

A bill for an act
relating to the environment; restricting the manufacture and sale of certain
polybrominated diphenyl ethers; requiring a report; providing penalties;
proposing coding for new law in Minnesota Statutes, chapter 325E.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[325E.385] PRODUCTS CONTAINING POLYBROMINATED
DIPHENYL ETHER.**

Subdivision 1. **Definitions.** For the purposes of sections 325E.386 to 325E.388,
the terms in this section have the meanings given them.

Subd. 2. **Commercial decabromodiphenyl ether.** "Commercial
decabromodiphenyl ether" means the chemical mixture of decabromodiphenyl ether,
including associated polybrominated diphenyl ether impurities not intentionally added.
No single polybrominated diphenyl ether impurity shall exceed one percent by mass of the
mixture, and the combination of all polybrominated diphenyl ether impurities shall not
exceed four percent by mass of the mixture.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of the Pollution
Control Agency.

Subd. 4. **Computer.** "Computer" means an electronic, magnetic, optical,
electrochemical, or other high-speed data processing device performing logical, arithmetic,
or storage functions, but does not include an automated typewriter or typesetter, a portable
hand-held calculator or device, or other similar device.

Subd. 5. **Electronic enclosure.** "Electronic enclosure" means the plastic housing
that encloses the components of electronic products, including, but not limited to,
televisions and computers.

Subd. 6. **Manufacturer.** "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an importer or domestic distributor of a noncombustible product containing polybrominated diphenyl ethers. A manufacturer does not include a retailer:

(1) of a private label brand or cobranding; or

(2) who assembles components to create a single electronic product based on an individual consumer preference.

Subd. 7. **Polybrominated diphenyl ethers or PBDE's.** "Polybrominated diphenyl ethers" or "PBDE's" means chemical forms that consist of diphenyl ethers bound with bromine atoms. Polybrominated diphenyl ethers include, but are not limited to, the three primary forms of the commercial mixtures known as pentabromodiphenyl ether, octabromodiphenyl ether, and decabromodiphenyl ether.

Subd. 8. **Retailer.** "Retailer" means a person who offers a product for sale at retail through any means, including, but not limited to, remote offerings such as sales outlets, catalogs, or the Internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer. A retailer does not include a person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that both manufactures and sells a product for retail.

Subd. 9. **Television.** "Television" means an electronic device that is a cathode-ray tube or flat panel display primarily intended to receive video programming via broadcast, cable, or satellite transmission or video from surveillance or other similar cameras.

Subd. 10. **Transportation vehicle.** "Transportation vehicle" means any mechanized vehicle that is used to transport goods or people, including, but not limited to, airplanes, automobiles, motorcycles, trucks, buses, trains, boats, ships, streetcars, or monorail cars.

Subd. 11. **Used product.** "Used product" means any product that has been previously owned, purchased, or sold in commerce. Used product does not include any product manufactured after January 1, 2008.

Sec. 2. **[325E.386] PRODUCTS CONTAINING CERTAIN POLYBROMINATED DIPHENYL ETHERS BANNED; EXEMPTIONS.**

Subdivision 1. **Penta and octadiphenyl ethers.** Except as provided in subdivision 3, beginning January 1, 2008, a person may not manufacture, process, or distribute in commerce a product or flame-retardant part of a product containing more than one-tenth of one percent of pentadiphenyl ether or octadiphenyl ether by mass.

3.1 Subd. 2. **Decabromodiphenyl ether in electronics and textiles.** Except as
3.2 provided in subdivision 3, beginning July 1, 2010, a person may not manufacture, process,
3.3 or distribute in commerce any of the following products:

3.4 (1) a television or computer with an electronic enclosure that contains commercial
3.5 decabromodiphenyl ether;

3.6 (2) upholstered furniture or textiles intended for indoor use in a home or other
3.7 residential occupancy that contain commercial decabromodiphenyl ether; or

3.8 (3) mattresses and mattress pads that contain commercial decabromodiphenyl ether.

