

1 HOUSE BILL NO. 519  
 2 INTRODUCED BY Harper VINCENT Luebeck  
 3 Henderson Fleming Wolfe M. Fadden Shussauer  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE Johnson  
 5 INTRASTATE DISTRIBUTION AND SALE OF HAZARDOUS SUBSTANCES Goodley  
 6 INTENDED OR SUITABLE FOR USE BY THE GENERAL PUBLIC; TO  
 7 INVESTIGATE AND EVALUATE GENERAL USE HAZARDOUS SUBSTANCES  
 8 AND RESULTING ACCIDENTS AS THEY RELATE TO PUBLIC HEALTH; AND  
 9 PROVIDING FOR AN EFFECTIVE DATE." Truby  
 10 Palmer Murphy Lester  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 Section 1. This act shall be cited as the "Montana  
 13 Consumer Product Safety Act of 1975".  
 14 Section 2. In this act: (1) "Department" means the  
 15 department of health and environmental sciences.  
 16 (2) "Person" includes an individual, partnership,  
 17 corporation, or association, or his legal representative or  
 18 agent.  
 19 (3) "Commerce" means all commerce within this state  
 20 and subject to the jurisdiction thereof; and includes the  
 21 operation of any business or service establishment.  
 22 (4) "Hazardous substance" means:  
 23 (a) (i) Any substance or mixture of substances which:  
 24 (A) is toxic,  
 25 (B) is corrosive,

1 (C) is an irritant,  
 2 (D) is a strong sensitizer,  
 3 (E) is flammable or combustible, or  
 4 (F) generates pressure through decomposition, heat, or  
 5 other means, if such substance or mixture of substances may  
 6 cause substantial personal injury or substantial illness  
 7 during or as a proximate result of any customary or  
 8 reasonably foreseeable handling or use, including reasonably  
 9 foreseeable ingestion by children.  
 10 (ii) Any substances which the department by rule finds,  
 11 under section 3(1), meets the requirements of subparagraph  
 12 (a)(i) of this paragraph.  
 13 (iii) Any radioactive substance, if, with respect to  
 14 such substance as used in a particular class of article or  
 15 as packaged, the department determines by rule that the  
 16 substance is sufficiently hazardous to require labeling in  
 17 accordance with this act in order to protect the public  
 18 health.  
 19 (iv) Any toy or other article intended for use by  
 20 children which the department by rule determines in  
 21 accordance with section 3(5) of this act presents an  
 22 electrical, mechanical, or thermal hazard.  
 23 (b) The term "hazardous substance" does not apply to  
 24 pesticides subject to the Federal Pesticide Environmental  
 25 Control Act or the Montana Pesticide Act, nor to foods,

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1 drugs, and cosmetics subject to the Montana Food, Drug and  
 2 Cosmetic Act, nor to substances intended for use as fuels  
 3 when stored in containers and used in the heating, cooking,  
 4 or refrigeration system of a house, but the term applies to  
 5 any article which is not itself a pesticide within the  
 6 meaning of the Federal Pesticide Environmental Control Act  
 7 or the Montana Pesticide Act, but which is a hazardous  
 8 substance within the meaning of subparagraph (a) of this  
 9 paragraph by reason of bearing or containing such a  
 10 pesticide; the term applies to pesticides where human health  
 11 is directly affected from the use or misuse of pesticides  
 12 requiring an accident investigation for the purpose of  
 13 preparing recommendations to federal or state pesticide  
 14 control agencies.

15 (c) The term "hazardous substance" does not include  
 16 any source material, special nuclear material, or by-product  
 17 material as defined in the Atomic Energy Act of 1954, as  
 18 amended, and rules issued pursuant thereto by the atomic  
 19 energy commission.

20 (5) "Toxic" means any substance (other than a  
 21 radioactive substance) which has the capacity to produce  
 22 personal injury or illness to man through ingestion,  
 23 inhalation or absorption through any body surface.

24 (6) (a) "Highly toxic" means any substance which falls  
 25 within any of the following categories:

1 (i) produces death within fourteen (14) days in  
 2 one-half (1/2) or more of a group of ten (10) or more  
 3 laboratory white rats each weighing between two hundred  
 4 (200) and three hundred (300) grams, at a single dose of  
 5 fifty (50) milligrams or less per kilogram of body weight,  
 6 when orally administered; or

7 (ii) produces death within fourteen (14) days in  
 8 one-half (1/2) or more of a group of ten (10) or more  
 9 laboratory white rats each weighing between two hundred  
 10 (200) and three hundred (300) grams, when inhaled  
 11 continuously for a period of one (1) hour or less at an  
 12 atmosphere concentration of two hundred (200) parts per  
 13 million by volume or less of gas or vapor or two (2)  
 14 milligrams per liter by volume or less of mist or dust, if  
 15 such concentration is likely to be encountered by man when  
 16 the substance is used in any reasonably foreseeable manner;  
 17 or

18 (iii) produces death within fourteen (14) days in  
 19 one-half (1/2) or more of a group of ten (10) or more  
 20 rabbits tested in a dosage of two hundred (200) milligrams  
 21 or less per kilogram of body weight, when administered by  
 22 continuous contact with the bare skin for twenty-four (24)  
 23 hours or less.

24 (b) If the department finds that available data on  
 25 human experience with any substance indicate results

1 different from those obtained on animals in the above-named  
2 dosages or concentrations, the human data shall take  
3 precedence.

4 (7) "Corrosive" means any substance which in contact  
5 with living tissue will cause destruction of tissue by  
6 chemical action, but does not refer to action on inanimate  
7 surfaces.

8 (8) "Irritant" means any substance not corrosive  
9 within the meaning of subsection (7) which on immediate,  
10 prolonged, or repeated contact with normal living tissue  
11 will induce a local inflammatory reaction.

12 (9) "Strong sensitizer" means a substance which will  
13 cause on normal living tissue, through an allergic or  
14 photodynamic process, a hypersensitivity.

15 (10) "Extremely flammable" applies to any substance  
16 which has a flash point at or below twenty degrees (20°)  
17 fahrenheit as determined by the tagliabue open cup tester.

18 (a) "Flammable" applies to any substance which has a  
19 flash point of above twenty degrees (20°) to and including  
20 eighty degrees (80°) fahrenheit, as determined by the  
21 tagliabue open cup tester.

22 (b) "Cumbustible" applies to any substance which has a  
23 flash point above eighty degrees (80°) fahrenheit to and  
24 including one hundred fifty degrees (150°), as determined by  
25 the tagliabue open cup tester; except that the flammability

1 or combustibility of solids and of the contents of  
2 self-pressurized containers shall be determined by methods  
3 found by the department to be generally applicable to such  
4 materials or containers, respectively, and established by  
5 rules issued by the department, which rules shall also  
6 define the terms "flammable", "combustible", and "extremely  
7 flammable" in accord with such methods.

8 (11) "Radioactive substance" means a substance which  
9 emits ionizing radiation.

10 (12) "Label" means a display of written, printed or  
11 graphic matter upon the immediate container of any  
12 substance, or in the case of an article which is unpackaged  
13 or is not packaged in an immediate container intended or  
14 suitable for delivery to the ultimate consumer, a display of  
15 such matter directly upon the article involved or upon a tag  
16 or other suitable material affixed thereto, and a  
17 requirement made by or under authority of this act that any  
18 word, statement, or other information appear on the label  
19 shall not be considered to be complied with unless such  
20 word, statement, or other information also appears:

21 (a) on the outside container or wrapper, if any,  
22 unless it is easily legible through the outside container or  
23 wrapper, and

24 (b) on all accompanying literature where there are  
25 directions for use, written or otherwise.

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1 (13) "Immediate container" does not include package  
2 liners.

3 (14) "Misbranded hazardous substance" means a  
4 hazardous substance (including a toy, or other article  
5 intended for use by children, which is a hazardous  
6 substance, or which bears or contains a hazardous substance  
7 in such a manner as to be susceptible of access by a child  
8 to whom such toy or other article is entrusted) intended, or  
9 packaged in a form suitable for use by the public or by  
10 children, which substance, except as otherwise provided by  
11 or under section 3, fails to bear a label:

12 (a) which states conspicuously,

13 (i) the name and place of business of the  
14 manufacturer, packer, distributor, or seller;

15 (ii) the common or usual name or the chemical name (if  
16 there be no common or usual name) of the hazardous substance  
17 or of each component which contributes substantially to its  
18 hazard, unless the department by rule permits or requires  
19 the use of a recognized generic name;

20 (iii) the signal word "danger" on substances which are  
21 extremely flammable, corrosive, or highly toxic;

22 (iv) the signal word on all other hazardous  
23 substances;

24 (v) an affirmative statement of the principal hazard  
25 or hazards, such as "flammable", "combustible", "vapor

1 harmful", "causes burns", "absorbed through skin", or  
2 similar wording descriptive of the hazard;

3 (vi) precautionary measures describing the action to  
4 be followed or avoided, except when modified by a rule of  
5 the department under section 3;

6 (vii) instruction, when necessary or appropriate, for  
7 first-aid treatment;

8 (viii) "poison" for any hazardous substance which is  
9 defined as "highly toxic" by subsection (6);

10 (ix) instructions for handling and storage or packages  
11 which require special care in handling or storage:

12 (A) "keep out of the reach of children" or its  
13 practical equivalent, or

14 (B) if the article is intended for use by children and  
15 is not a banned hazardous substance, adequate directions for  
16 the protection of children from the hazard, and

17 (b) on which any statement required under subparagraph  
18 (a) of this paragraph are located prominently and are in the  
19 English language in conspicuous and legible type in contrast  
20 by typography, layout, or color with other printed matter on  
21 the label.

