

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO TOXIC CHEMICALS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that polybrominated  
2 diphenyl ethers have been used extensively as fire retardants in  
3 many common household products for the past thirty years.  
4 Studies on animals show that polybrominated diphenyl ethers can  
5 affect behavior and learning after birth and into adulthood,  
6 making exposure to fetuses and children a particular concern.  
7 Levels of polybrominated diphenyl ethers are increasing in  
8 humans and the environment, particularly in North America.  
9 Since these chemicals are already in house dust, indoor air, as  
10 well as food, it is important to phase-out their use in common  
11 household products; provided that effective, safe, and  
12 technically feasible fire retardants are available at a  
13 reasonable cost.

14           The legislature further finds that polybrominated diphenyl  
15 ethers have the potential to disrupt thyroid hormone balance and  
16 contribute to a variety of developmental learning disabilities.  
17 Polybrominated diphenyl ethers may also have the potential to  
18 cause cancer. Substantial efforts to eliminate polybrominated



1 diphenyl ethers from consumer products have been made throughout  
2 the world in both the private and public sectors. These efforts  
3 have produced numerous safe alternatives that meeting stringent  
4 fire code standards.

5 The purpose of this Act is to prohibit the manufacture or  
6 distribution of products containing polybrominated diphenyl  
7 ethers by January 1, 2011.

8 SECTION 2. The Hawaii Revised Statutes is amended by  
9 adding a new chapter to be appropriately designated and to read  
10 as follows:

11 "CHAPTER

12 § -1 Definitions. As used in this chapter:

13 "Commercial decabromo diphenyl ether" or "commercial deca-  
14 bde" means the chemical mixture of decabromo diphenyl ether,  
15 including associated polybrominated diphenyl ether impurities  
16 not intentionally added.

17 "Department" means the department of health.

18 "Manufacturer" means any person, firm, association,  
19 partnership, corporation, governmental entity, organization, or  
20 joint venture that produces a product containing polybrominated  
21 diphenyl ethers or an importer or domestic distributor of a non-



1 edible product containing polybrominated diphenyl ethers. A  
2 manufacturer does not include a retailer who:

3 (1) Adds a private label brand or co-brands a product for  
4 sale; or

5 (2) Assembles components to create a single non-edible  
6 product based on an individual consumer preference.

7 "Mattress" has the same meaning as defined by the United  
8 States Consumer Product Safety Commission in 16 C.F.R. Part 1633  
9 (2007) as it existed on the effective date of this section, and  
10 includes mattress sets, box springs, futons, crib mattresses,  
11 and youth mattresses. "Mattress" includes mattress pads.

12 "Medical device" means an instrument, machine, implant, or  
13 diagnostic test used to diagnose a disease or other medical  
14 condition or to cure, treat, or prevent a disease.

15 "Polybrominated diphenyl ethers" means chemical forms that  
16 consist of diphenyl ethers bound with bromine atoms.  
17 Polybrominated diphenyl ethers include, but are not limited to,  
18 the three primary forms of the commercial mixtures known as  
19 pentabromo diphenyl ether or penta-bde, octabromo diphenyl ether  
20 or octa-bde, and decabromo diphenyl ether or deca-bde.

21 "Retailer" means a person who offers a product for sale at  
22 retail through any means including, but not limited to, remote



1 offerings such as sales outlets, catalogs, or the Internet, but  
2 does not include a sale that is a wholesale transaction with a  
3 distributor or a retailer. A retailer does not include a  
4 person, firm, association, partnership, corporation,  
5 governmental entity, organization, or joint venture that  
6 manufactures, then sells a product at retail.

7 "Transportation vehicle" means a mechanized vehicle that is  
8 used to transport goods or people including, but not limited to,  
9 airplanes, automobiles, motorcycles, trucks, buses, trains,  
10 boats, ships, streetcars, or monorail cars.

11 § -2 Prohibition of polybrominated diphenyl ethers.

