Public Law 89-756

AN ACT

To amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This title may be cited as the “Child Protection Act of 1966”.

APPLICATION OF FEDERAL HAZARDOUS SUBSTANCES LABELING ACT TO ARTICLES BEARING OR CONTAINING PESTICIDES, AND TO UNPACKAGED HAZARDOUS SUBSTANCES

Sec. 2. (a) Section 2(f)(2) of the Federal Hazardous Substances Labeling Act (15 U.S.C. 1261(f)(2)), which excludes “economic poisons” subject to the Federal Insecticide, Fungicide, and Rodenticide Act and certain other articles from the term “hazardous substance”; is amended by inserting before the period at the end thereof the following: ‘, 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 1 of this paragraph by reason of bearing or containing such an economic poison’.

(b) So much of section 2(n) of such Act (15 U.S.C. 1261(n)), defining the term “label”, as precedes the semicolon is amended to read as follows:

“(n) the term ‘label’ means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto”.

(c) (1) Paragraph (p) of section 2 of such Act (15 U.S.C. 1261(p)), defining the terms “misbranded package” and “misbranded package of a hazardous substance”, is amended by changing so much of such paragraph as precedes subparagraph (1) thereof to read as follows:

“(p) The term ‘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 such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, which substance, except as otherwise provided by or pursuant to section 3, fails to bear a label—”.

(2) Such paragraph (p) is further amended by striking out, in subparagraph (1), all of clause (J) through the word “and” and inserting in lieu thereof the following: “(J) the statement (i) ‘Keep out of the reach of children’ or its practical equivalent, or, (ii) 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”.

(d) Section 3(b) of such Act (15 U.S.C. 1262(b)), authorizing the Secretary to establish reasonable variations or additional label
requirements necessary for the protection of the public health and safety, is amended by changing so much of such subsection as follows the semicolon to read as follows: “and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.”

(e) Subsection (d) of section 3 of such Act (15 U.S.C. 1262(d)), authorizing the Secretary to except containers of hazardous substances with respect to which adequate requirements satisfying the purposes of such Act have been established by or pursuant to another Act, is amended by inserting “hazardous substance or” before “container of a hazardous substance”.

(f) Section 4 of such Act (15 U.S.C. 1263), setting forth prohibited acts, is amended as follows:

(1) Paragraphs (a), (c), and (g) of such section are each amended by striking out “misbranded package of a hazardous substance” and inserting in lieu thereof “misbranded hazardous substance”;

(2) Paragraphs (b) and (f) of such section are each amended by striking out “being in a misbranded package” and inserting in lieu thereof “being a misbranded hazardous substance”.

(g) Subsection (b) of section 5 of such Act (15 U.S.C. 1264) is amended by striking out “in misbranded packages” in clause (2) thereof and inserting in lieu thereof “a misbranded hazardous substance”.

(h) Section 6(a) of such Act (15 U.S.C. 1265(a)) is amended by striking out “Any hazardous substance that is in a misbranded package” and inserting in lieu thereof “Any misbranded hazardous substance”.

(i) Section 14(a) of such Act (15 U.S.C. 1273(a)) is amended by striking out “in misbranded packages” in the second sentence thereof and inserting in lieu thereof “a misbranded hazardous substance”.

EXCLUSION, FROM INTERSTATE COMMERCE, OF TOYS AND OTHER CHILDREN’S ARTICLES CONTAINING HAZARDOUS SUBSTANCES, AND OF OTHER SUBSTANCES SO DANGEROUS THAT CAUTIONARY LABELING IS NOT ADEQUATE

Sec. 3. (a) Section 2 of such Act (15 U.S.C. 1261) is further amended by adding at the end thereof the following new paragraph:

“(q) (1) The term ‘banned hazardous substance’ means (A) any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Secretary by regulation classifies as a ‘banned hazardous substance’ on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this Act for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce: Provided, That the Secretary, by regulation, (i) shall exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and
warnings, and (ii) shall exempt from clause (A), and provide for
the labeling of, common fireworks (including toy paper caps, cone
fountains, cylinder fountains, whistles without report, and sparklers)
to the extent that he determines that such articles can be adequately
labeled to protect the purchasers and users thereof.

“(2) Proceedings for the issuance, amendment, or repeal of regu-
lations pursuant to clause (B) of subparagraph (1) of this paragraph
shall be governed by the provisions of sections 701 (e), (f), and (g)
of the Federal Food, Drug, and Cosmetic Act: Provided, That if the Sec-
retary finds that the distribution for household use of the hazardous
substance involved presents an imminent hazard to the public health,
he may by order published in the Federal Register give notice of such
finding, and thereupon such substance when intended or offered for
household use, or when so packaged as to be suitable for such use,
shall be deemed to be a ‘banned hazardous substance’ pending the
completion of proceedings relating to the issuance of such regulations.”

(b) Subsections (a), (b), (c), and (g) of section 4 of such Act,
as amended by section 2 of this Act, are each further amended by
inserting “or banned hazardous substance” after “misbranded haz-
ardous substance”.

(c) Clause (2) of section 5(b) of such Act, as amended by section
2 of this Act, is further amended by striking out “within the mean-
ing of that term” in such clause and inserting in lieu thereof “or a
banned hazardous substance within the meaning of those terms”.

(d) Section 6(a) of such Act, as amended by section 2 of this Act,
is further amended by inserting “or banned hazardous substance”
after “Any misbranded hazardous substance”.

(e) Section 14(a) of such Act, as amended by section 2 of this
Act, is further amended by inserting “or banned hazardous substance”
after “misbranded hazardous substance” in the second sentence thereof.

EFFECT UPON STATE LAW

Sec. 4. (a) Section 17 of such Act (15 U.S.C. 1261, note) is amended
by inserting “(a)” immediately after the section designation and
adding at the end thereof the following new subsection:

“(b) It is hereby expressly declared that it is the intent of the
Congress to supersede any and all laws of the States and political
subdivisions thereof insofar as they may now or hereafter provide
for the precautionary labeling of any substance or article intended
or suitable for household use (except for those substances defined in
sections 2(f) (2) and (3) of this Act) which differs from the require-
ments or exemptions of this Act or the regulations or interpretations
promulgated pursuant thereto. Any law, regulation, or ordinance
purporting to establish such a labeling requirement shall be null and
void.”

(b) The title of such section is amended to read as follows:

“EFFECT UPON FEDERAL AND STATE LAW”.

CHANGE IN SHORT TITLE OF ACT

Sec. 5. Section 1 of the Federal Hazardous Substances Labeling Act
is amended by striking out “Labeling”.

Approved November 3, 1966.