
By: **Delegate Hubbard**

Introduced and read first time: January 13, 2005

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Brominated Flame Retardants - Notification and**
3 **Restrictions**

4 FOR the purpose of prohibiting, on or after a certain date, the sale or distribution of
5 a product that contains brominated flame retardants unless certain persons
6 have submitted a certain notice to the Maryland Department of the
7 Environment; requiring certain information to be included in the required
8 notice; establishing certain exemptions from certain notice requirements;
9 requiring, on or after a certain date, certain products containing a brominated
10 flame retardant to be labeled in a certain manner; prohibiting, on or after
11 certain dates, the manufacture, processing, selling, or distributing of certain
12 products that contain a certain amount of certain brominated flame retardants;
13 exempting certain products that contain a certain amount of certain brominated
14 flame retardants under certain circumstances from the prohibition; requiring
15 the Department, on or before a certain date, to adopt certain regulations that
16 establish a fee on certain products that contain brominated flame retardants;
17 authorizing the Department to adopt certain regulations; defining certain
18 terms; requiring a certain report on or before a certain date; and generally
19 relating to the use of brominated flame retardants.

20 BY adding to
21 Article - Environment
22 Section 6-1201 through 6-1205, inclusive, to be under the new subtitle "Subtitle
23 12. Brominated Flame Retardants"
24 Annotated Code of Maryland
25 (1996 Replacement Volume and 2004 Supplement)

26 Preamble

27 WHEREAS, Chemicals known as brominated flame retardants (BFRs) are
28 widely used in the State. To meet stringent fire standards, manufacturers add BFRs
29 to a multitude of products, including the plastic housing of electronics and computers,
30 circuit boards, and the foam and textiles used in furniture; and

1 WHEREAS, Polybrominated diphenyl ether (PBDE), which is a subcategory of
2 BFRs, has increased fortyfold in human breast milk since the 1970s; and

3 WHEREAS, PBDE has the potential to disrupt thyroid hormone balance and
4 contribute to a variety of developmental deficits, including low intelligence and
5 learning disabilities. PBDE may also have the potential to cause cancer; and

6 WHEREAS, Substantial efforts to eliminate BFRs from products have been
7 made throughout the world, including both the private and public sectors. These
8 efforts have made numerous alternatives available that are safe to human health
9 while meeting stringent fire standards. To meet market demand, it is in the interest
10 of Maryland manufacturers to eliminate the use of BFRs; and

11 WHEREAS, In order to protect the public health and environment, the General
12 Assembly believes it is necessary for the State to develop a precautionary approach
13 regarding the production, use, storage, and disposal of products containing BFRs;
14 now, therefore,

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Environment**

18 **SUBTITLE 12. BROMINATED FLAME RETARDANTS.**

19 6-1201.

20 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (B) "BFR" MEANS BROMINATED FLAME RETARDANT.

23 (C) (1) "BROMINATED FLAME RETARDANT" MEANS ANY CHEMICAL
24 CONTAINING THE ELEMENT BROMINE THAT IS ADDED TO A PLASTIC, FOAM, OR
25 TEXTILE TO INHIBIT FLAME FORMATION.

26 (2) "BROMINATED FLAME RETARDANT" INCLUDES:

27 (I) POLYBROMINATED BIPHENYLS;

28 (II) POLYBROMINATED DIPHENYL ETHERS;

29 (III) TETRABROMOBISPHENOL-A; AND

30 (IV) HEXABROMOCYCLODODECANE.

31 (D) "DECABDE" MEANS DECABROMINATED DIPHENYL ETHER.

32 (E) "OCTABDE" MEANS OCTABROMINATED DIPHENYL ETHER.

33 (F) (1) "PBDE" MEANS POLYBROMINATED DIPHENYL ETHER.

1 (2) "PBDE" INCLUDES:

2 (I) DECABROMINATED DIPHENYL ETHER;

3 (II) OCTABROMINATED DIPHENYL ETHER; AND

4 (III) PENTABROMINATED DIPHENYL ETHER.

5 (G) "PENTABDE" MEANS PENTABROMINATED DIPHENYL ETHER.

