

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 81 entitled “An act relating to the regulation of octaBDE, pentaBDE,
4 decaBDE, and flame retardant known as Tris in consumer products”
5 respectfully reports that it has considered the same and recommends that the
6 bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

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

9 CHAPTER 80. FLAME RETARDANTS

10 § 2971. ~~BROMINATED FLAME RETARDANTS~~

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

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

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

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

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

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

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

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

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

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

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

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

19 ~~(c) Except for inventory purchased prior to July 1, 2009, a person may not,~~
20 ~~as of July 1, 2010, manufacture, offer for sale, distribute for sale, or knowingly~~

1 ~~sell at retail the following products containing decaBDE in a concentration~~
2 ~~greater than 0.1 percent by weight:~~

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

4 ~~(2) Upholstered furniture.~~

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

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

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

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

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

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

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

1 ~~(2) Classified as “carcinogenic to humans” or “likely to be carcinogenic~~
2 ~~to humans” in the U.S. Environmental Protection Agency’s most recent list of~~
3 ~~chemicals evaluated for carcinogenic potential; or~~

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

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

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

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

20 ~~(2) Notify persons who sell in this state a product of the manufacturer’s~~
21 ~~which does not comply with this section that sale of the product is prohibited,~~

1 ~~and submit to the attorney general a list of the names and addresses of those~~
2 ~~notified.~~

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

5 [Repealed.]

6 § 2972. DEFINITIONS

7 (a) As used in this chapter:

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

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

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

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

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

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

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

20 (6) “Manufacturer” means any person:

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

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

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

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

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

12 (10) “PBDE” means polybrominated diphenyl ether.

13 (11) “Residential upholstered furniture” means furniture intended for
14 personal use that includes cushioning material covered by fabric or similar
15 material.

16 (12) “Technical mixture” means a PBDE mixture that is sold to a
17 manufacturer. A technical mixture is named for the predominant congener in
18 the mixture but is not exclusively made up of that congener.

19 (13) “Tris” means tris(1,3-dichloro-2-propyl) phosphate (TDCPP),
20 chemical abstracts service number 13674-87-8 (as of the effective date of this
21 section); tris(2-chloroethyl) phosphate (TCEP), chemical abstracts service

1 number 115-96-8 (as of the effective date of this section); or tris(2-chloro-1-
2 methylethyl) phosphate (TCPP) chemical abstracts service number 13674-84-
3 5, (as of the effective date of this section).

4 § 2973. BROMINATED FLAME RETARDANTS; PROHIBITION

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

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

13 (1) a mattress or mattress pad; or

14 (2) upholstered furniture.

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

19 (d)(1) Except as provided in subdivision (2) of this subsection, beginning
20 July 1, 2013, no person may manufacture, sell or offer for sale, or distribute for

1 sale or use in the State plastic shipping pallets that contain decaBDE in a
2 concentration greater than 0.1 percent by weight.

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

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

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

10 § 2974. CHLORINATED FLAME RETARDANTS

11 (a) Except for inventory manufactured prior to January 1, 2014, no person,
12 other than a retailer, shall, as of January 1, 2014, manufacture, offer for sale,
13 distribute for sale, or knowingly sell in or into this State any children's product
14 or residential upholstered furniture that contains Tris in any product
15 component in an amount greater than 50 parts per million.

16 (b) A retailer shall not, as of July 1, 2014, knowingly sell or offer for sale
17 in or into this State any children's product or residential upholstered furniture
18 containing Tris in any product component in an amount greater than 50 parts
19 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) As of March 31, 2014, a person other than a retailer who, since July 1,
11 2010, has manufactured, distributed, or sold in or into this State any product
12 containing Tris that is prohibited under subsection 2974(a) or (b) of this
13 chapter shall notify persons who sell the manufacturer's product of the fact that
14 the product sold to the person selling the manufacturer's product contains Tris.
15 The notification shall be sent by mail and shall notify the person selling the
16 manufacturer's product of the concentration of Tris in the product sold in parts
17 per million of each product component.

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

1 § 2976. REPLACEMENT OF REGULATED FLAME RETARDANTS

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

3 (1) classified as “known to be a human carcinogen” or “reasonably
4 anticipated to be a human carcinogen” in the most recent report on carcinogens
5 by the National Toxicology Program in the U.S. Department of Health and
6 Human Services;

7 (2) classified as “carcinogenic to humans” or “likely to be carcinogenic
8 to humans” in the U.S. Environmental Protection Agency’s most recent list of
9 chemicals evaluated for carcinogenic potential; or

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

12 § 2977. EXEMPTIONS

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

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

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

16 (3) building insulation materials;

17 (4) internal components of personal computers, audio and video
18 equipment, calculators, wireless phones, game consoles, handheld devices
19 incorporating a screen that are used to access interactive software and their
20 associated peripherals, and cables and other similar connecting devices; or

1 (5) interactive software intended for leisure and entertainment, such as
2 computer games, and their storage media, such as compact disks.

3 § 2978. VIOLATIONS; ENFORCEMENT

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

9 § 2979. PRODUCTION OF INFORMATION

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

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

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

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

3 Sec. 2. EFFECTIVE DATE

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

5 and that after passage the title of the be amended to read: “An act relating to
6 the regulation of octaBDE, pentaBDE, decaBDE, and the flame retardant
7 known as Tris in consumer products”

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12 (Committee vote: _____)

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Senator [surname]

FOR THE COMMITTEE