

STATE OF NEW YORK

10050--A

IN ASSEMBLY

March 2, 2004

Introduced by M. of A. DiNAPOLI, COLTON, JOHN, CYMBROWITZ, EDDINGTON, A. COHEN -- Multi-Sponsored by -- M. of A. BRENNAN, CAHILL, CLARK, COOK, R. DIAZ, GORDON, GRANNIS, GRODENCHIK, GROMACK, KARBEN, LAFAYETTE, MAYERSOHN, McENENY, PHEFFER, ROBINSON, SEDDIO, SEMINERIO, WEISENBERG, WRIGHT

-- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to restricting the use of certain flame retardants and relating to the creation of a state task force on flame retardant safety

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 three new subdivisions 4, 5 and 6 to read as follows:

4. "BROMINATED FLAME RETARDANTS" REFERS GENERALLY TO ANY PRODUCT CONTAINING A MIXTURE OF CHEMICALS KNOWN AS BROMINATED DIPHENYL ETHER TO PREVENT, REDUCE OR RETARD THE RISK OF FIRE IN ELECTRONIC DEVICES, FURNITURE, AND TEXTILES.
5. "POLYBROMINATED DIPHENYL ETHER" (PBDE) IS A MIXTURE OF BROMINATED DIPHENYL ETHERS, USUALLY MARKETED AS PENTABROMODIPHENYL ETHER OR OCTABROMODIPHENYL ETHER, ACCORDING TO HOW MANY HYDROGEN ATOMS IN THE DIPHENYLOXIDE STRUCTURE ARE REPLACED WITH BROMINE ATOMS.
6. "PROCESS", AS USED IN SECTION 37-0111 OF THIS TITLE, SHALL NOT INCLUDE THE PROCESSING OF METALLIC RECYCLABLES CONTAINING PENTABROMINATED DIPHENYL ETHER OR OCTABROMINATED DIPHENYL ETHER THAT IS CONDUCTED IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS.

S 2. The environmental conservation law is amended by adding a new section 37-0111 to read as follows:
S 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.

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 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
 - (B) 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.
- (C) 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 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.

S 3. Creation of state task force on flame retardant safety.

1. There is hereby created the "state task force on flame retardant safety", referred to hereafter as the task force. Such task force shall consist of thirteen members: seven of whom shall be appointed by the governor and shall include the commissioner of health, the commissioner of environmental conservation and the secretary of state; three of whom shall be appointed by the temporary president of the senate; and three of whom shall be appointed by the speaker of the assembly.

2. The ten at large members of the task force should include: two representatives of organizations whose prime function is the enhancement of the environmental quality of the state; two representatives from the brominated flame retardant manufacturing industry; two representatives with expertise in the area of environmental health from academic institutions; two representatives from industries that manufacture products that use flame retardants and two health care professionals with expertise in the area of environmental health.

3. The commissioner of health, or his or her designee, shall serve as the chair of the task force.

4. The members of the task force shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

5. The task force shall, at a minimum:

a. Review and report on relevant studies, risk assessments, findings or rulings in connection with the flame retardant decabrominated diphenyl ether, including but not limited to any issued by the United States Environmental Protection Agency and the European Union; and

b. Evaluate the availability of safer alternatives to the flame retardant decabrominated diphenyl ether, including an assessment of the reliability, ready availability and cost-effectiveness of such substitutes.

6. The task force shall issue its findings, in the form of a report, no later than December 31, 2005.

7. The task force shall utilize the resources of the department of health, the department of environmental conservation and any other state agencies with relevant information or expertise.

8. The task force may consult with any person, organization, educational institution, or governmental entity including but not limited to the United States Environmental Protection Agency and the European Union.

9. The department of health and the department of environmental conservation shall provide the task force with such facilities, assistance, and data as will enable the task force to carry out its powers and duties. Additionally, all other agencies of the state or subdivisions thereof shall, at the request of the chair provide the task force with such facilities, assistance, and data as will enable the task force to carry out its powers and duties.

S 4. This act shall take effect immediately; provided, however, that sections one and two of this act shall take effect January 1, 2006; provided, however that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.