

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND REGULAR SESSION-2004

Legislative Document

No. 1790

H.P. 1312

House of Representatives, December 22, 2003

**An Act To Reduce Contamination of Breast Milk and the
Environment from the Release of Brominated Chemicals in
Consumer Products**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 17, 2003. Referred to the Committee on Business, Research and Economic Development pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PINGREE of North Haven.
Cosponsored by Senator DAMON of Hancock and
Representatives: DUPLESSIE of Westbrook, KOFFMAN of Bar Harbor, LERMAN of
Augusta, MOODY of Manchester, SAVIELLO of Wilton, Senators: MAYO of Sagadahoc,
SAWYER of Penobscot, TREAT of Kennebec.

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

4 Sec. 1. 38 MRSA c. 16-D is enacted to read:

6 CHAPTER 16-D

8 BROMINATED FLAME RETARDANTS IN CONSUMER PRODUCTS

10 §1691. Definitions

12 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

14 1. Brominated flame retardant. "Brominated flame
16 retardant" means any chemical containing the element bromine that
may be added to a plastic, foam or textile to inhibit flame
18 formation. "Brominated flame retardant" includes, but is not
limited to, a chemical or group of chemicals known as
20 polybrominated biphenyls, polybrominated diphenyl ethers,
tetrabromobisphenol-A and hexabromocyclododecane. Polybrominated
22 diphenyl ethers include its 3 primary commercial mixtures known
as "penta," "octa" and "deca."

24 §1692. Notification

26 1. Prior written notice required. Effective January 1,
28 2006, a product to which a brominated flame retardant is added
during formulation or manufacture or a product containing one or
30 more components to which a brominated flame retardant is added
during formulation or manufacture may not be offered for final
32 sale or use or distributed for promotional purposes in the State
unless the manufacturer of the product or component or a trade
34 association representing manufacturers of the product or
component has provided written notice to the department in
36 accordance with this section. The notice must include the
following information on a form provided by the department:

38 A. A brief description of the product or component;

40 B. The amount and chemical type of brominated flame
42 retardant in each unit of the product or component, reported
as an exact number, as an average per product or component
44 with an upper or lower limit or as falling within a range
approved by the department;

46 C. The total amount and chemical type of brominated flame
48 retardant in all units of the product or component sold in
the United States during the most recent calendar year for
50 which sales figures are available, reported either for the
units or components sold by the manufacturer or as

2 aggregated by a manufacturer trade association for all units
3 of the product or component made by the manufacturers
4 represented by the association; and

5 D. The name and address of the manufacturer and the name,
6 address and phone number of a contact person for the
7 manufacturer.

8
9 **2. Product category information.** With the approval of the
10 department, the manufacturer may supply the information required
11 in subsection 1 for a product category rather than an individual
12 product. The manufacturer shall update and revise the
13 information in the notification whenever there is significant
14 change in the information or at the department's request. The
15 information required under subsection 1, paragraph C must be
16 updated and provided to the department every 3 years.

17 **3. Product components.** Notwithstanding subsection 1,
18 paragraph B, the manufacturer of a product containing one or more
19 components containing a brominated flame retardant is not
20 required to include information on the amount of brominated flame
21 retardants in the component in the notice to the department if
22 the component manufacturer has provided that information to the
23 department and the manufacturer of the product that contains the
24 component identifies the component and component manufacturer in
25 the notice.

26
27 **4. Importers; prohibition.** An importer of a product or
28 component from a foreign country may not sell, use or distribute
29 the product or component in the State unless the manufacturer of
30 the product or component is in compliance with this section,
31 except that this prohibition does not apply to retailers for whom
32 importing is not a primary business.

33 **§1693. Labeling and consumer information**

34
35 **1. Labeling required for certain products.** Effective
36 January 1, 2006, a manufacturer may not sell at retail in this
37 State, a manufacturer may not sell to a retailer in this State
38 and a retailer may not knowingly sell a product containing a
39 brominated flame retardant unless the product is labeled pursuant
40 to this subsection. The label must clearly inform the purchaser
41 or consumer that a brominated flame retardant is present in the
42 product, describe the hazards associated with brominated flame
43 retardants and provide guidance on safe management of the product
44 at its end of life so as to minimize the effects of disposal. A
45 manufacturer shall affix a label that conforms to the
46 requirements of this subsection to a product containing a
47 brominated flame retardant.