6 6-1202.

7 (A) ON OR AFTER JANUARY 1, 2007, THE FOLLOWING PRODUCTS MAY NOT BE
8 OFFERED FOR FINAL SALE OR USE OR DISTRIBUTED FOR PROMOTIONAL PURPOSES
9 IN THE STATE UNLESS THE MANUFACTURER OF THE PRODUCT OR COMPONENT OR
10 THE MANUFACTURER'S REPRESENTATIVE HAS PROVIDED WRITTEN NOTICE TO THE
11 DEPARTMENT IN ACCORDANCE WITH THIS SECTION:

12 (1) A PRODUCT TO WHICH A BFR IS ADDED DURING FORMULATION OR
13 MANUFACTURE; AND

14 (2) A PRODUCT CONTAINING ONE OR MORE COMPONENTS TO WHICH A
15 BFR IS ADDED DURING FORMULATION OR MANUFACTURE.

16 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE NOTICE
17 REQUIRED BY SUBSECTION (A) OF THIS SECTION SHALL BE ON A FORM PROVIDED BY
18 THE DEPARTMENT AND INCLUDE:

19 (1) A BRIEF DESCRIPTION OF THE PRODUCT OR COMPONENT;

20 (2) THE AMOUNT AND CHEMICAL TYPE OF BFR IN EACH UNIT OF THE
21 PRODUCT OR COMPONENT, REPORTED AS:

22 (I) AN EXACT NUMBER;

23 (II) AN AVERAGE PER PRODUCT OR COMPONENT WITH AN UPPER
24 AND LOWER LIMIT; OR

25 (III) FALLING WITHIN A RANGE APPROVED BY THE DEPARTMENT;

26 (3) THE TOTAL AMOUNT AND CHEMICAL TYPE OF BFR IN ALL UNITS OF
27 THE PRODUCT OR COMPONENT SOLD IN THE UNITED STATES DURING THE MOST
28 RECENT CALENDAR YEAR FOR WHICH SALES FIGURES ARE AVAILABLE, REPORTED
29 AS:

30 (I) THE TOTAL UNITS OR COMPONENTS SOLD BY THE
31 MANUFACTURER; OR

32 (II) AN AGGREGATION, PRODUCED BY A MANUFACTURER TRADE
33 ASSOCIATION, OF THE TOTAL UNITS OR COMPONENTS SOLD BY THE
34 MANUFACTURERS REPRESENTED BY THE ASSOCIATION;

1 (4) THE NAME AND ADDRESS OF THE MANUFACTURER; AND

2 (5) THE NAME, ADDRESS, AND PHONE NUMBER OF A CONTACT PERSON
3 FOR THE MANUFACTURER.

4 (C) (1) IF APPROVED BY THE DEPARTMENT, A MANUFACTURER MAY SUPPLY
5 THE INFORMATION REQUIRED BY THIS SECTION FOR A PRODUCT CATEGORY RATHER
6 THAN AN INDIVIDUAL PRODUCT.

7 (2) A MANUFACTURER OF A PRODUCT CONTAINING ONE OR MORE
8 COMPONENTS CONTAINING A BFR IS NOT REQUIRED TO SUBMIT INFORMATION ON
9 THE AMOUNT OF BFRS IN THE COMPONENT IF THE COMPONENT MANUFACTURER
10 HAS PROVIDED THAT INFORMATION TO THE DEPARTMENT AND THE
11 MANUFACTURER OF THE PRODUCT THAT CONTAINS THE COMPONENT IDENTIFIES
12 THE COMPONENT AND COMPONENT MANUFACTURER IN THE NOTICE.

13 (D) A MANUFACTURER SHALL UPDATE AND REVISE THE INFORMATION
14 PROVIDED UNDER THIS SECTION AT LEAST EVERY 3 YEARS AND ON:

15 (1) A SIGNIFICANT CHANGE IN THE INFORMATION; OR

16 (2) REQUEST BY THE DEPARTMENT.

