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By: **Delegate Hubbard**  
 Introduced and read first time: January 13, 2005  
 Assigned to: Environmental Matters

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Committee Report: Favorable with amendments  
 House action: Adopted  
 Read second time: February 22, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Environment - Brominated Flame Retardants - ~~Notification and~~**  
 3 **~~Restrictions~~ Pentabrominated and Octabrominated Diphenyl Ether -**  
 4 **Prohibition**

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

22 BY adding to  
 23 Article - Environment  
 24 Section 6-1201 through 6-1205, inclusive, to be under the new subtitle "Subtitle  
 25 12. Brominated Flame Retardants"  
 26 Annotated Code of Maryland

1 (1996 Replacement Volume and 2004 Supplement)

2 Preamble

3 WHEREAS, ~~Chemicals~~ To meet stringent fire safety standards, manufacturers  
4 add chemicals known as brominated flame retardants (BFRs) are widely used in the  
5 State. To meet stringent fire standards, manufacturers add BFRs to a multitude of  
6 products, including the plastic housing of electronics and computers, circuit boards,  
7 and the foam and textiles used in furniture; and

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

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

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

18 WHEREAS, ~~In order to protect the public health and environment, the General~~  
19 ~~Assembly believes it is necessary for the State to develop a precautionary approach~~  
20 ~~regarding the production, use, storage, and disposal of products containing BFRs~~

21 Although flame retardants make a valuable contribution to fire safety and save a  
22 number of lives every year by preventing the start of fires, delaying the spread of  
23 fires, or delaying the time of flashover to provide people time to escape, there has  
24 been increasing concern about the health effects of some of these BFRs; and

25 WHEREAS, There is an increasing level of public concern over the findings of  
26 certain polybrominated diphenyl ethers in the environment and in human breast  
27 milk; and

28 WHEREAS, Substantial efforts have been made by industry and users to phase  
29 out the manufacture of certain polybrominated diphenyl ethers; now, therefore,

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

32 **Article - Environment**

33 **SUBTITLE 12. BROMINATED FLAME RETARDANTS.**

34 6-1201.

35 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
36 INDICATED.

1 (B) "OCTABDE" MEANS OCTABROMINATED DIPHENYL ETHER.

2 (C) "PENTABDE" MEANS PENTABROMINATED DIPHENYL ETHER.

3 6-1202.

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

7 (B) ON OR AFTER OCTOBER 1, 2008, A PERSON MAY NOT MANUFACTURE,  
8 PROCESS, SELL, OR DISTRIBUTE IN THE STATE A PRODUCT OR FLAME-RETARDANT  
9 PART OF A PRODUCT THAT CONTAINS MORE THAN ONE-TENTH OF 1% OF PENTABDE  
10 OR OCTABDE BY MASS.

11 6-1203.

12 (A) TO ENFORCE THE PROVISIONS OF THIS SUBTITLE, THE DEPARTMENT MAY:

13 (1) NOTIFY A PERSON THAT THERE ARE GROUNDS FOR SUSPECTING  
14 THAT THE PERSON MAY BE IN VIOLATION OF THIS SUBTITLE; AND

15 (2) REQUEST THAT THE PERSON CERTIFY THAT THE PRODUCT OR  
16 FLAME-RETARDANT PART OF THE PRODUCT THAT THE PERSON MANUFACTURED,  
17 PROCESSED, SOLD, OR DISTRIBUTED IS IN COMPLIANCE WITH THIS SUBTITLE.

18 (B) IF THE PERSON FAILS TO CERTIFY THAT THE PRODUCT OR  
19 FLAME-RETARDANT PART OF THE PRODUCT IS IN COMPLIANCE, THE DEPARTMENT  
20 MAY SEEK AN INJUNCTION UNDER § 6-1204 OF THIS SUBTITLE.

21 6-1204.

22 (A) (1) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE OR  
23 ANY REGULATION ADOPTED UNDER THIS SUBTITLE, INCLUDING MAKING A FALSE  
24 STATEMENT IN A CERTIFICATE OF COMPLIANCE, SHALL BE LIABLE TO THE STATE  
25 FOR A CIVIL PENALTY OF UP TO \$1,000 FOR EACH VIOLATION, BUT NOT EXCEEDING A  
26 TOTAL OF \$10,000 FOR ANY ACTION.

27 (2) EACH PRODUCT OR FLAME-RETARDANT PART OF A PRODUCT IN  
28 VIOLATION CONSTITUTES A SEPARATE VIOLATION.

29 (3) THE STATE SHALL RECOVER THE CIVIL PENALTIES UNDER THIS  
30 SUBSECTION IN A CIVIL ACTION IN ANY COUNTY.

31 (B) ANY PERSON WHO PREVIOUSLY HAS BEEN ASSESSED A CIVIL PENALTY  
32 UNDER THIS SECTION AND WHO WILLFULLY VIOLATES ANY PROVISION OF THIS  
33 SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE, INCLUDING  
34 MAKING A FALSE STATEMENT IN A CERTIFICATE OF COMPLIANCE, IS GUILTY OF A  
35 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$20,000.