22 (15) (a) "Banned hazardous substance" means:

23 (i) any toy, or other article intended for use by  
24 children, which is a hazardous substance, or which bears or  
25 contains a hazardous substance in such a manner as to be

1 susceptible of access by a child to whom the toy or other  
2 article is entrusted; or

3 (ii) any hazardous substance intended, or packaged in a  
4 form suitable for use by the general public which the  
5 department by rule classifies as a "banned hazardous  
6 substance" on the basis of a finding that, notwithstanding  
7 such cautionary labeling as is or may be required under this  
8 act for that substance, the degree or nature of the hazard  
9 involved in the presence or use of such substance by the  
10 general public is such that the objective of the protection  
11 of the public health and safety can be adequately served  
12 only by keeping the substance, when so intended or packaged,  
13 out of the channels of commerce. However, the department by  
14 rule: shall exempt from clause (i) of this paragraph  
15 articles, such as chemical sets, which by reason of their  
16 functional purpose require the inclusion of the hazardous  
17 substance involved or necessarily present an electrical,  
18 mechanical, or thermal hazard, and which bear labeling  
19 giving adequate directions and warnings for safe use and are  
20 intended for use by children who have attained sufficient  
21 maturity, and may reasonably be expected, to read and heed  
22 the directions and warnings.

23 (b) Proceedings for the issuance, amendment, or repeal  
24 of rules under clause (ii) of subparagraph (a) of this  
25 paragraph shall be governed by the provisions of section 3

1 of the act.

2 (16) An article may be determined to present an  
3 electrical hazard if, in normal use or when subjected to  
4 reasonably foreseeable damage or abuse, its design or  
5 manufacture may cause personal injury or illness by electric  
6 shock.

7 (17) An article may be determined to present a  
8 mechanical hazard if, in normal use or when subjected to  
9 reasonably foreseeable damage or abuse, its design or  
10 manufacture presents an unreasonable risk of personal injury  
11 or illness:

12 (a) from fracture, fragmentation, or disassembly of  
13 the article,

14 (b) from propulsion of the article (or any part or  
15 accessory thereof),

16 (c) from points or other protrusions, surfaces, edges,  
17 openings, or closures,

18 (d) from moving parts,

19 (e) from lack or insufficiency of controls to reduce  
20 or stop motion,

21 (f) as a result of self-adhering characteristics of  
22 the article,

23 (g) because the article (or any part or accessory  
24 thereof) may be aspirated or ingested,

25 (h) because of instability, or

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1 (i) because of any other aspect of the article's  
2 design or manufacture.

3 (18) An article may be determined to present a thermal  
4 hazard if, in normal use or when subjected to reasonably  
5 foreseeable damage or abuse, its design or manufacture  
6 presents an unreasonable risk of personal injury or illness  
7 because of heat as from heated parts, substances, or  
8 surfaces.

9 Section 3. (1) When in the judgment of the department  
10 such action will promote the objectives of this act by  
11 avoiding or resolving uncertainty as to its application, the  
12 department may by rule declare to be a hazardous substance,  
13 for the purposes of this act, any substance or mixture of  
14 substances which the department finds meets the requirements  
15 of subparagraph (a)(i) of section 2(4).

16 (2) If the department finds that the requirements of  
17 section 2(14)(a) are not adequate for the protection of the  
18 public health and safety in view of the special hazard  
19 presented by any particular hazardous substance, the  
20 department may by rule establish such reasonable variations  
21 or additional label requirements as necessary for the  
22 protection of the public health and safety, and any such  
23 hazardous substance intended, or packaged in a form  
24 suitable, for use by the general public or by children,  
25 which fails to bear a label in accordance with the rules

1 shall be a misbranded hazardous substance.

2 (3) If the department finds that, because of the size  
3 of the package involved or because of the minor hazard  
4 presented by the substance contained therein, or for other  
5 good and sufficient reasons, full compliance with the  
6 labeling requirements otherwise applicable under this act is  
7 impracticable or is not necessary for the adequate  
8 protection of the public health and safety, the department  
9 shall adopt rules exempting such substance from these  
10 requirements to the extent of being consistent with adequate  
11 protection of the public health and safety.

12 (4) If the department finds that the hazard of an  
13 article subject to this act is such that labeling adequate  
14 to protect the public health and safety cannot be devised,  
15 or the article presents an imminent danger to the public  
16 health and safety, the department may declare the article a  
17 banned hazardous substance and require its removal from  
18 commerce.

19 (5) (a) A determination by the department that a toy  
20 or other article intended for use by children presents an  
21 electrical, mechanical, or thermal hazard shall be made by  
22 rule in accordance with this act.

23 (b) If, before or during a proceeding under paragraph  
24 (a) of this subsection, the department finds that, because  
25 of an electrical, mechanical, or thermal hazard,

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1 distribution of the toy or other article involved presents  
 2 an imminent hazard to the public health and the department  
 3 gives notice of such finding, the toy or other article shall  
 4 be a banned hazardous substance for purposes of this act  
 5 until the proceeding has been completed. If not yet  
 6 initiated when the notice is given, the proceeding shall be  
 7 initiated as promptly as possible.

8 (c) (i) In the case of any toy or other article  
 9 intended for use by children which is determined by the  
 10 department to present an electrical, mechanical, or thermal  
 11 hazard, any person who will be adversely affected by such a  
 12 determination may, at any time before the sixtieth day after  
 13 the rule making the determination is issued by the  
 14 department, file a petition with the court for a judicial  
 15 review of such determination. A copy of the petition shall  
 16 be immediately transmitted by the clerk of the court to the  
 17 department. The department shall file in the court the  
 18 record of the proceedings on which the department based its  
 19 determination.

20 (ii) If the petitioner applies to the court for leave  
 21 to adduce additional evidence, and shows to the satisfaction  
 22 of the court that such additional evidence is material and  
 23 that there was no opportunity to adduce such evidence in the  
 24 proceeding before the department, the court may order such  
 25 additional evidence (and evidence in rebuttal thereof) to be

1 taken before the department in a hearing or in such other  
 2 manner, and upon such terms and conditions, as the court may  
 3 consider proper. The department may modify their findings  
 4 as to the facts, or make new findings, by reason of the  
 5 additional evidence so taken, and they shall file such  
 6 modified or new findings, and their recommendation, if any,  
 7 for the modification or setting aside of their original  
 8 determination, with the return of such additional evidence.

9 (iii) Upon the filing of the petition under this  
 10 paragraph, the court has jurisdiction to review the  
 11 determination of the department. If the court ordered  
 12 additional evidence to be taken under subparagraph (ii) of  
 13 this paragraph, the court shall also review the department's  
 14 determination to determine if, on the basis of the entire  
 15 record before the court under subparagraphs (i) and (ii) of  
 16 this paragraph, it is supported by substantial evidence. If  
 17 the court finds the determination is not so supported, the  
 18 court may set it aside. With respect to any determination  
 19 reviewed under this paragraph, the court may grant  
 20 appropriate relief pending conclusion of the review  
 21 proceedings.

22 Section 4. The following acts and the causing thereof  
 23 are prohibited: (1) The introduction or delivery for  
 24 introduction into commerce of any misbranded hazardous  
 25 substance or banned hazardous substance.

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1           (2) The alteration, mutilation, destruction,  
2 obliteration, or removal of the whole or any part of the  
3 label of, or the doing of any other act with respect to a  
4 hazardous substance if such act is done while the substance  
5 is in commerce, or while the substance is held for sale  
6 (whether or not the first sale) after shipment in commerce,  
7 and results in the hazardous substance being a misbranded  
8 hazardous substance or a banned hazardous substance.

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

12           (4) The giving of a guarantee or undertaking referred  
13 to in section 5(2)(a) which guarantee or undertaking is  
14 false, except by a person who relied upon a guarantee or  
15 undertaking to the same effect signed by, and containing the  
16 name and address of, the person residing in the United  
17 States from whom he received in good faith the hazardous  
18 substance.

19           (5) The failure to permit entry or inspection as  
20 authorized by section 10(1) or to permit access to any  
21 copying of any record as authorized by section 11.

22           (6) The introduction or delivery for introduction into  
23 commerce, or the receipt in commerce and subsequent delivery  
24 or proffered delivery for pay or otherwise, of a hazardous  
25 substance in a reused food, drug, or cosmetic container or

1 in a container which, though not a reused container, is  
2 identifiable as a food, drug, or cosmetic container by its  
3 labeling or by other identification. The reuse of a food,  
4 drug, or cosmetic container as a container for a hazardous  
5 substance shall be deemed to be an act which results in the  
6 hazardous substance being a misbranded hazardous substance.  
7 As used in this paragraph, the terms "food", "drug", and  
8 "cosmetic" shall have the same meanings as in the Montana  
9 Food, Drug and Cosmetic Act.