3.9 Subd. 3. **Exemptions.** The following products containing polybrominated diphenyl
3.10 ethers are exempt from subdivisions 1 and 2:

3.11 (1) the sale or distribution of any used transportation vehicle with component parts
3.12 containing polybrominated diphenyl ethers;

3.13 (2) the sale or distribution of any used transportation vehicle parts or new
3.14 transportation vehicle parts manufactured before January 1, 2008, that contain
3.15 polybrominated diphenyl ethers;

3.16 (3) the manufacture, sale, repair, distribution, maintenance, refurbishment, or
3.17 modification of equipment containing polybrominated diphenyl ethers and used primarily
3.18 for military or federally funded space program applications. This exemption does not
3.19 cover consumer-based goods with broad applicability;

3.20 (4) the sale or distribution by a business, charity, public entity, or private party of
3.21 any used product containing polybrominated diphenyl ethers;

3.22 (5) the manufacture, sale, or distribution of new carpet cushion made from recycled
3.23 foam containing more than one-tenth of one percent penta polybrominated diphenyl
3.24 ether; or

3.25 (6) medical devices.

3.26 In-state retailers in possession of products on January 1, 2008, that are banned for
3.27 sale under subdivisions 1 and 2 may exhaust their stock through sales to the public.

3.28 Nothing in this section restricts the ability of a manufacturer, importer, or distributor
3.29 from transporting products containing polybrominated diphenyl ethers through the state,
3.30 or storing such products in the state for later distribution outside the state.

3.31 **Sec. 3. [325E.387] REVIEW OF DECABROMODIPHENYL ETHER.**

3.32 Subdivision 1. **Commissioner duties.** At least every two years, the commissioner
3.33 and the commissioner of health shall review uses of commercial decabromodiphenyl
3.34 ether, availability of technically feasible alternatives, and any new evidence regarding
3.35 the potential harm to public health and the environment posed by commercial

decabromodiphenyl ether. The 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 1, 2008, and every two years after that date.

Subd. 2. **Participation in interstate clearinghouse.** 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 Minnesota, 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.

Subd. 3. **State procurement.** By January 1, 2008, the commissioner of administration shall make available for purchase and use by all state agencies only equipment, supplies, and other products that do not contain polybrominated diphenyl ethers, unless exempted under section 325E.386, subdivision 3, or section 325E.388, subdivision 1.

Sec. 4. ~~[325E.388]~~ EXEMPTIONS; FEES; PENALTIES.

Subdivision 1. **Exemption process.** (a) A manufacturer or user of a product prohibited from manufacture, sale, or distribution under section 325E.386, subdivision 2, who has not received an exemption under section 325E.386, subdivision 3, may apply for an exemption for a specific use of commercial decabromodiphenyl ether under this section by filing a written request with the commissioner. The commissioner may grant an exemption for a term not to exceed three years. The exemption is renewable upon written request. An initial or renewal request for exemption must include at least the following:

(1) a policy statement articulating upper management support for eliminating or reducing to the maximum feasible extent the use of commercial decabromodiphenyl ether;

(2) a description of the product and the amount of commercial decabromodiphenyl ether distributed for sale and use in the state on an annual basis;

(3) a description of the recycling and disposal system used for the product in the state and an estimate of the amount of product and/or commercial decabromodiphenyl ether recycled or disposed in the state on an annual basis;

(4) a description of the manufacturer or user's past and ongoing efforts to eliminate or reduce the amount of commercial decabromodiphenyl ether used in the product;

(5) an assessment of options available to reduce or eliminate the use of commercial decabromodiphenyl ether, including any alternatives that do not contain commercial decabromodiphenyl ether, perform the same technical function, are commercially available, and are economically practicable;

(6) a statement of objectives in numerical terms and a schedule for achieving the elimination of commercial decabromodiphenyl ether and an environmental assessment of alternative products, including but not limited to human health, solid waste, hazardous waste, and wastewater impacts associated with production, use, recycling, and disposal of the alternatives;

(7) a listing of options considered not to be technically or economically practicable; and

(8) certification of the accuracy of the information contained in the request, signed and dated by an official of the manufacturer or user.

(b) The commissioner may grant an initial or renewal exemption for a specific use of commercial decabromodiphenyl ether, with or without conditions, upon finding that the applicant has demonstrated that there is no alternative that performs the same technical function, is commercially available, is economically practicable, and provides net health and environmental benefits to the state.

Subd. 2. **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 sections 325E.386 to 325E.388 and who excel at reducing or eliminating decabromodiphenyl ether in products and the environment.

Subd. 3. **Fees for exemption applicants.** The commissioner shall establish an application fee for an exemption under this section. Fees must be used to implement and enforce this section.

Subd. 4. **Penalties.** A manufacturer who violates sections 325E.386 to 325E.388 is subject to a civil penalty not to exceed \$1,000 for each violation in the case of a first offense. A manufacturer is subject to a civil penalty not to exceed \$5,000 for each repeat offense. Penalties collected under this section must be used by the commissioner to implement and enforce this section.