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ADMINISTERING SAFE TOYS ACT 2630.0100

CHAPTER 2630

DEPARTMENT OF COMMERCE ADMINISTERING SAFE TOYS ACT

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2630.0100 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 2630.0100 to 2630.3300, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Safe Toys Act, Minnesota Statutes, sections 325F.08 to 325F.17.

Subp. 3. **Asphyxiation or suffocation.** "Asphyxiation or suffocation" means a toy presents a hazard of asphyxiation or suffocation if, in normal use and reasonably foreseeable damage or abuse, its design, manufacture, or storage presents a risk of personal injury or illness from interference with normal breathing.

Subp. 4. **Child.** "Child" means any person or persons less than 14 years of age.

Subp. 5. **Dealer.** "Dealer" means any person that sells or distributes any toy to the general public.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 7. **Distributor.** "Distributor" means any person that sells or distributes any toy at wholesale.

Subp. 8. **Electrical hazard.** "Electrical hazard" means a toy presents 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 shock or electrocution.

Subp. 9. **Flammable.** "Flammable" means having a flash point up to 80 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester. The flammability of solids and of the contents of self-pressurized containers shall be determined by methods generally recognized as applicable to the materials or containers and established by this chapter.

Subp. 10. **Importer.** "Importer" means any person that imports toys into the state for sale or distribution within the state.

Subp. 11. **Manufacturer.** "Manufacturer" means any person that manufactures any toy for sale or distribution.

Subp. 12. **Mechanical hazard.** "Mechanical hazard" means a toy presents 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:

A. from fracture, fragmentation, or disassembly of the toy;

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- B. from propulsion of the toy or any part or accessory thereof;
- C. from points or other protrusion, surfaces, edges, openings, or closures;
- D. from moving parts;
- E. from lack or insufficiency of controls to reduce or stop motion;
- F. as a result of self-adhering characteristics of the toy;
- G. because the toy or any part or accessory thereof may be aspirated or ingested;
- H. because of instability;
- I. from stuffing material which is not free of dangerous or harmful substances; or
- J. because of any other aspect of the toy's design or manufacture.

Subp. 13. **Mouth toy.** "Mouth toy" means any toy intended to be placed in or in contact with a child's mouth.

Subp. 14. **Person.** "Person" means any individual, partnership, corporation, or association.

Subp. 15. **Retail purchase price.** "Retail purchase price" means the amount of money paid to acquire a toy offered for sale at retail, excluding transportation and shipping charges, interest, finance or service charges, and Minnesota sales and use taxes.

Subp. 16. **Thermal hazard.** "Thermal hazard" means that a toy presents a thermal hazard if, in normal use and reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat or from heated parts, substances, or surfaces.

Subp. 17. **Toxic.** "Toxic" means able to produce personal injury or illness to a person through ingestion, inhalation, or absorption through any body surface, and can apply to any substance other than a radioactive substance.

Subp. 18. **Toy.** "Toy" means any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children.

Statutory Authority: *MS s 325F.11*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2630.0200 SCOPE AND PURPOSE.

Parts 2630.0100 to 2630.3300 are adopted pursuant to the Safe Toys Act, Minnesota Statutes, sections 325F.08 to 325F.17, and are promulgated to assist consumers and businessmen in the interpretation of the statute.

Statutory Authority: *MS s 325F.11*

2630.0300 ADOPTION OF FEDERAL HAZARDOUS SUBSTANCES ACT BY REFERENCE.

The following regulations promulgated pursuant to the Federal Hazardous Substances Act, and published as Code of Federal Regulations, title 16, chapter II, subchapter C; parts 1500 and 1505 (formerly title 21, part 191), and in the Federal Register, volume 38, number 187 on Thursday, September 27, 1973, and in effect on October 30, 1973, are incorporated herein by reference and hereby made a part of this part:

A. part 1500.18 (formerly part 191.9a): banned toys and other banned articles intended for use by children;

B. part 1500.47 (formerly part 191.17): method for determining the sound pressure level produced by toy caps;

C. part 1500.86 (formerly part 191.65a): exemptions from classification as a banned toy or other banned article for use by children; and

D. part 1505 (formerly part 191b): requirements for electrical-

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ly-operated toys or other electrically-operated articles intended for use by children.

