

1975 Assembly Bill 352

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CHAPTER 117, Laws of 1975

AN ACT to renumber 100.37 (1) (h), (i), (j) and (k); to renumber and amend 100.37 (1) (a) 4; to amend 93.18 (2), 100.37 (1) (a) 1, (g), and (n) 1 as renumbered, (2) (b) and (5); to repeal and recreate 100.37 (3) (d); and to create 93.18 (3), 100.37 (1) (a) 4, (h), (i) and (j), (2) (e), (f), (g) and (h), (3) (e), (7) and (8) and 100.41 to 100.43 of the statutes, relating to hazardous substances, flammable fabrics, product safety requirements and packaging standards, granting rule-making authority and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 93.18 (2) of the statutes is amended to read:

93.18 (2) The department, in any matter relating to issuing, revoking or amending a special order relating to named persons, except as provided in sub. (3), shall serve upon the person complained against a complaint in the name of the department and a notice of a public hearing thereon to be held not sooner than 10 days after such service. The person complained against shall be entitled to be heard in person, or by agent or attorney and shall be entitled to process to compel the attendance of witnesses.

SECTION 2. 93.18 (3) of the statutes is created to read:

93.18 (3) The department, after acting pursuant to s. 100.37 or 100.41 to 100.43 to order the sale or distribution of any substance, article, furnishing, fabric, product or related material ceased, shall give written notice of its finding to the manufacturer, seller or other person responsible for placing the item in the channels of trade in this state. After such notice no person may sell, remove or otherwise dispose of such item except as directed by the department. Any person affected by such notice may demand a prompt hearing to determine the validity of the department's findings. The hearing, if requested, shall be held as expeditiously as possible but not later than 30 days after notice. A request for hearing does not operate to stay enforcement of the order during the pendency of the hearing. The person petitioning for a hearing shall be entitled to the same rights specified under sub. (2).

SECTION 3. 100.37 (1) (a) 1 of the statutes is amended to read:

100.37 (1) (a) 1. Any substance or mixture of substances, including a toy or other article intended for use by children, which is toxic, is corrosive, is an irritant, is a strong sensitizer, is flammable or 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.

SECTION 4. 100.37 (1) (a) 4 of the statutes is renumbered 100.37 (1) (a) 5 and amended to read:

100.37 (1) (a) 5. ~~“Hazardous”~~ Except as otherwise provided in this section, “hazardous substance” shall does not apply to pesticides subject to ss. 94.67 to 94.71, to foods, drugs and cosmetics, to bullets or other ammunition, or gun powder for reloading ammunition, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house, nor shall does it 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 of the atomic energy nuclear regulatory commission under such act.

SECTION 5. 100.37 (1) (a) 4 of the statutes is created to read:

100.37 (1) (a) 4. Any toy or other article intended for use by children which the department by rule determines in accordance with this section to present an electrical, mechanical or thermal hazard.

SECTION 6. 100.37 (1) (g) of the statutes is amended to read:

100.37 (1) (g) “Extremely flammable” applies to any substance which has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue open cup tester, and “flammable” applies to any substance which has a flash point of above 20 degrees to 80 degrees Fahrenheit, as determined by the Tagliabue open cup tester; “combustible” applies to any substance which has a flash point above 80 degrees Fahrenheit to 150 degrees as determined by the Tagliabue open cup tester, but the except that flammability or combustibility of solids and of the contents of self-pressurized containers shall be determined by methods as prescribed under the federal hazardous substances act (15 USC 1261 et seq) or found by the department to be generally applicable to such materials or containers, and established by rules issued adopted by the department, which shall also define “flammable”, “combustible” and “extremely flammable” in accordance with such methods.

