

S.81

An act relating to the regulation of octaBDE, pentaBDE, decaBDE, and the flame retardant known as Tris in consumer products

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 9 V.S.A. chapter 80 is amended to read:

CHAPTER 80. FLAME RETARDANTS

§ 2971. ~~BROMINATED FLAME RETARDANTS~~

~~(a) As used in this section:~~

~~(1) "Brominated flame retardant" means any chemical containing the element bromine that is added to plastic, foam, or textile to inhibit flame formation.~~

~~(2) "Congener" means a specific PBDE molecule.~~

~~(3) "DecaBDE" means decabromodiphenyl ether or any technical mixture in which decabromodiphenyl ether is a congener.~~

~~(4) "Flame retardant" means any chemical that is added to a plastic, foam, or textile to inhibit flame formation.~~

~~(5) "Manufacturer" means any person who manufactures a final product containing a regulated brominated flame retardant or any person whose brand name is affixed to a product containing a regulated brominated flame retardant.~~

~~(6) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways, and shall include farm tractors and other machinery used in the production, harvesting, and care of farm products.~~

~~(7) "OctaBDE" means octabromodiphenyl ether or any technical mixture in which octabromodiphenyl ether is a congener.~~

~~(8) "PentaBDE" means pentabromodiphenyl ether or any technical mixture in which a pentabromodiphenyl ether is a congener.~~

~~(9) "PBDE" means polybrominated diphenyl ether.~~

~~(10) "Technical mixture" means a PBDE mixture that is sold to a manufacturer. A technical mixture is named for the predominant congener in the mixture, but is not exclusively made up of that congener.~~

~~(b) As of July 1, 2010, no person may offer for sale, distribute for sale, distribute for promotional purposes, or knowingly sell at retail a product containing octaBDE or pentaBDE in a concentration greater than 0.1 percent by weight.~~

~~(c) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2010, manufacture, offer for sale, distribute for sale, or knowingly sell at retail the following products containing decaBDE in a concentration greater than 0.1 percent by weight:~~

~~(1) A mattress or mattress pad; or~~

~~(2) Upholstered furniture.~~

~~(d) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2012, manufacture, offer for sale, distribute for sale, or knowingly sell at retail a television or computer with a plastic housing containing decaBDE in a concentration greater than 0.1 percent by weight.~~

~~(e) This section shall not apply to:~~

~~(1) the sale or resale of used products; or~~

~~(2) motor vehicles or parts for use on motor vehicles.~~

~~(f) As of July 1, 2010, a manufacturer of a product that contains decaBDE and that is prohibited under subsection (c) or (d) of this section shall notify persons that sell the manufacturer's product of the requirements of this section.~~

~~(g) A manufacturer shall not replace decaBDE, pursuant to this section, 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; or~~

~~(3) Identified by the U.S. Environmental Protection Agency as causing birth defects, hormone disruption, or harm to reproduction or development.~~

~~(h) A violation of this section shall be deemed a violation of the Consumer Protection Act, chapter 63 of this title. The attorney general has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and private parties have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title.~~

~~(i) In addition to any other remedies and procedures authorized by this section, the attorney general may request a manufacturer of upholstered furniture, mattresses, mattress pads, computers, or televisions offered for sale or distributed for sale in this state to provide the attorney general with a certificate of compliance with this section with respect to such products. Within 30 days of receipt of the request for a certificate of compliance, the manufacturer shall:~~

~~(1) Provide the attorney general with a certificate declaring that its product complies with the requirements of this section; or~~

~~(2) Notify persons who sell in this state a product of the manufacturer's which does not comply with this section that sale of the product is prohibited, and submit to the attorney general a list of the names and addresses of those notified.~~

~~(j) The attorney general shall consult with retailers and retailer associations in order to assist retailers in complying with the requirements of this section.~~

[Repealed.]

§ 2972. DEFINITIONS

(a) As used in this chapter:

(1) “Article” means an object that during production is given a special shape, surface, or design which determines its function to a greater degree than its chemical composition.

(2) “Brominated flame retardant” means any chemical containing the element bromine that is added to plastic, foam, or textile to inhibit flame formation.

