S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

February 23, 2009

Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conversation law, in relation to restricting the use of certain ethers in certain products

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 37-0101 of the environmental conservation law is amended by adding two new subdivisions 7 and 8 to read as follows:

7. "COVERED ELECTRONIC DEVICE" MEANS A DESKTOP OR PERSONAL COMPUTER, COMPUTER MONITOR, PORTABLE COMPUTER, CATHODE RAY TUBE BASED TELEVISION OR A TELEVISION THAT IS NOT CATHODE RAY TUBE BASED.

8. "DECABROMODIPHENYL ETHER" MEANS THE CHEMICAL MIXTURE PREDOMINATELY COMPRISED OF DECABROMODIPHENYL ETHER, AND INCLUDING ASSOCIATED POLYBROMINATED DIPHENYL ETHER IMPURITIES NOT INTENTIONALLY ADDED.

S 2. The environmental conservation law is amended by adding a new section 37-0113 to read as follows:

S 37-0113. RESTRICTION OF DECABROMODIPHENYL ETHER IN ELECTRONICS AND TEXTILES.

1. LEGISLATIVE INTENT. THE LEGISLATURE FINDS AND DECLARES ALL OF THE FOLLOWING: POLYBROMINATED DIPHENYL ETHERS (PBDES) HAVE BEEN USED EXTENSIVELY AS FLAME RETARDANTS IN A LARGE NUMBER OF COMMON HOUSEHOLD PRODUCTS FOR THE PAST THIRTY YEARS. STUDIES ON ANIMALS SHOW THAT PBDES CAN IMPACT THE DEVELOPING BRAIN, AFFECTING BEHAVIOR AND LEARNING AFTER BIRTH AND INTO ADULTHOOD, MAKING EXPOSURE TO FETUSES AND CHILDREN A PARTICULAR CONCERN. LEVELS OF PBDES ARE INCREASING IN PEOPLE, AND IN THE ENVIRONMENT, PARTICULARLY IN NORTH AMERICA. BECAUSE PEOPLE CAN BE EXPOSED TO THESE CHEMICALS THROUGH HOUSE DUST AND INDOOR AIR AS WELL AS THROUGH FOOD, IT IS IMPORTANT TO PHASE OUT THEIR USE IN COMMON HOUSEHOLD PRODUCTS, PROVIDED THAT EFFECTIVE FLAME RETARDANTS THAT ARE SAFER AND TECHNICALLY FEASIBLE ARE AVAILABLE AT A REASONABLE COST.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. PROHIBITION. EXCEPT AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION, ON AND AFTER JULY FIRST, TWO THOUSAND TWELVE, A PERSON MAY NOT MANUFACTURE, PROCESS, OR DISTRIBUTE IN COMMERCE ANY OF THE FOLLOWING PRODUCTS IF THEY CONTAIN COMMERCIAL DECABROMODIPHENYL ETHER:

A. COVERED ELECTRONIC DEVICES;

B. UPHOLSTERED FURNITURE OR TEXTILES INTENDED FOR INDOOR USE IN A HOME OR OTHER RESIDENTIAL OCCUPANCY; OR

C. MATTRESSES AND MATTRESS PADS.

3. EXEMPTION. THE FOLLOWING PRODUCTS CONTAINING POLYBROMINATED DIPHENYL ETHERS ARE EXEMPT FROM THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION:

A. ANY USED TRANSPORTATION VEHICLE WITH COMPONENT PARTS CONTAINING POLYBROMINATED DIPHENYL ETHERS;

B. ANY USED TRANSPORTATION VEHICLE PARTS OR NEW TRANSPORTATION VEHICLE PARTS MANUFACTURED BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN;

C. EQUIPMENT USED PRIMARILY FOR MILITARY OR FEDERALLY FUNDED SPACE PROGRAM APPLICATIONS. THIS EXEMPTION DOES NOT COVER CONSUMER-BASED GOODS WITH BROAD APPLICABILITY;

D. ANY USED PRODUCT SOLD OR DISTRIBUTED BY A BUSINESS, CHARITY, OR PRIVATE PARTY; AND

E. MEDICAL DEVICES.

4. RETAILERS IN POSSESSION. IN-STATE RETAILERS IN POSSESSION OF PRODUCTS ON JULY FIRST, TWO THOUSAND TWELVE, THAT ARE BANNED FOR SALE UNDER SUBDIVISION TWO OF THIS SECTION MAY EXHAUST THEIR STOCK THROUGH SALES TO THE PUBLIC. NOTHING IN THIS SECTION SHALL RESTRICT THE ABILITY OF A MANUFACTURER, IMPORTER, OR DISTRIBUTOR FROM TRANSPORTING PRODUCTS CONTAINING POLYBROMINATED DIPHENYL ETHERS THROUGHOUT THE STATE, OR STORING SUCH PRODUCTS IN THE STATE FOR LATER DISTRIBUTION OUTSIDE THE STATE.