2 The board shall adopt rules to establish standards for affixing
4 labels to products and product packages. The rules must strive
6 for consistency with labeling programs in other states and
8 provide for approval by the department of alternative compliance
10 plans. Rules adopted pursuant to this subsection are routine
12 technical rules as defined in Title 5, chapter 375, subchapter
14 2-A.

16 **§1694. Restrictions on sale and use of brominated flame**
18 **retardants**

20 The following restrictions apply to the sale of products
22 containing a specified brominated flame retardant.

24 **1. Polybrominated biphenyls and certain polybrominated**
26 **diphenyl ethers.** Effective January 1, 2006, a person may not
28 sell or offer to sell or distribute for promotional purposes a
30 product containing polybrominated biphenyls or the "penta" or
32 "octa" mixtures of polybrominated diphenyl ethers.

34 **2. The deca mixture of polybrominated diphenyl ethers.**
36 Unless an exemption is obtained under subsection 4, effective
38 January 1, 2008, a person may not sell or offer to sell or
40 distribute for promotional purposes a product containing the
42 "deca" mixture of polybrominated diphenyl ethers.

44 **3. Other brominated flame retardants.** Unless an exemption
46 is obtained under subsection 4, effective January 1, 2010, a
48 person may not sell or offer to sell or distribute for
50 promotional purposes a product containing tetrabromobisphenol-A
or hexabromocyclododecane or any other brominated flame retardant
not otherwise specified in this section.

4. Exemptions. The manufacturer or user of a product may
apply for an exemption for one or more specific uses of a
brominated flame retardant by filing a written petition with the
commissioner prior to one year before the effective date of the
sales restriction. The commissioner may grant an exemption for
each specified use of a brominated flame retardant with or
without conditions upon finding that the petitioner has
demonstrated that:

A. The exemption is requested because the brominated flame
retardant is necessary to meet specific product
specifications identified by the customer or end user of the
product;

B. Protective measures have been taken to ensure the health
and safety of workers and consumers throughout the life of
the product containing a brominated flame retardant;

2 C. A system exists for the proper collection,
4 transportation and processing of the product at the end of
 its life; and

6 D. One of the following applies:

8 (1) A technically feasible alternative to the use of a
10 brominated flame retardant, including product redesign
 and substitute flame retardants, is not available at
12 comparable cost; or

14 (2) The risks to public health and the environment
 directly posed by a technically feasible available
16 alternative are greater than the same risks posed by
 the brominated flame retardant.

18 Prior to approving an exemption, the commissioner may consult
20 with neighboring states to promote consistency in the regulation
 of brominated flame retardants. The commissioner may request an
22 individual receiving an exemption to maintain records and provide
 reasonable reports to the department that provide details about
24 the use of a brominated flame retardant. An exemption may be
 granted for a term not to exceed 3 years and may be renewed upon
26 written application if the commissioner finds that the specific
 use of the brominated flame retardant continues to meet the
28 criteria of this subsection and the manufacturer or other persons
 comply with the conditions of its original approval. The board
30 shall adopt rules for processing exemption applications that
 provide for public participation. Rules adopted under this
32 subsection are routine technical rules pursuant to Title 5,
 chapter 375, subchapter 2-A.

34 **§1695. Implementation fees**

36 The board shall adopt rules no later than January 1, 2005
38 that establish fees for the sale of products containing
 brominated flame retardants sufficient to cover all costs to the
40 department associated with implementation of this chapter. The
 fees established in this section become effective no later than
42 July 1, 2005. Rules adopted under this section are routine
 technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

44 **Sec. 2. Report on brominated flame retardants.** The Department
46 of Environmental Protection shall submit a report no later than
 January 1, 2006 to the joint standing committee of the
48 Legislature having jurisdiction over natural resources matters
 after consultation with a diverse group of interested parties.
50 The report must include:

1. Information on the use of brominated flame retardants in products sold in the State collected pursuant to the Maine Revised Statutes, Title 38, section 1692;

2. Any data available on the human body burden or environmental occurrence of brominated flame retardants in the State;

3. Recommendations regarding restrictions on the disposal of products containing brominated flame retardants; and

4. Any other recommendations to further protection of public health and the environment from brominated flame retardants.

After receipt and review of the report, the joint standing committee may report out legislation related to brominated flame retardants to the Second Regular Session of the 122nd Legislature.

SUMMARY

The purpose of this bill is to reduce the increasing levels of brominated chemicals in people's bodies and in the breast milk of women. This bill regulates the sale of products containing brominated chemicals, requires clear labeling of products containing such chemicals and authorizes the establishment of fees for the sale of products containing brominated chemicals.