

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.

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

Subd. 4. **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.

Subd. 5. **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. 6. **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.

Subd. 7. **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 octabromodiphenyl 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 pentabromodiphenyl ether or octabromodiphenyl ether by mass.

Subd. 2. **Exemptions.** The following products containing polybrominated diphenyl ethers are exempt from subdivision 1:

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

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

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

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

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

(6) medical devices.

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

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

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

3.5 Subdivision 1. **Commissioner duties.** The commissioner in consultation
3.6 with the commissioners of health and public safety shall review uses of commercial
3.7 decabromodiphenyl ether, availability of technically feasible and safer alternatives, fire
3.8 safety and any evidence regarding the potential harm to public health and the environment
3.9 posed by commercial decabromodiphenyl ether and the alternatives. The commissioner
3.10 must consult with key stakeholders. The commissioner must also review the findings from
3.11 similar state and federal agencies and must report their findings and recommendations to
3.12 the appropriate committees of the legislature no later than January 15, 2008.

3.13 Subd. 2. **State procurement.** By January 1, 2008, the commissioner of
3.14 administration shall make available for purchase and use by all state agencies only
3.15 equipment, supplies, and other products that do not contain polybrominated diphenyl
3.16 ethers, unless exempted under section 325E.386, subdivision 2.

3.17 **Sec. 4. [325E.388] PENALTIES.**

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