5. ONGOING REVIEW OF AVAILABILITY OF ALTERNATIVES TO DECABROMODIPHENYL ETHER. AT LEAST EVERY TWO YEARS, THE COMMISSIONER AND THE COMMISSIONER OF HEALTH SHALL REVIEW USES OF COMMERCIAL DECABROMODIPHENYL ETHER, AVAILIBILITY OF TECHNICALLY FEASIBLE ALTERNATIVES, AND ANY NEW EVIDENCE REGARDING THE POTENTIAL HARM TO PUBLIC HEALTH AND THE ENVIRONMENT POSED BY COMMERCIAL DECABROMODIPHENYL ETHER. SUCH COMMISSIONERS SHALL MAKE RECOMMENDATIONS TO THE LEGISLATURE ON ADDITIONAL BANS AND RESTRICTIONS TO REDUCE AND PHASE OUT THE MANUFACTURE, SALE, OR DISTRIBUTION OF NONCOMBUSTIBLE PRODUCTS CONTAINING COMMERCIAL DECABROMODIPHENYL ETHER. THE COMMISSIONERS SHALL REPORT THEIR FINDINGS AND RECOMMENDATIONS TO THE APPROPRIATE COMMITTEES OF THE LEGISLATURE NO LATER THAN JANUARY FIRST, TWO THOUSAND TWELVE, AND EVERY TWO YEARS AFTER SUCH DATE.

A. THE COMMISSIONER IS AUTHORIZED TO PARTICIPATE IN A REGIONAL OR NATIONAL MULTISTATE CLEARINGHOUSE TO ASSIST IN CARRYING OUT THE REQUIREMENTS OF THIS SECTION. THE CLEARINGHOUSE IS AUTHORIZED TO MAINTAIN INFORMATION ON BEHALF OF NEW YORK, INCLUDING, BUT NOT LIMITED TO:

(1) A LIST OF ALL PRODUCTS CONTAINING POLYBROMINATED DIPHENYL ETHERS; AND

(2) INFORMATION ON ALL EXEMPTIONS GRANTED BY THE STATE.

B. BY JULY FIRST, TWO THOUSAND ELEVEN, THE COMMISSIONER OF THE OFFICE OF GENERAL SERVICES SHALL GIVE PRIORITY AND PREFERENCE TO THE PURCHASE OF EQUIPMENT, SUPPLIES, AND OTHER PRODUCTS THAT DO NOT CONTAIN DECABROMODIPHENYL ETHERS.

6. ADDITIONAL EXEMPTIONS. IN ADDITION TO THE SPECIFIC EXEMPTIONS UNDER SUBDIVISION THREE OF THIS SECTION, A MANUFACTURER OR USER OF A PRODUCT PROHIBITED FROM MANUFACTURE, SALE, OR DISTRIBUTION UNDER SUCH SUBDIVISION MAY APPLY FOR AN EXEMPTION FOR A SPECIFIC USE OF COMMERCIAL DECABROMODIPHENYL ETHER BY FILING A WRITTEN PETITION WITH THE COMMISSIONER.

THE COMMISSIONER MAY GRANT AN EXEMPTION FOR A TERM NOT TO EXCEED TWO YEARS. THE EXEMPTION SHALL BE RENEWABLE UPON WRITTEN APPLICATION IF THE SPECIFIC USE OF COMMERCIAL DECABROMODIPHENYL ETHER CONTINUES TO MEET THE CRITERIA OF THIS SECTION AND THE MANUFACTURER OR OTHER PERSONS COMPLY WITH THE CONDITIONS OF ITS ORIGINAL APPROVAL. THE COMMISSIONER MAY GRANT AN EXEMPTION FOR A SPECIFIC USE OF COMMERCIAL DECABROMODIPHENYL ETHER, WITH OR WITHOUT CONDITIONS, UPON FINDING THAT THE APPLICANT HAS DEMONSTRATED:

A. A TECHNICALLY FEASIBLE ALTERNATIVE IS NOT AVAILABLE AT REASONABLE COST; OR

B. THE POTENTIAL HARM TO PUBLIC HEALTH AND THE ENVIRONMENT DIRECTLY POSED BY A TECHNICALLY FEASIBLE AND AVAILABLE ALTERNATIVE IS GREATER THAN THE POTENTIAL HARM POSED BY COMMERCIAL DECABROMODIPHENYL ETHER.

7. LABELING AND POSITIVE RECOGNITION. THE COMMISSIONER MAY ESTABLISH A "PBDE-FREE" PRODUCT LABELING PROGRAM FOR PRODUCTS THAT DO NOT CONTAIN POLYBROMINATED DIPHENYL ETHERS. THE COMMISSIONER MAY ESTABLISH PARTNERSHIPS WITH MANUFACTURERS OF POLYBROMINATED DIPHENYL ETHERS TO ENHANCE THE MARKET FOR PRODUCTS THAT DO NOT CONTAIN POLYBROMINATED DIPHENYL ETHERS AND REDUCE THE USE OF POLYBROMINATED DIPHENYL ETHERS IN PRODUCTS. THE COMMISSIONER MAY DEVELOP AN AWARDS PROGRAM TO RECOGNIZE THE ACCOMPLISHMENTS OF MANUFACTURERS WHO EXCEED THE REQUIREMENTS OF THIS SECTION AND WHO EXCEL AT REDUCING OR ELIMINATING DECABROMODIPHENYL ETHER IN PRODUCTS AND THE ENVIRONMENT.

8. PENALTIES. A MANUFACTURER WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH VIOLATION IN THE CASE OF A FIRST OFFENSE. A MANUFACTURER IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH REPEAT OFFENSE. PENALTIES COLLECTED UNDER THIS SECTION SHALL BE USED BY THE COMMISSIONER TO IMPLEMENT AND ENFORCE THIS SECTION.

S 3. This act shall take effect July 1, 2011.