

**Enrolled**  
**Senate Bill 596**

Sponsored by Senator HASS; Senators ATKINSON, BATES, BONAMICI, DEVLIN, MONNES  
ANDERSON, WALKER, Representatives BAILEY, BRUUN, GARRETT, GREENLICK,  
HOLVEY, READ, TOMEI

CHAPTER .....

AN ACT

Relating to decabrominated diphenyl ether; creating new provisions; and amending ORS 453.005,  
453.025 and 453.085.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 453.005 is amended to read:

453.005. As used in ORS 453.005 to 453.135 unless the context requires otherwise:

(1) "Combustible" means any substance that has a flash point above 80 degrees Fahrenheit to and including 140 degrees, as determined by the Tagliabue Open Cup Tester.

(2) "Commerce" means any and all commerce within the State of Oregon and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(3) "Corrosive" means any substance that in contact with living tissue will cause destruction of tissue by chemical action, but does not refer to action on inanimate surfaces.

(4) "Electrical hazard" means an article that because of its design or manufacture may cause personal injury or illness by electric shock when in normal use or when subjected to reasonably foreseeable damage or abuse.

(5) "Extremely flammable" means any substance that has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester.

(6) "Flammable" means any substance that has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester.

(7) "Hazardous substance" means:

(a) Any substance that is toxic, corrosive, an irritant, a strong sensitizer, flammable, combustible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children, or any substance that the Director of Human Services finds, pursuant to the provisions of ORS 453.005 to 453.135, comes within the definition of this paragraph.

(b) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines that the substance is sufficiently hazardous to require labeling in accordance with ORS 453.005 to 453.135 in order to protect the public health. However, "hazardous substance" does not include any source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(c) Any toy or other article intended for use by children that the director determines in accordance with ORS 453.055 presents an electrical, thermal or mechanical hazard.

(d) Any article that is not pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act or regulated under ORS 616.335 to 616.385, but that is a hazardous substance within the meaning of paragraph (a) of this subsection by reason of bearing or containing pesticide.

(e) The following brominated flame retardant chemicals:

(A) Pentabrominated diphenyl ether; [and]

(B) Octabrominated diphenyl ether[.]; and

**(C) Decabrominated diphenyl ether.**

(8) "Highly toxic" means any substance that falls within any of the following categories:

(a) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered;

(b) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by humans when the substance is used in any reasonably foreseeable manner; or

(c) Produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less.

(9) "Immediate container" does not include package liners.

(10) "Irritant" means any substance not corrosive within the meaning of subsection (3) of this section, but that on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(11) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance, or in the case of an article that is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly on the article involved or on a tag or other suitable material affixed thereto, and a requirement made by or under authority of ORS 453.005 to 453.135 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper and on all accompanying literature where there are directions for use, written or otherwise.

(12) "Mechanical hazard" means an article that in normal use or when subjected to reasonably foreseeable damage or abuse presents an unreasonable risk of personal injury or illness, by its design or manufacture:

(a) From fracture, fragmentation, or disassembly of the article;

(b) From propulsion of the article or any part or accessory thereof;

(c) From points or other protrusions, surfaces, edges, openings, or closures;

(d) From moving parts;

(e) From lack or insufficiency of controls to reduce or stop motion;

(f) As a result of self-adhering characteristics of the article;

(g) Because the article or any part or accessory thereof may be aspirated or ingested;

(h) Because of instability; or

(i) Because of any other aspect of the article's design or manufacture.

(13) "Misbranded hazardous substance" means a hazardous substance that does not meet the labeling requirements of ORS 453.035.

(14) "Poison" means:

(a) Arsenic and its preparations;

(b) Corrosive sublimate;

(c) Cyanides and preparations, including hydrocyanic acid;

(d) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of 10 percent or more;

(e) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO<sub>3</sub>) in a concentration of five percent or more;

(f) Strychnine;

(g) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid (H<sub>2</sub>SO<sub>4</sub>) in a concentration of 10 percent or more;

(h) Solution of ammonia, U.S.P. 28 percent; or

(i) Carboic acid.