10           (7) The use by any person to his own advantage, or  
11 revealing other than to the department or officers or  
12 employees of the agency, or to the courts when relevant in  
13 any judicial proceeding under this act, of any information  
14 acquired under authority of section 10 concerning any method  
15 of process which as a trade secret is entitled to  
16 protection.

17           Section 5. (1) Any person who violates any of the  
18 provisions of section 4 is guilty of a misdemeanor and shall  
19 be fined not more than five hundred dollars (\$500) or  
20 imprisoned for not more than ninety (90) days, or both. For  
21 offenses committed with intent to defraud or mislead, or for  
22 second and subsequent offenses, the penalty shall be  
23 imprisonment for not more than one (1) year, or a fine of  
24 not more than three thousand dollars (\$3,000), or both  
25 imprisonment and fine.



1 (2) No person is subject to the penalties of  
2 subsection (1) of this section:

3 (a) for having violated section 4(3), if the receipt,  
4 delivery, or proffered delivery of the hazardous substance  
5 was made in good faith, unless he refuses to furnish on  
6 request of an officer or employee duly designated by the  
7 department, the name and address of the person from whom he  
8 purchased or received such hazardous substance, and copies  
9 of all documents, if any there be, pertaining to the  
10 delivery of the hazardous substance to him; or

11 (b) for having violated section 4(1), if he  
12 establishes a guarantee or undertaking signed by, and  
13 containing the name and address of, the person residing in  
14 the United States from whom he received in good faith the  
15 hazardous substance, to the effect that the hazardous  
16 substance is not a misbranded hazardous or a banned  
17 hazardous substance within the meaning of those terms in the  
18 act.

19 Section 6. In addition to the remedies hereinafter  
20 provided, the department is authorized to apply to court  
21 for, and such court shall have jurisdiction upon hearing and  
22 for cause shown, to grant a temporary or permanent  
23 injunction restraining any person from violating any  
24 provision of section 4, irrespective of whether or not there  
25 exists an adequate remedy at law.

1 Section 7. (1) Whenever a duly authorized agent of  
2 the department finds or has probable cause to believe that  
3 any hazardous substance is a misbranded, or is a banned  
4 hazardous substance, within the meaning of this act, he  
5 shall affix to such article a tag or other appropriate  
6 marking, giving notice that such article is, or is suspected  
7 of being, misbranded or is a banned hazardous substance and  
8 has been detained or embargoed, and warning all persons not  
9 to remove or dispose of such article by sale or otherwise  
10 until permission for removal or disposal is given by such  
11 agent or the court. It shall be unlawful for any person to  
12 remove or dispose of such detained or embargoed article by  
13 sale or otherwise without such permission.

14 (2) When an article detained or embargoed under  
15 subsection (1) has been found by such agent to be misbranded  
16 or a banned hazardous substance, he shall petition the judge  
17 or the police, county, or circuit court in whose  
18 jurisdiction the article is detained or embargoed for a  
19 libel of condemnation of such article. When such agent has  
20 found that an article so detained or embargoed is not  
21 misbranded or a banned hazardous substance, he shall remove  
22 the tag or other marking.

23 (3) If the court finds that a detained or embargoed  
24 article is misbranded or a banned hazardous substance, such  
25 article shall, after entry of the decree, be destroyed at

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1 the expense of the claimant thereof, under supervision of  
 2 such agent, and all court costs and fees and storage and  
 3 other proper expenses, shall be taxed against the claimant  
 4 of such article or his agent; provided, that when the  
 5 misbranding can be corrected by proper labeling of the  
 6 article, the court, after entry of the decree and after such  
 7 costs, fees, and expenses have been paid and a good and  
 8 sufficient bond, conditioned that such article shall be so  
 9 labeled, has been executed, may by order direct that such  
 10 article be delivered to the claimant thereof for such  
 11 labeling under the supervision of an agent of the  
 12 department. The expense of such supervision shall be paid  
 13 by the claimant. The article shall be returned to the  
 14 claimant on the representation to the court by the  
 15 department that the article is no longer in violation of  
 16 this act, and that the expenses of such supervision have  
 17 been paid.

18 Section 8. It is the duty of each state attorney or  
 19 county attorney to whom the department reports any violation  
 20 of this act, to cause appropriate proceedings to be  
 21 instituted in the proper courts without delay and to be  
 22 prosecuted in the manner required by law. Before any  
 23 violation of this act is reported to any such attorney for  
 24 the institution of a criminal proceeding, the person against  
 25 whom such proceeding is contemplated shall be given

1 appropriate notice and an opportunity to present his view  
 2 before the department, either orally or in writing, or by  
 3 attorney, with regard to such contemplated proceeding.

4 Section 9. (1) The authority to adopt rules for the  
 5 efficient enforcement of this act is vested in the  
 6 department.

7 (2) The department has the authority to adopt by  
 8 reference without public hearing rules adopted under the  
 9 Federal Hazardous Substances Act as amended.

10 Section 10. (1) For enforcement of this act, officers  
 11 or employees duly designated by the department, upon  
 12 presenting appropriate credentials to the owner, operator,  
 13 or agent in charge, are authorized:

14 (a) to enter, at reasonable time, any factory,  
 15 warehouse, or establishment in which hazardous substances  
 16 are manufactured, processed, packed or held for introduction  
 17 into commerce or are held after such introduction, or to  
 18 enter any vehicle being used to transport or hold such  
 19 hazardous substances in commerce;

20 (b) to inspect, at reasonable times, and within  
 21 reasonable limits and in a reasonable manner, such factory,  
 22 warehouse, establishment or vehicle, and all pertinent  
 23 equipment, finished and unfinished materials, and labeling  
 24 therein; and

25 (c) to obtain samples of such materials or packages

1 thereof, or of such labeling.

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

6 (3) The department will conduct investigations of  
7 reported accidental injuries, illnesses and deaths resulting  
8 from the use or misuse of all hazardous substances intended  
9 or suitable for use by the general public as defined under  
10 section 2(4)(a)(i). Investigations will evaluate the  
11 causative hazardous substance and circumstances of the  
12 accident for enforcement of this act. Where the offending  
13 hazardous substance is a pesticide regulated by another  
14 agency as the Federal Environmental Pesticide Control Act or  
15 the Montana Pesticide Act, the investigation will yield  
16 recommendations to the appropriate regulating agency for  
17 appropriate action.

18 Section 11. For the purpose of enforcing the  
19 provisions of this act, carriers engaged in commerce, and  
20 persons receiving hazardous substances in commerce or  
21 holding such hazardous substances so received shall, upon  
22 the request of an officer or employee duly designated by the  
23 department, permit such officer or employee at reasonable  
24 times, to have access to and to copy all records showing the  
25 movement in commerce of any such hazardous substances, or

1 the holding thereof during or after such movement, and the  
2 quantity, shipper, and consignee thereof; and it is unlawful  
3 for any such carrier or person to fail to permit such access  
4 to and copying of any record so requested when such request  
5 is accompanied by a statement in writing specifying the  
6 nature or kind of such hazardous substance to which such  
7 request relates; provided, that evidence obtained under this  
8 section is not used in a criminal prosecution of the person  
9 from whom obtained; provided further, that carriers are not  
10 subject to the other provisions of this act by reason of  
11 their receipt, carriage, holding, or delivery of hazardous  
12 substances in the usual course of business as carriers.

13 Section 12. The department in cooperation with other  
14 state and federal agencies shall develop and conduct  
15 appropriate accident prevention and health oriented  
16 educational programs. The educational programs shall inform  
17 the public of the hazards, proper handling and use,  
18 disposal, storage and transportation of hazardous substances  
19 and the proper medical and first aid procedures for  
20 accidents resulting from hazardous substances.

21 Section 13. (1) The department may cause to be  
22 published from time to time reports summarizing any  
23 judgments, research findings, decrees, or court orders which  
24 have been rendered under this act, including the nature of  
25 the charge and the disposition thereof.

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1           (2) The department may also cause to be disseminated  
2 information regarding hazardous substances in situations  
3 involving imminent danger to health. Nothing in this  
4 section shall be construed to prohibit the department from  
5 collecting, reporting and illustrating the results of the  
6 investigations of the department.

7           Section 14. If any provision of this act is declared  
8 unconstitutional, or the applicability thereof to any person  
9 or circumstance is held invalid, the constitutionality of  
10 the remainder of the act and the applicability thereof to  
11 other persons and circumstances shall not be affected  
12 thereby.

13           Section 15. This act shall take effect upon its  
14 passage and approval, but no penalty or condemnation shall  
15 be enforced for any violation of this act which occurs:  
16 (1) prior to the expiration of the sixth calendar month  
17 after the month in which this act is enacted, or

18           (2) prior to the expiration of such additional period  
19 or periods, ending not more than eighteen (18) months after  
20 the month of enactment of this act, as the department may  
21 prescribe on the basis of a finding that conditions exist  
22 which necessitate the prescribing of such additional period  
23 or periods; provided, that the department may limit the  
24 application of such additional period or periods to  
25 violations related to specified provisions of this act, or

1 to specified kinds of hazardous substances or packages  
2 thereof.

