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CHAPTER 39.

 HAZARDOUS SUBSTANCES ACT

**SECTION 23‑39‑10.** Short title.

 This chapter may be cited as the South Carolina Hazardous Substances Act.

HISTORY: 1962 Code Section 32‑1811; 1971 (57) 250.

**SECTION 23‑39‑20.** Definitions.

 For the purpose of this chapter ‑

 (a) The term "agency" means the South Carolina Department of Agriculture.

 (b) The term "Commissioner" means the Commissioner of Agriculture of South Carolina, or his legally authorized representative or agent.

 (c) The term "person" includes an individual, partnership, corporation, or association, or his legal representative or agent.

 (d) The term "commerce" means any and all commerce within the State of South Carolina and subject to the jurisdiction thereof; and includes the operation of any business or service establishment.

 (e) The term "hazardous substance" means:

 1. (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 (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 Commissioner by regulation finds, pursuant to the provisions of Section 23‑39‑30(a), meet the requirements of subparagraph 1(a) of this paragraph.

 (c) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Commissioner determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect public health.

 2. The term "hazardous substance" shall not apply to economic poisons or pesticides subject to the Federal EPC Act of 1970 or the South Carolina Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs, and cosmetics subject to the South Carolina 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 or pesticide within the meaning of the Federal EPC Act of 1970, 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. Any pesticide or economic poison not registered in compliance with the Federal Environmental Pesticide Control Act of 1970 or the South Carolina Insecticide, Fungicide, and Rodenticide Act shall be deemed a "hazardous substance" within the meaning of this chapter.

 3. 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.

 (f) The term "toxic" shall apply 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.

 (g)(1) The term "highly toxic" means any substance which falls within any of the following categories: (a) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmosphere concentration of two hundred parts per million by volume or less of gas or vapor or two 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 (c) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty‑four hours or less.

 (2) If the Commissioner 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.

 (h) The term "corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

 (i) The term "irritant" means any substance not corrosive within the meaning of subparagraph (h) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

 (j) The term "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 administrator. Before designating any substance as a strong sensitizer, the administrator, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

 (k) The term "extremely flammable" shall apply to any substance which has a flash point at or below twenty degrees Fahrenheit as determined by the Tagliabue Open Cup Tester, and the term "flammable" shall apply to any substance which has a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; except that the flammability of solids and of the contents of self‑pressurized containers shall be determined by methods found by the Commissioner to be generally applicable to such materials or containers, respectively, and established by regulations issued by him, which regulations shall also define the terms "flammable" and "extremely flammable" in accord with such methods.

 (l) The term "radioactive substance" means a substance which emits ionizing radiation.

 (m) 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, and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (2) on all accompanying literature where there are directions for use, written, or otherwise.

 (n) The term "immediate container" does not include package liners.

 (o) 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 23‑39‑30, fails to bear a label (1) which states conspicuously (a) the name and place of business of the manufacturer, packer, distributor, or seller; (b) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Commissioner by regulation permits or requires the use of a recognized generic name; (c) the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic; (d) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (e) an affirmative statement of the principal hazard or hazards, such as "Flammable," "Vapor Harmful," "Causes Burns," "Absorbed Through Skin," or similar wording descriptive of the hazard; (f) precautionary measures describing the action to be followed or avoided, except when modified by regulation of the administrator pursuant to Section 23‑39‑30; (g) instruction, when necessary or appropriate, for first‑aid treatment; (h) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (g); (i) instructions for handling and storage of packages which require special care in handling or storage and; (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 (2) on which any statement required under subparagraph (1) of this paragraph 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.

 (p)(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 household, which the administrator 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 chapter 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 commerce: Provided, that the Commissioner, 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 regulations pursuant to clause (b) of subparagraph (1) of this paragraph shall be governed by the provisions of Section 23‑39‑30.

HISTORY: 1962 Code Section 32‑1812; 1971 (57) 250.

**SECTION 23‑39‑30.** Promulgation of regulations declaring substances hazardous and establishing variations and exemptions.

 (a) Whenever in the judgment of the Commissioner such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to application, the Commissioner may by regulation declare to be a hazardous substance, for the purposes of this chapter, any substance or mixture of substances which he finds meets the requirements of subparagraph 1(a) of Section 23‑39‑20(e).

 (b) If the Commissioner finds that the requirements of Section 23‑39‑20(o)(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, he may by regulation establish such reasonable variations or additional label requirements as he finds necessary for the protection of the public health and safety; 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.

 (c) If the Commissioner 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 chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the Commissioner shall promulgate regulations exempting such substances from these requirements to the extent he determines to be consistent with adequate protection of the public health and safety.