12 After December 31, 2010, no person may manufacture, knowingly  
13 sell, offer for sale, distribute for sale, or distribute for use  
14 in this State, products containing polybrominated diphenyl  
15 ethers; except to:

- 16 (1) Sell or distribute any used transportation vehicle  
17 manufactured before January 1, 2009, with component  
18 parts containing polybrominated diphenyl ethers;
- 19 (2) Sell or distribute any used transportation vehicle  
20 parts or new transportation vehicle parts manufactured  
21 before January 1, 2009, that contain polybrominated  
22 diphenyl ethers;



- 1           (3)   Manufacture, sell, repair, distribute, maintain,  
2                    refurbish, or modify equipment containing  
3                    polybrominated diphenyl ethers used primarily for  
4                    military or federally funded space program  
5                    applications, not including consumer-based goods with  
6                    broad applicability;
- 7           (4)   Satisfy Federal Aviation Administration fire  
8                    worthiness requirements and recommendations;
- 9           (5)   Manufacture, sell, repair, distribute, maintain,  
10                   refurbish, or modify any new raw material or component  
11                   part used in a transportation vehicle, including  
12                   original spare parts containing deca-bde;
- 13           (6)   Use commercial deca-bde to maintain, refurbish, or  
14                   modify transportation equipment;
- 15           (7)   Sell or distribute any product containing  
16                   polybrominated diphenyl ethers that has been  
17                   previously owned, purchased, or sold in commerce;  
18                   provided that the product was manufactured before  
19                   January 1, 2011;
- 20           (8)   Manufacture, sell, or distribute any new product or  
21                   product component consisting of recycled or used  
22                   materials containing deca-bde;



1           (9)    Sell or purchase any previously owned product  
2                    containing polybrominated diphenyl ethers made in a  
3                    "casual sale" as defined in section 237-1 or sale by a  
4                    nonprofit organization;

5           (10)   Manufacture, sell, or distribute new carpet cushions  
6                    made from recycled foam containing less than one-tenth  
7                    of one per cent penta-bde; and

8           (11)   Manufacture, sell, or distribute medical devices.

9           §   -3   **Storage restrictions.**   Nothing in this chapter  
10                   shall restrict the ability of a manufacturer, importer, or  
11                   distributor from transporting products containing polybrominated  
12                   diphenyl ethers through the State or storing the products in the  
13                   State for later distribution outside the State.

14           §   -4   **Manufacturer notification to distributors.**   A  
15                   manufacturer of products containing polybrominated diphenyl  
16                   ethers that are restricted under this chapter shall notify  
17                   sellers of the products in this State of this chapter not less  
18                   than ninety days prior to January 1, 2011.

19           §   -5   **Assistance for state agencies purchasing equipment.**  
20                   The department shall assist state agencies to give priority and  
21                   preference to the purchase of equipment, supplies, and other  
22                   products that do not contain polybrominated diphenyl ethers.



1           §   -6   **Retailer liability.** (a) Retailers who unknowingly  
2 sell products prohibited of this chapter shall not be liable for  
3 any penalty or fine under this chapter.

4           (b) In-state retailers in possession of products  
5 prohibited under this chapter on January 1, 2011, may sell their  
6 existing inventory of prohibited products until exhausted;  
7 provided that no additional prohibited stock may be sold or  
8 offered for sale.

9           (c) The department shall assist in-state retailers in  
10 identifying potential products containing polybrominated  
11 diphenyl ethers.

12          §   -7   **Enforcement.** (a) The department shall enforce  
13 this chapter.

14          (b) Before January 1, 2011, the department may prepare and  
15 distribute information to in-state manufacturers and out-of-  
16 state manufacturers to assist them in identifying products  
17 prohibited under this chapter.

18          (c) The department may request a certificate of compliance  
19 from a manufacturer attesting that a manufacturer's product or  
20 products meets the requirements of this chapter.

21          (d) The department may issue a warning letter to a  
22 manufacturer that produces, sells, or distributes prohibited



1 products in violation of this chapter. The department shall  
2 offer information or other appropriate assistance to the  
3 manufacturer to comply with this chapter.

4 (e) The department shall require a manufacturer who  
5 knowingly produces, sells, or distributes a product prohibited  
6 under this chapter to recall the product and reimburse the  
7 retailer or any other purchaser for the cost of the product and  
8 any applicable shipping and handling charges related to  
9 returning the products.

10 (f) The department may adopt rules under chapter 91 to  
11 implement this chapter.

12 (g) A manufacturer of products containing polybrominated  
13 diphenyl ethers in violation of this chapter shall be subject to  
14 a civil penalty not to exceed \$1,000 for each violation. Repeat  
15 offenders shall be subject to a civil penalty not to exceed  
16 \$5,000 for each offense."

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Shiranne Chun Auland

*[Handwritten signatures]*  
J. Lee Goh  
Christina  
Nellie H. H.



**Report Title:**

Health; Toxic Chemicals; Polybrominated Diphenyl Ethers

**Description:**

Prohibits the manufacture, processing, or distribution of products containing more than trace amounts of PBDE by 1/1/11.

