

CHAPTER 19-21 LABELING OF HAZARDOUS SUBSTANCES

19-21-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "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 a manner so as to be susceptible of access by a child to whom the 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 department, by regulation, classifies as a "banned hazardous substance", on the basis of a finding that, notwithstanding cautionary labeling as required under this chapter, the degree or nature of the hazard involved in the presence or use of the substance in households is such that the protection of the public health and safety can only be adequately served by keeping the substance out of the channels of commerce.

Provided, the department, by regulation, shall exempt from subdivision a those articles, such as chemical sets, which by reason of 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 these directions and warnings.

2. "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action, but does not refer to action on inanimate surfaces.
3. "Department" means the department of health and human services.
4. "Extremely flammable" applies to any substance which has a flashpoint at or below twenty degrees Fahrenheit [-6.67 degrees Celsius] as determined by the Tagliabue open cup tester, and the term "flammable" applies to any substance which has a flashpoint of above twenty degrees to and including eighty degrees Fahrenheit [-6.67 degrees to and including 26.67 degrees Celsius], 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 generally applicable to such materials or containers, respectively, and established by regulations issued by the department, which regulations must also define the terms "flammable" and "extremely flammable" in accordance with such methods.
5. "Hazardous substance" means any substance, except drugs and medicines, or mixture of substances, except drugs and medicines, which is toxic, corrosive, an irritant, a strong sensitizer, flammable, or which generates pressure through decomposition, heat, or other means, if such hazardous substance or mixture of hazardous substances may cause substantial personal injury or illness during or as a proximate result of any customary or reasonably anticipated handling or use; provided, that the term "hazardous substance" does not include:
 - a. Substances stored in containers and intended for use as fuel in a heating, cooking, or refrigeration system.
 - b. Economic poisons subject to the Federal or the North Dakota Insecticide, Fungicide, and Rodenticide Act of 1947.
 - c. 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.

The term "hazardous substance" applies to any article which is not an economic poison within the meaning of the Federal or North Dakota Insecticide, Fungicide, and Rodenticide Act of 1947, and which is a hazardous substance within the meaning of this subsection by reason of bearing or containing an economic poison.

6. "Highly toxic" means any substance which falls within any of the following categories: produces death within fourteen days in one-half or more than one-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 produces death within fourteen days in one-half or more than one-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 atmospheric concentration of two hundred parts per million by volume or less of gas, vapor, mist, or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or produces death within fourteen days in one-half or more than one-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. If the department 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.
7. "Immediate container" does not include package liners.
8. "Irritant" means any substance, not corrosive, which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.
9. "Label" means a display of written, printed, or graphic matter upon or attached to the immediate package or container of any hazardous 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 this matter directly on the article involved, or on 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 appearing on the label may not be considered to be in compliance with this chapter unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper, and unless it appears on all accompanying literature where there are directions for use, written or otherwise.
10. "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 a manner so as to be susceptible of access by a child to whom the toy or other article is entrusted, which is intended, or packaged in a form suitable for household use, or use by children, which, unless exempted by regulation, fails to bear a label:
 - a. Which states conspicuously the name and place of business of the manufacturer, packer, or distributor; the common usual name, or the chemical name, or the recognized generic name, not trade name only, of the hazardous substance or of each component which contributes substantially to its hazard; the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic; the signal word "WARNING" or "CAUTION" on all other hazardous substances; 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; precautionary measures describing the action to be followed or avoided; instructions, when necessary, for the first-aid treatment in case of contact or exposure, if the substance is hazardous through contact or exposure; the word "POISON" for any hazardous substance which is defined as "HIGHLY TOXIC" by this section; instructions for handling and storage of packages which require special care in handling or storage; and the statement "KEEP OUT OF REACH OF CHILDREN", or its practical equivalent or, 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.

- b. On which any statements required under this subsection are located prominently and are in the English language in legible type in contrast by typography, layout, or color with other printed matter on the label; provided, that the department shall, by regulations, provide for minimum information which must appear on the labels for small packages, which labels need not include all of the information required by this subsection; provided, further, that the department may permit less than the foregoing statement of the hazard or precautionary measures for labels of hazardous substances presenting only minor hazards; and the term "misbranded hazardous substance" does not apply to packages of economic poisons so labeled that if introduced in interstate commerce, it would be in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act, nor to packages of foods, drugs, and cosmetics so labeled that if introduced in interstate commerce, it would be in compliance with the Federal Food, Drug, and Cosmetic Act, nor to any package of a hazardous substance so labeled that if introduced into interstate commerce, it would be in compliance with the Federal Hazardous Substances Act and rules and regulations promulgated pursuant to that Act.
11. "Person" includes an individual, partnership, corporation, limited liability company, and association.
12. "Radioactive substance" means a substance which emits ionizing radiation.
13. "Strong sensitizer" means any substance which will cause, on normal living tissue through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same hazardous substance and which is designated as such by the department. Before designating any substance as a strong sensitizer, the department shall, after public hearing, following due notice, find that the frequency of occurrence and severity of the reaction indicate a significant potential for causing hypersensitivity.
14. "Toxic" applies to any substance, other than a radioactive substance, which has the inherent capacity to produce bodily injury to man through ingestion, inhalation, or absorption through any body surface.