-End-

Approved by Committee  
on Public Health, Welfare  
& Safety

HOUSE BILL NO. 519

INTRODUCED BY HARPER, VINCENT, LUEBECK, GUNDERSON,  
FLEMING, WOLFE, MCFADDEN, DUSSAULT, JOHNSON, FAGG,  
BRADLEY, PALMER, MURPHY, LESTER, FINLEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE  
INTRASTATE DISTRIBUTION AND SALE OF HAZARDOUS SUBSTANCES  
INTENDED OR SUITABLE FOR USE BY THE GENERAL PUBLIC; TO  
INVESTIGATE AND EVALUATE GENERAL USE HAZARDOUS SUBSTANCES  
AND RESULTING ACCIDENTS AS THEY RELATE TO PUBLIC HEALTH; AND  
PROVIDING FOR AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. This act shall be cited as the "Montana  
Consumer Product Safety Act of 1975".

Section 2. In this act: (1) "Department" means the  
department of health and environmental sciences.

(2) "Person" includes an individual, partnership,  
corporation, or association, or his legal representative or  
agent.

(3) "Commerce" means all commerce within this state  
and subject to the jurisdiction thereof; and includes the  
operation of any business or service establishment.

(4) "Hazardous substance" means:

(a) (i) Any substance or mixture of substances which:

SECOND READING

HB 519 was not run in its entirety. Refer to white copy for complete  
text. Amendments are on P. 19.

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 the claimant thereof for such  
labeling under the supervision of an agent of the  
department. The expense of such supervision shall be paid  
by the claimant. The article shall be returned to the  
claimant on the representation to the court by the  
department that the article is no longer in violation of  
this act, and that the expenses of such supervision have  
been paid.

Section 8. It is the duty of ~~each-state-attorney-or~~  
THE DEPARTMENT OR THE county attorney to whom the department  
reports any violation of this act, 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 act is reported to any such

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3 FLEMING, WOLFE, MCFADDEN, DUSSAULT, JOHNSON, FAGG,  
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18 (2) "Person" includes an individual, partnership,  
19 corporation, or association, or his legal representative or  
20 agent.

21 (3) "Commerce" means all commerce within this state  
22 and subject to the jurisdiction thereof; and includes the  
23 operation of any business or service establishment.

24 (4) "Hazardous substance" means:

25 (a) (i) Any substance or mixture of substances which:

1 (A) is toxic,

2 (B) is corrosive,

3 (C) is an irritant,

4 (D) is a strong sensitizer,

5 (E) is flammable or combustible, or

6 (F) generates pressure through decomposition, heat, or  
7 other means, if such substance or mixture of substances may  
8 cause substantial personal injury or substantial illness  
9 during or as a proximate result of any customary or  
10 reasonably foreseeable handling or use, including reasonably  
11 foreseeable ingestion by children.

12 (ii) Any substances which the department by rule finds,  
13 under section 3(1), meet the requirements of subparagraph  
14 (a)(i) of this paragraph.

15 (iii) Any radioactive substance, if, with respect to  
16 such substance as used in a particular class of article or  
17 as packaged, the department determines by rule that the  
18 substance is sufficiently hazardous to require labeling in  
19 accordance with this act in order to protect the public  
20 health.

21 (iv) Any toy or other article intended for use by  
22 children which the department by rule determines in  
23 accordance with section 3(5) of this act presents an  
24 electrical, mechanical, or thermal hazard.

25 (b) The term "hazardous substance" does not apply to

1 pesticides subject to the Federal Pesticide Environmental  
 2 Control Act or the Montana Pesticide Act, nor to foods,  
 3 drugs, and cosmetics subject to the Montana Food, Drug and  
 4 Cosmetic Act, nor to substances intended for use as fuels  
 5 when stored in containers and used in the heating, cooking,  
 6 or refrigeration system of a house, but the term applies to  
 7 any article which is not itself a pesticide within the  
 8 meaning of the Federal Pesticide Environmental Control Act  
 9 or the Montana Pesticide Act, but which is a hazardous  
 10 substance within the meaning of subparagraph (a) of this  
 11 paragraph by reason of bearing or containing such a  
 12 pesticide; the term applies to pesticides where human health  
 13 is directly affected from the use or misuse of pesticides  
 14 requiring an accident investigation for the purpose of  
 15 preparing recommendations to federal or state pesticide  
 16 control agencies.

17 (c) The term "hazardous substance" does not include  
 18 any source material, special nuclear material, or by-product  
 19 material as defined in the Atomic Energy Act of 1954, as  
 20 amended, and rules issued pursuant thereto by the atomic  
 21 energy commission.

22 (5) "Toxic" means any substance (other than a  
 23 radioactive substance) which has the capacity to produce  
 24 personal injury or illness to man through ingestion,  
 25 inhalation or absorption through any body surface.

1 (6) (a) "Highly toxic" means any substance which falls  
 2 within any of the following categories:

3 (i) produces death within fourteen (14) days in  
 4 one-half (1/2) or more of a group of ten (10) or more  
 5 laboratory white rats each weighing between two hundred  
 6 (200) and three hundred (300) grams, at a single dose of  
 7 fifty (50) milligrams or less per kilogram of body weight,  
 8 when orally administered; or

9 (ii) produces death within fourteen (14) days in  
 10 one-half (1/2) or more of a group of ten (10) or more  
 11 laboratory white rats each weighing between two hundred  
 12 (200) and three hundred (300) grams, when inhaled  
 13 continuously for a period of one (1) hour or less at an  
 14 atmosphere concentration of two hundred (200) parts per  
 15 million by volume or less of gas or vapor or two (2)  
 16 milligrams per liter by volume or less of mist or dust, if  
 17 such concentration is likely to be encountered by man when  
 18 the substance is used in any reasonably foreseeable manner;  
 19 or

20 (iii) produces death within fourteen (14) days in  
 21 one-half (1/2) or more of a group of ten (10) or more  
 22 rabbits tested in a dosage of two hundred (200) milligrams  
 23 or less per kilogram of body weight, when administered by  
 24 continuous contact with the bare skin for twenty-four (24)  
 25 hours or less.

1 (b) If the department finds that available data on  
2 human experience with any substance indicate results  
3 different from those obtained on animals in the above-named  
4 dosages or concentrations, the human data shall take  
5 precedence.

6 (7) "Corrosive" means any substance which in contact  
7 with living tissue will cause destruction of tissue by  
8 chemical action, but does not refer to action on inanimate  
9 surfaces.

10 (8) "Irritant" means any substance not corrosive  
11 within the meaning of subsection (7) which on immediate,  
12 prolonged, or repeated contact with normal living tissue  
13 will induce a local inflammatory reaction.

14 (9) "Strong sensitizer" means a substance which will  
15 cause on normal living tissue, through an allergic or  
16 photodynamic process, a hypersensitivity.

17 (10) "Extremely flammable" applies to any substance  
18 which has a flash point at or below twenty degrees (20°)  
19 fahrenheit as determined by the tagliabue open cup tester.

20 (a) "Flammable" applies to any substance which has a  
21 flash point of above twenty degrees (20°) to and including  
22 eighty degrees (80°) fahrenheit, as determined by the  
23 tagliabue open cup tester.

24 (b) "Combustible" applies to any substance which has a  
25 flash point above eighty degrees (80°) fahrenheit to and

1 including one hundred fifty degrees (150°), as determined by  
2 the tagliabue open cup tester; except that the flammability  
3 or combustibility of solids and of the contents of  
4 self-pressurized containers shall be determined by methods  
5 found by the department to be generally applicable to such  
6 materials or containers, respectively, and established by  
7 rules issued by the department, which rules shall also  
8 define the terms "flammable", "combustible", and "extremely  
9 flammable" in accord with such methods.

10 (11) "Radioactive substance" means a substance which  
11 emits ionizing radiation.

12 (12) "Label" means a display of written, printed or  
13 graphic matter upon the immediate container of any  
14 substance, or in the case of an article which is unpackaged  
15 or is not packaged in an immediate container intended or  
16 suitable for delivery to the ultimate consumer, a display of  
17 such matter directly upon the article involved or upon a tag  
18 or other suitable material affixed thereto, and a  
19 requirement made by or under authority of this act that any  
20 word, statement, or other information appear on the label  
21 shall not be considered to be complied with unless such  
22 word, statement, or other information also appears:

23 (a) on the outside container or wrapper, if any,  
24 unless it is easily legible through the outside container or  
25 wrapper, and



1 (b) on all accompanying literature where there are  
2 directions for use, written or otherwise.

3 (13) "Immediate container" does not include package  
4 liners.