Statutory Authority: *MS s 325F.11*

2630.0400 BANNED TOYS LIST.

The director may, from time to time, publish a list of those toys that fail to meet the standards required by the act and the rules adopted pursuant thereto. Such a list shall be for general informational purposes only and shall not constitute an exclusive listing of all toys distributed which are in violation of the act.

Statutory Authority: *MS s 325F.11*

2630.0500 BANNING AND SEIZURE OF HAZARDOUS TOYS.

Subpart 1. Order banning hazardous toys. If the director determines that a specific toy is subject to a part and fails to meet any standards incorporated therein, he may issue and cause to be served upon the manufacturer and importer a temporary order banning the manufacture, importation, distribution, sale, or offering for sale of such toys. The order shall be served by registered or certified mail and shall be calculated to give reasonable notice of the time and place for a hearing thereon, and shall state the reasons for the entry of the temporary order. The hearing shall be held no later than ten days after the temporary order has been served upon all parties, after which and within ten days of the date of the hearing the director shall issue a further order either vacating, modifying, or continuing the order. The order may be modified to include:

A. directing the manufacturer or importer to repurchase the banned toys in accordance with parts 2630.1100 to 2630.1900;

B. directing the manufacturer or importer to bring such toys into conformity with this chapter and federal regulations, and standards incorporated therein; and

C. directing such other action as the director deems necessary to ensure compliance with this chapter and federal regulations.

Subp. 2. Immediate danger. If the director determines that an immediate danger exists to the public health and safety, which is caused by a toy that presents an electrical, mechanical, or thermal hazard or a toy that presents a hazard due to toxic or flammable properties or properties able to produce asphyxiation or suffocation, he may issue and cause to be served upon the manufacturer, importer, or dealer a temporary order banning the manufacture, importation, sale, or distribution of such toy. The order shall be served by registered or certified mail and shall be calculated to give reasonable notice of the time and place for a hearing thereon and shall state the reasons for the entry of the temporary order. The hearing shall be held no later than ten days after the issuance of the temporary order, after which and within ten days of the date of the hearing the director shall issue a further order either vacating, modifying, or continuing the order.

Subp. 3. Warrant to seize toys. The director shall apply to the district court to seize toys presenting hazards to the public when no other method to control the hazard exists.

Statutory Authority: *MS s 325F.11*

TESTING

2630.0800 TESTING OF TOYS.

Testing of toys:

A. Each manufacturer of toys shall test all his toys that are subject to this chapter and which are currently being manufactured for sale or distribution within the state. The tests shall be conducted to ensure compliance with this chapter. Each manufacturer shall provide the results of these tests to any person who imports his toy into this state.

B. Each manufacturer of toys shall test all his toys that are subject to this chapter prior to introduction for sale or distribution in the state. The tests shall be conducted to ensure compliance with this chapter. Each manufacturer shall provide the results of these tests to any person who imports his toy into the state.

C. A copy of all test results for each toy introduced for sale or distribution in the state shall be kept by each manufacturer and importer who manufactures or imports that toy. Such test results shall be presented to the director upon 72 hours notice from the director or his employee.

D. Pursuant to an order issued to a manufacturer or importer the director may require that all test results be filed with his office prior to the introduction of any new toys into the state for distribution or sale by that manufacturer or importer.

E. When a manufacturer or importer fails to comply with items A to D, the director may issue and serve upon that manufacturer or importer an order banning the sale, offering for sale, importation, distribution, or manufacture of any toy for which test results are not available. The order shall be served by mail and shall be calculated to give reasonable notice of the time and place for a hearing thereon and shall state the reasons for the entry of the order.

F. The provisions of this part shall be applied to all toys sold in Minnesota 120 days after the effective date of the part.

Statutory Authority: *MS s 325F.11*

REPURCHASE AND REIMBURSEMENT PROCEDURES

2630.1100 RETROACTIVE SCOPE.

The procedures prescribed in this chapter shall apply to any toy banned pursuant to the act, regardless of whether such toy was banned at the time of its sale.

Statutory Authority: *MS s 325F.11*

2630.1200 RETURN TO DEALER.

Return to dealer:

A. In the case of a person who returns a banned toy that was sold at retail by a dealer, if the person who purchased it from the dealer returns it to him and provides proof of retail purchase price, that dealer shall refund the retail purchase price and shall reimburse the buyer for any reasonable and necessary transportation charges incurred in its return.

