

HOUSE BILL NO. 63

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES HOLMES, Kawasaki, Kerttula

Introduced: 1/18/11

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to flame retardants and to the manufacture, sale, and distribution of
2 products containing flame retardants; relating to bioaccumulative toxic chemicals; and
3 providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 18.31 is amended by adding new sections to read:

6 **Article 4. Toxic Chemicals in Products.**

7 **Sec. 18.31.600. Prohibitions.** (a) A person may not manufacture, sell, or
8 distribute a product that contains more than 0.1 percent by mass of pentaBDE,
9 octaBDE, or a combination of pentaBDE and octaBDE.

10 (b) A person may not manufacture, sell, or distribute a mattress, a mattress
11 pad, or upholstered furniture if the mattress, mattress pad, or upholstered furniture has
12 a textile component containing more than 0.1 percent by mass of decaBDE.

13 (c) A person may not manufacture, sell, or distribute an electronic product if
14 the electronic product has a plastic housing that contains more than 0.1 percent by

1 mass of decaBDE.

2 (d) A person may not manufacture, sell, or distribute a product that is
3 prohibited by the department under AS 18.31.610.

4 **Sec. 18.31.610. Prohibition by department.** (a) The department may prohibit
5 by regulation the manufacture, sale, and distribution of a product that contains a flame
6 retardant that is not a brominated flame retardant if the department determines that

7 (1) the flame retardant is harmful to public health or the environment;
8 and

9 (2) an alternative to the flame retardant exists, is safer for the public
10 health or the environment, and is available on a nationwide basis.

11 (b) Before establishing a prohibition under (a) of this section, the department
12 shall consult with the Department of Health and Social Services, and the state fire
13 marshal shall determine that the flame retardant alternative identified in (a)(2) of this
14 section satisfies applicable fire safety standards.

15 (c) In this section, "product" means

16 (1) a mattress, a mattress pad, or upholstered furniture if the mattress,
17 mattress pad, or upholstered furniture contains plastic fibers that contain the flame
18 retardant; or

19 (2) an electronic product that has a plastic housing that contains the
20 flame retardant.

21 **Sec. 18.31.620. Exemptions.** The prohibitions in AS 18.31.600 do not apply if
22 the product that is prohibited is part of

23 (1) a transportation vehicle or a product or part used in a transportation
24 vehicle or transportation equipment;

25 (2) a product or equipment used in an industrial, mining, or
26 manufacturing process;

27 (3) electronic wiring or cable used for power transmission;

28 (4) a used item that is resold; or

29 (5) a new item that is brought into the state before the effective date of
30 this section.

31 **Sec. 18.31.630. Notification by manufacturer.** A person who manufactures

1 products whose sale and distribution are prohibited by AS 18.31.600 shall inform its
2 retailers in the state of the prohibitions under AS 18.31.600 and the penalty under
3 AS 18.31.660.

4 **Sec. 18.31.640. Retailer assistance.** The department shall develop a program
5 to assist retailers to identify products in their inventories that violate AS 18.31.600.

6 **Sec. 18.31.650. Enforcement.** If the department determines that there are
7 grounds to suspect that a retailer is selling a product in violation of AS 18.31.600, the
8 department may request that, within 10 days, the manufacturer of the product

9 (1) provide the department with a sworn certificate indicating that the
10 sale of the product does not violate AS 18.31.600; or

11 (2) notify each retailer who sells the product in the state that the sale of
12 the product is prohibited by AS 18.31.600 and provide the department with a list of the
13 names and addresses of the retailers notified.

14 **Sec. 18.31.660. Civil penalty.** A person who violates AS 18.31.600 -
15 18.31.650 is liable to the state for a civil penalty of up to \$1,000 for each violation.

16 **Sec. 18.31.670. Review by departments.** The department, along with and the
17 Department of Health and Social Services, shall review

18 (1) the hazards and risks of brominated flame retardants and possible
19 alternatives to brominated flame retardants; and

20 (2) the findings and rulings by the United States Environmental
21 Protection Agency that are related to brominated flame retardants and possible
22 alternatives to brominated flame retardants.

