

HAZARDOUS SUBSTANCES ACT Act 188 of 1965

AN ACT to regulate the intrastate distribution and sale of hazardous substances intended or suitable for household use; and to prescribe penalties.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1967, Act 152, Eff. Nov. 2, 1967;—Am. 1974, Act 377, Eff. Apr. 1, 1975;—Am. 1982, Act 54, Imd. Eff. Apr. 6, 1982.

The People of the State of Michigan enact:

286.451 Hazardous substances act; short title.

Sec. 1. This act shall be known and may be cited as the “hazardous substances act”.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1967, Act 152, Eff. Nov. 2, 1967.

286.452 Definitions.

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.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1967, Act 152, Eff. Nov. 2, 1967;—Am. 1974, Act 377, Eff. Apr. 1, 1975;—Am. 1978, Act 257, Eff. July 1, 1978;—Am. 1996, Act 62, Imd. Eff. Feb. 26, 1996.

286.453 Declaration of hazardous or banned substance; establishment of reasonable variations or additional label requirements; failure of hazardous substance to bear label; exempted substances; determination of toy or other article as hazard to children.

Sec. 3. (1) When in the judgment of the administrator such action will promote the objectives of this act by avoiding or resolving uncertainty as to the application of this act, the administrator may by rule declare to be a hazardous or banned substance, for the purposes of this act, a substance or mixture of substances which he finds meets the requirements of section 2(d).

(2) If the administrator finds that the requirements of section 2(n) (1) are not adequate for the protection of the public health and safety in view of the special hazard presented by a particular hazardous substance, he may establish by rule such reasonable variations or additional label requirements as he finds necessary for the protection of the public health and safety; and a hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with those rules shall be deemed to be a misbranded, hazardous, or

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banned substance.

(3) If the administrator finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this act is impracticable or is not necessary for the adequate protection of the public health and safety, the administrator shall promulgate rules exempting those substances from these requirements to the extent he determines to be consistent with the adequate protection of the public health and safety.

(4) A determination by the administrator that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard to children shall be made by administrative rule in accordance with section 9.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1967, Act 152, Eff. Nov. 2, 1967;—Am. 1974, Act 377, Eff. Apr. 1, 1975.

286.454 Prohibited acts.

Sec. 4. The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into intrastate commerce of a misbranded, banned hazardous substance, or toy.

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if that act is done while the substance is in intrastate commerce, or while the substance is held for sale, whether or not the first sale, after shipment in intrastate commerce, and results in the hazardous substance being a misbranded or banned hazardous substance.

(c) The receipt in intrastate commerce of a misbranded or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

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

(e) The failure to permit entry or inspection as authorized by section 10 or to permit access to and copying of any record as authorized by section 11.

(f) The introduction or delivery for introduction into intrastate commerce, or the receipt in intrastate 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 which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded or banned hazardous substance. As used in this paragraph, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the federal food, drug and cosmetic act, 21 U.S.C. sections 301 to 392.

(g) The use by a person to his own advantage, or revealing other than to the administrator or officers or employees of the agency, or to the courts when relevant in a judicial proceeding under this act, of information acquired under authority of section 10 concerning a method of process which as a trade secret is entitled to protection.

(h) The manufacture of a misbranded hazardous substance or banned hazardous substance within this state.

(i) The introduction or reintroduction into intrastate commerce of a misbranded hazardous substance or banned hazardous substance, either denominated as such by rule or embargoed by the administrator, without first submitting samples, purportedly free of hazardous characteristics, to the administrator for inspection and receiving a determination by the administrator that the hazard is eliminated.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1966, Act 194, Imd. Eff. July 1, 1966;—Am. 1967, Act 152, Eff. Nov. 2, 1967;—Am. 1974, Act 377, Eff. Apr. 1, 1975.

286.455 Violation as misdemeanor or felony; penalties; persons not subject to penalties.

Sec. 5. (1) A person who violates section 4 is guilty of a misdemeanor, punishable by a fine of not more than \$2,000.00 or imprisonment for not more than 1 year, or both.

(2) A person who wilfully, or with intent to defraud or mislead, violates section 4 is guilty of a felony, punishable by a fine of not more than \$20,000.00 or imprisonment for not more than 5 years, or both.

(3) A person shall not be subject to the penalties of subsection (1) for violating section 4(c), if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless that person refuses to furnish, upon the request of an officer or employee duly designated by the administrator, the name and address of the person from whom he or she purchased or received the hazardous or banned substance and copies of all documents pertaining to the delivery of the hazardous or banned substance to the person. A

person shall not be subject to the penalties of subsection (1) for violating section 4(a) if that person establishes a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he or she received in good faith the hazardous or banned substance, to the effect that the hazardous or banned substance is not a misbranded hazardous substance.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1967, Act 152, Eff. Nov. 2, 1967;—Am. 1974, Act 377, Eff. Apr. 1, 1975;—Am. 1982, Act 54, Imd. Eff. Apr. 6, 1982.

286.456 Injunction; mailing copy of application or complaint to administrator.

Sec. 6. In addition to the remedies hereinafter provided, the administrator, attorney general, or prosecuting attorneys may apply to the circuit court for, and the court may, upon hearing and for cause shown, grant a temporary or permanent injunction restraining a person from violating section 4, irrespective of whether or not there exists an adequate remedy at law. The attorney general or prosecuting attorney shall within 30 days after filing an application or complaint in the circuit court mail by certified mail a copy of the application or complaint to the administrator.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1974, Act 377, Eff. Apr. 1, 1975.

286.457 Tagging or marking misbranded or banned hazardous substance; permission for removal or disposal of detained or embargoed article; petition to condemn article; destruction of article; costs; conditions to return of article to claimant.