17 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN
18 IMPORTER OF A PRODUCT OR COMPONENT FROM A FOREIGN COUNTRY MAY NOT
19 SELL, USE, OR DISTRIBUTE THE PRODUCT OR COMPONENT IN THE STATE UNLESS
20 THE MANUFACTURER OF THE PRODUCT OR COMPONENT IS IN COMPLIANCE WITH
21 THIS SECTION.

22 (2) THIS SUBSECTION DOES NOT APPLY TO RETAILERS FOR WHOM
23 IMPORTING IS NOT A PRIMARY BUSINESS.

24 6-1203.

25 (A) ON OR AFTER JANUARY 1, 2007, UNLESS LABELED IN ACCORDANCE WITH
26 SUBSECTION (B) OF THIS SECTION, A PRODUCT CONTAINING A BFR MAY NOT BE:

27 (1) SOLD BY A MANUFACTURER AT RETAIL IN THE STATE;

28 (2) SOLD BY A MANUFACTURER TO A RETAILER IN THE STATE; OR

29 (3) KNOWINGLY SOLD BY A RETAILER IN THE STATE.

30 (B) THE LABEL REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL:

31 (1) CLEARLY INFORM THE PURCHASER OR CONSUMER THAT A BFR IS
32 PRESENT IN THE PRODUCT;

33 (2) DESCRIBE THE HAZARDS ASSOCIATED WITH BFRS; AND

1 (3) PROVIDE GUIDANCE ON THE SAFE DISPOSAL OF THE PRODUCT AT
2 ITS END OF LIFE SO AS TO MINIMIZE NEGATIVE ENVIRONMENTAL AND HEALTH
3 EFFECTS.

4 (C) THE MANUFACTURER IS RESPONSIBLE FOR AFFIXING THE LABEL
5 REQUIRED UNDER THIS SECTION.

6 (D) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS ESTABLISHING
7 STANDARDS FOR THE LABEL REQUIRED UNDER THIS SECTION.

8 (2) THE REGULATIONS SHALL:

9 (I) TO THE EXTENT PRACTICABLE, BE CONSISTENT WITH
10 LABELING REQUIREMENTS IN OTHER STATES; AND

11 (II) PROVIDE FOR APPROVAL BY THE DEPARTMENT OF
12 ALTERNATIVE METHODS OF COMPLIANCE.

13 6-1204.

14 (A) THIS SECTION DOES NOT APPLY TO THE PROCESSING OF METALLIC
15 RECYCLABLES CONTAINING PENTABDE OR OCTABDE THAT IS CONDUCTED IN
16 COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS.

17 (B) EXCEPT AS PROVIDED UNDER SUBSECTION (C) OF THIS SECTION:

18 (1) ON OR AFTER OCTOBER 1, 2008, A PERSON MAY NOT MANUFACTURE,
19 PROCESS, SELL, OR DISTRIBUTE IN THE STATE A PRODUCT OR A FLAME-RETARDANT
20 PART OF A PRODUCT THAT CONTAINS MORE THAN ONE-TENTH OF 1% OF PENTABDE
21 OR OCTABDE BY MASS;

22 (2) ON OR AFTER OCTOBER 1, 2010, A PERSON MAY NOT MANUFACTURE,
23 PROCESS, SELL, OR DISTRIBUTE IN THE STATE A PRODUCT OR A FLAME-RETARDANT
24 PART OF A PRODUCT THAT CONTAINS MORE THAN ONE-TENTH OF 1% OF DECABDE
25 BY MASS; AND

26 (3) ON OR AFTER OCTOBER 1, 2012, A PERSON MAY NOT MANUFACTURE,
27 PROCESS, SELL, OR DISTRIBUTE IN THE STATE A PRODUCT OR A FLAME-RETARDANT
28 PART OF A PRODUCT THAT CONTAINS MORE THAN ONE-TENTH OF 1% OF
29 TETRABROMOBISPHENOL-A OR HEXABROMOCYCLODODECANE OR ANY OTHER BFR
30 BY MASS.

