

SENATE BILL No. 400

May 29, 2013, Introduced by Senators WARREN, HOPGOOD, GREGORY, HOOD, ANANICH, WHITMER, BIEDA, JOHNSON and HUNTER and referred to the Committee on Government Operations.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 5493 (MCL 333.5493), as added by 2007 PA 159,
and by adding sections 5495, 5496, 5497, and 5498.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5493. (1) Except as otherwise provided in ~~subsection (2),~~
2 **SUBSECTIONS (2) AND (3)**, a person who violates this part is subject
3 to the following:

4 (a) If the person is not an individual consumer and the
5 violation is the person's first offense under this part, a civil
6 fine of not more than \$100.00 per item not to exceed \$5,000.00
7 total.

8 (b) If a person is not an individual consumer and the
9 violation is the person's second offense under this part, a civil

1 fine of not more than \$500.00 per item not to exceed \$25,000.00
2 total.

3 (c) If the person is not an individual consumer and the
4 violation is the person's third or subsequent offense under this
5 part, a civil fine of not more than \$1,000.00 per item not to
6 exceed \$50,000.00 total.

7 (d) If a person knowingly violates this part and the person is
8 not an individual consumer, a civil fine equal to 3 times the
9 amounts in subdivision (c).

10 (2) A civil fine imposed under this section shall be waived if
11 it is determined that a person acted in good faith to be in
12 compliance with this part, pursued compliance with due diligence,
13 and promptly corrected any noncompliance after discovery of the
14 violation.

15 (3) THIS SECTION DOES NOT APPLY TO A VIOLATION DESCRIBED IN
16 SECTION 5497.

17 SEC. 5495. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
18 BEFORE OFFERING FOR SALE IN THIS STATE A CHILDREN'S PRODUCT THAT
19 CONTAINS A CHEMICAL OF GREATEST CONCERN, A MANUFACTURER OR
20 DISTRIBUTOR SHALL SUBMIT TO THE DEPARTMENT A WRITTEN STATEMENT AS
21 DESCRIBED IN SUBSECTION (2). HOWEVER, IF THE CHILDREN'S PRODUCT IS
22 ALREADY BEING OFFERED FOR SALE IN THIS STATE BY THE MANUFACTURER OR
23 DISTRIBUTOR WHEN THE CHEMICAL OF GREATEST CONCERN IS LISTED BY THE
24 DEPARTMENT, THE MANUFACTURER OR DISTRIBUTOR SHALL SUBMIT THE
25 STATEMENT DESCRIBED IN SUBSECTION (2) BY 180 DAYS AFTER THE DATE ON
26 WHICH THE CHEMICAL OF GREATEST CONCERN IS LISTED.

27 (2) A MANUFACTURER OR DISTRIBUTOR SHALL INCLUDE ALL OF THE

1 FOLLOWING IN THE WRITTEN STATEMENT REQUIRED UNDER SUBSECTION (1):

2 (A) THE MANUFACTURER'S OR DISTRIBUTOR'S NAME, ADDRESS,
3 TELEPHONE NUMBER, AND ELECTRONIC MAIL ADDRESS.

4 (B) IDENTIFICATION OF THE CHILDREN'S PRODUCT.

5 (C) THE CHEMICALS OF GREATEST CONCERN CONTAINED IN THE
6 CHILDREN'S PRODUCT.

7 (D) THE AMOUNT OF EACH CHEMICAL OF GREATEST CONCERN CONTAINED
8 IN THE CHILDREN'S PRODUCT.

9 (E) THE PURPOSE OF EACH CHEMICAL OF GREATEST CONCERN CONTAINED
10 IN THE CHILDREN'S PRODUCT.

11 (3) THE FOLLOWING ARE EXEMPT FROM SUBSECTION (1):

12 (A) A RETAILER, UNLESS THE RETAILER IS ALSO A MANUFACTURER OR
13 DISTRIBUTOR, OR BOTH.

14 (B) USES OF CHEMICALS OF GREATEST CONCERN FOR INDUSTRIAL OR
15 MANUFACTURING PURPOSES.

16 (C) MOTOR VEHICLES OR THEIR COMPONENT PARTS, EXCEPT THAT THE
17 USE OF CHEMICALS OF GREATEST CONCERN IN DETACHABLE CAR SEATS IS NOT
18 EXEMPT.

19 (D) CHEMICALS OF GREATEST CONCERN GENERATED SOLELY AS
20 COMBUSTION BY-PRODUCTS OR THAT ARE PRESENT IN COMBUSTIBLE FUELS.

21 (4) THE DEPARTMENT MAY EXTEND THE DEADLINE FOR SUBMISSION OF
22 THE WRITTEN STATEMENT UNDER SUBSECTION (1) FOR 1 OR MORE SPECIFIED
23 USES OF A CHEMICAL OF GREATEST CONCERN IN A CHILDREN'S PRODUCT IF
24 THE DEPARTMENT DETERMINES THAT MORE TIME IS NEEDED BY THE
25 MANUFACTURER OR DISTRIBUTOR TO COMPLY.