SECTION 7. 100.37 (1) (h), (i), (j) and (k) of the statutes are renumbered 100.37 (1) (k), (L), (m) and (n) and 100.37 (1) (n) 1, as renumbered, is amended to read:

100.37 (1) (n) 1. Which states conspicuously the name and place of business of the manufacturer, packer, distributor or seller; the common or usual name, or the chemical name if there is no common or usual name, of the hazardous substance or of each component which contributes substantially to its hazard, unless the department by rule permits or requires the use of a recognized generic name; the signal word "DANGER" on substances which are extremely flammable, corrosive or highly toxic; the signal word "WARNING" or "CAUTION" on all other hazardous substances; an affirmative statement of the principal hazards, such as "Flammable," "Combustible", "Vapor harmful," "Causes burns," "Absorbed through skin" or similar wording descriptive of the hazard; precautionary measures describing the action to be followed or avoided, except when modified by rule of the department pursuant to sub. (2); instruction, when necessary or appropriate, for first-aid treatment; the word "poison" for any hazardous substance which is highly toxic; instructions for handling and storage of packages which require special care in handling or storage; and 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; and

SECTION 8. 100.37 (1) (h), (i) and (j) of the statutes are created to read:

100.37 (1) (h) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(i) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness 1) from fracture, fragmentation or disassembly of the article, 2) from propulsion of the article, or any part or accessory thereof, 3) from points or other protrusions, surfaces, edges, openings or closures, 4) from moving parts, 5) from lack or insufficiency of controls to reduce or stop motion, 6) as a result of self-adhering characteristics of the article, 7) because the article, or any part or accessory thereof, may be aspirated or ingested, 8) because of instability or 9) because of any other aspect of the article's design or manufacture including the capability of producing sounds at a level of 138 decibels or higher.

(j) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

SECTION 9. 100.37 (2) (b) of the statutes is amended to read:

100.37 (2) (b) If the department finds that the requirements of ~~sub. (1) (k) 1~~ this section are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, it may by rule establish such reasonable variations or additional ~~label~~ requirements as it finds necessary for the protection of the public health and safety; ~~and any hazardous substance, intended or suitable for household use, or toy or other article intended for use by children, which fails to bear a label in accordance with such rules is deemed to be a misbranded package of a hazardous substance.~~

SECTION 10. 100.37 (2) (e), (f), (g) and (h) of the statutes are created to read:

100.37 (2) (e) The department may summarily ban the sale or distribution of any hazardous substance or article if it finds that the hazard to public health or safety is so great that such hazard should not be permitted to continue. The department shall follow the procedure specified in s. 93.18 (3).

(f) The department may by rule prescribe the methods of sale of hazardous substances, including but not limited to glues, cements and hobby kit fuels, and may regulate the manner of display and restrict access by the general public to hazardous substances.

(g) The department may by rule prescribe package safety standards, including type of package material and safety closures for hazardous substances and pesticides, and may prohibit the sale of noncomplying or defective packages.

(h) The department may by rule limit or ban the use of any ingredient or combination of ingredients in any hazardous substance if it finds such action necessary to adequately protect the public health and safety.

SECTION 11. 100.37 (3) (d) of the statutes is repealed and recreated to read:

100.37 (3) (d) The sale or offering for sale of any hazardous substance contrary to this section or to any rule or order of the department issued under this section.

SECTION 12. 100.37 (3) (e) of the statutes is created to read:

100.37 (3) (e) The sale or offering for sale, in violation of this section, of any article or substance which is a hazardous substance within the meaning of this section or the federal hazardous substances act (15 USC 1261 et seq).

SECTION 13. 100.37 (5) of the statutes is amended to read:

100.37 (5) If the department has reasonable cause to believe that any substance is in violation of this section or poses an imminent hazard to public health or safety, it may deliver to the owner or custodian thereof an order prohibiting the sale or movement of such substance until an analysis or examination has been completed. Such holding order ~~shall is~~ not be effective for more than 14 days from the time of delivery thereof. The substance described in any such holding order ~~shall may~~ not be sold or moved for any purpose without the approval of the department. If the department, after analysis or examination, determines that the substance described in such order is not in violation of this section, it shall promptly notify, ~~by registered mail~~, the owner or custodian thereof and such notice shall terminate the holding order. If the analysis or examination shows that the substance is in violation of this section, the owner or custodian thereof shall be so notified, ~~by registered mail~~, in writing within the effective time of the holding order. Upon receipt of such notice the owner or custodian may dispose of the substance only as authorized by the department. The owner or custodian of the substance or article may within 10 days of receipt of such notice petition for a hearing as provided in s. 93.18.

SECTION 14. 100.37 (7) and (8) of the statutes are created to read:

100.37 (7) Any manufacturer, distributor or retailer of a misbranded or banned package containing a hazardous substance shall, on demand of any person purchasing such products from it, if the package is misbranded or banned at the time of sale, repurchase such product and refund the full purchase price thereof to the purchaser making the demand for refund. If the purchaser is required to return the product to the manufacturer, distributor or retailer as a condition to the repurchase and refund, the purchaser shall be reimbursed for any reasonable and necessary charges incurred in its return.