(3) “Children’s product” means a consumer product:

(A) marketed for use by children under 12 years of age; or

(B) the substantial use of which by a child under 12 years of age is reasonably foreseeable.

(4) “Congener” means a specific PBDE molecule.

(5) “DecaBDE” means decabromodiphenyl ether or any technical mixture in which decabromodiphenyl ether is a congener.

(6) “Flame retardant” means any chemical that is added to a plastic, foam, or textile to inhibit flame formation.

(7) “Manufacturer” means any person:

(A) who manufactures a final product containing a flame retardant regulated under this chapter; or

(B) whose brand name is affixed to a final product containing a flame retardant regulated under this chapter.

(8) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways and shall include farm tractors and other machinery used in the production, harvesting, and care of farm products.

(9) "OctaBDE" means octabromodiphenyl ether or any technical mixture in which octabromodiphenyl ether is a congener.

(10) "PentaBDE" means pentabromodiphenyl ether or any technical mixture in which pentabromodiphenyl ether is a congener.

(11) "PBDE" means polybrominated diphenyl ether.

(12) "Residential upholstered furniture" means furniture intended for personal use that includes cushioning material covered by fabric or similar material.

(13) "Technical mixture" means a PBDE mixture that is sold to a manufacturer. A technical mixture is named for the predominant congener in the mixture but is not exclusively made up of that congener.

(14) "Tris" means tris(1,3-dichloro-2-propyl) phosphate (TDCPP), chemical abstracts service number 13674-87-8 (as of the effective date of this section); and tris(2-chloroethyl) phosphate (TCEP), chemical abstracts service number 115-96-8 (as of the effective date of this section).

§ 2973. BROMINATED FLAME RETARDANTS; PROHIBITION

(a) As of July 1, 2010, no person may offer for sale, distribute for sale, distribute for promotional purposes, or knowingly sell at retail a product containing octaBDE or pentaBDE in a concentration greater than 0.1 percent by weight.

(b) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2010, manufacture, offer for sale, distribute for sale, or knowingly sell at retail the following products containing decaBDE in a concentration greater than 0.1 percent by weight:

(1) a mattress or mattress pad; or

(2) upholstered furniture.

(c) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2012, manufacture, offer for sale, distribute for sale, or knowingly sell at retail a television or computer with a plastic housing containing decaBDE in a concentration greater than 0.1 percent by weight.

(d)(1) Except as provided in subdivision (2) of this subsection, beginning July 1, 2013, no person may manufacture, sell or offer for sale, or distribute for sale or use in the State plastic shipping pallets that contain decaBDE in a concentration greater than 0.1 percent by weight.

(2) Subdivision (1) of this subsection shall not apply to the sale, lease, distribution, or use in the State of:

(A) plastic shipping pallets manufactured prior to January 1, 2011; or

(B) plastic shipping pallets manufactured from recycled shipping pallets that contain decaBDE in a concentration that is no greater than the concentration of decaBDE in the recycled pallets from which the plastic pallets were manufactured.

§ 2974. CHLORINATED FLAME RETARDANTS

(a) Except for inventory manufactured prior to January 1, 2014, no person, other than a retailer, shall, as of January 1, 2014, manufacture, offer for sale, distribute for sale, or knowingly sell in or into this State any children's product or residential upholstered furniture that contains Tris in any product component in an amount greater than 1,000 parts per million.

(b) A retailer shall not, as of July 1, 2014, knowingly sell or offer for sale in or into this State any children's product or residential upholstered furniture containing Tris in any product component in an amount greater than 1,000 parts per million.

(c)(1) Notwithstanding the requirements of subsections (a) and (b) of this section, the 1,000-parts-per-million threshold for Tris shall be applied to an individual article and not to individual product components for the following:

(A) personal computers, audio and video equipment, calculators, wireless telephones, game consoles, handheld devices incorporating a screen that are used to access interactive software and their associated peripherals, and cable and other similar connecting devices; and

(B) interactive software intended for leisure and entertainment, such as computer games, and their storage media, such as compact discs.

