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Referred: State Affairs
and Judiciary

1 IN THE SENATE

BY BEGICH

2 SENATE BILL NO. 277

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulating the intrastate distribu-
7 tion and sale of hazardous substances intended or
8 suitable for household use; and providing for an
9 effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 18 is amended by adding a new chapter to read:

12 CHAPTER 31. ALASKA HAZARDOUS SUBSTANCES ACT.

13 Sec. 18.31.010. SCOPE OF REGULATIONS. (a) When, in the judg-
14 ment of the commissioner his action will promote the objectives of
15 this chapter by avoiding or resolving uncertainty as to application,
16 the commissioner may by regulation declare to be a hazardous substance,
17 for the purposes of this chapter, any substance or mixture of substance
18 which he finds meets the requirements of sec. 100(4)(A) of this chapter

19 (b) If the commissioner finds that the requirements of sec. 100
20 (15)(A) of this chapter are not adequate for the protection of the
21 public health and safety in view of the special hazard presented by
22 a particular hazardous substance, he may by regulation establish
23 reasonable variations or additional label requirements he finds neces-
24 sary for the protection of the public health and safety; and any
25 hazardous substance intended, or packaged in a form suitable, for use
26 in the household or by children which fails to bear a label in accord-
27 ance with these regulations shall be considered to be a misbranded
28 hazardous substance.

29 (c) If the commissioner finds that, because of the size of the

1 package or because of the minor hazard presented by the substance
2 contained in the package, or for other good and sufficient reasons,
3 full compliance with the labeling requirements under this chapter is
4 impracticable or not necessary for the adequate protection of the
5 public health and safety, the commissioner shall promulgate regulations
6 exempting these substances from these requirements to the extent he
7 determines to be consistent with adequate protection of the health and
8 safety.

9 (d) If the commissioner finds that the hazard of an article
10 subject to this chapter is such that labeling adequate to protect the
11 public health and safety cannot be devised or the article presents an
12 imminent danger to the public health and safety, the commissioner may
13 declare the article to be a banned hazardous substance and require its
14 removal from commerce.

15 Sec. 18.31.020. PROHIBITED ACTS. Doing or causing any of the
16 following acts is prohibited:

17 (1) the introduction or delivery for introduction into
18 commerce of a misbranded hazardous substance or banned hazardous sub-
19 stance;

20 (2) the alteration, mutilation, destruction, obliteration,
21 or removal of the whole or part of the label of, or the doing of any
22 other act with respect to, a hazardous substance if the act is done
23 while the substance is in commerce, or while the substance is held for
24 sale (whether or not the first sale) after shipment in commerce, and
25 results in the hazardous substance being a misbranded hazardous sub-
26 stance or a banned hazardous substance;

27 (3) the receipt in commerce of any misbranded hazardous sub-
28 stance or banned hazardous substance and the delivery or proffered
29 delivery for pay or otherwise;

1 (4) the giving of a guarantee or undertaking referred to in
2 sec. 30(b)(2) of this chapter which guarantee or undertaking is false,
3 except by a person who relied upon a guarantee or undertaking to the
4 same effect signed by, and containing the name and address of, the
5 person residing in the United States from whom he received in good faith
6 the hazardous substance;

7 (5) the failure to permit entry or inspection as authorized
8 by sec. 80(a) of this chapter or to permit access to and copying of a
9 record as authorized by sec. 90 of this chapter;

10 (6) the introduction or delivery for introduction into
11 commerce, or the receipt in commerce and subsequent delivery or
12 proffered delivery for pay or otherwise, of a hazardous substance in
13 a reused food, drug, or cosmetic container or in a container which,
14 though not a reused container, is identifiable as a food, drug, or
15 cosmetic container by its labeling or by other identification; the reuse
16 of a food, drug, or cosmetic container as a container for a hazardous
17 substance shall be considered to be an act which results in the hazardous
18 substance being a misbranded hazardous substance;

19 (7) the use by any person to his own advantage, or revealing
20 other than to the commissioner or officers or employees of the depart-
21 ment, or to the courts when relevant in a judicial proceeding under
22 this chapter, of information acquired under authority of sec. 80 of this
23 chapter concerning a method of process which as a trade secret is en-
24 titled to protection.

