

Act No. 62
Public Acts of 1996
Approved by the Governor
February 25, 1996
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February 26, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Rep. Byl

ENROLLED HOUSE BILL No. 5313

AN ACT to amend section 2 of Act No. 188 of the Public Acts of 1965, entitled as amended "An act to regulate the intrastate distribution and sale of hazardous substances intended or suitable for household use; and to prescribe penalties," being section 286.452 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 2 of Act No. 188 of the Public Acts of 1965, as amended, being section 286.452 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 2. As used in this act:

- (a) "Agency" means the department of agriculture.
- (b) "Administrator" means the director of the department of agriculture or an authorized representative or agent of the director.
- (c) "Intrastate commerce" means commerce within this state and subject to the jurisdiction of this state and includes the operation of a business or service establishment.
- (d) "Hazardous substance" means any of the following:
 - (i) A substance, mixture of substances, or article that is toxic, corrosive, an irritant, a strong sensitizer, flammable, or generates pressure through decomposition, heat or other means, if that substance, mixture of substances, or article may cause substantial personal injury or substantial illness during or as a proximate result of a customary or reasonably foreseeable handling or use by the public, including reasonably foreseeable ingestion by children.
 - (ii) A substance that the administrator by rule finds, pursuant to section 3, meets the requirements of subparagraph (i).
 - (iii) A radioactive substance, if, with respect to that substance as used in a particular class of article or as packaged for public use, the administrator determines by rule that the substance is sufficiently hazardous to require labeling pursuant to this act in order to protect the public health.
 - (iv) A toy or other article intended for use by children that the administrator determines by rule to be an electrical, mechanical, or thermal hazard to children.

Hazardous substance does not apply to economic poisons subject to part 83 (pesticide control) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.8301 to 324.8336 of the Michigan Compiled Laws, or the federal insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat. 973, 7 U.S.C. 136 to 136i and 136j to 136y, or to foods, drugs, and cosmetics that are subject to the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 301 to 321, 331 to 333, 334 to 343-2, 344 to 346a, 347, 348 to 353, 355

to 360, 360b to 360dd, 360hh to 363, 371 to 376, and 378 to 395, or that would be subject to that act if in interstate commerce. Hazardous substance does not apply to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, and does not include a source material, special nuclear material, or byproduct material as defined in the atomic energy act of 1954, chapter 1073, 68 Stat. 919, and regulations issued pursuant to that act by the atomic energy commission. Hazardous substance applies to an article which is not itself an economic poison within the meaning of the federal insecticide, fungicide, and rodenticide act, but which is a hazardous substance within the meaning of subdivision (d)(i) by reason of bearing or containing an economic poison.

(e) "Toxic" means a substance, other than a radioactive substance, that has the capacity to produce personal injury or illness to human beings through ingestion, inhalation, or absorption through a body surface.

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

(i) Produces death within 14 days in 1/2 or more than 1/2 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.

(ii) Produces death within 14 days in 1/2 or more than 1/2 of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, if inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor or 2 milligrams per liter by volume or less of mist or dust, if the concentration is likely to be encountered by human beings if the substance is used in a reasonably foreseeable manner.

(iii) Produces death within 14 days in 1/2 or more than 1/2 of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, if administered by continuous contact with the bare skin for 24 hours or less.

If the administrator finds that available data on human experience with a substance indicate results different from those obtained on animals in the above named dosages or concentrations, the human data shall take precedence.

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

(h) "Irritant" means a substance not corrosive within the meaning of subdivision (g) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(i) "Strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substances and which is designated as a strong sensitizer by the administrator. Before designating a substance as a strong sensitizer, the administrator, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(j) "Extremely flammable" means a substance which has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue open cup tester. "Flammable" means a substance which has a flash point of above 20 degrees and at or below 80 degrees Fahrenheit, as determined by the Tagliabue open cup tester; except that the flammability of solids and of the contents of self-pressurized containers shall be determined by methods found by the administrator to be generally applicable to those materials or containers, and established by rules promulgated by the administrator, which rules shall also define the terms, flammable and extremely flammable, pursuant to those methods.

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

(l) "Label" means a display of written, printed, or graphic matter upon the immediate container of a substance. If on an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, label means a display of written, printed, or graphic matter directly upon the article involved or upon a tag or other suitable material affixed to the article. A requirement made under the authority of this act that a word, statement, or other information appear on the label, shall not be considered to be complied with unless that word, statement, or other information also appears on the outside container or wrapper, if there is one, unless it is easily legible through the outside container or wrapper, and on all accompanying literature, if there are directions for the use, written or otherwise.

