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Senate Bill 1458 (as enrolled)
House Bill 4406 (as enrolled)
Sponsor: Senator Patricia L. Birkholz (S.B. 1458)
Representative Chris Kolb (H.B. 4406)
Senate Committee: Natural Resources and Environmental Affairs
House Committee: Land Use and Environment

PUBLIC ACT 526 of 2004
PUBLIC ACT 562 of 2004

Date Completed: 1-11-05

CONTENT

The bills amended Part 147 of the Natural Resources and Environmental Protection Act to prohibit, and establish a criminal fine for, the manufacture, processing, or distribution of a product or material that contains more than 0.1% of octa- or penta-BDE, beginning June 1, 2006. The prohibition does not apply to original equipment manufacture replacement parts, or the processing of recyclables containing octa- or penta-BDE in compliance with applicable Federal, State, and local laws.

Previously, Part 147 was entitled "PCB Compounds". The House bill renamed it "Chemical Substances" and created Subpart 1 (PCB Compounds), which consists of the original sections of Part 147. The Senate bill created Subpart 2 (PBDE Compounds), and named it the "Mary Beth Doyle PBDE Act".

The bills were tie-barred to each other.

Senate Bill 1458

The bill's prohibition applies to "octa-BDE", which the bill defines as octabromodiphenyl ether. The bill also defines "penta-BDE" as pentabromodiphenyl ether, and defines "PBDE" as polybrominated diphenyl ether.

The bill allows the Department of Environmental Quality (DEQ) to establish a PBDE advisory committee to assist it in determining the risk posed by the release of PBDEs, other than penta- or octa-BDE, to human health and the environment. The DEQ may use existing programs to monitor

the presence of PBDEs in the State's environment determine exposure and risk. If new scientific information gathered by the advisory committee indicates a significant risk to human health and the environment in the State, the committee must inform the DEQ of the risk. If the DEQ concurs, it must advise the Legislature of the risk. The bill specifies that nothing in these provisions precludes the DEQ from issuing recommendations to the Legislature independent of any actions of the advisory committee.

House Bill 4406

The bill's prohibition applies to penta-BDE. Under the bill, a violation of Subpart 2 is a misdemeanor punishable by a fine of at least \$2,500 but not more than \$25,000. Each day that a violation continues must be considered a separate violation.

MCL 324.14721-324.14724 (S.B. 1458)
324.14701 et al. (H.B. 4406)

BACKGROUND

Polybrominated diphenyl ethers are the most commonly used class of brominated fire retardants, which are used primarily in plastics and textile coatings. There are three main classes of PBDEs--penta, octa, and deca--distinguished by the number of bromine atoms attached to the molecule: five, eight, and 10, respectively. Deca-BDEs comprise over 80% of the PBDE market.

Commercial octa-BDE is used mainly to produce a material that is used in the

manufacture of computer and business equipment housings. Commercial octa-BDE also is used in adhesives and coatings. About 95% of commercial penta-BDE is used in the manufacture of flexible polyurethane foam used in furniture and upholstery, automobiles, and foam-based packaging.

In early 2003, the European Union adopted a directive that bans the marketing and use of penta- and octa-BDE in all consumer products beginning August 15, 2004. In August 2003, California enacted legislation to prohibit a person from manufacturing, processing, or distributing in commerce a product or flame-retarded part of a product containing more than 0.1% of penta-BDE or octa-BDE, by mass, beginning January 1, 2008.

In 2004, according to the National Caucus of Environmental Legislators, Hawaii enacted a ban on the use of all PCBs; Maine enacted a law banning the use of penta- and octa-BDE beginning in 2006 and deca-BDE beginning in 2008; the governor of the State of Washington issued an executive order directing the Department of Ecology to phase out the use of PBDEs and the Legislature approved funding for the phase-out; and New York's Assembly and Senate passed legislation to ban penta- and octa-BDE and create a task force to study deca-BDE.

The primary manufacturer of penta- and octa-BDE in the United States, Great Lakes Chemical, agreed to cease production of these formulations by the end of 2004.

(Except as indicated, the primary source of this information is "POLYBROMINATED DIPHENYL ETHERS (PBDES): Background Paper", Toxics Steering Group PBDE Subcommittee, DEQ, January 2004.)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 1458

The bill allows the Department to use existing programs to monitor the presence of PBDEs in the environment. Enforcement costs and damages recovered will depend on the number of violations.

House Bill 4406

The new misdemeanor may result in an indeterminate amount of additional penal fine revenue. The revenue will benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.