



House of Representatives

General Assembly

File No. 321

February Session, 2008

Substitute House Bill No. 5805

House of Representatives, March 31, 2008

The Committee on Environment reported through REP. ROY, R. of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING TOXIC SUBSTANCES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) For the purposes of
2 this section, "APEs" or "alkylphenol ethoxylates" means a synthetic
3 surfactant of the alkylphenol family, including, but not limited to,
4 nonylphenol ethoxylates. On and after January 1, 2010, no person, firm
5 or corporation may use, sell, offer or expose for sale, give or furnish for
6 commercial, institutional or industrial use any cleaning product or
7 laundry product that contains APEs in this state. On and after January
8 1, 2012, no person, firm or corporation may use, sell, offer or expose for
9 sale, give or furnish any household cleaning product, laundry product
10 or personal care product that contains APEs in this state.

11 (b) Each manufacturer of a product containing APEs that is sold in
12 this state shall notify its distributors of the requirements of this section.

13 (c) Any person who violates any provision of this section shall be
14 fined in accordance with section 22a-438 of the general statutes.

15 (d) The commissioner may participate in the establishment and
16 implementation of a regional, multistate organization or compact to
17 assist in carrying out the requirements of this section.

18 Sec. 2. Section 22a-463 of the general statutes is repealed and the
19 following is substituted in lieu thereof (*Effective July 1, 2008*):

20 As used in sections 22a-463 to 22a-469, inclusive, and section 3 of
21 this act:

22 [(a)] (1) "Commissioner" means the Commissioner of Environmental
23 Protection.

24 [(b)] (2) "PCB" means the class of organic compounds known as
25 polychlorinated biphenyls or terphenyls and includes any of several
26 compounds produced by replacing two or more hydrogen atoms on
27 the biphenyl or terphenyl molecule with chlorine.

28 [(c)] (3) "Incidental amounts of PCB" means amounts of the
29 compound PCB in an item, product or material which are beyond the
30 control of the person manufacturing, selling for use, or using such
31 item, product or material.

32 (4) "Polybrominated flame retardant" means the class of chemicals
33 containing the element bromine that is added to a plastic, foam or
34 textile to inhibit flame, including the penta, octa and deca mixtures of
35 polybrominated diphenyl ethers.

36 Sec. 3. (NEW) (*Effective July 1, 2008*) (a) (1) On and after July 1, 2008,
37 no person may sell, offer to sell or distribute for promotional purposes
38 a product containing more than one-tenth of one per cent of the penta
39 or octa mixtures of polybrominated diphenyl ethers in this state. (2) On
40 and after January 1, 2010, no person may manufacture, sell, offer for
41 sale, distribute for sale or use the following products that have fibers
42 containing the deca mixture of polybrominated diphenyl ethers in this
43 state: (A) A mattress or mattress pad, or (B) upholstered furniture
44 intended for indoor residential or office use. (3) On and after January 1,
45 2011, no person shall manufacture, sell, offer for sale, distribute for sale

46 or use a television or computer that has a plastic housing containing
47 the deca mixture of polybrominated diphenyl ethers in this state.

48 (b) The provisions of subsection (a) of this section shall not apply to
49 the following products containing the deca mixture of polybrominated
50 diphenyl ethers: (1) (A) Motor vehicles including, but not limited to,
51 vehicles used for transportation, such as cars, buses, trains and
52 airplanes, or (B) any products, equipment or parts for use in such
53 vehicles, (2) products or equipment used in industrial or
54 manufacturing processes, (3) electronic wiring and cable used for
55 power transmission, or (4) products listed in subsection (a) of this
56 section that were manufactured prior to the dates specified in said
57 subsection.

58 (c) Any manufacturer of a product containing polybrominated
59 flame retardants that is sold in this state shall notify its distributors of
60 the requirements of this section.

61 (d) If the commissioner suspects that a product is being offered for
62 sale in violation of subdivision (2) or (3) of subsection (a) of this
63 section, the commissioner may request the manufacturer of the
64 product to provide a certificate of compliance. Not later than ten days
65 after the receipt of such request, the manufacturer shall (1) provide the
66 commissioner with a certificate attesting that the product complies
67 with the requirements of this section, or (2) notify all of the persons
68 who sell the manufacturer's products in this state that the sale of the
69 product is prohibited and provide the commissioner with a list of the
70 names and addresses of those notified. The commissioner may enforce
71 the provisions of this section.

72 (e) For the purposes of this section, "manufacturer" means the
73 person who manufactured the final product or whose brand name is
74 affixed to the product. "Manufacturer" includes the importer or
75 domestic distributor in the case of a product that was imported into
76 the United States if the manufacturer does not have a presence in the
77 United States.

78 (f) The commissioner may participate in the establishment and
79 implementation of a regional, multistate organization or compact to
80 assist in carrying out the requirements of this section.

81 Sec. 4. (NEW) (*Effective October 1, 2008*) If the Commissioner of
82 Environmental Protection determines (1) that a flame retardant is
83 harmful to the public health and the environment, (2) that an
84 alternative to the flame retardant is nationally available, and (3) in
85 consultation with the State Fire Marshal, that the alternative meets
86 applicable fire safety standards, the commissioner may adopt
87 regulations, in accordance with the provisions of chapter 54 of the
88 general statutes, to prohibit the manufacture, sale or distribution of
89 products containing such flame retardants in this state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	New section
Sec. 2	<i>July 1, 2008</i>	22a-463
Sec. 3	<i>July 1, 2008</i>	New section
Sec. 4	<i>October 1, 2008</i>	New section

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Department of Environmental Protection	GF - Revenue Gain	Potential Indeterminate	Potential Indeterminate

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill could result in a revenue gain to the General Fund through the Department of Environmental Protection (DEP) since the DEP commissioner may enforce compliance with its provisions. Although the bill does not specify the amount of the civil penalty, current law sets the penalty at up to \$25,000 for each offense.

