

## 1 HOUSE BILL NO. 560

2 INTRODUCED BY D. MCALPIN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE MANUFACTURE, SALE, OR DISTRIBUTION  
5 OF CERTAIN PRODUCTS CONTAINING POLYBROMINATED DIPHENYL ETHERS; DEFINING TERMS;  
6 PROVIDING CERTAIN EXEMPTIONS AND EXCEPTIONS; REQUIRING THAT CERTAIN REPORTS BE MADE  
7 TO THE LEGISLATURE; REQUIRING A MANUFACTURER TO PROVIDE NOTIFICATION OF RESTRICTIONS  
8 TO PERSONS SELLING PRODUCTS THAT CONTAIN POLYBROMINATED DIPHENYL ETHERS; PROVIDING  
9 COMPLIANCE MECHANISMS; AUTHORIZING CIVIL PENALTIES; REQUIRING THE DEPARTMENT OF  
10 ENVIRONMENTAL QUALITY TO ASSIST OTHER STATE AGENCIES IN IDENTIFYING CERTAIN PRODUCTS  
11 FOR PURCHASE; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES;  
12 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
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14 WHEREAS, polybrominated diphenyl ethers have been used extensively as flame retardants in a large  
15 number of common household products for the past 30 years; and

16 WHEREAS, studies on animals show that polybrominated diphenyl ethers can impact the developing  
17 brain, affecting behavior and learning after birth and into adulthood and therefore making exposure to fetuses and  
18 children a particular concern; and

19 WHEREAS, levels of polybrominated diphenyl ethers are increasing in people and in the environment,  
20 particularly in North America; and

21 WHEREAS, because people can be exposed to these chemicals through house dust and indoor air, as  
22 well as through food, it is important to restrict the use of these chemicals in common household products,  
23 provided that effective flame retardants that are safer and technically feasible are available at a reasonable cost.  
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25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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27 **NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 11], unless the context requires  
28 otherwise, the following definitions apply:

29 (1) "Commercial decabromodiphenyl ether" means the chemical mixture of decabromodiphenyl ether,  
30 including associated polybrominated diphenyl ether impurities not intentionally added.

1 (2) "Department" means the department of environmental quality as provided for in 2-15-3501.

2 (3) "Electronic enclosure" means the plastic housing that encloses the components of electronic  
3 products, including but not limited to televisions and computers.

4 (4) (a) "Manufacturer" means any person, firm, association, partnership, corporation, governmental  
5 entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an  
6 importer or domestic distributor of a noncombustible product containing polybrominated diphenyl ethers.

7 (b) The term does not include a retailer who:

8 (i) adds a private label brand or co-brands a product for sale; or

9 (ii) assembles components to create a single noncombustible product based on an individual consumer's  
10 preference.

11 (5) "Mattress" has the same meaning as defined by the United States consumer product safety  
12 commission in 16 CFR, part 1633, and includes mattress pads, mattress sets, box springs, futons, crib  
13 mattresses, and youth mattresses.

14 (6) "Medical device" means an instrument, machine, implant, or diagnostic test used to help diagnose  
15 a disease or other condition or to cure, treat, or prevent disease.

16 (7) "Noncombustible product" means a product that is not edible.

17 (8) "Polybrominated diphenyl ethers" means chemical forms that consist of diphenyl ethers bound with  
18 bromine atoms. Polybrominated diphenyl ethers include but are not limited to the three primary forms of the  
19 commercial mixtures known as pentabromodiphenyl ether, octabromodiphenyl ether, and decabromodiphenyl  
20 ether.

21 (9) "Residential upholstered furniture" means residential seating products intended for indoor use in a  
22 home or other dwelling intended for residential occupancy that consist in whole or in part of resilient cushioning  
23 materials enclosed within a covering consisting of fabric or related materials if the resilient cushioning materials  
24 are sold with the item of upholstered furniture and the upholstered furniture is constructed with a contiguous  
25 upholstered seat and back that may include arms.

26 (10) (a) "Retailer" means a person who offers a product for sale at retail through any means, including  
27 but not limited to remote offerings such as sales outlets, catalogs, or the internet.