31 (C) (1) UP TO 1 YEAR BEFORE THE APPLICABLE EFFECTIVE DATE OF THE
32 PROHIBITION, THE MANUFACTURER OR USER OF A PRODUCT AFFECTED BY THIS
33 SECTION MAY APPLY TO THE DEPARTMENT FOR AN EXEMPTION FOR ONE OR MORE
34 SPECIFIC USES OF A BFR.

35 (2) THE DEPARTMENT MAY GRANT AN EXEMPTION, WITH OR WITHOUT
36 CONDITIONS, FOR EACH SPECIFIED USE OF A BFR ON FINDING THAT THE
37 PETITIONER HAS DEMONSTRATED THAT:

1 (I) THE EXEMPTION IS REQUESTED BECAUSE THE BFR IS
2 NECESSARY TO MEET SPECIFIC PRODUCT SPECIFICATIONS IDENTIFIED BY THE
3 CUSTOMER OR END USER OF THE PRODUCT;

4 (II) PROTECTIVE MEASURES HAVE BEEN TAKEN TO ENSURE THE
5 HEALTH AND SAFETY OF WORKERS AND CONSUMERS THROUGHOUT THE LIFE OF
6 THE PRODUCT;

7 (III) A SYSTEM EXISTS FOR THE PROPER COLLECTION,
8 TRANSPORTATION, AND PROCESSING OF THE PRODUCT AT THE END OF ITS LIFE;
9 AND

10 (IV) 1. A TECHNICALLY FEASIBLE ALTERNATIVE TO THE USE OF
11 A BFR, INCLUDING PRODUCT REDESIGN AND SUBSTITUTE FLAME RETARDANTS, IS
12 NOT AVAILABLE AT A COMPARABLE COST; OR

13 2. THE RISKS TO THE PUBLIC HEALTH AND THE
14 ENVIRONMENT DIRECTLY POSED BY A TECHNICALLY FEASIBLE AVAILABLE
15 ALTERNATIVE ARE GREATER THAN THE RISKS POSED BY THE BFR.

16 (3) AN EXEMPTION GRANTED UNDER THIS SUBSECTION MAY BE:

17 (I) GRANTED FOR A TERM NOT TO EXCEED 3 YEARS; AND

18 (II) RENEWED ON WRITTEN APPLICATION IF THE DEPARTMENT
19 FINDS THAT:

20 1. THE SPECIFIC USE OF THE BFR CONTINUES TO MEET THE
21 CRITERIA OF THIS SUBSECTION; AND

22 2. THE PETITIONER AND OTHER RELEVANT PARTIES HAVE
23 COMPLIED WITH THE CONDITIONS OF THE ORIGINAL EXEMPTION.

24 (4) AS REQUIRED BY THE DEPARTMENT, A PERSON RECEIVING AN
25 EXEMPTION UNDER THIS SUBSECTION SHALL MAINTAIN AND SUBMIT RECORDS
26 RELATED TO THE USE OF THE BFR.

27 6-1205.

28 (A) ON OR BEFORE JANUARY 1, 2006, THE DEPARTMENT SHALL ADOPT
29 REGULATIONS THAT ESTABLISH A FEE, SUFFICIENT TO COVER THE COSTS TO THE
30 DEPARTMENT ASSOCIATED WITH THE IMPLEMENTATION OF THIS SUBTITLE, ON THE
31 SALE OF PRODUCTS CONTAINING BFRS.

32 (B) THE DEPARTMENT MAY ADOPT REGULATIONS NECESSARY FOR THE
33 IMPLEMENTATION OF THIS SUBTITLE.

34 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1,
35 2007, the Department of the Environment shall, in conjunction with interested
36 parties, review and, subject to § 2-1246 of the State Government Article, jointly

1 report to the House Environmental Matters Committee and the Senate Education,
2 Health, and Environmental Affairs Committee on:

3 (a) The use of brominated flame retardants in products sold in the State;

4 (b) Any data available on the human body burden or environmental
5 occurrence of brominated flame retardants;

6 (c) Recommendations regarding restrictions on the disposal of products
7 containing brominated flame retardants; and

8 (d) Any other recommendations to further protection of public health and the
9 environment from brominated flame retardants.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2005.