5 (14) "Misbranded hazardous substance" means a  
6 hazardous substance (including a toy, or other article  
7 intended for use by children, which is a hazardous  
8 substance, or which bears or contains a hazardous substance  
9 in such a manner as to be susceptible of access by a child  
10 to whom such toy or other article is entrusted) intended, or  
11 packaged in a form suitable for use by the public or by  
12 children, which substance, except as otherwise provided by  
13 or under section 3, fails to bear a label:

- 14 (a) which states conspicuously,
  - 15 (i) the name and place of business of the  
16 manufacturer, packer, distributor, or seller;
  - 17 (ii) the common or usual name or the chemical name (if  
18 there be no common or usual name) of the hazardous substance  
19 or of each component which contributes substantially to its  
20 hazard, unless the department by rule permits or requires  
21 the use of a recognized generic name;
  - 22 (iii) the signal word "danger" on substances which are  
23 extremely flammable, corrosive, or highly toxic;
  - 24 (iv) the signal word on all other hazardous  
25 substances;

1 (v) an affirmative statement of the principal hazard  
2 or hazards, such as "flammable", "combustible", "vapor  
3 harmful", "causes burns", "absorbed through skin", or  
4 similar wording descriptive of the hazard;

5 (vi) precautionary measures describing the action to  
6 be followed or avoided, except when modified by a rule of  
7 the department under section 3;

8 (vii) instruction, when necessary or appropriate, for  
9 first-aid treatment;

10 (viii) "poison" for any hazardous substance which is  
11 defined as "highly toxic" by subsection (6);

12 (ix) instructions for handling and storage or packages  
13 which require special care in handling or storage:

- 14 (A) "keep out of the reach of children" or its  
15 practical equivalent, or
- 16 (B) if the article is intended for use by children and  
17 is not a banned hazardous substance, adequate directions for  
18 the protection of children from the hazard, and

19 (b) on which any statement required under subparagraph  
20 (a) of this paragraph are located prominently and are in the  
21 English language in conspicuous and legible type in contrast  
22 by typography, layout, or color with other printed matter on  
23 the label.

24 (15) (a) "Banned hazardous substance" means:

- 25 (i) any toy, or other article intended for use by

1 children, which is a hazardous substance, or which bears or  
 2 contains a hazardous substance in such a manner as to be  
 3 susceptible of access by a child to whom the toy or other  
 4 article is entrusted; or

5 (ii) any hazardous substance intended, or packaged in a  
 6 form suitable for use by the general public which the  
 7 department by rule classifies as a "banned hazardous  
 8 substance" on the basis of a finding that, notwithstanding  
 9 such cautionary labeling as is or may be required under this  
 10 act for that substance, the degree or nature of the hazard  
 11 involved in the presence or use of such substance by the  
 12 general public is such that the objective of the protection  
 13 of the public health and safety can be adequately served  
 14 only by keeping the substance, when so intended or packaged,  
 15 out of the channels of commerce. However, the department by  
 16 rule: shall exempt from clause (i) of this paragraph  
 17 articles, such as chemical sets, which by reason of their  
 18 functional purpose require the inclusion of the hazardous  
 19 substance involved or necessarily present an electrical,  
 20 mechanical, or thermal hazard, and which bear labeling  
 21 giving adequate directions and warnings for safe use and are  
 22 intended for use by children who have attained sufficient  
 23 maturity, and may reasonably be expected, to read and heed  
 24 the directions and warnings.

25 (b) Proceedings for the issuance, amendment, or repeal

1 of rules under clause (ii) of subparagraph (a) of this  
 2 paragraph shall be governed by the provisions of section 3  
 3 of the act.

4 (16) An article may be determined to present an  
 5 electrical hazard if, in normal use or when subjected to  
 6 reasonably foreseeable damage or abuse, its design or  
 7 manufacture may cause personal injury or illness by electric  
 8 shock.

9 (17) An article may be determined to present a  
 10 mechanical hazard if, in normal use or when subjected to  
 11 reasonably foreseeable damage or abuse, its design or  
 12 manufacture presents an unreasonable risk of personal injury  
 13 or illness:

14 (a) from fracture, fragmentation, or disassembly of  
 15 the article,

16 (b) from propulsion of the article (or any part or  
 17 accessory thereof),

18 (c) from points or other protrusions, surfaces, edges,  
 19 openings, or closures,

20 (d) from moving parts,

21 (e) from lack or insufficiency of controls to reduce  
 22 or stop motion,

23 (f) as a result of self-adhering characteristics of  
 24 the article,

25 (g) because the article (or any part or accessory

1 thereof) may be aspirated or ingested,

2 (h) because of instability, or

3 (i) because of any other aspect of the article's  
4 design or manufacture.

5 (18) An article may be determined to present a thermal  
6 hazard if, in normal use or when subjected to reasonably  
7 foreseeable damage or abuse, its design or manufacture  
8 presents an unreasonable risk of personal injury or illness  
9 because of heat as from heated parts, substances, or  
10 surfaces.

11 Section 3. (1) When in the judgment of the department  
12 such action will promote the objectives of this act by  
13 avoiding or resolving uncertainty as to its application, the  
14 department may by rule declare to be a hazardous substance,  
15 for the purposes of this act, any substance or mixture of  
16 substances which the department finds meets the requirements  
17 of subparagraph (a)(i) of section 2(4).

18 (2) If the department finds that the requirements of  
19 section 2(14)(a) are not adequate for the protection of the  
20 public health and safety in view of the special hazard  
21 presented by any particular hazardous substance, the  
22 department may by rule establish such reasonable variations  
23 or additional label requirements as necessary for the  
24 protection of the public health and safety, and any such  
25 hazardous substance intended, or packaged in a form

1 suitable, for use by the general public or by children,  
2 which fails to bear a label in accordance with the rules  
3 shall be a misbranded hazardous substance.

4 (3) If the department finds that, because of the size  
5 of the package involved or because of the minor hazard  
6 presented by the substance contained therein, or for other  
7 good and sufficient reasons, full compliance with the  
8 labeling requirements otherwise applicable under this act is  
9 impracticable or is not necessary for the adequate  
10 protection of the public health and safety, the department  
11 shall adopt rules exempting such substance from these  
12 requirements to the extent of being consistent with adequate  
13 protection of the public health and safety.

14 (4) If the department finds that the hazard of an  
15 article subject to this act is such that labeling adequate  
16 to protect the public health and safety cannot be devised,  
17 or the article presents an imminent danger to the public  
18 health and safety, the department may declare the article a  
19 banned hazardous substance and require its removal from  
20 commerce.

21 (5) (a) A determination by the department that a toy  
22 or other article intended for use by children presents an  
23 electrical, mechanical, or thermal hazard shall be made by  
24 rule in accordance with this act.

25 (b) If, before or during a proceeding under paragraph

1 (a) of this subsection, the department finds that, because  
 2 of an electrical, mechanical, or thermal hazard,  
 3 distribution of the toy or other article involved presents  
 4 an imminent hazard to the public health and the department  
 5 gives notice of such finding, the toy or other article shall  
 6 be a banned hazardous substance for purposes of this act  
 7 until the proceeding has been completed. If not yet  
 8 initiated when the notice is given, the proceeding shall be  
 9 initiated as promptly as possible.

10 (c) (i) In the case of any toy or other article  
 11 intended for use by children which is determined by the  
 12 department to present an electrical, mechanical, or thermal  
 13 hazard, any person who will be adversely affected by such a  
 14 determination may, at any time before the sixtieth day after  
 15 the rule making the determination is issued by the  
 16 department, file a petition with the court for a judicial  
 17 review of such determination. A copy of the petition shall  
 18 be immediately transmitted by the clerk of the court to the  
 19 department. The department shall file in the court the  
 20 record of the proceedings on which the department based its  
 21 determination.

22 (ii) If the petitioner applies to the court for leave  
 23 to adduce additional evidence, and shows to the satisfaction  
 24 of the court that such additional evidence is material and  
 25 that there was no opportunity to adduce such evidence in the

1 proceeding before the department, the court may order such  
 2 additional evidence (and evidence in rebuttal thereof) to be  
 3 taken before the department in a hearing or in such other  
 4 manner, and upon such terms and conditions, as the court may  
 5 consider proper. The department may modify their findings  
 6 as to the facts, or make new findings, by reason of the  
 7 additional evidence so taken, and they shall file such  
 8 modified or new findings, and their recommendation, if any,  
 9 for the modification or setting aside of their original  
 10 determination, with the return of such additional evidence.

11 (iii) Upon the filing of the petition under this  
 12 paragraph, the court has jurisdiction to review the  
 13 determination of the department. If the court ordered  
 14 additional evidence to be taken under subparagraph (ii) of  
 15 this paragraph, the court shall also review the department's  
 16 determination to determine if, on the basis of the entire  
 17 record before the court under subparagraphs (i) and (ii) of  
 18 this paragraph, it is supported by substantial evidence. If  
 19 the court finds the determination is not so supported, the  
 20 court may set it aside. With respect to any determination  
 21 reviewed under this paragraph, the court may grant  
 22 appropriate relief pending conclusion of the review  
 23 proceedings.

24 Section 4. The following acts and the causing thereof  
 25 are prohibited: (1) The introduction or delivery for

1 introduction into commerce of any misbranded hazardous  
2 substance or banned hazardous substance.

3 (2) The alteration, mutilation, destruction,  
4 obliteration, or removal of the whole or any part of the  
5 label of, or the doing of any other act with respect to a  
6 hazardous substance if such act is done while the substance  
7 is in commerce, or while the substance is held for sale  
8 (whether or not the first sale) after shipment in commerce,  
9 and results in the hazardous substance being a misbranded  
10 hazardous substance or a banned hazardous substance.