(8) Whoever violates this section may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both.

SECTION 15. 100.41 to 100.43 of the statutes are created to read:

100.41 Flammable fabrics. (1) DEFINITIONS. In this section:

(a) "Article of wearing apparel" means any costume or article of clothing worn or designed to be worn by individuals.

(b) "Clear and present hazard" means a hazard found by the department to constitute a demonstrable danger to human safety, life or property.

(c) "Fabric" means any material woven, knitted, felted or otherwise produced from or in combination with any natural or synthetic fiber, film or substitute therefor which is manufactured or designed for use and may reasonably be expected to be used in any product or to cover any product.

(d) "Federal act" means the federal flammable fabrics act, 15 USC 1191 et seq.

(e) "Furnishing" means any type of furnishing made in whole or in part of fabric or related material and which is manufactured or designed for use and may reasonably be expected to be used in or around homes, offices or other places of assembly or accommodation.

(f) "Product" means any article of wearing apparel, fabric or furnishing, including tents, awnings and knapsacks.

(g) "Related material" means paper, plastic, rubber, synthetic film or synthetic foam which is manufactured or designed for use or which may reasonably be expected to be used in or on any product.

(2) **STANDARDS OF FLAMMABILITY.** The department may by rule prescribe standards of flammability that have been promulgated pursuant to the federal act.

(3) **PROHIBITED ACTS.** No person may manufacture for sale, sell or offer for sale in this state any furnishing, product, fabric or related material in violation of this section or of any standards or rules adopted by the department under this section, or which fails to conform with applicable standards under the federal act.

(4) **RULES.** In addition to standards of flammability, the department may by rule prescribe labeling requirements that have been established by rules promulgated pursuant to the federal act, and may ban the sale of any product or material if it finds that its flammability is such as to constitute a clear and present hazard to personal safety or property.

(5) **REMOVAL FROM SALE.** The department may summarily ban the sale or distribution of any furnishing, fabric, product or related material if it finds that the hazard of flammability is so great that such hazard should not be permitted to continue prior to the time a hearing can be held. The department shall follow the procedure specified in s. 93.18 (3).

100.42 Product safety. (1) **DEFINITIONS.** In this section:

(a) "Aircraft" has the meaning given under s. 114.002 (2).

(b) "Boat" has the meaning given under s. 30.50 (1).

(c) "Consumer product" means any article, or component part thereof, produced or distributed for sale, or sold to consumers for personal use, consumption or enjoyment in or around the home, or for recreational or other purposes; but does not include bullets or other ammunition, or gun powder for reloading ammunition, motor vehicles or motor vehicle equipment, aircraft or aircraft equipment, boats or marine equipment, pesticides, hazardous substances, food and drugs, including animal feeds and drugs, or other products to the extent that they are regulated under other state or federal laws, or the state is specifically preempted from further regulation under federal law.

(d) "Drug" has the meaning given under s. 450.06.

(e) "Federal act" means the federal consumer product safety act, 15 USC 2051 et seq.

(f) "Food" has the meaning given under s. 97.01 (2).

(g) "Labeling" means all labels and other written, printed or graphic matter on or attached to or accompanying any consumer product.

(h) "Motor vehicle" has the meaning given under s. 340.01 (35).

(i) "Pesticide" has the meaning given under s. 94.67 (1).

(2) SAFETY STANDARDS. The department may by rule adopt consumer product safety standards that have been promulgated pursuant to the federal act.

(3) REMOVAL FROM SALE; REPAIR OR REPLACEMENT. (a) The department may summarily ban the sale of any consumer product manufactured, sold or distributed in violation of this section or any rule adopted under this section, or which presents an unreasonable risk of injury or imminent hazard to the public health, welfare and safety. Any such product may be summarily banned notwithstanding the existence of applicable safety standards or action taken toward the development or adoption of a standard. The department shall follow the procedure specified in s. 93.18 (3).

