

# HOUSE BILL No. 5775

March 7, 2002, Introduced by Reps. Kolb, Lemmons, Woodward, Jamnick, Hansen and Dennis and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
(MCL 324.101 to 324.90106) by adding part 146.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 146 TOXIC SUBSTANCES

2 SEC. 14601. AS USED IN THIS PART:

3 (A) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL  
4 QUALITY.

5 (B) "PBDE" MEANS POLYBROMINATED DIPHENYL ETHER.

6 (C) "RELEASE" INCLUDES, BUT IS NOT LIMITED TO, ANY SPILLING,  
7 LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING,  
8 INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING OF A SUB-  
9 STANCE INTO THE ENVIRONMENT.

10 SEC. 14602. THE LEGISLATURE FINDS AND DECLARES ALL OF THE  
11 FOLLOWING:

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1 (A) THAT ARTICLE IV, SECTION 52 OF THE STATE CONSTITUTION OF  
2 1963 REQUIRES THE LEGISLATURE TO PROVIDE FOR THE PROTECTION OF  
3 THE AIR, WATER, AND OTHER NATURAL RESOURCES OF THE STATE FROM  
4 POLLUTION, IMPAIRMENT, AND DESTRUCTION.

5 (B) THAT PERSISTENT AND BIOACCUMULATIVE COMPOUNDS POSE A  
6 SERIOUS THREAT TO THE ENVIRONMENTAL HEALTH OF THE GREAT LAKES  
7 ECOSYSTEM.

8 (C) THAT PBDES ARE COMPOUNDS THAT EXHIBIT CHARACTERISTICS OF  
9 PERSISTENCE AND BIOACCUMULATION.

10 (D) THAT DISCHARGES AND OTHER RELEASES CONTAINING PBDES  
11 SHOULD BE REDUCED OR ELIMINATED TO PROTECT THE GREAT LAKES.

12 SEC. 14603. A PERSON WHO INTRODUCES ANY QUANTITY OF PBDE  
13 INTO A PRODUCT OR MATERIAL SHALL ANNUALLY SUBMIT A REPORT TO THE  
14 DEPARTMENT THAT DETAILS ALL OF THE FOLLOWING:

15 (A) THE QUANTITY OF PBDE USED DURING THE PREVIOUS CALENDAR  
16 YEAR.

17 (B) THE TYPES OF PRODUCTS OR MATERIALS IN WHICH THE PBDE WAS  
18 USED AND THE AMOUNT OF PBDE PRESENT IN EACH TYPE OF PRODUCT OR  
19 MATERIAL.

20 SEC. 14604. A PERSON WHO RELEASES ANY PBDE THAT HAS NOT  
21 BEEN REPORTED AS PART OF THE TOXIC RELEASES INVENTORY UNDER  
22 SECTION 313 OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW  
23 ACT, TITLE III OF PUBLIC LAW 99-499, 42 U.S.C. 11023, SHALL ANNU-  
24 ALLY REPORT TO THE DEPARTMENT THE QUANTITY AND THE MEDIUM IN  
25 WHICH THE RELEASE OR RELEASES OCCURRED.

26 SEC. 14605. BEGINNING ON JANUARY 1, 2007, A PERSON SHALL  
27 NOT RELEASE ANY PBDE INTO THE ENVIRONMENT OR USE ANY PBDE UNLESS

1 THE DEPARTMENT HAS ISSUED A WRITTEN DETERMINATION, FOLLOWING A  
2 90-DAY PUBLIC NOTICE AND COMMENT PERIOD, THAT PBDES DO NOT POSE  
3 AN UNACCEPTABLE RISK TO HUMAN HEALTH, SAFETY, OR WELFARE OR TO  
4 THE ENVIRONMENT.

5 SEC. 14606. THE DEPARTMENT MAY ESTABLISH A PBDE ADVISORY  
6 COMMITTEE TO ASSIST THE DEPARTMENT IN DETERMINING THE RISK POSED  
7 BY RELEASES OF PBDES AND IN DETERMINING HOW THE USE OF PBDES  
8 COULD BE REDUCED OR ELIMINATED.