(2) In applying the requirements of the 1,000-parts-per-million threshold for Tris to an individual article under this subsection, the Attorney General shall interpret what constitutes an “article” in a manner that is consistent with industry practices and guidance, including the European Union’s Registration, Evaluation, and Restriction on Chemical Substances regulation, known as “REACH”, Regulation (EC) Number 1907/2006, Art. 3(3).

§ 2975. NOTICE TO RETAILERS; DISCLOSURE OF PRODUCT

CONTENT; CONSULTATION

(a) As of July 1, 2010, a manufacturer of a product that contains decaBDE and that is prohibited under subsection 2973(c) or (d) of this chapter shall notify persons that sell the manufacturer’s product of the requirements of this chapter.

(b) As of July 1, 2013, a manufacturer of a product that contains Tris and that is prohibited under subsection 2974(a) or (b) of this chapter shall notify persons that sell the manufacturer’s product of the requirements of this chapter.

(c) As of March 31, 2014, a person other than a retailer who, since July 1, 2013, has manufactured, distributed, or sold in or into this State any product containing Tris that is prohibited under subsection 2974(a) or (b) of this chapter shall notify persons who sell the manufacturer’s product of the fact that

the product sold to the person selling the manufacturer's product contains Tris.
The notification shall be sent by mail and shall notify the person selling the
manufacturer's product of the concentration of Tris in the product sold in parts
per million of each product component.

(d) The Attorney General shall consult with retailers and retailer
associations to assist retailers in complying with the requirements of this
chapter.

§ 2976. REPLACEMENT OF REGULATED FLAME RETARDANTS

A manufacturer shall not replace decaBDE or Tris 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; or

(3) identified by the U.S. Environmental Protection Agency as causing
birth defects, hormone disruption, or harm to reproduction or development.

§ 2977. EXEMPTIONS

The requirements and prohibitions of this chapter shall not apply to:

(1) the sale or resale of used products;

(2) motor vehicles or parts for use on motor vehicles; and

(3) building insulation materials.

§ 2978. VIOLATIONS; ENFORCEMENT

A violation of this chapter shall be considered a violation of the Consumer Protection Act, chapter 63 of this title. The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions and private parties have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title.

§ 2979. PRODUCTION OF INFORMATION

In addition to any other remedies and procedures authorized by this chapter, the Attorney General may request a manufacturer of upholstered furniture, mattresses, mattress pads, computers, televisions, children's products, or residential upholstered furniture offered for sale or distributed for sale in this State to provide the Attorney General with a certificate of compliance with this chapter with respect to such products. Within 30 days of receipt of the request for a certificate of compliance, the manufacturer shall:

(1) provide the Attorney General with a certificate declaring that its product complies with the requirements of this chapter; or

(2) notify persons who sell in this State a product of the manufacturer's which does not comply with this chapter that sale of the product is prohibited

and submit to the Attorney General a list of the names and addresses of those notified.

§ 2980. DEPARTMENT OF HEALTH RULEMAKING; TCPP

(a) The Commissioner of Health may adopt by rule:

(1) a prohibition on the manufacture, offer for sale, distribution for sale, or knowing sale at retail in or into the State of the flame retardant tris(2-chloro-1-methylethyl) phosphate (TCPP) if the Commissioner of Health determines, based on the weight of available, scientific studies, that the toxicity of TCPP and its potential exposure pathways pose a hazard to human health; and

(2) exemptions from a prohibition adopted under subdivision (1) of this subsection.

(b) A violation of a prohibition or requirement adopted by rule under this section shall be enforceable by the Attorney General under section 2978 of this title as a violation of this chapter.

(c) In addition to the public participation requirements of 3 V.S.A. chapter 25 and prior to submitting a rule authorized under this section to the Secretary of State under 3 V.S.A. § 838, the Commissioner of Health shall consult with interested parties within the State regarding a proposed prohibition on the manufacture, offer for sale, distribution for sale, or knowing sale at retail in the State of the flame retardant TCPP. The Commissioner of

Health may satisfy the consultation requirement of this section through the use of workshops, focused work groups, dockets, meetings, or other forms of communication.

(d) A rule proposed by the Commissioner of Health under this section shall go into effect one calendar year after the Commissioner of Health files an adopted rule under 3 V.S.A. § 843.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.