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

14 (4) The giving of a guarantee or undertaking referred  
15 to in section 5(2)(a) which guarantee or undertaking is  
16 false, except by a person who relied upon a guarantee or  
17 undertaking to the same effect signed by, and containing the  
18 name and address of, the person residing in the United  
19 States from whom he received in good faith the hazardous  
20 substance.

21 (5) The failure to permit entry or inspection as  
22 authorized by section 10(1) or to permit access to any  
23 copying of any record as authorized by section 11.

24 (6) The introduction or delivery for introduction into  
25 commerce, or the receipt in commerce and subsequent delivery

1 or proffered delivery for pay or otherwise, of a hazardous  
2 substance in a reused food, drug, or cosmetic container or  
3 in a container which, though not a reused container, is  
4 identifiable as a food, drug, or cosmetic container by its  
5 labeling or by other identification. The reuse of a food,  
6 drug, or cosmetic container as a container for a hazardous  
7 substance shall be deemed to be an act which results in the  
8 hazardous substance being a misbranded hazardous substance.  
9 As used in this paragraph, the terms "food", "drug", and  
10 "cosmetic" shall have the same meanings as in the Montana  
11 Food, Drug and Cosmetic Act.

12 (7) The use by any person to his own advantage, or  
13 revealing other than to the department or officers or  
14 employees of the agency, or to the courts when relevant in  
15 any judicial proceeding under this act, of any information  
16 acquired under authority of section 10 concerning any method  
17 of process which as a trade secret is entitled to  
18 protection.

19 Section 5. (1) Any person who violates any of the  
20 provisions of section 4 is guilty of a misdemeanor and shall  
21 be fined not more than five hundred dollars (\$500) or  
22 imprisoned for not more than ninety (90) days, or both. For  
23 offenses committed with intent to defraud or mislead, or for  
24 second and subsequent offenses, the penalty shall be  
25 imprisonment for not more than one (1) year, or a fine of

1 not more than three thousand dollars (\$3,000), or both  
2 imprisonment and fine.

3 (2) No person is subject to the penalties of  
4 subsection (1) of this section:

5 (a) for having violated section 4(3), if the receipt,  
6 delivery, or proffered delivery of the hazardous substance  
7 was made in good faith, unless he refuses to furnish on  
8 request of an officer or employee duly designated by the  
9 department, the name and address of the person from whom he  
10 purchased or received such hazardous substance, and copies  
11 of all documents, if any there be, pertaining to the  
12 delivery of the hazardous substance to him; or

13 (b) for having violated section 4(1), if he  
14 establishes a guarantee or undertaking signed by, and  
15 containing the name and address of, the person residing in  
16 the United States from whom he received in good faith the  
17 hazardous substance, to the effect that the hazardous  
18 substance is not a misbranded hazardous or a banned  
19 hazardous substance within the meaning of those terms in the  
20 act.

21 Section 6. In addition to the remedies hereinafter  
22 provided, the department is authorized to apply to court  
23 for, and such court shall have jurisdiction upon hearing and  
24 for cause shown, to grant a temporary or permanent  
25 injunction restraining any person from violating any

1 provision of section 4, irrespective of whether or not there  
2 exists an adequate remedy at law.

3 Section 7. (1) Whenever a duly authorized agent of  
4 the department finds or has probable cause to believe that  
5 any hazardous substance is a misbranded, or is a banned  
6 hazardous substance, within the meaning of this act, he  
7 shall affix to such article a tag or other appropriate  
8 marking, giving notice that such article is, or is suspected  
9 of being, misbranded or is a banned hazardous substance and  
10 has been detained or embargoed, and warning all persons not  
11 to remove or dispose of such article by sale or otherwise  
12 until permission for removal or disposal is given by such  
13 agent or the court. It shall be unlawful for any person to  
14 remove or dispose of such detained or embargoed article by  
15 sale or otherwise without such permission.

16 (2) When an article detained or embargoed under  
17 subsection (1) has been found by such agent to be misbranded  
18 or a banned hazardous substance, he shall petition the judge  
19 or the police, county, or circuit court in whose  
20 jurisdiction the article is detained or embargoed for a  
21 libel of condemnation of such article. When such agent has  
22 found that an article so detained or embargoed is not  
23 misbranded or a banned hazardous substance, he shall remove  
24 the tag or other marking.

25 (3) If the court finds that a detained or embargoed

1 article is misbranded or a banned hazardous substance, such  
 2 article shall, after entry of the decree, be destroyed at  
 3 the expense of the claimant thereof, under supervision of  
 4 such agent, and all court costs and fees and storage and  
 5 other proper expenses, shall be taxed against the claimant  
 6 of such article or his agent; provided, that when the  
 7 misbranding can be corrected by proper labeling of the  
 8 article, the court, after entry of the decree and after such  
 9 costs, fees, and expenses have been paid and a good and  
 10 sufficient bond, conditioned that such article shall be so  
 11 labeled, has been executed, may by order direct that such  
 12 article be delivered to the claimant thereof for such  
 13 labeling under the supervision of an agent of the  
 14 department. The expense of such supervision shall be paid  
 15 by the claimant. The article shall be returned to the  
 16 claimant on the representation to the court by the  
 17 department that the article is no longer in violation of  
 18 this act, and that the expenses of such supervision have  
 19 been paid.

20 Section 8. It is the duty of ~~each state attorney or~~  
 21 THE DEPARTMENT OR THE county attorney to whom the department  
 22 reports any violation of this act, to cause appropriate  
 23 proceedings to be instituted in the proper courts without  
 24 delay and to be prosecuted in the manner required by law.  
 25 Before any violation of this act is reported to any such

1 attorney for the institution of a criminal proceeding, the  
 2 person against whom such proceeding is contemplated shall be  
 3 given appropriate notice and an opportunity to present his  
 4 view before the department, either orally or in writing, or  
 5 by attorney, with regard to such contemplated proceeding.

6 Section 9. (1) The authority to adopt rules for the  
 7 efficient enforcement of this act is vested in the  
 8 department.

9 (2) The department has the authority to adopt by  
 10 reference without public hearing rules adopted under the  
 11 Federal Hazardous Substances Act as amended.

12 Section 10. (1) For enforcement of this act, officers  
 13 or employees duly designated by the department, upon  
 14 presenting appropriate credentials to the owner, operator,  
 15 or agent in charge, are authorized:

16 (a) to enter, at reasonable time, any factory,  
 17 warehouse, or establishment in which hazardous substances  
 18 are manufactured, processed, packed or held for introduction  
 19 into commerce or are held after such introduction, or to  
 20 enter any vehicle being used to transport or hold such  
 21 hazardous substances in commerce;

22 (b) to inspect, at reasonable times, and within  
 23 reasonable limits and in a reasonable manner, such factory,  
 24 warehouse, establishment or vehicle, and all pertinent  
 25 equipment, finished and unfinished materials, and labeling

1 therein; and

2 (c) to obtain samples of such materials or packages  
3 thereof, or of such labeling.

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

8 (3) The department will conduct investigations of  
9 reported accidental injuries, illnesses and deaths resulting  
10 from the use or misuse of all hazardous substances intended  
11 or suitable for use by the general public as defined under  
12 section 2(4)(a)(i). Investigations will evaluate the  
13 causative hazardous substance and circumstances of the  
14 accident for enforcement of this act. Where the offending  
15 hazardous substance is a pesticide regulated by another  
16 agency as the Federal Environmental Pesticide Control Act or  
17 the Montana Pesticide Act, the investigation will yield  
18 recommendations to the appropriate regulating agency for  
19 appropriate action.

20 Section 11. For the purpose of enforcing the  
21 provisions of this act, carriers engaged in commerce, and  
22 persons receiving hazardous substances in commerce or  
23 holding such hazardous substances so received shall, upon  
24 the request of an officer or employee duly designated by the  
25 department, permit such officer or employee at reasonable

1 times, to have access to and to copy all records showing the  
2 movement in commerce of any such hazardous substances, or  
3 the holding thereof during or after such movement, and the  
4 quantity, shipper, and consignee thereof; and it is unlawful  
5 for any such carrier or person to fail to permit such access  
6 to and copying of any record so requested when such request  
7 is accompanied by a statement in writing specifying the  
8 nature or kind of such hazardous substance to which such  
9 request relates; provided, that evidence obtained under this  
10 section is not used in a criminal prosecution of the person  
11 from whom obtained; provided further, that carriers are not  
12 subject to the other provisions of this act by reason of  
13 their receipt, carriage, holding, or delivery of hazardous  
14 substances in the usual course of business as carriers.

15 Section 12. The department in cooperation with other  
16 state and federal agencies shall develop and conduct  
17 appropriate accident prevention and health oriented  
18 educational programs. The educational programs shall inform  
19 the public of the hazards, proper handling and use,  
20 disposal, storage and transportation of hazardous substances  
21 and the proper medical and first aid procedures for  
22 accidents resulting from hazardous substances.

23 Section 13. (1) The department may cause to be  
24 published from time to time reports summarizing any  
25 judgments, research findings, decrees, or court orders which



1 have been rendered under this act, including the nature of  
2 the charge and the disposition thereof.