19-21-02. Prohibited acts.

The following acts and the causing thereof are hereby prohibited:

1. The sale or delivery for sale of any misbranded hazardous substance or banned hazardous substance.
2. 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 held for sale and which results in the hazardous substance being a misbranded or banned hazardous substance.
3. The refusal to permit entry, inspection, or copying of records as authorized by this chapter.
4. A reuse of food, drug, or cosmetic or any beverage containers still bearing original labels or identifiable as such by characteristic shape, impression, or closures as containers for hazardous substances.
5. The use by any person to that person's own advantage, or revealing, other than to the department, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under authority of section 19-21-06 concerning any method of process which, as a trade secret, is entitled to protection.

19-21-03. Stop-sale orders - Seizures.

The department shall issue and enforce a written or printed "stop-sale use or removal" order to the owner or custodian of any hazardous substance when the department finds that the product is being offered or exposed for sale in violation of any of the provisions of this chapter, and the order must direct that the product must be held at a designated place until the provisions of this chapter have been complied with and the product is released in writing by the department. However, the owner or custodian of such product has the right to appeal from such order to a court of competent jurisdiction in the county where the product is found, praying for a

judgment as to the justification of the order, and for the discharge of the product from the order prohibiting the sale in accordance with the findings of the court. The provisions of this section may not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter. The department shall release the hazardous substance held under any "stop-sale use or removal" order when the requirements of this chapter have been complied with and upon payment of all reasonable costs and expenses incurred in connection with such order. When the department issues and enforces a "stop-sale use or removal" order against any hazardous substance declared in violation of this chapter, in possession of any dealer or distributor, such dealer or distributor may return to the person from whom such hazardous substance was purchased all unbroken retail containers affected by such order and such person shall reimburse the dealer or distributor for the full purchase price, including all delivery costs. Any hazardous substance found not to be in compliance with this chapter is subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which the product is located. In the event the court finds that the hazardous substance is in violation of the provisions of this chapter and orders the condemnation of the product, it must be disposed of in any manner consistent with the character of the hazardous substance and the laws of the state. In no instance may the disposition of the hazardous substance be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of the product or for permission to process or relabel the product to bring it into compliance with this chapter.

19-21-04. Hearing before report of criminal violation.

Before any violation of this chapter is reported by the department to any state's attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated must be given appropriate notice and an opportunity to present the person's views, either orally or in writing, with regard to such contemplated proceeding.

19-21-04.1. Injunction proceedings.

In addition to any other remedy provided in this chapter, the department is hereby authorized to apply to the district court of Burleigh County, 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 19-21-02, irrespective of whether or not there exists an adequate remedy at law.

19-21-05. Regulations.

The department may adopt regulations pursuant to chapter 28-32 for the efficient enforcement of this chapter. If the department 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, it shall adopt regulations exempting the substance from these requirements, to an extent consistent with adequate protection of the public health and safety.

If the department finds that an article subject to this chapter cannot be labeled adequately to protect the public health and safety, or the article presents an imminent danger to the public health and safety, it may declare the article to be a banned hazardous substance and require its removal from commerce.

The department shall cause the regulations adopted under this chapter to conform with the regulations established pursuant to the Federal Hazardous Substances Act.

19-21-06. Examinations and investigations.

The department is authorized to conduct examinations, inspections, and investigations for the purposes of this chapter through officers and employees of the department or through any health officer or employee of the state of North Dakota. For purposes of enforcement of this chapter, officers or employees duly designated by the department upon presenting appropriate credentials to the owner, operator, or agent in charge are authorized to enter, at reasonable

times, any factory, warehouse, or establishment in which hazardous substances are held or to enter any vehicle being used to transport or hold such hazardous substances and to inspect and sample at reasonable times, within reasonable limits, and in a reasonable manner finished hazardous substances in retail packages and labeling thereon in such factory, warehouse, establishment, or vehicle. Each such inspection must be commenced and completed with reasonable promptness.

19-21-07. Records of shipment.

For the purpose of enforcing the provisions of this chapter, carriers and persons receiving hazardous substances or holding such hazardous substances so received, upon the request of an officer or employee duly designated by the department, shall permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement of any such hazardous substance or the holding thereof during or after such movement and the quantity, shipper, and consignee thereof. It is 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 of such hazardous substance to which such request relates. Evidence obtained under this section may not be used in a criminal prosecution of the person from whom obtained.

19-21-08. Publicity.

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

19-21-09. Penalties.

Any person who violates any of the provisions of this chapter is guilty of a class A misdemeanor. No person is subject to the penalties of this section for having violated subsection 1 of section 19-21-02 in respect of any hazardous substance shipped or delivered for shipment for export to any foreign country in a package marked for export and branded in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country.

19-21-10. Short title.

This chapter may be cited as the Hazardous Substances Labeling Act.