1 (C) THE DEPARTMENT MAY SEEK AN INJUNCTION AGAINST ANY PERSON WHO  
2 VIOLATES OR THREATENS TO VIOLATE ANY PROVISION OF THIS SUBTITLE OR ANY  
3 REGULATION ADOPTED UNDER THIS SUBTITLE.

4 ~~6-1205.~~

5 THE DEPARTMENT MAY ADOPT REGULATIONS NECESSARY FOR THE  
6 IMPLEMENTATION OF THIS SUBTITLE.

7 ~~(B) "BFR" MEANS BROMINATED FLAME RETARDANT.~~

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

11 ~~(2) "BROMINATED FLAME RETARDANT" INCLUDES:~~

12 ~~(I) POLYBROMINATED BIPHENYLS;~~

13 ~~(II) POLYBROMINATED DIPHENYL ETHERS;~~

14 ~~(III) TETRABROMOBISPHENOL A; AND~~

15 ~~(IV) HEXABROMOCYCLODODECANE.~~

16 ~~(D) "DECABDE" MEANS DECABROMINATED DIPHENYL ETHER.~~

17 ~~(E) "OCTABDE" MEANS OCTABROMINATED DIPHENYL ETHER.~~

18 ~~(F) (1) "PBDE" MEANS POLYBROMINATED DIPHENYL ETHER.~~

19 ~~(2) "PBDE" INCLUDES:~~

20 ~~(I) DECABROMINATED DIPHENYL ETHER;~~

21 ~~(II) OCTABROMINATED DIPHENYL ETHER; AND~~

22 ~~(III) PENTABROMINATED DIPHENYL ETHER.~~

23 ~~(G) "PENTABDE" MEANS PENTABROMINATED DIPHENYL ETHER.~~

24 ~~6-1202.~~

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

30 ~~(1) A PRODUCT TO WHICH A BFR IS ADDED DURING FORMULATION OR~~  
31 ~~MANUFACTURE; AND~~

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

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

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

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

9           (I)     AN EXACT NUMBER;

10          (II)    AN AVERAGE PER PRODUCT OR COMPONENT WITH AN UPPER  
11 AND LOWER LIMIT; OR

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

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

17          (I)     THE TOTAL UNITS OR COMPONENTS SOLD BY THE  
18 MANUFACTURER; OR

19          (II)    AN AGGREGATION, PRODUCED BY A MANUFACTURER TRADE  
20 ASSOCIATION, OF THE TOTAL UNITS OR COMPONENTS SOLD BY THE  
21 MANUFACTURERS REPRESENTED BY THE ASSOCIATION;

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

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

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

28          (2)     A MANUFACTURER OF A PRODUCT CONTAINING ONE OR MORE  
29 COMPONENTS CONTAINING A BFR IS NOT REQUIRED TO SUBMIT INFORMATION ON  
30 THE AMOUNT OF BFRS IN THE COMPONENT IF THE COMPONENT MANUFACTURER  
31 HAS PROVIDED THAT INFORMATION TO THE DEPARTMENT AND THE  
32 MANUFACTURER OF THE PRODUCT THAT CONTAINS THE COMPONENT IDENTIFIES  
33 THE COMPONENT AND COMPONENT MANUFACTURER IN THE NOTICE.

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

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

1           (2)     ~~REQUEST BY THE DEPARTMENT.~~

2     ~~(E)     (1)     EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN~~  
3 ~~IMPORTER OF A PRODUCT OR COMPONENT FROM A FOREIGN COUNTRY MAY NOT~~  
4 ~~SELL, USE, OR DISTRIBUTE THE PRODUCT OR COMPONENT IN THE STATE UNLESS~~  
5 ~~THE MANUFACTURER OF THE PRODUCT OR COMPONENT IS IN COMPLIANCE WITH~~  
6 ~~THIS SECTION.~~

7           (2)     ~~THIS SUBSECTION DOES NOT APPLY TO RETAILERS FOR WHOM~~  
8 ~~IMPORTING IS NOT A PRIMARY BUSINESS.~~

9 ~~6-1203.~~

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

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

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

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

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

16           (1)     ~~CLEARLY INFORM THE PURCHASER OR CONSUMER THAT A BFR IS~~  
17 ~~PRESENT IN THE PRODUCT;~~

18           (2)     ~~DESCRIBE THE HAZARDS ASSOCIATED WITH BFRS; AND~~

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

22     ~~(C)     THE MANUFACTURER IS RESPONSIBLE FOR AFFIXING THE LABEL~~  
23 ~~REQUIRED UNDER THIS SECTION.~~

24     ~~(D)     (1)     THE DEPARTMENT SHALL ADOPT REGULATIONS ESTABLISHING~~  
25 ~~STANDARDS FOR THE LABEL REQUIRED UNDER THIS SECTION.~~

26           (2)     ~~THE REGULATIONS SHALL:~~

27                   (1)     ~~TO THE EXTENT PRACTICABLE, BE CONSISTENT WITH~~  
28 ~~LABELING REQUIREMENTS IN OTHER STATES; AND~~

29                   (1)     ~~PROVIDE FOR APPROVAL BY THE DEPARTMENT OF~~  
30 ~~ALTERNATIVE METHODS OF COMPLIANCE.~~

1 6-1204.