Sec. 7. (1) When a duly authorized agent of the administrator finds or has probable cause to believe that a hazardous household substance or toy is so misbranded as to be dangerous to the public health, or banned, within the meaning of this act, he shall affix to that article a tag or other appropriate marking, giving notice that the article is, or is suspected of being, a misbranded or banned hazardous substance and has been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. A person shall not remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) When an article detained or embargoed under subsection (1) has been found by the agent to be a misbranded or banned hazardous substance, the agent or at the agent's request, the attorney general or the prosecuting attorney of the county in which the article detained or embargoed is located, shall petition the judge of the circuit court in whose jurisdiction the article is detained or embargoed to condemn the article. When the agent has found that an article so detained or embargoed is not misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is misbranded, the article, after entry of the judgment or order, shall be destroyed at the expense of the claimant thereof, under the supervision of the agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of the article or his agent. When the misbranding can be corrected by proper labeling of the article, the court, after entry of the judgment or order and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article shall be so labeled, has been executed, may direct that the article be delivered to claimant thereof for labeling under the supervision of an agent of the administrator. The expense of the supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the administrator that the article is no longer in violation of this act, and that the expenses of supervision have been paid.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1974, Act 377, Eff. Apr. 1, 1975.

286.458 Court proceedings for reported violation; notice; opportunity to present views.

Sec. 8. The attorney general or the prosecuting attorney to whom the administrator reports a violation of this act shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before a violation of this act is reported to any prosecuting attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the administrator or his designated agent, either orally or in writing, in person, or by attorney, with regard to the contemplated proceeding. Proceedings shall be held pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1974, Act 377, Eff. Apr. 1, 1975.

286.459 Rules; adoption of federal regulations; additional rules or amendments; notice of imminent hazard.

Sec. 9. (1) The administrator shall promulgate rules necessary for the administration of this act pursuant to

Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(2) Certain federal regulations adopted to date pursuant to section 2 of the child protection and toy safety act of 1969, 15 U.S.C. 1261(f)(1)(D) and 15 U.S.C. 1261(q)(1)(A), being 16 C.F.R. 1500.18, 16 C.F.R. 1500.86, 16 C.F.R. part 1505, and 16 C.F.R. part 1508 are adopted as rules under this act. The administrator shall cause any additional rules or amendments to rules promulgated to conform, insofar as practicable, with the regulations established pursuant to the federal hazardous substances act, 15 U.S.C. 1261 to 1275, and to the consumer product safety act, 15 U.S.C. 2051 to 2082.

(3) If the administrator finds that the distribution for household use of a hazardous substance or the distribution of a toy intended for use by children, which is a hazardous substance or which bears or contains a hazardous substance accessible to a child, presents imminent hazard to the public health, the administrator may give notice by order published in a newspaper circulated throughout the state of that finding, and upon publication of the order the substance, if intended or offered for household use, or if so packaged as to be suitable for household use, shall be considered to be a banned hazardous substance pending the completion of the proceedings relating to the issuance of an administrative rule concerning that substance.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1967, Act 152, Eff. Nov. 2, 1967;—Am. 1974, Act 377, Eff. Apr. 1, 1975;—Am. 1978, Act 257, Eff. July 1, 1978;—Am. 1982, Act 54, Imd. Eff. Apr. 6, 1982.

Administrative rules: R 285.547.1 of the Michigan Administrative Code.

286.460 Factory or warehouse; entry and inspection, samples, receipt.

Sec. 10. (1) For purposes of enforcement of this act, officers or employees duly designated by the administrator, upon presenting appropriate credentials to the owner, operator, or agent in charge, may enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into intrastate commerce or are held after such introduction, or enter any vehicle being used to transport or hold such hazardous substances in intrastate commerce; inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and obtain samples of such materials or packages thereof, or of such labeling.

(2) If the officer or employee obtains any sample, prior to leaving the premises, he shall pay or offer to pay the owner, operator, or agent in charge for such sample and give a receipt describing the samples obtained.

History: 1965, Act 188, Eff. Mar. 31, 1966.

286.461 Carriers, access to records; admissibility of evidence in criminal prosecution.

Sec. 11. For the purpose of enforcing the provisions of this act, carriers engaged in intrastate commerce, and persons receiving hazardous or banned substances in intrastate commerce or holding hazardous or banned substances so received, upon the request of an officer or employee duly designated by the administrator, shall permit the officer or employee, at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any hazardous or banned substance, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof; and it is unlawful for any carrier or person to fail to permit access to and copying of any record so requested when the request is accompanied by a statement in writing specifying the nature or kind of such hazardous or banned substance to which such request relates. Evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained. Carriers shall not be subject to the other provisions of this act by reason of their receipt, carriage, holding or delivery of hazardous or banned substances in the usual course of business as carriers.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1967, Act 152, Eff. Nov. 2, 1967.

286.462 Publication of reports; dissemination of information.

Sec. 12. (1) The administrator shall cause to be published at least twice annually reports summarizing any judgments, or court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

(2) The administrator may also cause to be disseminated information regarding hazardous or banned substances in situations involving, in the opinion of the administrator, imminent danger to health. Nothing in this section shall be construed to prohibit the administrator from collecting, reporting, and illustrating the results of the investigations of the agency.

History: 1965, Act 188, Eff. Mar. 31, 1966;—Am. 1967, Act 152, Eff. Nov. 2, 1967;—Am. 1974, Act 377, Eff. Apr. 1, 1975.

286.463 Repealed. 1982, Act 54, Imd. Eff. Apr. 6, 1982.

Compiler's note: The repealed section pertained to licensing manufacturer or wholesaler of thermal, mechanical, or electrical toys.