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

(n) "Misbranded hazardous substance" means a hazardous substance, including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in a manner which is susceptible of access by a child to whom the toy or other article is entrusted, intended, or which is packaged in a form suitable for use in the household or by children, which substance, except as provided by section 3, fails to bear a label:

(i) Which states conspicuously, the following:

(A) The name and place of business of the manufacturer, packer, distributor, or seller.

(B) The common or usual name, or the chemical name, if there is not a common or usual name, of the hazardous substance or of each component which contributes substantially to its hazard, unless the administrator by rule permits or requires the use of a recognized generic name.

- (C) The signal word, "DANGER", on substances which are extremely flammable, corrosive, or highly toxic.
- (D) The signal word, "WARNING" or "CAUTION", on other hazardous substances.
- (E) An affirmative statement of the principal hazard, or hazards, such as "Flammable", "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard.
- (F) Precautionary measures describing the action to be followed or avoided, except if modified by rule of the administrator pursuant to section 3.
- (G) Instruction, if necessary or appropriate, for first aid treatment.
- (H) The word, "POISON", for a hazardous substance which is defined as highly toxic by subdivision (f).
- (I) Instructions for handling and storage of packages which require special care in handling or storage.
- (J) The statement, "Keep out of the reach of children", or its practical equivalent, or if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard.
- (ii) On which a statement is required under subparagraph (i) located prominently and in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.
- (o) "Banned hazardous substance" means any of the following:
 - (i) A toy or other article intended for use by children, which is a hazardous substance or which bears or contains a hazardous substance accessible to a child to whom the toy or other article is entrusted. The administrator by rule shall:
 - (A) Exempt articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved, and which bear labeling that gives adequate directions and warning for safe use and are intended for use by children of sufficient maturity and may reasonably be expected to read and heed the directions and warnings.
 - (B) Exempt and provide for the labeling of common fireworks for which a permit is not required pursuant to section 243a(3)(a), (b), (c), (d), and (e) of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.243a of the Michigan Compiled Laws, to the extent that the administrator determines that those articles can be adequately labeled to protect the purchasers and users of the articles.
 - (ii) A hazardous substance intended or packaged in a form suitable for use in the household, which the administrator by rule classifies as a banned hazardous substance on the basis of a finding that notwithstanding the cautionary labeling required under this act for that substance, the degree or nature of the hazard involved in the presence or use of the substance in households is so hazardous that the protection of the public health and safety can be adequately promoted only by keeping the substance, if so intended or packaged, out of intrastate commerce.
- (p) "Electrical hazard" means a hazard which results if an electrical toy in normal use or if subjected to reasonably foreseeable damage or abuse may, because of its design or manufacture, cause personal injury or illness by electric shock.
- (q) "Mechanical hazard" means a hazard that results if a mechanical toy in normal use or if subjected to reasonably foreseeable damage or abuse presents, because of its design or manufacture, an unreasonable risk of personal injury or illness from 1 or more of the following:
 - (i) From fracture, fragmentation, or disassembly of the toy.
 - (ii) From propulsion of the toy or a part or accessory of the toy.
 - (iii) From a point or other protrusion, surface, edge, opening, or closure.
 - (iv) From a moving part.
 - (v) From an insufficiency of controls to reduce or stop motion.
 - (vi) From the self-adhering characteristics of the toy.
 - (vii) Because the toy or a part or accessory of the toy may be aspirated or ingested.
 - (viii) Because of instability.
 - (ix) Because of another aspect of the toy's design or manufacture.
- (r) "Thermal hazard" means a hazard that results if a thermal toy in normal use or if subjected to reasonably foreseeable damage or abuse presents, because of the toy's design or manufacture, an unreasonable risk of personal injury or illness because of heat from heated parts, substances, or surfaces.
- (s) "Manufacturer" means a person, partnership, sole proprietorship, association, or corporation engaged in the manufacture of thermal, mechanical, or electrical toys.
- (t) "Retailer" means a person, partnership, sole proprietorship, association, or corporation who customarily sells thermal, mechanical, or electrical toys to the consumer.
- (u) "Wholesaler" means a person, partnership, sole proprietorship, association, or corporation who sells thermal, mechanical, or electrical toys to retailers.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.