26 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, BY JULY 1,
27 2014 AND ANNUALLY THEREAFTER, A MANUFACTURER SHALL REPORT TO THE

1 DEPARTMENT WHETHER A SCREENING INFORMATION DATA SET, AS SPECIFIED
2 BY THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OR
3 EQUIVALENT INFORMATION EXISTS FOR EACH CHEMICAL INTENTIONALLY ADDED
4 TO A CHILDREN'S PRODUCT THAT THE MANUFACTURER SOLD IN THIS STATE IN
5 THE CURRENT OR PRIOR CALENDAR YEAR.

6 (6) A MANUFACTURER OR DISTRIBUTOR OF A CHILDREN'S PRODUCT SOLD
7 IN THIS STATE IS EXEMPT FROM SUBSECTION (1) AND A MANUFACTURER IS
8 EXEMPT FROM SUBSECTION (5) IF THE QUANTITY OF THAT CHILDREN'S
9 PRODUCT SOLD IN THIS STATE BY THAT MANUFACTURER OR DISTRIBUTOR IN
10 THE PRIOR CALENDAR YEAR OR TO BE SOLD IN THE CURRENT CALENDAR YEAR
11 IS 3,000 UNITS OR LESS.

12 (7) NOT MORE THAN 30 DAYS AFTER RECEIPT OF INFORMATION IN A
13 WRITTEN STATEMENT OR REPORT UNDER THIS SECTION, THE DEPARTMENT
14 SHALL POST THE INFORMATION ON ITS WEBSITE IN AN EASILY
15 UNDERSTANDABLE FORM.

16 SEC. 5496. THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT
17 OF ENVIRONMENTAL QUALITY, MAY PROMULGATE RULES UNDER THE
18 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
19 24.328, TO IMPLEMENT THIS PART.

20 SEC. 5497. (1) IF A MANUFACTURER OR DISTRIBUTOR VIOLATES A
21 REQUIREMENT OF SECTION 5495 OR RULES PROMULGATED TO IMPLEMENT
22 SECTION 5495 AND THE VIOLATION CONTINUES FOR MORE THAN 90 DAYS, THE
23 DEPARTMENT MAY TAKE ENFORCEMENT ACTION, ASSESS ADMINISTRATIVE FINES
24 UNDER SUBSECTION (2), AND REQUEST THE ATTORNEY GENERAL TO INITIATE
25 PROCEEDINGS TO ENJOIN THE SALE OF CHILDREN'S PRODUCTS IN THIS STATE
26 BY THAT MANUFACTURER OR DISTRIBUTOR.

27 (2) SUBJECT TO SUBSECTION (3), A MANUFACTURER OR DISTRIBUTOR

1 THAT VIOLATES SECTION 5495 OR RULES PROMULGATED TO IMPLEMENT
2 SECTION 5495 IS SUBJECT TO THE FOLLOWING:

3 (A) FOR A FIRST VIOLATION, AN ADMINISTRATIVE FINE OF NOT MORE
4 THAN \$5,000.00.

5 (B) FOR A SECOND VIOLATION, AN ADMINISTRATIVE FINE OF NOT MORE
6 THAN \$25,000.00.

7 (C) FOR A THIRD OR SUBSEQUENT VIOLATION, AN ADMINISTRATIVE
8 FINE OF NOT MORE THAN \$50,000.00.

9 (D) FOR A KNOWING VIOLATION, AN ADMINISTRATIVE FINE OF NOT
10 MORE THAN \$150,000.00.

11 (3) THE DEPARTMENT SHALL WAIVE AN ADMINISTRATIVE FINE UNDER
12 THIS SECTION IF THE MANUFACTURER OR DISTRIBUTOR ACTS IN GOOD FAITH
13 TO COMPLY WITH SECTION 5495 AND RULES PROMULGATED TO IMPLEMENT
14 SECTION 5495, PURSUES COMPLIANCE WITH DUE DILIGENCE, AND PROMPTLY
15 CORRECTS ANY NONCOMPLIANCE AFTER DISCOVERY OF THE VIOLATION.

16 SEC. 5498. (1) THE CHILDREN'S SAFE PRODUCTS FUND IS CREATED
17 WITHIN THE STATE TREASURY.

18 (2) THE DEPARTMENT SHALL TRANSMIT ALL ADMINISTRATIVE FINES
19 COLLECTED UNDER THIS PART TO THE STATE TREASURER FOR DEPOSIT INTO
20 THE FUND. THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS
21 FROM ANY OTHER SOURCE FOR DEPOSIT INTO THE FUND. THE STATE
22 TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND AND SHALL CREDIT
23 TO THE FUND INTEREST EARNINGS FROM FUND INVESTMENTS. MONEY IN THE
24 FUND AT THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE FUND AND
25 SHALL NOT LAPSE TO THE GENERAL FUND. THE DEPARTMENT SHALL BE THE
26 ADMINISTRATOR OF THE FUND FOR AUDITING PURPOSES.

27 (3) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON

1 APPROPRIATION, ONLY FOR THE PURPOSE OF ADMINISTERING AND CARRYING
2 OUT DUTIES REQUIRED BY THIS PART.

3 Enacting section 1. This amendatory act may be referred to as
4 the "safe children's products act".

5 Enacting section 2. This amendatory act does not take effect
6 unless Senate Bill No. 399

7 of the 97th Legislature is enacted into law.