

1 S.76

2 Introduced by Senators Lyons, Ayer and Shumlin

3 Referred to Committee on

4 Date:

5 Subject: Environmental health; brominated flame retardants; bisphenol A

6 Statement of purpose: This bill proposes to ban the manufacture, sale, and
7 distribution of certain products containing brominated flame retardants. The
8 bill would also ban bisphenol A (BPA) in children's products and most food
9 and beverage containers.

10 An act relating to brominated flame retardants and bisphenol A

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

12 * * * Brominated Flame Retardants * * *

13 Sec. 1. 10 V.S.A. chapter 165 is added to read:

14 CHAPTER 165. FLAME RETARDANTS

15 § 7201. DEFINITIONS

16 As used in this chapter:

17 (1) "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 (2) "Congener" means a specific PBDE molecule.

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

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

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

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

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

13 (8) "PBDE" means polybrominated diphenyl ether.

14 § 7202. PROHIBITION ON SALE OR DISTRIBUTION OF BROMINATED
15 FLAME RETARDANTS

16 (a) As of July 1, 2010, no person may sell, offer for sale, distribute for sale,
17 or distribute for promotional purposes a product containing octaBDE or
18 pentaBDE.

19 (b) As of July 1, 2010, a person may not manufacture, sell, offer for sale, or
20 distribute for sale either of the following products containing decaBDE:

21 (1) A mattress or mattress pad;

1 (2) Upholstered furniture intended for indoor use in a home or other
2 residential occupancy.

3 (c) As of July 1, 2011, a person may not manufacture, sell, offer for sale, or
4 distribute for sale a television or computer with a plastic housing containing
5 decaBDE.

6 (d) This section shall not apply to the sale or resale of used products.

7 (e) As of July 1, 2010, a manufacturer of a product containing decaBDE,
8 octaBDE, or pentaBDE shall notify persons that sell the manufacturer's
9 product of the requirements of this section.

10 (f) A manufacturer shall not replace decaBDE, pursuant to this section,
11 with a chemical that is:

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

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

18 § 7203. OUTREACH AND EDUCATION; MULTISTATE

19 CLEARINGHOUSE

20 (a) The secretary of natural resources shall develop a program to inform
21 and educate retailers regarding the requirements of this section and methods

1 for identifying products that contain decaBDE, octaBDE, or pentaBDE.

2 (b) The secretary of natural resources may participate in the establishment
3 and implementation of a regional multistate clearinghouse to assist in the
4 implementation of the requirements of this section; help coordinate education
5 and outreach activities; review risk assessments; review alternatives to
6 DecaBDE, OctaBDE, or PentaBDE; and implement other activities related to
7 the administration of this chapter.

8 § 7204. REVIEW OF BROMINATED FLAME RETARDANTS; REPORT
9 TO GENERAL ASSEMBLY

10 Beginning January 15, 2011 and every two years thereafter, the secretary of
11 natural resources shall report to the general assembly regarding the regulation
12 of brominated flame retardants in Vermont, in other states, and nationally. The
13 report shall include recommended additional actions to protect the public
14 health and the environment from brominated flame retardants.

15 § 7205. CERTIFICATE OF COMPLIANCE

16 If the secretary of natural resources reasonably suspects that a product
17 containing a regulated brominated flame retardant is being sold, offered for
18 sale, or distributed for sale in violation of this chapter, the secretary may
19 request the manufacturer of the product to provide the secretary with a
20 certificate of compliance. Within 10 days of receipt of the request for a
21 certificate of compliance, the manufacturer shall:

1 (18) 10 V.S.A. chapter 164, relating to comprehensive mercury
2 management; and

3 (19) 10 V.S.A. chapter 165, relating to flame retardants.

4 Sec. 3. 10 V.S.A. § 8503(a) is amended to read:

5 (a) This chapter shall govern all appeals of an act or decision of the
6 secretary, excluding enforcement actions under chapters 201 and 211 of this
7 title and rulemaking, under the following authorities and under the rules
8 adopted under those authorities:

9 (1) The following provisions of this title:

10 * * *

11 (N) chapter 159 (waste management).

12 (O) chapter 165 (flame retardants).

13 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

14 * * * bisphenol A * * *

15 Sec. 4. FINDINGS

16 The general assembly finds that:

17 (1) Bisphenol A (BPA) is an industrial chemical that is pervasive in the
18 environment and commonly found in dust particles, surface water, and
19 drinking water.

1 (2) Over six billion pounds of BPA are produced worldwide each year,
2 and production of the chemical releases approximately 200,000 pounds of the
3 chemical into the atmosphere annually.

4 (3) BPA is one of the most frequently detected industrial chemicals in
5 groundwater and is also found in landfill leachate, surface water, sewage,
6 sludge, and treated wastewater discharge.

7 (4) The use of BPA should be limited in order to protect the health of
8 the citizens and environment of Vermont.

9 Sec. 5. 18 V.S.A. § 1512 is added to read:

10 § 1512. BISPHENOL A

11 (a) As used in this section:

12 (1) “Bisphenol A” means an industrial chemical used primarily in the
13 manufacture of polycarbonate plastic and epoxy resins.

14 (2) “Canned good” means any canned food or beverage that has been
15 hermetically sealed and commercially processed and prepared for human
16 consumption.

17 (3) “Child care article” means any product designed or intended by the
18 manufacturer to facilitate sleep, relaxation, or the feeding of children, or to
19 help children with sucking or teething.

1 (4) “Food or beverage container” means a package, parcel, or other
2 vessel intended for use in storing, heating, or serving liquids or solids intended
3 for consumption by humans, but does not include canned goods.

4 (5) “Toy” means any product designed or intended by the manufacturer
5 to be used by children when they play.

6 (b) Beginning July 1, 2009, no person or entity shall manufacture, sell, or
7 distribute in commerce any food or beverage container, child care article, or
8 toy containing bisphenol A in any concentration.

9 (c) Manufacturers shall use the least toxic alternative when replacing
10 bisphenol A in accordance with this section.

11 (d) Manufacturers shall not replace bisphenol A, pursuant to this section,
12 with carcinogens rated by the U.S. Environmental Protection Agency (EPA) as
13 A, B, or C carcinogens or substances listed on the EPA’s “List of Chemicals
14 Evaluated for Carcinogenic Potential” as known or likely carcinogens, known
15 to be human carcinogens, likely to be human carcinogens, or suggestive of
16 being carcinogens.

17 (e) Manufacturers shall not replace bisphenol A, pursuant to this section,
18 with reproductive toxicants that the EPA has identified as causing birth
19 defects, reproductive harm, or developmental harm.

20 (f) A violation of this section shall be deemed a violation of the Consumer
21 Fraud Act, chapter 63 of Title 9. The attorney general has the same authority

- 1 to make rules, conduct civil investigations, enter into assurances of
- 2 discontinuance, and bring civil actions, and private parties have the same rights
- 3 and remedies, as provided under subchapter 1 of chapter 63 of Title 9.