in the municipality may apply to the director in
12 writing for a waiver from strict compliance with this section. The
13 application shall describe the scope and duration of the waiver
14 requested, and demonstrate that strict compliance shall cause
15 undue hardship, practical difficulty to the applicant, or is not
16 feasible. The director shall respond in writing within 60 days,
17 and may inform the applicant that additional time is needed to
18 consider the application, not to exceed 120 additional days. An
19 application for a waiver may be granted in whole or in part, and
20 shall be crafted narrowly to address the basis for the request.
21 The director's decision to grant or deny the application shall be
22 in writing and state it is a final decision. The director may
23 revoke a waiver granted under this subsection at any time if the
24 director determines the application was made in bad faith,
25 contained false information, or the grounds for the application
26 for the waiver have ceased to exist.

27 **F[~~G~~].** Definitions. The following definitions apply to this section:

28
29 *Covered product* means upholstered furniture, reupholstered furniture,
30 or juvenile products, any component, internal or external, of which has been
31 made with or contains a flame retardant chemical. Covered products do not
32 include:

- 33
- 34 1. used or second-hand furniture that is not reupholstered, or
 - 35 2. used or second-hand Juvenile Products; [~~or~~]
 - 36 3. products that are not primarily intended for use in the home,
37 such as products or components for motor vehicles, watercraft,
38 aircraft, or other vehicles;
 - 39 4. child restraint systems, as regulated under 49 CFR Part
40 571; or
 - 41 5. the following electronics:
 - 42 a. electronic products,
- 43
44
45
46
47
48

1 **b. electronic components of upholstered furniture,**
2 **reupholstered furniture, or juvenile products, or**

3
4 **c. any associated casing for those electronic products.**

5
6 *Establishment* means any store, stand, booth, concession, or any other
7 business enterprise that engages in the sale of covered products in the
8 municipality, and/or in the business of reupholstering residential furniture in
9 the municipality.

10
11 *Halogenated chemical* means any chemical that contains one or more
12 halogen elements, including fluorine, chlorine, bromine, or iodine.

13
14 *Juvenile product* means a new, not a previously owned, product
15 designed for residential use by infants and children under 12 years of age,
16 including but not limited to a bassinet, booster seat, changing pad, floor play
17 mat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant
18 swing, infant walker, nursing pad, nursing pillow, playpen side pad, portable
19 hook-on chair, stroller, and children’s nap mat. **Juvenile product does not**
20 **include child or infant restraint systems, toys, or clothing.**

21
22 *Manufacturer* means a person who, in the course of business,

- 23
24 1. manufactures a covered product;
25
26 2. affixes a brand name to a covered product; or
27
28 3. is the importer or first distributor in the United States of a
29 covered product that was imported into the United States and if
30 the person who manufactured or assembled the covered
31 product or whose brand name is affixed to the covered product
32 does not do business in the United States; in this subparagraph,
33 “distributor” means a person who sells covered products on a
34 wholesale basis.

35
36 *Organophosphorus chemical* means any chemical that contains one or
37 more carbon elements and one or more phosphorus elements.

38
39 *Organonitrogen chemical* means any chemical that contains one or
40 more carbon elements and one or more nitrogen elements.

41
42 *Reupholstered furniture* means furniture whose original fabric, padding,
43 decking, barrier material, foam and/or other resilient filling has been replaced
44 by an establishment and that has not been sold since the time of such
45 replacement.

46
47 *Upholstered furniture* means new, not previously owned **furniture,**
48 **including mattresses, box springs and other foundational bedding,**
49 **[seating]** made with soft materials including but not limited to fabric, padding,

decking, barrier material, foam, and/or other resilient filling.

G[H]. Penalties. Any person who violates subsection A.~~[, C.,]~~ or **D[E]**. is subject to a civil penalty as set forth in Section 14.60.030, or, if no penalty is included in Section 14.60.030, a civil penalty not to exceed \$300.00 for each day of the violation.

Section 2. Anchorage Municipal Code section 14.60.030 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

14.60.030 - Fine schedule.

The fine schedule under this chapter is as follows:

Code Section	Offense	Penalty / fine
* * *	* * *	* * *
<u>15.100.010A.</u> [or C.]	<u>Manufacture, sell, offer to sell, or distribute a covered product with a prohibited flame retardant chemical</u> or substitute chemical	<u>300.00</u>
<u>15.100.010D[E].</u>	<u>Failure to label covered product</u>	<u>300.00</u>
* * *	* * *	* * *