(b) If the department determines that a product presents a substantial hazard or risk of injury, the department may, after notice and opportunity for hearing under s. 93.18, order the manufacturer, distributor or retailer of such product:

1. To bring such product into compliance with requirements of applicable consumer product safety standards, to recall such product or to repair any defects in products which have been sold;

2. To replace such product with a like or equivalent product which complies with applicable consumer product safety standards or which does not contain the defect; or

3. To refund the purchase price of the product.

(4) PROHIBITED ACTS; ENFORCEMENT. No person may manufacture, sell or distribute for sale any consumer product which is not in compliance with applicable consumer product safety standards under the federal act or rules of the department, or which has been banned as a hazardous product or ordered from sale by the department. No person may fail or refuse to comply with an order under sub. (3) (b) or any other rule or order under this section. In addition to other penalties and enforcement procedures, the department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this section or rules adopted under this section.

(5) EXEMPTIONS. Except with respect to a consumer product which is the subject of a temporary or permanent injunction or an order of the department banning its manufacture, sale or distribution, sub. (4) does not apply to any person who holds a certificate issued in accordance with section 14 (a) of the federal act to the effect that such consumer product conforms to all applicable consumer product safety standards under such act, unless such person knows that such consumer product does not conform; or to any person who relies in good faith on the representation of the manufacturer or distributor of such product that the product is not subject to an applicable safety standard under the federal act.

100.43 Packaging standards; poison prevention. (1) DEFINITIONS. In this section:

(a) "Cosmetic" means articles other than soap, applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, or any component of any such article.

(b) "Drug" has the meaning given under s. 450.06, and includes animal drugs.

(c) "Federal act" means the federal poison prevention packaging act, 15 USC 1471 et seq.

(d) "Food" has the meaning given under s. 97.01 (2), and includes animal feeds.

(e) "Hazardous substance" has the meaning given under s. 100.37 (1) (a).

(f) "Household substance" means any substance customarily produced, distributed for sale, or sold to individuals for consumption or use in or about the household, or which is customarily kept or stored by individuals in or about the household, and which is a hazardous substance, a pesticide, a food, drug or cosmetic, or a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

(g) "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance.

(h) "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use or storage by individuals in or about the household and, for purposes of labeling conventional packaging under sub. (3), includes any outer container or wrapping used for retail display of any such substance to consumers. The term does not apply to shipping containers or wrappings used solely for the transportation of household substances in bulk or quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or to containers or wrappings used by retailers to ship or deliver household substances to consumers, unless they are the only containers or wrappings used to ship or deliver the household substance to the consumer.

(i) "Pesticide" has the meaning given under s. 94.67 (1).

(j) "Special packaging" means packaging designed or constructed to make it significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the household substance contained therein within a reasonable time, but which may be readily opened by normal adults.

(2) PACKAGING STANDARDS. The department may by rule adopt special packaging standards that have been promulgated pursuant to the federal act.

(3) CONVENTIONAL PACKAGING EXEMPTIONS. (a) The manufacturer or packer of a household substance subject to special packaging standards may, as necessary to make such substance available to elderly or handicapped persons unable to use such substances when packaged in compliance with such standards, package any household substances subject to such standards in conventional packaging of a single size which does not comply with such standard if:

1. The manufacturer or packer also supplies such substance in packages which comply with applicable standards; and

2. The packages bear conspicuous labeling stating: "This package for households without young children", or such other statement as may be prescribed under applicable standards.

(b) If it is determined that a household substance packaged in noncomplying package is not also being supplied by the manufacturer or packer in popular size packages which comply with special packaging standards, the department may by special order require the manufacturer or packer of such substance to package it exclusively in special packaging complying with applicable standards.

(c) A household substance, subject to special packaging standards, which is dispensed pursuant to a prescription of a physician, dentist, or other licensed medical practitioner may be sold in conventional or noncomplying packages when directed in such prescription or requested by the purchaser.

(4) PROHIBITED ACTS; ENFORCEMENT. (a) No person may manufacture, distribute or sell any household substance which is not packaged in compliance with applicable special packaging standards under the federal act or rules of the department. No person may violate this section or any rule or order issued under this section.

(b) The department may summarily bar the sale or distribution of any household substance which is sold or offered for sale in violation of this section or of any rules or order issued under this section. The department shall follow the procedure specified in s. 93.18 (3).

(c) The department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this section, or any rule or order issued under this section.

SECTION 16. Effective date. This act shall take effect on the first day of the sixth month after publication.