B. In the case of a person who returns a banned toy that was sold at retail by a dealer, if the person who purchased it from the dealer returns it to him and does not provide proof of retail purchase price, the dealer shall refund the person the average retail purchase price charged for such toy during the 12-month period preceding the posting of public notice as required in this chapter. If the dealer is unable to establish the average retail purchase price charged for such a toy, he shall refund the price he last paid for the toy.

C. Any dealer who makes reimbursement pursuant to item B shall, upon request from the director or his employee, furnish the director with any information and records used to determine the average retail price described in item B. Such information and records shall be available for a period of 12 months.

D. Refunds of sales and use taxes shall be governed by Minnesota Statutes and the rules of the Minnesota Department of Revenue relating to the sales and use tax.

Statutory Authority: *MS s 325F.11*

2630.1300 DISTRIBUTORS.

A distributor who has sold a banned toy shall repurchase it from the person to whom he sold it and shall refund that person the price paid the distributor for that toy.

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If the distributor is repurchasing the banned toy from a dealer who has reimbursed the purchaser for reasonable and necessary transportation charges pursuant to the requirements of part 2630.1200, the distributor shall reimburse that dealer for such charges.

If the distributor requires the return of the toy in connection with the purchase of it in accordance with this paragraph, the distributor shall reimburse any persons for any reasonable and necessary expenses incurred in returning the toy to the distributor.

Statutory Authority: *MS s 325F.11*

2630.1400 MANUFACTURER OR IMPORTER.

Subpart 1. Repurchase. A manufacturer or importer who has sold a banned toy shall repurchase it from the person to whom he sold it and shall refund that person the price paid the manufacturer for that toy.

The manufacturer or importer shall reimburse a person to whom he sold a banned toy for any reasonable and necessary transportation charges and expenses paid by said persons pursuant to the requirements of parts 2630.1200 and 2630.1300.

If the manufacturer or importer requires the return of the toy in connection with his repurchase of it in accordance with this part, he shall reimburse any persons to whom he sold it for any reasonable and necessary expenses incurred in returning the toy to the manufacturer or importer.

Subp. 2. Notice. The manufacturer or importer of a toy subject to repurchase shall immediately notify, in a manner prescribed by the director, each distributor and other person to whom he sold the toy that the toy is a banned toy and is subject to repurchase under the act. Such notice shall identify the toy involved, including model number or other distinguishing characteristics, set forth the nature of hazards associated with the use of the product, provide instructions for return or other disposition of the toy, and advise that any distributor or dealer who receives the notice is required to provide further notice as specified in parts 2630.1500 to 2630.1900. A distributor, upon receiving such notice, shall, in the same manner, immediately notify, in a manner prescribed by the director, each distributor, dealer, and other person to whom he sold such a toy.

Statutory Authority: *MS s 325F.11*

2630.1500 BANNED TOY LIST.

Banned toy list:

A. A dealer who sells or has sold a banned toy at a retail establishment shall, upon notification that such a product is a banned toy, immediately prepare and prominently display a list containing identification of the banned product including the model number or other distinguishing characteristics, the name and address of the manufacturer and the nature of the hazards associated with the use of the product, along with the procedure by which a refund, repair, or replacement may be obtained by the retail purchaser. Each such banned toy shall be maintained on the list for a period of not less than 120 days from the date the dealer received such notification.

B. The director may, at any time, require the manufacturer or importer to notify distributors and dealers that a product shall be maintained on said list for a longer period. In this case, the distributor shall so notify persons to whom he sold the banned toy and dealers shall so maintain said list.

C. The list required by item A shall be considered prominently displayed if it is available for inspection at a convenient location in the retail establishment, to which the public has access without having to obtain the permission or assistance of a store employee, and if a sign posted in accordance with the provisions of part 2630.1600 clearly indicates the location of the list.

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D. A dealer who displays a list of banned toys pursuant to the Federal Hazardous Substances Act or the Consumer Product Safety Act, which list includes each article and all information required to be displayed pursuant to the Safe Toys Act, shall have complied with this part.

