



SPONSOR: Rep. Schooley & Sen. Blevins & Sen. Sorenson  
Reps. Ewing, Gilligan, Hall-Long, Johnson, Keeley,  
Kowalko, Longhurst, Maier, Manolakos, M Marshall,  
McWilliams, Mitchell, Mulrooney, Schwartzkopf, B.  
Short, D. Short, Spence, Valihura, Walls; Sens. Cloutier,  
Ennis, Henry, Sokola

HOUSE OF REPRESENTATIVES  
144th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL NO. 362

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO COMMERCE AND TRADE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1: Amend Title 6 of the Delaware Code by adding thereto a new chapter as follows:

“CHAPTER 25C. TOY SAFETY

This Chapter may be cited as the ‘Children’s Toy Safety Act’.

§ 2501C. Definitions.

As used in this Chapter, unless the context otherwise requires:

(1) ‘Child’ shall be defined as an individual less than 12 years of age.

(2) ‘Consumer’ shall have the meaning as set forth in the Consumer Product Safety Act, 15 U.S.C.

§§ 2051 - 2085.

(3) ‘Person’ means an individual, partnership, corporation, association, governmental entity,  
business entity, or other legal entity.

(4) ‘Toxic substance’ means a substance that contains lead or a coating on an item that contains lead  
in excess of the limit set by 16 CFR 1303 (i.e., 0.06 percent by weight of the total nonvolatile content of  
the paint or the weight of the dried paint film); or a substance that has been deemed toxic or harmful to  
the health of children by the U.S. Consumer Product Safety Commission (CPSC). Toxic substance does  
not include glass or crystal decorative inaccessible components.

(5) ‘Toy’ means an article designed and intended for the child’s use in play.

§ 2502C. Prohibited Conduct.

(1) A person shall not knowingly sell, offer for sale, or transfer a toy in the State of Delaware that  
contains a toxic substance or that is otherwise unsafe to a child.

(2) A person shall not knowingly fail to remove for sale or transfer any toy that has been identified as containing lead and/or unsafe by the CPSC or has been the subject of a corrective action plan, which must be promptly implemented, or a recall, as described further at § 2503C(2).

(3) This section does not apply to the sale of an antique or collectible toy that is not marketed to or intended to be used by a child.

§ 2503C. Criteria.

A toy will be deemed unsafe if it meets one or more of the following criteria:

(1) The toy does not conform to federal laws and regulations setting forth standards for the toy;

(2) The toy has been recalled by a state or federal agency, the toy's manufacturer, distributor, or importer, or the toy has been listed by the CPSC as a recalled product which has not been corrected, and the recall has not been rescinded; or

(3) A state or federal agency has issued an imminent hazard warning that a toy's intended use constitutes a safety hazard and such warning has not been rescinded.

§ 2504C. Penalties.

(1) Except as otherwise provided in § 2502C, a person who violates this Chapter is subject to the following:

(A) If the person is not an individual consumer, a civil fine of not more than \$100.00 per incident not to exceed \$5,000.00 total.

(B) If the person is not an individual consumer and the violation is the person's second offense under this Chapter, a civil fine of not more than \$500.00 per incident not to exceed \$25,000.00 total.

(C) If the person is not an individual consumer and the violation is the person's third or subsequent offense under this Chapter, a civil fine of not more than \$1,000.00 per incident not to exceed \$50,000.00 total.

(D) If a person knowingly violates this Chapter after receipt of a notice of violation and the person is not an individual consumer, a civil fine equal to three (3) times the amount in the preceding subsection (C).

(2) A civil fine imposed under this section shall be waived if it is determined that a person acted in good faith to be in compliance with this Chapter, pursued compliance with due diligence, and promptly

corrected any noncompliance after discovery of the violation.

§ 2505C. The Department of Health and Social Services.

(1) The Delaware Department of Health and Social Services (“DHSS”) shall provide and maintain a list of all unsafe toys and toys containing a toxic substance or a link to the [www.Recalls.gov](http://www.Recalls.gov) website.

This list shall be updated no later than 72 hours after a new unsafe toy or toy containing a toxic substance has been subject to recall. This list shall also be linked through the DHSS website and a physical copy shall be made available to the public in designated locations throughout the State of Delaware.”

#### SYNOPSIS

This Act, which shall hereafter be referred to as the “Children’s Toy Safety Act”, prohibits the sale or distribution of toys that are harmful to and threaten the health of our children in the State of Delaware.