(15) "Radioactive substance" means a substance that emits ionizing radiation.

(16) "Strong sensitizer" means a substance that will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of the same substances and that is designated as such by the Director of Human Services.

(17) "Thermal hazard" means an article that, in normal use or when subjected to reasonably foreseeable damage or abuse, because of its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

(18) "Toxic substance" means any substance, other than radioactive substance, that has the capacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption through any body surface.

**SECTION 2.** ORS 453.085 is amended to read:

453.085. A person may not perform any of the following acts:

(1) The introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance.

(2) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of a hazardous substance.

(3) The performance of any act with respect to a hazardous substance while the substance is in commerce, or while the substance is held for sale or resale after shipment in commerce, that results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance.

(4) The receipt of or delivery into commerce of any misbranded hazardous substance or banned hazardous substance for pay or otherwise.

(5) The giving of a guarantee or undertaking that is false, except as a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, a person residing in the United States from whom the person received in good faith the hazardous substance.

(6) The failure to permit entry or inspection as authorized by ORS 453.005 to 453.135 or to permit access to and copying of any record as authorized by ORS 453.005 to 453.135.

(7) The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug or cosmetic container or in a container that, though not a reused container, is identifiable as a food, drug or cosmetic container by its labeling or by other identification.

(8) The use by any person to the advantage of the person, or the revealing other than to the Director of Human Services or the authorized representative of the director or to a court of any information acquired under authority of ORS 453.005 to 453.135 concerning any method or process that is a trade secret entitled to protection.

(9) The sale or delivery of any poison to a minor under 18 years of age without the written order of a person 21 years of age or over, which written order shall be retained in the records of the seller and the poison register of the seller shall show by the name of the purchaser the fact that the sale or delivery was to a minor on order of an adult and show the adult's name and address.

(10) The sale or delivery of completely denatured alcohol, methyl alcohol (methanol), canned heat or other solidified forms of denatured alcohol, or any preparation containing those substances, to be used for beverage purposes.

(11) The sale or delivery of any poison without making or causing to be made an entry in a poison register of the seller in the manner required by law.

(12) The sale or delivery to any person of any poison without having learned by due inquiry that such person is aware of the poisonous character thereof and that it is desired for a lawful purpose.

(13) The giving of a fictitious name or making any false representations to the seller or dealer when buying any of the poisons.

(14) The sale or delivery to any person by anyone other than a pharmacist of a poison.

(15) The removal or disposal of any detained or embargoed article without permission of the Director of Human Services or a designated representative.

(16) The introduction or delivery for introduction into commerce of any product containing more than one-tenth of one percent by mass of pentabrominated diphenyl ether, [*or*] octabrominated diphenyl ether **or decabrominated diphenyl ether**. This subsection does not apply to:

(a) Used products; or

*[(b) Replacement parts for products introduced into commerce before January 1, 2006.]*

**(b) Replacement parts for products containing more than one-tenth of one percent by mass of pentabrominated diphenyl ether or octabrominated diphenyl ether introduced into commerce before January 1, 2006, or replacement parts for products containing more than one-tenth of one percent by mass of decabrominated diphenyl ether introduced into commerce before January 1, 2011.**

**SECTION 3.** ORS 453.025 is amended to read:

453.025. (1) Nothing in ORS 453.005 to 453.135 and 453.990 (2) is intended to interfere with or prevent the legitimate sale of completely denatured alcohol or methyl alcohol (methanol) by garages and filling stations, when used for antifreeze purposes and poured directly into the radiator of any automobile or motor vehicle by the seller thereof.

(2) Stores and shops other than pharmacies may sell completely denatured alcohol or methyl alcohol (methanol) in quantities of not less than one gallon only in original containers and only when properly labeled by distiller or wholesale distributor and bearing also seller's label. The name and address of seller must be applied by label on the container. The record of such wholesale quantities must be kept by the seller and information including date, means of identification and purported use must also be kept.