Statutory Authority: *MS s 325F.11*

2630.1600 RETAIL DEALERS DISPLAYING NOTICE OF REFUND.

A dealer who sells or has sold a banned toy at a retail establishment, upon receiving notification that such product is a banned toy, shall immediately prepare and prominently display a "NOTICE OF REFUND PROCEDURES FOR BANNED TOYS OR ARTICLES FOR CHILDREN" as follows. This notice shall be posted on each floor of each such establishment where items similar to the banned toy are displayed or sold. Each such notice, which shall be not less than 22 by 28 inches in size, shall be printed in a color contrasting with the background and shall be so displayed for a period of not less than 120 days from the date the dealer received the latest such notification, or a longer period if so ordered by the director.

NOTICE OF REFUND PROCEDURES FOR BANNED TOYS OR ARTICLES FOR CHILDREN.

IN ACCORDANCE WITH THE MINNESOTA SAFE TOYS ACT, THIS STORE HAS AVAILABLE A LIST OF TOYS AND OTHER CHILDREN'S ARTICLES THAT HAVE BEEN SOLD IN THIS STORE AND THAT HAVE RECENTLY BEEN BANNED BY THE MINNESOTA OFFICES OF CONSUMER SERVICES.

THESE ARTICLES ARE HAZARDOUS AND SHOULD NOT BE USED. THIS LIST IS AVAILABLE FOR INSPECTION AT: (describe location where available).

THE LIST CONTAINS IDENTIFICATION OF THE BANNED ARTICLE, THE NATURE OF THE HAZARD ASSOCIATED WITH THE ARTICLE, AND HOW A REFUND, REPAIR OR REPLACEMENT MAY BE OBTAINED.

Statutory Authority: *MS s 325F.11*

2630.1700 NONRETAIL DEALERS DISPLAYING NOTICE OF REFUND.

A dealer who sells or has sold a banned toy in other than a retail establishment, shall, upon notification that the product is a banned toy, publicize a clear and conspicuous "NOTICE OF BANNED TOY OR CHILDREN'S ARTICLE" as follows, in a manner reasonably calculated to reach as many purchasers of the banned product as possible.

NOTICE OF BANNED TOY OR CHILDREN'S ARTICLE

(Insert identification of banned product, including model number or other distinguishing characteristics and name and address of manufacturers).

THE MINNESOTA DEPARTMENT OF COMMERCE HAS BANNED THIS PRODUCT AS HAZARDOUS BECAUSE (insert nature of the hazards associated with the use of the product).

THIS PRODUCT SHOULD NOT BE USED. IF YOU HAVE PROOF OF HOW MUCH YOU PAID FOR THE TOY, RETURN THE BANNED PRODUCT TO THE RETAILER WHO SOLD IT TO YOU AND RECEIVE A FULL REFUND OF THE RETAIL PURCHASE PRICE, REPAIR OR REPLACEMENT, AND ANY REASONABLE AND NECESSARY COSTS INCURRED IN RETURNING THE PRODUCT.

IF YOU DO NOT HAVE PROOF OF HOW MUCH YOU PAID FOR THE TOY, YOU MAY RETURN THE TOY TO THE RETAILER WHO SOLD IT TO YOU AND RECEIVE A PARTIAL REFUND, REPAIR OR REPLACEMENT, AND ANY REASONABLE AND NECESSARY COSTS INCURRED IN RETURNING THE ARTICLE.

Statutory Authority: *MS s 325F.11*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2630.1800 ALTERNATIVE DISPLAY COMPLIANCE.

Subpart 1. Retail dealers. Any notice posted by a dealer in compliance with the Federal Hazardous Substances Act or the Consumer Product Safety Act, which includes the same information required by the notice in part 2630.1600 shall meet the requirements of part 2630.1600.

Subp. 2. Nonretailed dealers. Any notice published by a dealer in compliance with the Federal Hazardous Substances Act or the Consumer Product Safety Act, which includes the same information required by the notice in part 2630.1700 shall meet the requirements of part 2630.1700.

Statutory Authority: *MS s 325F.11*

2630.1900 SCOPE OF NOTICE PROVISION.

The notice provisions of parts 2630.1600 and 2630.1700 are not mutually exclusive.

Statutory Authority: *MS s 325F.11*

2630.2000 MANUFACTURERS INITIATIVE.

Where a manufacturer or importer discovers that a toy he is selling or has sold is in violation of this chapter, the manufacturer or importer shall initiate the same listing, notification, and repurchase procedures as set out in parts 2630.1100 to 2630.1900 and shall notify the director of his action within 72 hours of discovering the violation.