3 (2) The department may also cause to be disseminated  
4 information regarding hazardous substances in situations  
5 involving imminent danger to health. Nothing in this  
6 section shall be construed to prohibit the department from  
7 collecting, reporting and illustrating the results of the  
8 investigations of the department.

9 Section 14. If any provision of this act is declared  
10 unconstitutional, or the applicability thereof to any person  
11 or circumstance is held invalid, the constitutionality of  
12 the remainder of the act and the applicability thereof to  
13 other persons and circumstances shall not be affected  
14 thereby.

15 Section 15. This act shall take effect upon its  
16 passage and approval, but no penalty or condemnation shall  
17 be enforced for any violation of this act which occurs:

18 (1) prior to the expiration of the sixth calendar month  
19 after the month in which this act is enacted, or

20 (2) prior to the expiration of such additional period  
21 or periods, ending not more than eighteen (18) months after  
22 the month of enactment of this act, as the department may  
23 prescribe on the basis of a finding that conditions exist  
24 which necessitate the prescribing of such additional period  
25 or periods; provided, that the department may limit the

1 application of such additional period or periods to  
2 violations related to specified provisions of this act, or  
3 to specified kinds of hazardous substances or packages  
4 thereof.

-End-

March 22, 1975

SENATE COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

AMENDMENTS TO HOUSE BILL NO. 519

That House Bill No. 519, third reading, be amended as follows:

1. Amend page 11, section 2, line 10.

Following: line 10

Insert: "(19) "Court" means, in section 3 of this act, the district court for the first judicial district, and in sections 6 and 7 of this act, the district court is the district in which the violation occurs."

1                   HOUSE BILL NO. 519  
2           INTRODUCED BY HARPER, VINCENT, LUEBECK, GUNDERSON,  
3           FLEMING, WOLFE, MCFADDEN, DUSSAULT, JOHNSON, FAGG,  
4           BRADLEY, PALMER, MURPHY, LESTER, FINLEY  
5  
6   A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE  
7   INTRASTATE DISTRIBUTION AND SALE OF HAZARDOUS SUBSTANCES  
8   INTENDED OR SUITABLE FOR USE BY THE GENERAL PUBLIC; TO  
9   INVESTIGATE AND EVALUATE GENERAL USE HAZARDOUS SUBSTANCES  
10   AND RESULTING ACCIDENTS AS THEY RELATE TO PUBLIC HEALTH; AND  
11   PROVIDING FOR AN EFFECTIVE DATE."  
12  
13   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14        Section 1. This act shall be cited as the "Montana  
15   Consumer Product Safety Act of 1975".  
16        Section 2. In this act: (1) "Department" means the  
17   department of health and environmental sciences.  
18        (2) "Person" includes an individual, partnership,  
19   corporation, or association, or his legal representative or  
20   agent.  
21        (3) "Commerce" means all commerce within this state  
22   and subject to the jurisdiction thereof; and includes the  
23   operation of any business or service establishment.  
24        (4) "Hazardous substance" means:  
25        (a) (i) Any substance or mixture of substances which:

1           (A) is toxic,  
2           (B) is corrosive,  
3           (C) is an irritant,  
4           (D) is a strong sensitizer,  
5           (E) is flammable or combustible, or  
6           (F) generates pressure through decomposition, heat, or  
7   other means, if such substance or mixture of substances may  
8   cause substantial personal injury or substantial illness  
9   during or as a proximate result of any customary or  
10   reasonably foreseeable handling or use, including reasonably  
11   foreseeable ingestion by children.  
12        (ii) Any substances which the department by rule finds,  
13   under section 3(1), meet the requirements of subparagraph  
14   (a)(i) of this paragraph.  
15        (iii) Any radioactive substance, if, with respect to  
16   such substance as used in a particular class of article or  
17   as packaged, the department determines by rule that the  
18   substance is sufficiently hazardous to require labeling in  
19   accordance with this act in order to protect the public  
20   health.  
21        (iv) Any toy or other article intended for use by  
22   children which the department by rule determines in  
23   accordance with section 3(5) of this act presents an  
24   electrical, mechanical, or thermal hazard.  
25        (b) The term "hazardous substance" does not apply to

1 pesticides subject to the Federal Pesticide Environmental  
 2 Control Act or the Montana Pesticide Act, nor to foods,  
 3 drugs, and cosmetics subject to the Montana Food, Drug and  
 4 Cosmetic Act, nor to substances intended for use as fuels  
 5 when stored in containers and used in the heating, cooking,  
 6 or refrigeration system of a house, but the term applies to  
 7 any article which is not itself a pesticide within the  
 8 meaning of the Federal Pesticide Environmental Control Act  
 9 or the Montana Pesticide Act, but which is a hazardous  
 10 substance within the meaning of subparagraph (a) of this  
 11 paragraph by reason of bearing or containing such a  
 12 pesticide; the term applies to pesticides where human health  
 13 is directly affected from the use or misuse of pesticides  
 14 requiring an accident investigation for the purpose of  
 15 preparing recommendations to federal or state pesticide  
 16 control agencies.

17 (c) The term "hazardous substance" does not include  
 18 any source material, special nuclear material, or by-product  
 19 material as defined in the Atomic Energy Act of 1954, as  
 20 amended, and rules issued pursuant thereto by the atomic  
 21 energy commission.

22 (5) "Toxic" means any substance (other than a  
 23 radioactive substance) which has the capacity to produce  
 24 personal injury or illness to man through ingestion,  
 25 inhalation or absorption through any body surface.

1 (6) (a) "Highly toxic" means any substance which falls  
 2 within any of the following categories:

3 (i) produces death within fourteen (14) days in  
 4 one-half (1/2) or more of a group of ten (10) or more  
 5 laboratory white rats each weighing between two hundred  
 6 (200) and three hundred (300) grams, at a single dose of  
 7 fifty (50) milligrams or less per kilogram of body weight,  
 8 when orally administered; or

9 (ii) produces death within fourteen (14) days in  
 10 one-half (1/2) or more of a group of ten (10) or more  
 11 laboratory white rats each weighing between two hundred  
 12 (200) and three hundred (300) grams, when inhaled  
 13 continuously for a period of one (1) hour or less at an  
 14 atmosphere concentration of two hundred (200) parts per  
 15 million by volume or less of gas or vapor or two (2)  
 16 milligrams per liter by volume or less of mist or dust, if  
 17 such concentration is likely to be encountered by man when  
 18 the substance is used in any reasonably foreseeable manner;  
 19 or

20 (iii) produces death within fourteen (14) days in  
 21 one-half (1/2) or more of a group of ten (10) or more  
 22 rabbits tested in a dosage of two hundred (200) milligrams  
 23 or less per kilogram of body weight, when administered by  
 24 continuous contact with the bare skin for twenty-four (24)  
 25 hours or less.

1 (b) If the department finds that available data on  
2 human experience with any substance indicate results  
3 different from those obtained on animals in the above-named  
4 dosages or concentrations, the human data shall take  
5 precedence.

6 (7) "Corrosive" means any substance which in contact  
7 with living tissue will cause destruction of tissue by  
8 chemical action, but does not refer to action on inanimate  
9 surfaces.

10 (8) "Irritant" means any substance not corrosive  
11 within the meaning of subsection (7) which on immediate,  
12 prolonged, or repeated contact with normal living tissue  
13 will induce a local inflammatory reaction.

14 (9) "Strong sensitizer" means a substance which will  
15 cause on normal living tissue, through an allergic or  
16 photodynamic process, a hypersensitivity.

17 (10) "Extremely flammable" applies to any substance  
18 which has a flash point at or below twenty degrees (20°)  
19 fahrenheit as determined by the tagliabue open cup tester.

20 (a) "Flammable" applies to any substance which has a  
21 flash point of above twenty degrees (20°) to and including  
22 eighty degrees (80°) fahrenheit, as determined by the  
23 tagliabue open cup tester.

24 (b) "Combustible" applies to any substance which has a  
25 flash point above eighty degrees (80°) fahrenheit to and

1 including one hundred fifty degrees (150°), as determined by  
2 the tagliabue open cup tester; except that the flammability  
3 or combustibility of solids and of the contents of  
4 self-pressurized containers shall be determined by methods  
5 found by the department to be generally applicable to such  
6 materials or containers, respectively, and established by  
7 rules issued by the department, which rules shall also  
8 define the terms "flammable", "combustible", and "extremely  
9 flammable" in accord with such methods.

10 (11) "Radioactive substance" means a substance which  
11 emits ionizing radiation.

12 (12) "Label" means a display of written, printed or  
13 graphic matter upon the immediate container of any  
14 substance, or in the case of an article which is unpackaged  
15 or is not packaged in an immediate container intended or  
16 suitable for delivery to the ultimate consumer, a display of  
17 such matter directly upon the article involved or upon a tag  
18 or other suitable material affixed thereto, and a  
19 requirement made by or under authority of this act that any  
20 word, statement, or other information appear on the label  
21 shall not be considered to be complied with unless such  
22 word, statement, or other information also appears:

23 (a) on the outside container or wrapper, if any,  
24 unless it is easily legible through the outside container or  
25 wrapper, and

1 (b) on all accompanying literature where there are  
2 directions for use, written or otherwise.