25 Sec. 18.31.030. PENALTIES. (a) A person who violates a provision
26 of sec. 20 of this chapter is guilty of a misdemeanor and upon conviction
27 is punishable by a fine of not more than \$500, or by imprisonment for
28 not more than 90 days, or by both; but for offenses committed with
29 intent to defraud or mislead, or for a second conviction under this

1 chapter, is punishable by a fine of not more than \$3,000, or by im-
2 prisonment for not more than one year, or by both.

3 (b) A person is not subject to the penalties of (a) of this
4 section

5 (1) for having violated sec. 20(c) of this chapter if the
6 receipt, delivery, or proffered delivery of the hazardous substance was
7 made in good faith, unless he refuses to furnish on request of an
8 officer or employee designated by the commissioner, the name and
9 address of the person from whom he purchased or received the hazardous
10 substance, and copies of all documents, if any, pertaining to the
11 delivery of the hazardous substance to him; or

12 (2) if he establishes a guarantee or undertaking signed by,
13 and containing the name and address of, the person residing in the
14 United States from whom he received in good faith the hazardous sub-
15 stance, to the effect that the hazardous substance is not a misbranded
16 hazardous substance or a banned hazardous substance within the meaning
17 of those terms in this chapter.

18 Sec. 18.31.040. INJUNCTION PROCEEDINGS. In addition to the
19 other remedies provided in this chapter, the commissioner is authorized
20 to apply to the superior court in the judicial district where the
21 alleged violation is occurring and the court shall have jurisdiction,
22 upon hearing and for cause shown, to grant a temporary or permanent
23 injunction restraining a person from violating a provision of sec. 20
24 of this chapter whether or not there exists an adequate remedy at law.

25 Sec. 18.31.050. EMBARGO AND SEIZURE. (a) When an authorized
26 agent of the commissioner finds or has probable cause to believe that
27 a hazardous household substance is misbranded or is a banned hazardous
28 substance, within the meaning of this chapter, he shall affix to the
29 article a tag or other appropriate marking, giving notice that the

1 article is, or is suspected of being, misbranded or is a banned
2 hazardous substance and has been detained or embargoed, and warning
3 all persons not to remove or dispose of the article by sale or other-
4 wise until permission for removal or disposal is given by the agent or
5 the court. It is unlawful for a person to remove or dispose of the
6 detained or embargoed article by sale or otherwise without this per-
7 mission.

8 (b) When an article detained or embargoed under (a) of this sec-
9 tion has been found by the agent to be misbranded or a banned hazardous
10 substance, he shall petition the superior court in the judicial district
11 where the article is detained or embargoed to forfeit the article to
12 the state. When an agent has found that an article detained or em-
13 bargoed is not misbranded or a banned hazardous substance, he shall re-
14 move the tag or other marking.

15 (c) If the court finds that a detained or embargoed article is
16 misbranded or a banned hazardous substance, the article shall, after
17 entry of the decree, be destroyed at the expense of the claimant, under
18 supervision of the agent, and all court costs and fees and storage and
19 other proper expenses shall be taxed against the claimant of the article
20 or his agent. However, when the misbranding can be corrected by proper
21 labeling of the article, the court, after entry of the decree and after
22 costs, fees and expenses have been paid and a good and sufficient bond,
23 conditioned that the article shall be properly labeled, has been exe-
24 cuted, may by order direct that the article be delivered to claimant
25 for proper labeling under the supervision of an agent of the commission-
26 er. The expense of the supervision shall be paid by the claimant. The
27 article shall be returned to the claimant on the representation to the
28 court by the commissioner that the article is no longer in violation of
29 this chapter, and the expenses of the supervision of relabeling have

1 been paid.