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

HISTORY: 1962 Code Section 32‑1813; 1971 (57) 250.

**SECTION 23‑39‑40.** Prohibited acts.

 The following acts and the causing thereof are hereby prohibited:

 (a) The introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned 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 in commerce, or while the substance is held for sale (whether or not the first sale) after shipment in commerce, and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance.

 (c) The receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

 (d) The giving of a guarantee or undertaking referred to in Section 23‑39‑50(b)(2) which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

 (e) The failure to permit entry or inspection as authorized by Section 23‑39‑100(a) or to permit access to and copying of any record as authorized by Section 23‑39‑110.

 (f) The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse 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 a misbranded hazardous substance. As used in this paragraph, the terms "food," "drug," and "cosmetic" shall have the same meanings as in the South Carolina Food, Drug, and Cosmetic Act.

 (g) The use by any person to his own advantage, or revealing other than to the Commissioner or officers or employees of the agency, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under authority of Section 23‑39‑100 concerning any method of process which as a trade secret is entitled to protection.

HISTORY: 1962 Code Section 32‑1814; 1971 (57) 250.

**SECTION 23‑39‑50.** Penalties for violation of Section 23‑39‑40; exceptions.

 (a) Any person who violates any of the provisions of Section 23‑39‑40 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $500 or to imprisonment for not more than ninety days, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than one year, or a fine of not more than $3,000, or both such imprisonment and fine.

 (b) No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated Section 23‑39‑40(c), if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Commissioner, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated Section 23‑39‑40(a), if he establishes a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not (in misbranded packages) a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in the chapter.

HISTORY: 1962 Code Section 32‑1815; 1971 (57) 250.

**SECTION 23‑39‑60.** Injunction proceedings.

 In addition to the remedies hereinafter provided, the Commissioner is hereby authorized to apply to the appropriate circuit court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of Section 23‑39‑40; irrespective of whether or not there exists an adequate remedy at law.

HISTORY: 1962 Code Section 32‑1816; 1971 (57) 250.

**SECTION 23‑39‑70.** Procedure for embargo and condemnation of misbranded or banned hazardous substances.

 (a) Whenever a duly authorized agent of the Commissioner finds or has probable cause to believe that any hazardous household substance is misbranded, or is a banned hazardous substance, within the meaning of this chapter, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, misbranded or is a banned hazardous substance and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

 (b) When an article detained or embargoed under subsection (a) has been found by such agent to be misbranded or a banned hazardous substance, he shall petition the circuit court in whose jurisdiction the article is detained or embargoed for a libel of condemnation of such article. When such agent has found that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

 (c) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled, has been executed, may by order direct that such article be delivered to claimant thereof for such labeling under the supervision of an agent of the Commissioner. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the Commissioner that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.

HISTORY: 1962 Code Section 32‑1817; 1971 (57) 250.

**SECTION 23‑39‑80.** Duty of solicitor upon receiving report of violation; notice and hearing before reporting violation.

 It shall be the duty of each State solicitor to whom the Commissioner reports any violation of this chapter, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this chapter is reported to any such solicitor for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner or his designated agent, either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding.

HISTORY: 1962 Code Section 32‑1818; 1971 (57) 250.

**SECTION 23‑39‑90.** Promulgation of regulations.

 (a) The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the Commissioner.

 (b) The Commissioner shall cause the regulations promulgated under this chapter to conform with the regulations established pursuant to the Federal Hazardous Substance Act.

HISTORY: 1962 Code Section 32‑1819; 1971 (57) 250.

**SECTION 23‑39‑100.** Examinations and investigations.

 (a) For the purposes of enforcement of this chapter, officers or employees duly designated by the Commissioner upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in commerce; (2) to inspect, at reasonable times, and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling.

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

HISTORY: 1962 Code Section 32‑1820; 1971 (57) 250.

**SECTION 23‑39‑110.** Access to records of shipment.

 For the purpose of enforcing the provisions of this chapter, carriers engaged in commerce, and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the Commissioner permit such officer or employee at reasonable times, to have access to and to copy all records showing the movement in commerce of any such hazardous substances, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind or such hazardous substance to which such request relates. Provided, that evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained. Provided further, that carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

HISTORY: 1962 Code Section 32‑1821; 1971 (57) 250.

**SECTION 23‑39‑120.** Reports of action taken under chapter.

 (a) The Commissioner may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

 (b) The Commissioner may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the Commissioner imminent danger to health. Nothing in this section shall be construed to prohibit the Commissioner from collecting, reporting, and illustrating the results of the investigations of the agency.

HISTORY: 1962 Code Section 32‑1822; 1971 (57) 250.