23 **Sec. 18.31.680. List of toxic chemicals.** (a) The department shall, in
24 consultation with the Department of Health and Social Services, establish by
25 regulation and update every three years on or before February 1 a list of persistent
26 bioaccumulative toxic chemicals that occur or are used in products used by human
27 beings.

28 (b) When establishing the list required by (a) of this section, the department
29 shall consider

30 (1) the persistent bioaccumulative toxins list prepared by the State of
31 Washington;

1 (2) the chemical data developed by the United States Environmental
2 Protection Agency under the high production volume challenge program; and

3 (3) other sources the department determines are relevant.

4 **Sec. 18.31.690. Interstate clearinghouse.** The department may participate in
5 the establishment and implementation of a regional multistate clearinghouse to

6 (1) assist the department to carry out the department's duties under
7 AS 18.31.600 - 18.31.790; and

8 (2) help coordinate education and outreach activities related to
9 brominated flame retardants, including risk assessments and possible alternatives to
10 brominated flame retardants.

11 **Sec. 18.31.700. Regulations.** In addition to the regulations allowed under
12 AS 18.31.610, the department may adopt regulations to implement AS 18.31.600 -
13 18.31.790. The department shall adopt the regulations for AS 18.31.600 - 18.31.790
14 under AS 44.62 (Administrative Procedure Act).

15 **Sec. 18.31.790. Definitions for AS 18.31.600 - 18.31.790.** In AS 18.31.600 -
16 18.31.790, unless the context indicates otherwise,

17 (1) "brominated flame retardant" means a flame retardant that contains
18 pentaBDE, octaBDE, or decaBDE;

19 (2) "congener" means a specific polybromodiphenyl ether molecule;

20 (3) "decaBDE" means decabromodiphenyl ether or a technical mixture
21 in which decabromodiphenyl ether is the predominant congener;

22 (4) "department" means the Department of Environmental
23 Conservation;

24 (5) "distribution" means distribution for sale or for a commercial
25 purpose;

26 (6) "electronic product" means a television, a computer, or another
27 piece of electronic equipment;

28 (7) "flame retardant" means a chemical that is added to plastic, foam,
29 or a textile to inhibit flame formation;

30 (8) "manufacture" means manufacture for sale;

31 (9) "manufacturer" means a person who

1 (A) manufactures a product or whose brand name is affixed to
2 the product; or

3 (B) imports or distributes a product in the United States if the
4 person who manufactured or assembled the product or whose brand name is
5 affixed to the product does not do business in the United States;

6 (10) "octaBDE" means octabromodiphenyl ether or a technical mixture
7 in which octabromodiphenyl ether is the predominant congener;

8 (11) "pentaBDE" means pentabromodiphenyl ether or a technical
9 mixture in which pentabromodiphenyl ether is the predominant congener;

10 (12) "persistent bioaccumulative toxic chemicals" includes
11 carcinogens, mutagens, reproductive toxicants, developmental toxicants,
12 neurotoxicants, endocrine disruptors, and other toxins; in this paragraph,

13 (A) "bioaccumulative" means increasing in concentration in
14 living organisms as the living organisms take in contaminated air, water, soil,
15 sediment, or food;

16 (B) "persistent" means remaining in the environment without
17 transformation or breakdown into another chemical form;

18 (13) "sell" includes an offer to sell;

19 (14) "technical mixture" means a mixture that is named for the
20 predominant congener and that is not exclusively composed of the predominant
21 congener;

22 (15) "transportation vehicle" means a mechanized vehicle that is used
23 to transport goods or individuals, and includes an airplane, an automobile, a
24 motorcycle, a truck, a bus, a train, and a ship.

25 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **TRANSITION: REGULATIONS.** The Department of Environmental Conservation
28 may proceed to adopt regulations necessary to implement this Act. The regulations take effect
29 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
30 statutory changes.

31 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: FIRST LIST. On or before February 1, 2013, the Department of
3 Environmental Conservation shall establish the first list required by AS 18.31.680, added by
4 sec. 1 of this Act.

5 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 REVISOR'S INSTRUCTION. Wherever "chapter" appears in AS 18.31.010 -
8 18.31.500, the revisor of statutes shall substitute "AS 18.31.010 - 18.31.500."

9 * **Sec. 5.** Section 2 of this Act takes effect immediately under AS 01.10.070(c).

10 * **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect January 1, 2012.