2 Sec. 18.31.060. HEARING BEFORE REPORT OF CRIMINAL VIOLATION. It
3 is the duty of each district attorney to whom the commissioner reports
4 a violation of this chapter to cause appropriate proceedings to be
5 instituted in the proper court without delay and to be prosecuted in
6 the manner required by law. Before a violation of this chapter is
7 reported to a district attorney for the institution of a criminal pro-
8 ceeding, the person against whom the proceeding is contemplated shall
9 be given appropriate notice and an opportunity to present his views
10 before the commissioner or his designated agent, either orally or in
11 writing, in person, or by attorney, with regard to the contemplated
12 proceedings.

13 Sec. 18.31.070. REGULATIONS. (a) The commissioner shall promul-
14 gate regulations considered necessary to carry out the provisions of
15 this chapter.

16 (b) The commissioner shall use the regulations promulgated under
17 the federal Hazardous Substances Act as guidelines for the regulations
18 promulgated under this chapter.

19 Sec. 18.31.080. EXAMINATIONS AND INVESTIGATIONS. (a) For pur-
20 poses of enforcement of this chapter, officers or employees designated
21 by the commissioner, upon presenting appropriate credentials to the
22 owner, operator, or agent in charge, are authorized to

23 (1) enter, at reasonable times, any factory, warehouse, or
24 establishment in which hazardous substances are manufactured, processed,
25 packed, or held for introduction into commerce or are held after intro-
26 duction, or to enter a vehicle being used to transport or hold the
27 hazardous substances in commerce;

28 (2) inspect, at reasonable times and within reasonable limits
29 and in a reasonable manner, a factory, warehouse, establishment or

1 vehicle, and all pertinent equipment, finished and unfinished materials,
2 and labeling;

3 (3) obtain samples of the materials or packages or of the
4 labelings.

5 (b) If the officer or employee obtains a sample, before leaving
6 the premises, he shall pay or offer to pay the owner, operator, or
7 agent in charge for the sample and give a receipt describing the samples
8 obtained.

9 Sec. 18.31.090. RECORDS OF SHIPMENT. For the purpose of enforcing
10 this chapter, carriers engaged in commerce and persons receiving hazardous
11 substances in commerce or holding the hazardous substances received
12 shall, upon the request of an officer or employee designated by the
13 commissioner, permit the officer or employee at reasonable times to
14 have access to and to copy all records showing the movement in commerce
15 of the hazardous substances, or the holding of the substances after
16 movement, the quantity, shipper, and consignee. It is unlawful for a
17 carrier or person to fail to permit access to and the copying of a
18 record requested when the request is accompanied by a statement in
19 writing specifying the nature or kind of hazardous substance to which
20 the request relates. However, evidence obtained under this section may
21 not be used in a criminal prosecution of the person from whom obtained
22 and carriers may not be subject to the other provisions of this chapter
23 by reason of their receipt, carriage, holding, or delivery of hazardous
24 substances in the usual course of business as carriers.

25 Sec. 18.31.100. DEFINITIONS. In this chapter

26 (1) "banned hazardous substance" means

27 (A) a toy, or other article intended for use by children
28 which is a hazardous substance, or which bears or contains a
29 hazardous substance in such a manner as to be susceptible of access

1 by a child to whom the toy or other article is entrusted; or

2 (B) a hazardous substance intended, or packaged in a
3 form suitable, for use in the household which the commissioner by
4 regulation classifies as a "banned hazardous substance" on the basis
5 of a finding that, notwithstanding the cautionary labeling as is
6 or may be required under this chapter for that substance, the
7 degree or nature of the hazard involved in the presence or use
8 of the substance in households is such that the objective of the
9 protection of the public health and safety can be adequately
10 served only by keeping the substance, when so intended or packaged
11 out of the channels of commerce, provided, that the commissioner
12 by regulation

13 (1) exempts from (A) of this paragraph articles,
14 such as chemical sets, which by reason of their functional
15 purpose require the inclusion of the hazardous substance in-
16 volved, and which bear labeling giving adequate directions
17 and warnings for safe use and are intended for use by
18 children who have attained sufficient maturity, and may
19 reasonably be expected to read and heed the directions and
20 warnings, and