28 (b) The term does not include a person, firm, association, partnership, corporation, governmental entity,  
29 organization, or joint venture that both manufactures and sells a product at retail or that makes a sale that is a  
30 wholesale transaction with a distributor or another retailer.

1 (11) "Technically feasible" means an alternative that is available at a cost and in sufficient quantity to  
2 permit the manufacturer to produce an economically viable product.

3 (12) "Transportation vehicle" means a mechanized vehicle that is used to transport goods or people,  
4 including but not limited to airplanes, automobiles, motorcycles, trucks, buses, trains, boats, ships, streetcars,  
5 or monorail cars.

6 (13) "Used product" means a product that has been previously owned, purchased, or sold in commerce  
7 if it was manufactured before January 1, 2008, or the effective date of a restriction under [section 3 or 4].

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9 **NEW SECTION. Section 2. Exemptions.** The provisions of [sections 1 through 11] do not apply to:

10 (1) products containing decabromodiphenyl ether except as provided in [sections 3(2) and 4];

11 (2) the sale or distribution of any used transportation vehicle manufactured before January 1, 2008, with  
12 component parts containing polybrominated diphenyl ethers;

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

15 (4) except for consumer-based goods with broad applicability, the manufacture, sale, repair, distribution,  
16 maintenance, refurbishment, or modification of equipment containing polybrominated diphenyl ethers and used  
17 primarily for military or federally funded space program applications;

18 (5) safety systems required by the federal aviation administration;

19 (6) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of any new  
20 raw material or component part used in a transportation vehicle with component parts, including original spare  
21 parts, containing decabromodiphenyl ether;

22 (7) the use of commercial decabromodiphenyl ether in the maintenance, refurbishment, or modification  
23 of transportation equipment;

24 (8) the sale or distribution of any used product containing polybrominated diphenyl ethers;

25 (9) the manufacture, sale, or distribution of any new product or product component consisting of recycled  
26 or used materials containing decabromodiphenyl ether;

27 (10) the manufacture, sale, or distribution of new carpet cushion made from recycled foam containing  
28 less than 1/10 of 1% pentabromodiphenyl ether; or

29 (11) medical devices.  
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1            **NEW SECTION. Section 3. General prohibitions.** (1) Except as provided in [sections 2, 4, and 7], after  
2 January 1, 2008, a person may not manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for  
3 use in this state noncombustible products containing polybrominated diphenyl ethers.

4            (2) Except as provided in [sections 2 and 7], after January 1, 2008, a person may not manufacture,  
5 knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a mattress containing  
6 decabromodiphenyl ether.

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8            **NEW SECTION. Section 4. Qualified prohibition for certain products based on agency**  
9 **evaluations.** (1) (a) Except as provided in subsection (1)(b), a person may manufacture, knowingly sell, offer for  
10 sale, distribute for sale, or distribute for use in this state residential upholstered furniture that contains commercial  
11 decabromodiphenyl ether or any television or computer that has an electronic enclosure that contains commercial  
12 decabromodiphenyl ether.

13            (b) Pursuant to subsection (2), if it is determined that a safer and technically feasible alternative is  
14 available and that the alternative meets applicable fire safety standards, the department shall by rule, except as  
15 provided in [section 7], prohibit a person from manufacturing, knowingly selling, offering for sale, distributing for  
16 sale, or distributing for use in this state residential upholstered furniture that contains commercial  
17 decabromodiphenyl ether or any television or computer that has an electronic enclosure that contains commercial  
18 decabromodiphenyl ether.

19            (2) (a) The department and the department of public health and human services shall annually review  
20 risk assessments, peer-reviewed scientific studies, and other relevant findings regarding alternatives to the use  
21 of commercial decabromodiphenyl ether in residential upholstered furniture, televisions, and computers.

22            (b) If the department and the department of public health and human services jointly find that safer and  
23 technically feasible alternatives are available, the department shall consult the fire prevention and investigation  
24 advisory council provided for in 2-15-2005 to determine if the identified alternatives meet applicable fire safety  
25 standards.

26            (c) If the fire prevention and investigation advisory council determines that an alternative identified under  
27 subsection (2)(b) meets applicable fire safety standards, the department shall institute rulemaking pursuant to  
28 subsection (1)(b).