(AO No. 93-167(S-1), § 1, 4-13-94; AO No. 94-108, § 1, 10-5-94; AO No. 94-134, § 2, 9-8-94; AO No. 95-42, § 2, 3-23-95; AO No. 95-67(S), § 9, 7-1-95; AO No. 95-102, § 1, 4-26-95; AO No. 95-118, § 3, 9-1-95; AO No. 95-163(S), § 21, 8-8-95; AO No. 95-195(S-1), 1-1-96; AO No. 96-51(S-1), § 2, 8-1-96; AO No. 96-96(S-1), § 2, 2-1-97; AO No. 96-126(S), § 3, 10-1-96; AO No. 96-137(S), § 9, 1-2-97; AO No. 97-88, § 3, 6-3-97; AO No. 97-107, § 3, 11-17-97; AO No. 97-133(S), § 1, 11-11-97; AO No. 98-27(S-1), § 2, 11-11-97; AO No. 98-160, § 2, 12-8-98; AO No. 99-13(S), 2-9-99; AO No. 99-91(S), § 4, 7-13-99; AO No. 2000-64, § 1, 4-18-00; AO No. 2000-116(S), § 4, 7-18-00; AO No. 2000-127(S), § 2, 10-14-00; AO No. 2000-129(S), § 26, 11-21-00; AO No. 2001-48, § 1, 3-13-01; AO No. 2001-74(S), § 2, 4-17-01; AO No. 2001-4, § 2, 2-6-01; AO No. 2001-145(S-1), § 11, 12-11-01; AO No. 2003-68, § 1, 9-30-03; AO No. 2003-97, § 4, 9-30-03; AO No. 2003-117, § 2, 1-28-03; AO No. 2003-130, § 8, 10-7-03; AO No. 2003-152S, § 10, 1-1-04; AO No. 2004-1, § 2, 1-1-03; AO No. 2004-99, § 2, 6-22-04; AO No. 2004-100(S-1), § 6, 1-1-05; AO No. 2004-171, § 1, 1-11-05; AO No. 2005-160, § 9, 11-1-05; AO No. 2005-84(S), § 3, 1-1-06; AO No. 2005-185(S), § 35, 2-28-06; AO No. 2005-124(S-1A), § 33, 4-18-06; AO No. 2006-39, § 6, 4-11-06; AO No. 2006-54, § 1, 5-2-06; AO No. 2006-80, § 1, 6-6-06; AO No. 2007-50, § 4, 4-10-07; AO No. 2007-60, § 4, 11-1-07; AO No. 2007-70, § 3, 5-15-07; AO No. 2008-84(S), § 5, 7-15-08; AO No. 2009-61, § 3, 7-7-09; AO No. 2009-82, § 5, 7-7-09; AO No. 2009-40(S), § 3, 7-21-09; AO No. 2009-112, § 4, 10-13-09; AO No. 2009-122, § 2, 12-17-09; AO-2010-35(S), § 7, 5-11-10; AO No. 2010-39, § 2, 5-11-10; AO No. 2010-87(S),

1 § 3, 12-7-10; AO No. 2011-46, § 4, 4-12-11; AO No. 2011-59, § 10, 5-24-11;
2 AO No. 2011-106(S), § 3, 11-8-11; AO No. 2011-112, § 4, 11-22-11, eff. 12-
3 22-11; AO No. 2012-10, § 1, 1-31-12; AO No. 2012-77, § 29, 8-7-12; AO No.
4 2013-109(S-1), § 5, 12-3-13; AO No. 2013-130(S-1), § 1, 1-14-14; AO No.
5 2014-42, § 31, 6-21-14; AO No. 2014-85, § 4, 8-5-14; AO No. 2014-110(S), §
6 2, 9-9-14; AO No. 2014-137(S), § 3, 11-18-14; AO No. 2015-23(S), § 20, 3-
7 24-15; AO No. 2015-48, § 16, 5-14-15 ; AO No. 2015-54, § 1, 5-26-15 ; AO
8 No. 2015-65, § 4, 6-9-15 ; AO No. 2015-111(S-1), § 2, 1-1-16 ; AO No. 2016-
9 16(S), § 4, 2-9-16 ; AO No. 2016-76(S), § 7, 7-12-16 ; AO No. 2016-81(S), §
10 4, 8-25-16 ; AO No. 2016-83(S), § 9, 7-26-16 ; AO No. 2016-82 , § 3, 8-9-16;
11 AO No. 2016-116 , § 2, 10-18-16; AO No. 2016-115(S) , § 2, 11-15-16; AO
12 No. 2016-124(S) , § 11, 12-20-16; AO No. 2017-26 , § 2, 5-1-17; AO No.
13 2017-29(S) , § 61, 6-1-17; AO No. 2017-30 , § 3, 3-21-17; AO No. 2017-31(S)
14 , § 5, 5-26-17; AO No. 2017-119(S) , § 4, 11-9-17; AO No. 2017-101 , § 2, 2-5-
15 18; AO No. 2017-161(S) , § 3, 2-27-18)

16
17 **Section 3.** This ordinance shall be effective immediately upon passage and
18 approval by the Assembly.
19

20
21 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
22 _____, 2019.
23

24
25
26
27 _____
Chair

28 ATTEST:
29
30

31 _____
32 Municipal Clerk