

ACT 216

H.B. NO. 2062-74

A Bill for an Act Relating to Poison Prevention.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER

HAWAII POISON PREVENTION PACKAGING ACT

Sec. -1 Short title. This chapter shall be cited as the “Hawaii Poison Prevention Packaging Act.”

Sec. -2 Purpose. The dangers arising from accidental ingestion of substances produced or distributed for sale for consumption, use, or storage by individuals in or about the household, particularly by young children necessitates legislation designed to help reduce injuries to, and illnesses of young children ingesting such substances. It is the purpose of this chapter to require household substances which are accessible to young children and which may cause injury or illness to be contained in special packaging that is designed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of such substances within a reasonable time, but not difficult for normal adults to use properly.

Sec. -3 Definitions. For the purposes of this chapter:

- (1) “Director” means the director of health.
- (2) “Household substance” means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:
 - (A) A hazardous substance as defined by this section;

- (B) A pesticide as defined by this section;
 - (C) A food, drug, or cosmetic as those terms are defined by section 328-1; or
 - (D) 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.
- (3) "Hazardous substance" means:
- (A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) 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.
 - (B) Any substances which the director by rule finds pursuant to section 4(1), meet the requirements of subparagraph (A) of this paragraph.
 - (C) Any radioactive substances, if, with respect to such substances as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health.
 - (D) The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, but such term shall apply to any 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 subparagraph (A) of this paragraph by reason of bearing or containing such a pesticide.
 - (E) The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.
- (4) "Pesticide" means:
- (A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the board of agriculture or the administrator of the environmental protection agency shall declare to be a pest, and
 - (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

- (5) "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 section -5(a) (2), also means any outer container or wrapping used in the retail display of any such substance to consumers. The term does not include:
- (A) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or
 - (B) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping.
- (6) "Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.
- (7) "Labeling" means all labels and other written, printed, or graphic matter (A) upon any household substance or its package, or (B) accompanying such substance.
- (8) "Federal Act" means the Poison Prevention Packaging Act of 1970 (Public Law 91-601).

Sec. -4 Rules; implementation. The director shall carry out and effectuate the purpose of this chapter by rules adopted under chapter 91 including but not limited to the following:

- (1) The director may establish in accordance with this chapter, by rule, standards for the special packaging of any household substance if he finds that:
 - (A) The degree or nature of the hazard to children in the availability of such substances, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and
 - (B) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.
- (2) In establishing a standard under this section, the director shall consider:
 - (A) The reasonableness of such standard;
 - (B) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;
 - (C) The manufacturing practices of industries affected by this chapter; and
 - (D) The nature and use of the household substance.

- (3) In carrying out this chapter, the director shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.
- (4) Nothing in this chapter shall authorize the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in section 5(a) (2), labeling. In the case of a household substance for which special packaging is required pursuant to a rule under this section, the director may in such rule prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.
- (5) Compliance with federal regulations prescribing standards issued pursuant to the Federal Act shall be deemed in compliance with this chapter.

Sec. -5 Conventional packages, marketing, labeling statements. (a)

For the purposes of making any household substance which is subject to a standard established under section 4 readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in 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 such standard; and
- (2) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by rule prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(b) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(c) In the case of a household substance subject to such a standard which is packaged under subsection (a) in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he may, after giving the manufacturer or packer an opportunity to comply with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter.

Sec. -6 Special packaging standards, establishment. (a) All rules prescribing standards for the special packaging of household substances now or hereafter adopted under authority of the Federal Act shall be the regulatory standards for special packaging of household substances in this State.

(b) Hearings authorized or required by this chapter shall be conducted

by the director or an officer, agent or employee designated by him pursuant to chapter 91.

(c) The authority to adopt rules for the efficient enforcement of this chapter is vested in the director. The director may make such rules conform, insofar as practicable, with those promulgated under the Federal Act.

(d) A federal regulation adopted pursuant to section 6(a) shall take effect in this State on the date it becomes effective as a federal regulation. No publication or hearing shall be required.

(e) No standard shall be effective as to household substances subject to this chapter packaged prior to the effective date of such final rule.

Sec. -7 Penalties. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor.”

SECTION 2. This Act shall take effect upon its approval.

(Approved June 12, 1974.)