§ 37-0111. Prohibition against brominated flame retardants.

1. Manufacture, process, or distribution of brominated flame retardants. (a) No person shall manufacture, process or distribute in commerce a product, or a flame-retardant part of a product, containing more than one-tenth of one per centum of pentabrominated diphenyl ether or octabrominated diphenyl ether, by mass.

(b) The commissioner may waive the provisions of this section in whole or in part upon a finding by the commissioner, in consultation with the commissioners of health and labor in a particular instance that there is no significant threat to the public health.

2. Administration. (a) The commissioner is hereby authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to products, fabrics or related materials, and for the labeling for a product, fabric or related material, as may be necessary and proper for purposes of administration and enforcement of this article.

(b) The commissioner is hereby empowered to order the recall of or confiscation of consumer products offered for sale which do not meet the standards set forth in or pursuant to this section.

(c) The commissioner may obtain from any person by regulation or subpoena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which he or she is required or authorized to make pursuant to this section.

All information reported to or otherwise obtained by the commissioner or his or her representative pursuant to this section which information contains or relates to a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this section or when relevant in any proceeding under this section.

3. Guaranty. (a) No person shall be subject to prosecution under this section if such person: (1) establishes a guaranty received in good faith signed by and containing the name and address of the person

residing in the United States by whom the product, fabric or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests showing that the product, fabric or related material covered by the guaranty, or used in the product, fabric or related material covered by the guaranty meets the requirements of this section; and (2) has not, by further processing, affected the flammability of the product, fabric or related material covered by the guaranty which he or she received. Such guaranty shall be either: (A) a separate guaranty specifically designating the product, fabric or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric or related material; or (B) a continuing guaranty filed with the department or with the federal trade commission applicable to any product, fabric or related material handled by a guarantor, in such form as the department or the federal trade commission by rules or regulations may prescribe; or (C) a continuing guaranty given by seller to buyer applicable to any product, fabric or related material sold or to be sold to buyer by seller in a form as the department or the federal trade commission by rules or regulations may prescribe.

(b) The furnishing with respect to any product, fabric or related material, of a false guaranty, except by a person relying upon a guaranty to the same effect received in good faith and signed by and containing the name and address of the person residing in the United States by whom the product, fabric or related material guaranteed was manufactured or from whom it was received, with reason to believe the product, fabric or related material falsely guaranteed may be introduced, sold or transported in commerce, is unlawful.

4. Exclusions. (a) The provisions of this section shall not apply to any common carrier, contract carrier or freight forwarder with respect to a product, fabric or related material shipped or delivered for shipment through the state for commerce in another state or country.

(b) As used in this section, "distribute in commerce" shall not include the resale of products manufactured prior to January first, two thousand six or replacement parts manufactured prior to January first, two thousand six.

5. Violations. A violation of any provision of this section or any rule or regulation of the commissioner promulgated hereunder is a misdemeanor. Each product, fabric or related material made, sold or exposed for sale, shall constitute a separate violation.

6. Severability. The provisions of this section shall be severable and and if any portion thereof or the applicability thereof to any person or circumstances shall be held to be invalid, the remainder of this title and the application thereof shall not be affected thereby.