29            (d) If the fire prevention and investigation advisory council determines that none of the alternatives  
30 identified under subsection (2)(b) meet applicable fire safety standards, the department may not institute

1 rulemaking pursuant to subsection (1)(b).

2 (3) The department and the department of public health and human services shall document their  
3 findings and the findings of the fire prevention and investigation advisory council in a report to the legislature by  
4 January 1, 2009. The report must also include any additional evidence of the potential harm posed by  
5 decabromodiphenyl ether.

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7 **NEW SECTION. Section 5. Transporting products.** [Sections 1 through 11] do not restrict the ability  
8 of a manufacturer, importer, or distributor from transporting products containing polybrominated diphenyl ethers  
9 through the state or storing the products in the state for later distribution outside the state.

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11 **NEW SECTION. Section 6. Notification.** A manufacturer of products containing polybrominated  
12 diphenyl ethers that are restricted under [sections 1 through 11] shall notify persons that sell the manufacturer's  
13 products in this state of the provisions of [sections 1 through 11] not less than 90 days prior to the effective date  
14 of the restrictions.

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16 **NEW SECTION. Section 7. Selling banned products -- exceptions.** (1) A retailer who unknowingly  
17 sells products banned under [sections 3 and 4] is not liable under the provisions of [sections 1 through 11].

18 (2) In-state retailers in possession of products on the date that restrictions become effective under  
19 [sections 3 and 4] may exhaust their existing stock through sales to the public.

20 (3) The department shall assist in-state retailers in identifying potential products containing  
21 polybrominated diphenyl ethers.

22 (4) If a retailer unknowingly possesses products that are banned for sale under [sections 3 and 4] and  
23 the manufacturer does not recall the products as required under [section 8(2)], the retailer may exhaust its  
24 existing stock through sales to the public. However, additional banned stock may not be sold or offered for sale.

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26 **NEW SECTION. Section 8. Compliance.** (1) The department:  
27 (a) shall, before the date that a product is banned under [section 3 or 4], prepare and distribute  
28 information to in-state manufacturers and out-of-state manufacturers, to the maximum extent practicable, to assist  
29 them in identifying products prohibited for manufacture, sale, or distribution under [sections 1 through 11];  
30 (b) may request a certificate of compliance from a manufacturer. A certificate of compliance attests that

1 a manufacturer's product or products meets the requirements of [sections 1 through 11].

2 (c) may issue a warning letter to a manufacturer that produces, sells, or distributes banned products in  
3 violation of [sections 1 through 11]; and

4 (d) shall offer information or other appropriate assistance to the manufacturer in complying with [sections  
5 1 through 11].

6 (2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or  
7 distribution in this state under [sections 1 through 11] shall, subject to [section 7], recall the products and  
8 reimburse the retailer or any other purchaser for the product and any applicable shipping and handling for  
9 returning the products.

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11 **NEW SECTION. Section 9. Civil penalty.** (1) In an action initiated by the department to collect civil  
12 penalties against a manufacturer who is found to have violated [sections 1 through 11] or a rule, order, or  
13 condition of approval issued under [sections 1 through 11], the manufacturer is subject to a civil penalty not to  
14 exceed \$5,000. The action must be filed in the district court of the county in which the violation occurred or, if  
15 mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark  
16 County.

17 (2) Each day of violation constitutes a separate violation.

18 (3) Action under this section does not bar enforcement of [sections 1 through 11] or a rule, order, or  
19 condition of approval issued under [sections 1 through 11] by injunction or other appropriate remedy.

20 (4) When seeking penalties under this section, the department shall take into account the penalty factors  
21 in 75-1-1001 in determining an appropriate settlement or judgment, as appropriate.

22 (5) Civil penalties collected pursuant to this section must be deposited in the state general fund.

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24 **NEW SECTION. Section 10. Assistance to state agency.** The department shall assist state agencies  
25 in identifying for purchase equipment, supplies, and other products that do not contain polybrominated diphenyl  
26 ethers.

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28 **NEW SECTION. Section 11. Rulemaking.** The department may adopt rules to implement and enforce  
29 the provisions of [sections 1 through 11].

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1            NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through 11] are intended to be  
2 codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 11].

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4            NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

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