21 (11) exempts from (A) of this paragraph and pro-
22 vides for the labeling of common fireworks;

23 (2) "commerce" means any and all commerce in the state and
24 subject to its jurisdiction and includes the operation of a business
25 or service establishment;

26 (3) "commissioner" means the commissioner of the Department
27 of Health and Welfare;

28 (4) "corrosive" means a substance which in contact with liv-
29 ing tissue will cause destruction of tissue by chemical action; but

1 does not refer to action on inanimate surfaces;

2 (5) "department" means the Department of Health and Welfare;

3 (6) "extremely flammable" means a substance which has a
4 flash point at or below 20 degrees Fahrenheit as determined by the
5 Tagliabue Open Cup Tester, and the term "flammable" means a substance
6 which has a flash point of above 20 degrees to and including 80 degrees
7 Fahrenheit, as determined by the Tagliabue Open Cup Tester; except
8 that the flammability of solids and of the contents of self-pressurized
9 containers shall be determined by methods found by the commissioner to
10 be generally applicable to the materials or containers, respectively,
11 and established by regulations issued by him, which regulations shall
12 also define the terms "flammable" and "extremely flammable" in accord
13 with the methods employed;

14 (7) "hazardous substance" means

15 (A) a substance or mixture of substances which (i) is
16 toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a
17 strong sensitizer, (v) is flammable, or (vi) generates pressure
18 through decomposition, heat, or other means, if the substance or
19 mixture of substances may cause substantial personal injury or
20 substantial illness during or as a proximate result of a customary
21 or reasonably foreseeable handling or use, including reasonably
22 foreseeable ingestion by children;

23 (B) A substance which the commissioner by regulation
24 finds, under the provisions of sec. 10(a) meets the requirements
25 of this paragraph;

26 (C) a radioactive substance, if, with respect to the
27 substance as used in a particular class of article or as packaged,
28 the commissioner determines by regulation that the substance is
29 sufficiently hazardous to require labeling in accordance with

1 this chapter in order to protect the public health;

2 (8) "hazardous substance" does not mean economic poisons
3 subject to the federal Insecticide, Fungicide, and Rodenticide Act,
4 nor to foods, drugs, and cosmetics subject to the Alaska Food, Drug
5 and Cosmetic Act, nor to substances intended for use as fuels when
6 stored in containers and used in the heating, cooking or refrigeration
7 system of a house, but does not include any article which is not itself
8 an economic poison within the meaning of the federal Insecticide,
9 Fungicide, and Rodenticide Act but which is a hazardous substance within
10 the meaning of (7) of this section by reason of bearing or containing
11 an economic poison;

12 (9) "hazardous substance" does not mean a source material,
13 special nuclear material, or byproduct material as defined in the
14 Atomic Energy Act of 1954, as amended, and regulations issued under that
15 Act by the Atomic Energy Commission;

16 (10) "highly toxic" means a substance which

17 (A) produces death within 14 days in half or more than
18 half of a group of 10 or more laboratory white rats each weighing
19 between 200 and 300 grams, at a single dose of 50 milligrams or
20 less per kilogram of body weight, when orally administered; or

21 (B) produces death within 14 days in half or more than
22 half of a group of 10 or more laboratory white rats each weighing
23 between 200 and 300 grams, when inhaled continuously for a period
24 of one hour or less at an atmosphere concentration of 200 parts
25 per 1,000,000 by volume or less of gas or vapor or two milligrams
26 per liter by volume or less of mist or dust, provided this concen-
27 tration is likely to be encountered by man when the substance is
28 used in a reasonably foreseeable manner; or

29 (C) produces death within 14 days in half or more than

1 half of a group of 10 or more rabbits tested in a dosage of 200
2 milligrams or less per kilogram of body weight, when administered
3 by continuous contact with the bare skin for 24 hours or less,
4 but if the commissioner finds that available data on human experi-
5 ence with any substance indicate results different from those
6 obtained on animals in the above named dosage or concentrations,
7 the human data shall take precedence;

