

1 S.81

2 Introduced by Senators Lyons, Ashe, Campbell, Fox, Galbraith, MacDonald,

3 McCormack, Mullin, Pollina, and Zuckerman

4 Referred to Committee on

5 Date:

6 Subject: Public health; consumer affairs; flame retardants; prohibition of use in

7 certain consumer products

8 Statement of purpose of bill as introduced: This bill proposes to prohibit the

9 manufacture, distribution, sale, and use of certain consumer products

10 containing octaBDE, pentaBDE, decaBDE, and forms of the flame retardant

11 known as Tris, which are harmful to human health.

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

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

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

16 CHAPTER 80. FLAME RETARDANTS

17 ~~§ 2971. BROMINATED FLAME RETARDANTS~~

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

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

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

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

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

9 ~~(5) “Manufacturer” means any person who manufactures a final product~~
10 ~~containing a regulated brominated flame retardant or any person whose brand-~~
11 ~~name is affixed to a product containing a regulated brominated flame retardant.~~

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

15 ~~(7) “OctaBDE” means octabromodiphenyl ether or any technical~~
16 ~~mixture in which octabromodiphenyl ether is a congener.~~

17 ~~(8) “PentaBDE” means pentabromodiphenyl ether or any technical~~
18 ~~mixture in which a pentabromodiphenyl ether is a congener.~~

19 ~~(9) “PBDE” means polybrominated diphenyl ether.~~

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

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

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

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

13 ~~(2) Upholstered furniture.~~

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

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

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

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

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

4 ~~(g) A manufacturer shall not replace decaBDE, pursuant to this section,~~
5 ~~with a chemical that is:~~

6 ~~(1) Classified as "known to be a human carcinogen" or "reasonably~~
7 ~~anticipated to be a human carcinogen" in the most recent report on carcinogens~~
8 ~~by the National Toxicology Program in the U.S. Department of Health and~~
9 ~~Human Services;~~

10 ~~(2) Classified as "carcinogenic to humans" or "likely to be carcinogenic~~
11 ~~to humans" in the U.S. Environmental Protection Agency's most recent list of~~
12 ~~chemicals evaluated for carcinogenic potential; or~~

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

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

20 ~~(i) In addition to any other remedies and procedures authorized by this~~
21 ~~section, the attorney general may request a manufacturer of upholstered~~

1 ~~furniture, mattresses, mattress pads, computers, or televisions offered for sale~~
2 ~~or distributed for sale in this state to provide the attorney general with a~~
3 ~~certificate of compliance with this section with respect to such products.~~

4 ~~Within 30 days of receipt of the request for a certificate of compliance, the~~
5 ~~manufacturer shall:~~

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

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

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

14 § 2972. DEFINITIONS

15 (a) As used in this chapter:

16 (1) "Agency" means the Agency of Natural Resources.

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

20 (3) "Children's product" means a consumer product:

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

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

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

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

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

8 (7) “Manufacturer” means any person:

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

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

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

16 (9) “OctaBDE” means octabromodiphenyl ether or any technical
17 mixture in which octabromodiphenyl ether is a congener.

18 (10) “PentaBDE” means pentabromodiphenyl ether or any technical
19 mixture in which pentabromodiphenyl ether is a congener.

20 (11) “PBDE” means polybrominated diphenyl ether.

1 (12) “Residential upholstered furniture” means furniture intended for
2 personal use that includes cushioning material covered by fabric or similar
3 material.

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

7 (14) “Tris” means tris(1,3-dichloro-2-propyl) phosphate (TDCPP),
8 chemical abstracts service number 13674-87-8 (as of the effective date of this
9 section); tris(2-chloroethyl) phosphate (TCEP), chemical abstracts service
10 number 115-96-8 (as of the effective date of this section); or tris(2-chloro-1-
11 methylethyl) phosphate (TCPP) chemical abstracts service number 13674-84-
12 5, (as of the effective date of this section).

13 § 2973. BROMINATED FLAME RETARDANTS; PROHIBITION

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

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

1 (1) a mattress or mattress pad; or

2 (2) upholstered furniture.

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

7 (d) As of July 1, 2013, no person may manufacture, sell or offer for sale, or
8 distribute for sale or use in the State plastic shipping pallets or any products
9 made from recycled shipping pallets that contain decaBDE in a concentration
10 greater than 0.1 percent by weight.

11 § 2974. CHLORINATED FLAME RETARDANTS

12 (a) Except for inventory purchased prior to July 1, 2013, no person other
13 than a retailer may, as of July 1, 2013, manufacture, offer for sale, distribute
14 for sale, or knowingly sell, in or into this State any children's product or
15 residential upholstered furniture that contains Tris in any product component in
16 an amount greater than 50 parts per million.

17 (b) A retailer may not, as of July 1, 2014, knowingly sell or offer for sale in
18 or into this State any children's product or residential upholstered furniture
19 containing Tris in any product component in an amount greater than 50 parts
20 per million.

1 § 2975. NOTICE TO RETAILERS; DISCLOSURE OF PRODUCT

2 CONTENT; CONSULTATION

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

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

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

13 § 2976. REPLACEMENT OF REGULATED FLAME RETARDANTS

14 A manufacturer shall not replace decaBDE or Tris with a chemical that is:

15 (1) classified as "known to be a human carcinogen" or "reasonably
16 anticipated to be a human carcinogen" in the most recent report on carcinogens
17 by the National Toxicology Program in the U.S. Department of Health and
18 Human Services;

19 (2) classified as "carcinogenic to humans" or "likely to be carcinogenic
20 to humans" in the U.S. Environmental Protection Agency's most recent list of
21 chemicals evaluated for carcinogenic potential; or

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

3 § 2977. EXEMPTIONS

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

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

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

7 § 2978. VIOLATIONS; ENFORCEMENT

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

13 § 2979. PRODUCTION OF INFORMATION

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

1 (1) provide the Attorney General with a certificate declaring that its
2 product complies with the requirements of this section; or
3 (2) notify persons who sell in this State a product of the manufacturer's
4 which does not comply with this section that sale of the product is prohibited
5 and submit to the Attorney General a list of the names and addresses of those
6 notified.

7 Sec. 2. EFFECTIVE DATE

8 This act shall take effect on July 1, 2013.