9 SEC. 14607. THE DEPARTMENT MAY PROMULGATE RULES TO IMPLE-  
10 MENT THIS PART.

11 SEC. 14608. (1) THE ATTORNEY GENERAL MAY BRING A CIVIL  
12 ACTION FOR APPROPRIATE RELIEF AGAINST A PERSON FOR A VIOLATION OF  
13 THIS PART, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

14 (A) A PERMANENT OR TEMPORARY INJUNCTION.

15 (B) DAMAGES FOR THE FULL VALUE OF THE INJURIES DONE TO THE  
16 NATURAL RESOURCES OF THE STATE.

17 (C) COSTS OF SURVEILLANCE AND ENFORCEMENT BY THE STATE  
18 RESULTING FROM THE VIOLATION.

19 (D) A CIVIL FINE OF NOT LESS THAN \$2,500.00 OR MORE THAN  
20 \$25,000.00 PER DAY OF VIOLATION.

21 (2) IN ADDITION TO ANY OTHER REMEDY AWARDED UNDER  
22 SUBSECTION (1), THE COURT MAY AWARD REASONABLE ATTORNEY FEES AND  
23 COSTS TO THE PREVAILING PARTY.

24 (3) AN ACTION UNDER THIS SECTION MAY BE BROUGHT IN THE CIR-  
25 CUIT COURT FOR THE COUNTY OF INGHAM OR FOR THE COUNTY IN WHICH  
26 THE DEFENDANT IS LOCATED, RESIDES, OR IS DOING BUSINESS.

1        SEC. 14609. (1) SUBJECT TO SUBSECTION (4), A PERSON WHO  
2        KNOWINGLY RELEASES PBDES INTO THE ENVIRONMENT CONTRARY TO THIS  
3        PART, OR WHO INTENTIONALLY MAKES A FALSE STATEMENT OR REPRESENTA-  
4        TION ON A REPORT REQUIRED UNDER THIS PART, IS GUILTY OF A FELONY  
5        AND, EXCEPT AS PROVIDED IN SUBSECTION (2), SHALL BE FINED NOT  
6        LESS THAN \$2,500.00 OR MORE THAN \$25,000.00 PER DAY FOR EACH  
7        VIOLATION.

8        (2) IN ADDITION TO THE PENALTIES UNDER SUBSECTION (1), AT  
9        THE DISCRETION OF THE COURT, A PERSON WHO IS FOUND GUILTY UNDER  
10       SUBSECTION (1) IS SUBJECT TO ALL OF THE FOLLOWING:

11       (A) AN ADDITIONAL FINE OF NOT MORE THAN \$25,000.00 FOR EACH  
12       DAY DURING WHICH THE UNLAWFUL RELEASE OCCURRED.

13       (B) IF THE CONVICTION IS FOR A VIOLATION COMMITTED AFTER A  
14       FIRST CONVICTION OF THE PERSON UNDER THIS SECTION, A FINE OF NOT  
15       LESS THAN \$25,000.00 PER DAY AND NOT MORE THAN \$50,000.00 PER DAY  
16       OF VIOLATION.

17       (C) IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR PROBATION.

18       (3) WITH THE EXCEPTION OF THE ISSUANCE OF CRIMINAL COM-  
19       PLAINTS, ISSUANCE OF WARRANTS, AND THE HOLDING OF AN ARRAIGNMENT,  
20       THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE VIOLATION OCCURRED  
21       HAS EXCLUSIVE JURISDICTION FOR PROSECUTIONS UNDER THIS SECTION.

22       (4) A PERSON IS NOT SUBJECT TO THE PENALTIES OF THIS SECTION  
23       IF THE RELEASE IS IN CONFORMANCE WITH AND OBEDIENT TO A RULE,  
24       ORDER, OR PERMIT OF THE DEPARTMENT.