

CHAPTER 320

AN ACT to repeal and recreate 97.71 of the statutes, relating to the labeling of hazardous substances and granting rule-making authority.

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

97.71 of the statutes is repealed and recreated to read:

97.71 HAZARDOUS SUBSTANCES LABELING ACT. (1) In this section:

(a) "Hazardous substance" means:

1. Any substance or mixture of substances which is toxic, is corrosive, is an irritant, is a strong sensitizer, is flammable 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.

2. Any substances which the department by rule finds, pursuant to sub. (2) (a), meet the requirements of subd. 1.

3. Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this section in order to protect the public health.

4. "Hazardous substance" shall not apply to economic poisons subject to ss. 94.67 to 94.71, to foods, drugs and cosmetics, 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 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 the atomic energy commission.

(b) "Toxic" applies to any substance, other than a radioactive substance, which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(c) "Highly toxic" means any substance which falls within any of the following categories: Produces death within 14 days in 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; or produces death within 14 days in 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 2 milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or produces death within 14 days in 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. If the department finds that available data on human experience with any substance indicate results different from those obtained on animals in the above named dosages or concentrations, the human data shall take precedence.

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

(e) "Irritant" means any substance not corrosive which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

(f) "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 such by the department. Before designating any substance as a strong sensitizer, the department, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(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, but the flammability of solids and of the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to such materials or containers, and established by rules issued by the department, which shall also define "flammable" and "extremely flammable" in accordance with such methods.

(h) "Radioactive substance" means a substance which emits ionizing radiation.

(i) "Label" means a display of written, printed or graphic matter upon the immediate container of any substance; and a requirement made by or under authority of this section that any word, statement or other information appears 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 there is 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.

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

(k) "Misbranded package" or "misbranded package of a hazardous substance" means a hazardous substance in a container intended or suitable for household use which, except as otherwise provided under sub. (2), fails to bear a label:

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," "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; and

2. On which any statements required under subd. 1 are located prominently and are in the English language in conspicuous and legible type in

contrast by typography, layout or color with other printed matter on the label.

(2) (a) Whenever in the judgment of the department such action will promote the objectives of this section by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance, for the purposes of this section, any substance or mixture of substances which it finds meets the requirements of sub. (1) (a) 1.

(b) If the department finds that the requirements of sub. (1) (k) 1 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 container of such hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with such rules is deemed to be a misbranded package of a hazardous substance.

(c) If the department 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 section is impracticable or is not necessary for the adequate protection of the public health and safety, it may exempt such substances from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety.

(3) The following acts and the causing thereof are prohibited:

(a) The sale, or offering or exposing for sale of any misbranded package of a hazardous substance.

(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 such act is done while the substance is held for sale, and results in the hazardous substance being in a misbranded package.

(c) The sale, or offering or exposing for sale of a hazardous substance in a re-used food, drug or cosmetic container or in a container which, though not a re-used container, is identifiable as a food, drug or cosmetic container by its labeling or by other identification. The re-use 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 in a misbranded package.

(4) The department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating sub. (3); irrespective of whether or not there exists an adequate remedy at law.

(5) If the department has reasonable cause to believe that any substance is in violation of this section, 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 not be effective for more than 14 days from the time of delivery thereof. The substance described in any such holding order shall 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, 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 de-

partment. The owner or custodian may within 10 days of receipt of such notice petition for a hearing as provided in s. 93.18.

(6) Nothing in this section shall affect the application of any law of this state specifically regulating any substance regulated by this section.

SECTION 2. This act shall take effect on January 1, 1966.

Approved October 27, 1965.

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