(3) Sellers of denatured alcohol or methyl alcohol (methanol) only are not required to obtain a shopkeepers' license under ORS 689.305.

(4)(a) Subject to the exemption under paragraph (b) of this subsection, retail sales of completely denatured alcohol, methyl alcohol (methanol), heating fuel mixtures and other forms of denatured alcohol except heating fuel mixtures and other forms of denatured alcohol containing less than five percent methanol by weight and containing additives that render them unpalatable for human consumption, in quantities of less than one gallon, shall be confined to pharmacists and registration of the sales must be made in their poison register.

(b) Hotel, restaurant or food catering wholesalers or suppliers of heating fuel mixtures and other forms of denatured alcohol are exempt from paragraph (a) of this subsection when the supplying of these products is restricted for use solely in the preparation of commercially prepared foods in businesses supplying food needs directly to the public for immediate consumption. Products so classified when purchased shall be used only for this specified purpose and shall not be resold, given away or in any way made available to the public.

(5) Distributors and transporters, stores and shops, other than pharmacies, may deliver, or sell carbolic acid (phenol), for commercial use only in quantities of at least one pound but only when the container is properly labeled by the manufacturer or wholesaler and also bears a label containing the name and address of the seller or deliverer. Record of sales or deliveries of quantities of one pound or more of carbolic acid (phenol) shall be kept by the seller and deliverer. The record shall contain information, including the date, name of purchaser or person receiving the delivery and purported use.

(6) A distributor, transporter, store or shop shall not by reason of the delivery or sale of carbolic acid (phenol) in quantities of at least one pound be required to obtain a shopkeepers' license under ORS 689.305. Retail sales of carbolic acid (phenol) in quantities of less than one pound shall be confined to pharmacies and registration of such sales shall be made on their poison register.

(7) Except as specifically provided by law, the provisions of laws governing the sale and distribution of poisons do not apply to the sale or distribution of compounds, preparations or remedies which do not contain more than two grains of opium, or more than one-fourth grain of morphine, or more than one-eighth grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if solid or semisolid preparations, in one avoirdupois ounce; or to liniments, ointments or other preparations which are prepared for external use only, when sold or distributed for use as medicines.

(8)(a) Whenever poisons are dispensed in accordance with a written prescription by a practitioner, and such written prescription is filed and retained by the pharmacist as required by law, all of the requirements of ORS 453.005 to 453.135 and 453.990 (2) are satisfied.

(b) A pharmacist shall affix a poison label to a prescription when the prescribing practitioner so directs.

(9) Nothing in ORS 453.005 to 453.135 and 453.990 (2) applies to the manufacture or wholesale of any poisons. However, each box, vessel or package, other than prescriptions, in which any poison is contained must be labeled as provided in ORS 453.035.

**(10) Nothing in ORS 453.005 to 453.135 and 453.990 (2) applies to:**

**(a) The manufacture, sale, repair, distribution, maintenance, refurbishment or modification of any new raw material or component part used in a motor vehicle, as that term is defined in ORS 801.360, or an airplane with component parts, including but not limited to original spare parts, that contain decabrominated diphenyl ether.**

**(b) The use of commercial decabrominated diphenyl ether in the maintenance, refurbishment or modification of equipment used for purposes related to transportation.**

**SECTION 4.** Except as provided in section 5 of this 2009 Act, the amendments to ORS 453.005, 453.025 and 453.085 by sections 1 to 3 of this 2009 Act become operative January 1, 2011.

**SECTION 5.** The Director of Human Services may adopt rules before the operative date specified in section 4 of this 2009 Act or take any action before that date that is necessary to carry out the amendments to ORS 453.005, 453.025 and 453.085 by sections 1 to 3 of this 2009 Act.

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**Passed by Senate March 24, 2009**

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Secretary of Senate

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President of Senate

**Passed by House June 18, 2009**

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Speaker of House

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State