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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 934

February 13, 2007

Authored by Clark, Tingelstad, Ruud, Atkins, Gardner and others

The bill was read for the first time and referred to the Committee on Environment and Natural Resources

March 13, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Commerce and Labor

March 27, 2007

Committee Recommendation and Adoption of Report: To Pass as Amended and re-referred to the Committee on Finance

February 14, 2008

By motion, recalled and re-referred to the Committee on Commerce and Labor

March 27, 2008

Committee Recommendation and Adoption of Report: To Pass as Amended and Read Second Time

March 31, 2008

By motion, re-referred to the Committee on Finance

April 21, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to environment; banning certain products containing commercial
1.3 decabromodiphenyl ether; providing for exemptions and fees; authorizing
1.4 participation in multistate clearinghouse; requiring a report; amending
1.5 Minnesota Statutes 2007 Supplement, sections 325E.386; 325E.387, by adding a
1.6 subdivision.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2007 Supplement, section 325E.386, is amended to read:

1.9 325E.386 PRODUCTS CONTAINING CERTAIN POLYBROMINATED
1.10 DIPHENYL ETHERS BANNED; EXEMPTIONS.

1.11 Subdivision 1. Penta- and octabromodiphenyl ethers. Except as provided in
1.12 subdivision 3 2, beginning January 1, 2008, a person may not manufacture, process, or
1.13 distribute in commerce a product or flame-retardant part of a product containing more
1.14 than one-tenth of one percent of pentabromodiphenyl ether or octabromodiphenyl ether
1.15 by mass.

1.16 Subd. 2. Exemptions; penta- and octabromodiphenyl ethers. The following
1.17 products containing polybrominated diphenyl ethers are exempt from subdivision 1 and
1.18 section 325E.387, subdivision 2:

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

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

1.24 (3) the manufacture, sale, repair, distribution, maintenance, refurbishment, or
1.25 modification of equipment containing polybrominated diphenyl ethers and used primarily

2.1 for military or federally funded space program applications. This exemption does not
2.2 cover consumer-based goods with broad applicability;

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

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

2.7 (6) medical devices; or

2.8 (7) the manufacture, sale, repair, distribution, maintenance, refurbishment, or
2.9 modification of telecommunications equipment containing polybrominated diphenyl
2.10 ethers used by entities eligible to hold authorization in the Public Safety Pool under Code
2.11 of Federal Regulations, title 47, part 90.

2.12 In-state retailers in possession of products on January 1, 2008, that are banned for
2.13 sale under subdivision 1 may exhaust their stock through sales to the public. Nothing in
2.14 this section restricts the ability of a manufacturer, importer, or distributor from transporting
2.15 products containing polybrominated diphenyl ethers through the state, or storing such
2.16 products in the state for later distribution outside the state.

2.17 Subd. 3. **Commercial decabromodiphenyl ether.** (a) Except as provided in
2.18 subdivision 4, beginning July 1, 2010, a person may not manufacture, process, or
2.19 distribute in commerce any of the following products containing more than one-tenth of
2.20 one percent of commercial decabromodiphenyl ether by mass:

2.21 (1) the exterior casing of a television, computer, or computer monitor;

2.22 (2) upholstered furniture or textiles intended for indoor use in a home or other
2.23 residential occupancy; or

2.24 (3) mattresses and mattress pads.

2.25 (b) The sale or distribution by a business, charity, public entity, or private party of
2.26 any used product containing commercial decabromodiphenyl ether is exempted from
2.27 this subdivision.

2.28 (c) In-state retailers in possession of products on January 1, 2010, that are banned for
2.29 sale under this subdivision may exhaust their stock of products located in the state as of that
2.30 date through sales to the public. Nothing in this section restricts a manufacturer, importer,
2.31 or distributor from transporting products containing commercial decabromodiphenyl ether
2.32 through the state or storing such products in the state for later distribution outside the state.

2.33 Subd. 4. **Exemption process; commercial decabromodiphenyl ether.** (a) A
2.34 manufacturer or user of a product prohibited from manufacture, sale, or distribution
2.35 under subdivision 3 may apply for an exemption for a specific use of commercial
2.36 decabromodiphenyl ether under this section by filing a written request with the

3.1 commissioner. The commissioner may grant an exemption for a term not to exceed three
3.2 years. The exemption is renewable upon written request. An initial or renewal request for
3.3 exemption must include at least the following:

3.4 (1) a policy statement articulating upper management support for eliminating or
3.5 reducing to the maximum feasible extent the use of commercial decabromodiphenyl ether;

3.6 (2) a description of the product and the amount of commercial decabromodiphenyl
3.7 ether distributed for sale and use in the state on an annual basis;

3.8 (3) a description of the recycling and disposal system used for the product in the
3.9 state and an estimate of the amount of product or commercial decabromodiphenyl ether
3.10 that is recycled or disposed of in the state on an annual basis;

3.11 (4) a description of the manufacturer's or user's past and ongoing efforts to eliminate
3.12 or reduce the amount of commercial decabromodiphenyl ether used in the product;

3.13 (5) an assessment of options available to reduce or eliminate the use of commercial
3.14 decabromodiphenyl ether, including any alternatives that do not contain commercial
3.15 decabromodiphenyl ether, perform the same technical function, are commercially
3.16 available, and are economically practicable;

3.17 (6) a statement of objectives in numerical terms and a schedule for achieving the
3.18 elimination of commercial decabromodiphenyl ether and an environmental assessment of
3.19 alternative products, including but not limited to human health, solid waste, hazardous
3.20 waste, and wastewater impacts associated with production, use, recycling, and disposal
3.21 of the alternatives;

3.22 (7) a listing of options considered not to be technically or economically practicable;
3.23 and

3.24 (8) certification of the accuracy of the information contained in the request, signed
3.25 and dated by an official of the manufacturer or user.

3.26 (b) The commissioner may grant an initial or renewal exemption for a specific use of
3.27 commercial decabromodiphenyl ether, with or without conditions, upon finding that the
3.28 applicant has demonstrated that there is no alternative that performs the same technical
3.29 function, is commercially available, is economically practicable, and provides net health
3.30 and environmental benefits to the state.

3.31 Subd. 5. **Fees for exemption applicants.** The application fee for an exemption
3.32 under subdivision 4 is \$2,000 per exemption. The fee is exempt from section 16A.1285.
3.33 Revenues from application fees must be deposited in the environmental fund.

3.34 Sec. 2. Minnesota Statutes 2007 Supplement, section 325E.387, is amended by adding
3.35 a subdivision to read:

4.1 Subd. 3. **Participation in interstate clearinghouse.** The commissioner may
4.2 participate in a regional or national multistate clearinghouse to assist in carrying out the
4.3 requirements of this section. The clearinghouse is authorized to maintain information on
4.4 behalf of Minnesota, including, but not limited to:

4.5 (1) a list of all products containing polybrominated diphenyl ethers; and

4.6 (2) information on all exemptions granted by the state.

4.7 **Sec. 3. REPORT.**

4.8 By July 1, 2011, the Pollution Control Agency shall report to the senate and house of
4.9 representatives committees with jurisdiction over environment and natural resources and
4.10 commerce policy regarding flame-retardant alternatives available for decabromodiphenyl
4.11 ether.