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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 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 where the lead content is more than 0.04% of the total weight; 1,4-Butanediol; or a substance that  
has been deemed toxic or harmful to the health of children by the Consumer Product Safety Commission,  
or another state or federal agency. Toxic substance does not include glass or crystal decorative  
components.

(5) ‘Toy’ means an article designed and made for the amusement of a child or for the child’s use in  
play.

§ 2502C. Prohibited Conduct.

(1) A person shall not 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 or has been the subject of a recall, as described more fully 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 all state and 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 U.S. Consumer Product Safety Commission as a recalled product; and the recall has not been rescinded; or

(3) A state or federal agency has issued a 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 part, 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 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.

51           (1)       The Delaware Department of Health and Social Services (“DHSS”) shall provide and maintain a  
52           list of all unsafe toys and toys containing a toxic substance. This list shall be updated no more than 24  
53           hours after a new unsafe toy or toy containing a toxic substance has been identified. This list shall also be  
54           made public through the DHSS website and a physical copy shall be made available to the public in  
55           designated locations throughout the State of Delaware.

56       § 2506C. Child Care Facilities.

57           (1) Such regulations, as they relate to standards and requirements for licensure and approval of child care  
58           facilities, which shall include daycare centers, family daycare homes, public and private nursery  
59           schools, preschools and kindergartens, family foster care facilities, placement agency facilities, group  
60           care facilities, and temporary shelter facilities shall be required to certify that no unsafe toys or toys  
61           containing a toxic substance are being used or kept on the premises, with the exception that antique  
62           or collectible children’s products may be kept if they are not used by, or accessible to, any child in  
63           the child care facility.”

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.