Statutory Authority: *MS s 325F.11*

GLASS, CHESTS, AND VACUUM BOTTLES

2630.3100 TOYS CONTAINING GLASS.

Subpart 1. Particles and edges. No person, firm, corporation, association or agent or employee thereof shall import, manufacture, sell, hold for sale, or distribute a toy or other article intended for use by children that contains glass, unless the glass is protected in such a way that no glass particle or edges will be accessible when a toy is subjected to normal use or reasonably foreseeable damage or abuse.

Subp. 2. Exemption. The provisions of subpart 1 shall not apply to nontoy glass articles used during the consumption of food or beverages, glass containers for prescriptions, health and beauty aid products, chemistry sets and other science education sets intended primarily for use by children, children's prescription eyewear, children's vacuum bottles, or light bulbs and similar illuminating devices that are components of toys.

Statutory Authority: *MS s 325F.11*

2630.3200 TOY CHESTS AND SIMILAR ARTICLES.

Subpart 1. Compliance. No person, firm, corporation, association or agent or employee thereof shall import, manufacture, sell, hold for sale, or distribute any toy chest or similar article intended for use by children that does not comply with the provisions of subparts 2 and 3.

Subp. 2. Instructions included with nonassembled toy chests. Toy chests and similar articles intended for use by children, unless they are sold completely assembled to the consumer, shall be accompanied by detailed instructions that include an assembly drawing, a list and description of all parts and tools required for assembly, and a full-size diagram of the required bolts and other fasteners.

The instructions shall be written so that unskilled laymen following the instructions can correctly assembly the article without making errors that would

result in improper or unsafe assembly. The instructions shall include cautionary statements concerning tightening of bolts and other fasteners.

Subp. 3. Requirements for design and construction. Requirements for design and construction:

A. The article shall have no components that have the potential for causing injury by shearing, scissoring, or pinching actions; have the potential for causing laceration or puncture-wound injury; have sharp or rough edges; or are threaded hardware that protrudes more than one diameter beyond the internally threaded fastener or structural member.

B. All wood parts and surfaces shall be smooth and free from splinters, splits, cracks, and similar defects.

C. No attachments, including, but not limited to, built-in toys, decorations, and design components, and no part thereof that will become accessible when subjected to normal use or reasonably foreseeable damage or abuse, shall have laceration or puncture injury potential.

D. If the article or a component thereof has a continuous enclosed volume greater than 1.1 cubic feet and a smaller internal dimension of six inches or more, it must comply with the following:

(1) the article or component shall have no positive latching device;

(2) any vertically opening door or lid that is self-closing due to the article's design and that weighs more than three pounds shall be counter-balanced and require a force of less than 1-1/2 pounds for opening, as measured at the point or edge opposite the hinges;

(3) the article shall be ventilated through at least two openings which together total at least two square inches in area. Each such opening shall be located either in the top surface and in the upper one-quarter of at least one vertical surface, or in the upper one-quarter of at least two vertical surfaces of the enclosure. The openings shall be at least ten inches apart at their edges as measured across the surfaces. The article shall contain structural features that permit the passage of air when the ventilated surface is contiguous with a solid flat surface, such as a wall.

Statutory Authority: *MS s 325F.11*

2630.3300 CHILDREN'S VACUUM BOTTLES.

Subpart 1. Test. No person, firm, corporation, association, or agent thereof shall import, manufacture, sell, hold for sale, or distribute any vacuum bottle with a capacity of 16 ounces or less that is intended for use by children, unless it is designed and constructed to pass the tests described in subparts 2 and 3.

Subp. 2. Impact medium. The impact medium shall consist of a 0.125 inch nominal thickness of type IV vinyl-asbestos tile, as specified in Federal Specification SST-312A, over at least a 2.5 inch thickness of concrete. The impact area shall be at least three square feet.

Subp. 3. Test procedure. The test shall consist of dropping a fully assembled vacuum bottle, filled to the neck with water at 36 degrees to 40 degrees Fahrenheit, a minimum of four times from a height of three feet. The vacuum bottle shall be dropped in random orientation. After each drop, the test sample shall be allowed to come to rest and examined and evaluated before continuing. If the glass filler breaks on any of the first three drops, the test can be terminated on the particular drop on which the filler breaks. Accessibility of glass in the liquid shall be determined by opening the cap and emptying the contents.

Statutory Authority: *MS s 325F.11*