The number of civil penalties imposed cannot be anticipated before actual violations occur.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of civil penalties imposed.

OLR Bill Analysis

sHB 5805

AN ACT CONCERNING TOXIC SUBSTANCES.

SUMMARY:

This bill phases out the use of alkylphenol ethoxylates (APE) and polybrominated diphenyl ethers (PBDE) in certain products sold in the state (see BACKGROUND). It allows the Department of Environmental Protection (DEP) commissioner to ban certain flame retardants if she finds they are harmful to human health or the environment and that safe alternatives exist. It authorizes her to take part in the creation and implementation of a regional, multistate organization or compact to help carry out the bill's requirements with respect to APE and PBDE.

EFFECTIVE DATE: July 1, 2008, except for the ban on APEs and the provision concerning the commissioner's findings on certain flame retardants, which take effect October 1, 2008.

PBDE PHASE-OUT

The bill prohibits, starting July 1, 2008, anyone from selling, offering to sell, or distributing for promotional purposes a product in this state containing more than one-tenth of 1% of either the penta- or octa-mixture of PBDE.

Starting January 1, 2010, no one may manufacture, sell, offer for sale, or distribute for sale or use in this state a mattress or mattress pad or upholstered furniture intended for indoor residential or office use that has fibers containing the deca- mixture of PBDE. But the bill allows the sale or distribution of these products containing the deca-mixture if they were manufactured before January 1, 2010.

Starting January 1, 2011, the bill bars the manufacture, sale, offer or distribution for sale, or use a television or computer with a plastic housing containing the deca- mixture of PBDE. The bill allows the sale or distribution of these products containing the deca-mixture if they were manufactured before January 1, 2011.

Other Exceptions

The phase-out also does not apply to the following products containing the deca- mixture of PBDE: (1) motor vehicles, including cars, buses, trains, and airplanes, and any products, equipment, or parts used in such vehicles; (2) products or equipment used in industrial or manufacturing processes; and (3) electronic wiring and cable used for power transmission.

NOTIFICATION AND CERTIFICATE OF COMPLIANCE

The bill requires manufacturers of products containing polybrominated flame retardants to notify their distributors of the bill's requirements concerning PBDE, but does say by when they must do so. Under the bill, polybrominated flame retardants are those chemicals containing the element bromine that are added to a plastic, foam, or textile to inhibit flame, including the penta-, octa- and deca-mixtures of PBDE.

If the commissioner suspects that a product containing a deca-mixture of PBDE is being offered for sale in violation of the bill, she may ask the manufacturer to provide her with a certificate of compliance. No later than 10 days after receiving such a request, the manufacturer must (1) give the commissioner a certificate attesting that the product complies with the bill or (2) notify anyone selling the product that such sale is prohibited, and give the commissioner the names and addresses of the people selling the product.

The commissioner may enforce the bill. The bill does not specify a penalty, but by law, violations of certain water pollution controls laws are punishable by a civil penalty of up to \$25,000 for each offense (CGS § 22a-438).

Under the bill, a manufacturer is the person who manufactures the final product or whose brand name is affixed to it. It includes an importer or domestic distributor in the case of a product imported into the U.S. if the manufacturer does not have a presence in this country.

FLAME RETARDANT BAN

The bill authorizes the commissioner to adopt regulations barring the manufacture, sale, or distribution of products containing a flame retardant if she determines (1) the flame retardant is harmful to the public health and environment; (2) that an alternative is nationally available; and (3) in consultation with the state Fire Marshal, that the alternative meets applicable fire safety standards.

APE PHASE-OUT

The bill prohibits, starting January 1, 2010, any person, firm, or corporation from using, selling, offering or exposing for sale, giving, or furnishing for commercial, industrial, or institutional use in this state any cleaning or laundry product containing an APE. Starting January 1, 2012, no person, firm, or corporation may use, sell, offer or expose for sale, give, or furnish any household cleaning, laundry, or personal care product containing an APE. Under the bill, an APE is a synthetic surfactant of the alkylphenol family, including nonylphenol ethoxylates. (A surfactant reduces the surface tension between two liquids.)

The bill requires manufacturers of products containing APEs to notify their distributors of the bill's requirements, but does not specify when. Violators face a civil penalty of up to \$25,000 for each offense.

BACKGROUND

Alkylphenol Ethoxylates

These compounds are used in some detergents and household cleaners and can enter waterways through wastewater treatment plants. The Sierra Club has called on the U.S. Environmental Protection Agency (EPA) to ban the compounds, claiming they affect the reproductive organs of fish. Manufacturers of the products say the

compounds have been extensively studied and are suitable for their intended use.

PBDE

Penta-, octa-, and deca-PBDE are three mixtures of a chemical used as a flame retardant in such products as furniture foam, TV cabinets, computer casings, consumer electronics, small appliances, drapes, and carpets. PBDEs slow the ignition time and rate of fire growth, allowing people more time to escape from a fire. However, there is growing evidence PBDEs persist in the environment and accumulate in people's bodies, possibly causing harm to the liver, thyroid, and nervous system. The EPA is working with chemical manufacturers to find safer alternatives to PBDE.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 19 Nay 8 (03/12/2008)