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

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

6 (1) ~~ON OR AFTER OCTOBER 1, 2008, A PERSON MAY NOT MANUFACTURE,~~  
7 ~~PROCESS, SELL, OR DISTRIBUTE IN THE STATE A PRODUCT OR A FLAME RETARDANT~~  
8 ~~PART OF A PRODUCT THAT CONTAINS MORE THAN ONE TENTH OF 1% OF PENTABDE~~  
9 ~~OR OCTABDE BY MASS;~~

10 (2) ~~ON OR AFTER OCTOBER 1, 2010, A PERSON MAY NOT MANUFACTURE,~~  
11 ~~PROCESS, SELL, OR DISTRIBUTE IN THE STATE A PRODUCT OR A FLAME RETARDANT~~  
12 ~~PART OF A PRODUCT THAT CONTAINS MORE THAN ONE TENTH OF 1% OF DECABDE~~  
13 ~~BY MASS; AND~~

14 (3) ~~ON OR AFTER OCTOBER 1, 2012, A PERSON MAY NOT MANUFACTURE,~~  
15 ~~PROCESS, SELL, OR DISTRIBUTE IN THE STATE A PRODUCT OR A FLAME RETARDANT~~  
16 ~~PART OF A PRODUCT THAT CONTAINS MORE THAN ONE TENTH OF 1% OF~~  
17 ~~TETRABROMOBISPHENOL A OR HEXABROMOCYCLODODECANE OR ANY OTHER BFR~~  
18 ~~BY MASS.~~

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

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

26 (I) ~~THE EXEMPTION IS REQUESTED BECAUSE THE BFR IS~~  
27 ~~NECESSARY TO MEET SPECIFIC PRODUCT SPECIFICATIONS IDENTIFIED BY THE~~  
28 ~~CUSTOMER OR END USER OF THE PRODUCT;~~

29 (II) ~~PROTECTIVE MEASURES HAVE BEEN TAKEN TO ENSURE THE~~  
30 ~~HEALTH AND SAFETY OF WORKERS AND CONSUMERS THROUGHOUT THE LIFE OF~~  
31 ~~THE PRODUCT;~~

32 (III) ~~A SYSTEM EXISTS FOR THE PROPER COLLECTION,~~  
33 ~~TRANSPORTATION, AND PROCESSING OF THE PRODUCT AT THE END OF ITS LIFE;~~  
34 ~~AND~~

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

1                   ~~2. THE RISKS TO THE PUBLIC HEALTH AND THE~~  
2 ~~ENVIRONMENT DIRECTLY POSED BY A TECHNICALLY FEASIBLE AVAILABLE~~  
3 ~~ALTERNATIVE ARE GREATER THAN THE RISKS POSED BY THE BFR.~~

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

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

6                   ~~(II) RENEWED ON WRITTEN APPLICATION IF THE DEPARTMENT~~  
7 ~~FINDS THAT:~~

8                   ~~1. THE SPECIFIC USE OF THE BFR CONTINUES TO MEET THE~~  
9 ~~CRITERIA OF THIS SUBSECTION; AND~~

10                  ~~2. THE PETITIONER AND OTHER RELEVANT PARTIES HAVE~~  
11 ~~COMPLIED WITH THE CONDITIONS OF THE ORIGINAL EXEMPTION.~~

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

15 ~~6-1205.~~

16   ~~(A) ON OR BEFORE JANUARY 1, 2006, THE DEPARTMENT SHALL ADOPT~~  
17 ~~REGULATIONS THAT ESTABLISH A FEE, SUFFICIENT TO COVER THE COSTS TO THE~~  
18 ~~DEPARTMENT ASSOCIATED WITH THE IMPLEMENTATION OF THIS SUBTITLE, ON THE~~  
19 ~~SALE OF PRODUCTS CONTAINING BFRS.~~

20   ~~(B) THE DEPARTMENT MAY ADOPT REGULATIONS NECESSARY FOR THE~~  
21 ~~IMPLEMENTATION OF THIS SUBTITLE.~~

22   SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1,  
23 2007, the Department of the Environment shall, in conjunction with interested  
24 parties, review and, subject to § 2-1246 of the State Government Article, jointly  
25 report to the House Environmental Matters Committee and the Senate Education,  
26 Health, and Environmental Affairs Committee on:

27   (a)   The use of ~~brominated flame retardants~~ decabrominated diphenyl ether in  
28 products sold in the State;

29   (b)   Any data available on the human body burden or environmental  
30 occurrence of ~~brominated flame retardants~~ decabrominated diphenyl ether;

31   (c)   Recommendations regarding restrictions on the use, sale, and disposal of  
32 products containing ~~brominated flame retardants~~ decabrominated diphenyl ether;  
33 and

34   (d)   Any other recommendations to further protection of public health and the  
35 environment from ~~brominated flame retardants~~ decabrominated diphenyl ether.



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