8 (11) "irritant" means a substance not corrosive within the
9 meaning of (4) of this section which on immediate, prolonged, or re-
10 peated contact with normal living tissue will induce a local inflamma-
11 tory reaction;

12 (12) "label" means a display of written, printed, or graphic
13 matter upon the immediate container of a substance, or in the case of
14 an article which is unpackaged or is not packaged in an immediate
15 container intended or suitable for delivery to the ultimate consumer,
16 a display of this matter directly upon the article involved or upon
17 a tag or other suitable material affixed to the article and a require-
18 ment made under authority of this chapter that a word, statement, or
19 other information appearing on the label may not be considered to be
20 in compliance with this chapter unless the word, statement, or other
21 information also appears (A) on the outside container or wrapper, if
22 any, unless it is easily legible through the outside container or
23 wrapper and (B) on all accompanying literature where there are direc-
24 tions for use, written, or otherwise; immediate container does not
25 include package liners;

26 (13) "misbranded hazardous substance" means a hazardous sub-
27 stance (including a toy or other article intended for use by children,
28 which is a hazardous substance, or which bears or contains a hazardous
29 substance in a manner as to be susceptible of access by a child to

1 whom the toy or other article is entrusted) intended, or packaged in
2 a form suitable, for use in the household or by children, which sub-
3 stance, except as otherwise provided by sec. 10 of this chapter falls
4 to bear a label

5 (A) which states conspicuously

6 (i) the name and place of business of the manu-
7 facturer, packer, distributor, or seller;

8 (ii) the common or usual name or the chemical name
9 (if there be no common or usual name) of the hazardous sub-
10 stance or of each component which contributes substantially
11 to its hazard, unless the commissioner by regulation permits
12 or requires the use of a recognized generic name;

13 (iii) the signal word "DANGER" on substances which
14 are extremely flammable, corrosive, or highly toxic;

15 (iv) the signal word "WARNING" or "CAUTION" on all
16 other hazardous substances;

17 (v) an affirmative statement of the principal
18 hazard or hazards, such as "Flammable", "Vapor Harmful",
19 "Causes Burns", "Absorbed Through Skin", or similar wording
20 descriptive of the hazard;

21 (vi) precautionary measures describing the action
22 to be followed or avoided, except when modified by regulation
23 of the commissioner under sec. 10 of this chapter;

24 (vii) instruction, when necessary or appropriate,
25 for first-aid treatment;

26 (viii) the word "POISON" for any hazardous substance
27 which is defined as "highly toxic" by (10) of this section;

28 (ix) instructions for handling and storage of
29 packages which require special care in handling or storage; and

1 (x) the statement "Keep Out of Reach of Children"
2 or its practical equivalent, or, if the article is intended
3 for use by children and is not a banned hazardous substance,
4 adequate directions for the protection of children from the
5 hazard, and

6 (B) on which any statement required under (A) of this
7 paragraph are located prominently and are in the English language
8 in conspicuous and legible type in contrast by typography, layout,
9 or color with other printed matter on the label;

10 (14) "radioactive substance" means a substance which emits
11 ionizing radiation;

12 (15) "strong sensitizer" means a substance which will cause
13 on normal living tissue, through an allergic or photodynamic process,
14 a hypersensitivity which becomes evident on reapplication of the same
15 substances and which is designated by the commissioner as a strong
16 sensitizer; before designating a substance as a strong sensitizer,
17 the commissioner, upon consideration of the frequency of occurrence
18 and severity of the reaction, shall find that the substance has a sig-
19 nificant potential for causing hypersensitivity;

20 (16) "toxic" means a substance (other than radioactive sub-
21 stance) which has the capacity to produce personal injury or illness to
22 man through ingestion, inhalation, or absorption through any body sur-
23 face.

24 * Sec. 2. No criminal prosecution may take place under this chapter until
25 six months after the effective date of this Act.

26 * Sec. 3. This Act takes effect on the day after its passage and approval
27 or on the day it becomes law without approval.
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