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Public Law
123rd Legislature
First Regular Session

Chapter 296
H.P. 1167 - L.D. 1658

**An Act To Protect Pregnant Women and Children
from Toxic Chemicals Released into the Home**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1609, as reallocated by RR 2003, c. 2, §119, is amended to read:

§ 1609. Restrictions on sale and distribution of brominated flame retardants

For purposes of this section, "brominated flame retardant" means any chemical containing the element bromine that is added to a plastic, foam or textile to inhibit flame formation.

1. "Penta" mixture and "octa" mixtures of polybrominated diphenyl ethers.

Effective January 1, 2006, a person may not sell or offer to sell, or distribute for promotional purposes, a product containing more than ~~1%~~0.1% of the "penta" or "octa" mixtures of polybrominated diphenyl ethers.

2. ~~Review; report.~~ ~~The department, with the Department of Human Services, Bureau of Health, shall review relevant risk assessments in connection with brominated flame retardants and relevant findings and rulings by the United States Environmental Protection Agency and the European Union. The department shall annually, no later than January 5th, submit a report regarding the regulation of brominated flame retardants to the joint standing committee of the Legislature having jurisdiction over natural resources matters. For purposes of this subsection, "brominated flame retardant" means any chemical containing the element bromine that may be added to a plastic, foam or textile to inhibit flame formation.~~

3. ~~Application.~~ ~~This section does not apply to the sale of used products.~~

4. "Deca" mixture of polybrominated diphenyl ethers in home furniture.

Effective January 1, 2008, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State any of the following products that have plastic fibers containing the "deca" mixture of polybrominated diphenyl ethers:

A. A mattress or mattress pad; or

B. Upholstered furniture intended for indoor use in a home or other residential occupancy.

5. “Deca” mixture of polybrominated diphenyl ethers in electronics. Effective January 1, 2010, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a television or computer that has a plastic housing containing the “deca” mixture of polybrominated diphenyl ethers.

6. Exemptions. The restrictions in subsections 4 and 5 do not apply to the following products containing the “deca” mixture of polybrominated diphenyl ethers:

- A. Transportation vehicles or products or parts for use in transportation vehicles or transportation equipment;
- B. Products or equipment used in industrial or manufacturing processes; or
- C. Electronic wiring and cable used for power transmission.

7. Manufacturer responsibility. Effective January 1, 2008, a manufacturer of a product containing polybrominated diphenyl ethers restricted under subsection 1, 4 or 5 must notify persons that sell the manufacturer’s product of the requirements of this section.

8. Retailer assistance. The department must develop a program to assist retailers in identifying products that might contain polybrominated diphenyl ethers in their inventory.

9. Interstate clearinghouse. The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carrying out the requirements of this chapter and to help coordinate education and outreach activities, review risk assessments and alternatives to the use of chemicals listed in this section, and carry out any other activities related to the administration of this chapter.

10. Review; report. The department, with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, shall review relevant hazard and risk assessments in connection with brominated flame retardants as well as assessments of alternatives to the use of brominated flame retardants and relevant findings and rulings by the United States Environmental Protection Agency and the European Union. Every 2 years beginning in 2009, the department shall submit a report regarding the regulation of brominated flame retardants to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than January 5th. The report must include recommendations on actions that would further protect the public health and the environment from brominated flame retardants.

11. Application. This section does not apply to the sale of used products.

12. Enforcement. If there are grounds to suspect that a product is being offered for sale in violation of this section, the commissioner may request the manufacturer of the product to provide a certificate of compliance. Within 10 days of receipt of a request, the manufacturer shall:

- A. Provide the commissioner with a certificate attesting that the product complies with the requirements of this section; or
- B. Notify persons who sell the manufacturer's products in this State that the sale of the product is prohibited and provide the commissioner with a list of the names and addresses of those notified.

When it appears that a product has been sold, offered for sale or distributed in this State in violation of this section, the commissioner may take enforcement action in accordance with section 347-A against the product manufacturer. For the purpose of this section, "manufacturer" means any person who manufactured the final product or whose brand name is affixed to the product. In the case of a product that was imported into the United States, "manufacturer" includes the importer or domestic distributor of the product if the person who manufactured or assembled the product or whose brand name is affixed to the product does not have a presence in the United States.

13. Department rule-making authority; flame retardants. If the commissioner determines, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, that a flame retardant is harmful to the public health and the environment and an alternative to the flame retardant that is safer to the public health and the environment is nationally available and the State Fire Marshal determines that a safer alternative meets applicable fire safety standards, the commissioner may adopt rules to prohibit the manufacture, sale or distribution in the State of:

- A. A mattress, a mattress pad or upholstered furniture intended for indoor use in a home or other residential occupancy that has plastic fibers containing that flame retardant; or
- B. A television or computer that has a plastic housing containing that flame retardant.

The commissioner's rulemaking under this subsection must be made in accordance with Title 5, chapter 375, subchapter 2-A. The department shall report any rulemaking undertaken pursuant to this subsection to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation relating to the department's report. For purposes of this subsection, "flame retardant" means any chemical that is added to a plastic, foam or textile to inhibit flame formation. Rules adopted pursuant to this subsection are routine technical rules.

Effective September 20, 2007