3 (13) "Immediate container" does not include package  
4 liners.

5 (14) "Misbranded hazardous substance" means a  
6 hazardous substance (including a toy, or other article  
7 intended for use by children, which is a hazardous  
8 substance, or which bears or contains a hazardous substance  
9 in such a manner as to be susceptible of access by a child  
10 to whom such toy or other article is entrusted) intended, or  
11 packaged in a form suitable for use by the public or by  
12 children, which substance, except as otherwise provided by  
13 or under section 3, fails to bear a label:

14 (a) which states conspicuously,

15 (i) the name and place of business of the  
16 manufacturer, packer, distributor, or seller;

17 (ii) the common or usual name or the chemical name (if  
18 there be no common or usual name) of the hazardous substance  
19 or of each component which contributes substantially to its  
20 hazard, unless the department by rule permits or requires  
21 the use of a recognized generic name;

22 (iii) the signal word "danger" on substances which are  
23 extremely flammable, corrosive, or highly toxic;

24 (iv) the signal word on all other hazardous  
25 substances;

1 (v) an affirmative statement of the principal hazard  
2 or hazards, such as "flammable", "combustible", "vapor  
3 harmful", "causes burns", "absorbed through skin", or  
4 similar wording descriptive of the hazard;

5 (vi) precautionary measures describing the action to  
6 be followed or avoided, except when modified by a rule of  
7 the department under section 3;

8 (vii) instruction, when necessary or appropriate, for  
9 first-aid treatment;

10 (viii) "poison" for any hazardous substance which is  
11 defined as "highly toxic" by subsection (6);

12 (ix) instructions for handling and storage or packages  
13 which require special care in handling or storage:

14 (A) "keep out of the reach of children" or its  
15 practical equivalent, or

16 (B) if the article is intended for use by children and  
17 is not a banned hazardous substance, adequate directions for  
18 the protection of children from the hazard, and

19 (b) on which any statement required under subparagraph  
20 (a) of this paragraph are located prominently and are in the  
21 English language in conspicuous and legible type in contrast  
22 by typography, layout, or color with other printed matter on  
23 the label.

24 (15) (a) "Banned hazardous substance" means:

25 (i) any toy, or other article intended for use by

1 children, which is a hazardous substance, or which bears or  
 2 contains a hazardous substance in such a manner as to be  
 3 susceptible of access by a child to whom the toy or other  
 4 article is entrusted; or

5 (ii) any hazardous substance intended, or packaged in a  
 6 form suitable for use by the general public which the  
 7 department by rule classifies as a "banned hazardous  
 8 substance" on the basis of a finding that, notwithstanding  
 9 such cautionary labeling as is or may be required under this  
 10 act for that substance, the degree or nature of the hazard  
 11 involved in the presence or use of such substance by the  
 12 general public is such that the objective of the protection  
 13 of the public health and safety can be adequately served  
 14 only by keeping the substance, when so intended or packaged,  
 15 out of the channels of commerce. However, the department by  
 16 rule: shall exempt from clause (i) of this paragraph  
 17 articles, such as chemical sets, which by reason of their  
 18 functional purpose require the inclusion of the hazardous  
 19 substance involved or necessarily present an electrical,  
 20 mechanical, or thermal hazard, and which bear labeling  
 21 giving adequate directions and warnings for safe use and are  
 22 intended for use by children who have attained sufficient  
 23 maturity, and may reasonably be expected, to read and heed  
 24 the directions and warnings.

25 (b) Proceedings for the issuance, amendment, or repeal

1 of rules under clause (ii) of subparagraph (a) of this  
 2 paragraph shall be governed by the provisions of section 3  
 3 of the act.

4 (16) An article may be determined to present an  
 5 electrical hazard if, in normal use or when subjected to  
 6 reasonably foreseeable damage or abuse, its design or  
 7 manufacture may cause personal injury or illness by electric  
 8 shock.

9 (17) An article may be determined to present a  
 10 mechanical hazard if, in normal use or when subjected to  
 11 reasonably foreseeable damage or abuse, its design or  
 12 manufacture presents an unreasonable risk of personal injury  
 13 or illness:

14 (a) from fracture, fragmentation, or disassembly of  
 15 the article,

16 (b) from propulsion of the article (or any part or  
 17 accessory thereof),

18 (c) from points or other protrusions, surfaces, edges,  
 19 openings, or closures,

20 (d) from moving parts,

21 (e) from lack or insufficiency of controls to reduce  
 22 or stop motion,

23 (f) as a result of self-adhering characteristics of  
 24 the article,

25 (g) because the article (or any part or accessory

1 thereof) may be aspirated or ingested,  
 2 (h) because of instability, or  
 3 (i) because of any other aspect of the article's  
 4 design or manufacture.

5 (18) An article may be determined to present a thermal  
 6 hazard if, in normal use or when subjected to reasonably  
 7 foreseeable damage or abuse, its design or manufacture  
 8 presents an unreasonable risk of personal injury or illness  
 9 because of heat as from heated parts, substances, or  
 10 surfaces.

11 (19) "COURT" MEANS, IN SECTION 3 OF THIS ACT, THE  
 12 DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT, AND IN  
 13 SECTIONS 6 AND 7 OF THIS ACT, THE DISTRICT COURT IS THE  
 14 DISTRICT IN WHICH THE VIOLATION OCCURS.

15 Section 3. (1) When in the judgment of the department  
 16 such action will promote the objectives of this act by  
 17 avoiding or resolving uncertainty as to its application, the  
 18 department may by rule declare to be a hazardous substance,  
 19 for the purposes of this act, any substance or mixture of  
 20 substances which the department finds meets the requirements  
 21 of subparagraph (a)(i) of section 2(4).

22 (2) If the department finds that the requirements of  
 23 section 2(14)(a) are not adequate for the protection of the  
 24 public health and safety in view of the special hazard  
 25 presented by any particular hazardous substance, the

1 department may by rule establish such reasonable variations  
 2 or additional label requirements as necessary for the  
 3 protection of the public health and safety, and any such  
 4 hazardous substance intended, or packaged in a form  
 5 suitable, for use by the general public or by children,  
 6 which fails to bear a label in accordance with the rules  
 7 shall be a misbranded hazardous substance.

8 (3) If the department finds that, because of the size  
 9 of the package involved or because of the minor hazard  
 10 presented by the substance contained therein, or for other  
 11 good and sufficient reasons, full compliance with the  
 12 labeling requirements otherwise applicable under this act is  
 13 impracticable or is not necessary for the adequate  
 14 protection of the public health and safety, the department  
 15 shall adopt rules exempting such substance from these  
 16 requirements to the extent of being consistent with adequate  
 17 protection of the public health and safety.

18 (4) If the department finds that the hazard of an  
 19 article subject to this act is such that labeling adequate  
 20 to protect the public health and safety cannot be devised,  
 21 or the article presents an imminent danger to the public  
 22 health and safety, the department may declare the article a  
 23 banned hazardous substance and require its removal from  
 24 commerce.

25 (5) (a) A determination by the department that a toy



1 or other article intended for use by children presents an  
2 electrical, mechanical, or thermal hazard shall be made by  
3 rule in accordance with this act.

4 (b) If, before or during a proceeding under paragraph  
5 (a) of this subsection, the department finds that, because  
6 of an electrical, mechanical, or thermal hazard,  
7 distribution of the toy or other article involved presents  
8 an imminent hazard to the public health and the department  
9 gives notice of such finding, the toy or other article shall  
10 be a banned hazardous substance for purposes of this act  
11 until the proceeding has been completed. If not yet  
12 initiated when the notice is given, the proceeding shall be  
13 initiated as promptly as possible.

14 (c) (i) In the case of any toy or other article  
15 intended for use by children which is determined by the  
16 department to present an electrical, mechanical, or thermal  
17 hazard, any person who will be adversely affected by such a  
18 determination may, at any time before the sixtieth day after  
19 the rule making the determination is issued by the  
20 department, file a petition with the court for a judicial  
21 review of such determination. A copy of the petition shall  
22 be immediately transmitted by the clerk of the court to the  
23 department. The department shall file in the court the  
24 record of the proceedings on which the department based its  
25 determination.

1 (ii) If the petitioner applies to the court for leave  
2 to adduce additional evidence, and shows to the satisfaction  
3 of the court that such additional evidence is material and  
4 that there was no opportunity to adduce such evidence in the  
5 proceeding before the department, the court may order such  
6 additional evidence (and evidence in rebuttal thereof) to be  
7 taken before the department in a hearing or in such other  
8 manner, and upon such terms and conditions, as the court may  
9 consider proper. The department may modify their findings  
10 as to the facts, or make new findings, by reason of the  
11 additional evidence so taken, and they shall file such  
12 modified or new findings, and their recommendation, if any,  
13 for the modification or setting aside of their original  
14 determination, with the return of such additional evidence.

15 (iii) Upon the filing of the petition under this  
16 paragraph, the court has jurisdiction to review the  
17 determination of the department. If the court ordered  
18 additional evidence to be taken under subparagraph (ii) of  
19 this paragraph, the court shall also review the department's  
20 determination to determine if, on the basis of the entire  
21 record before the court under subparagraphs (i) and (ii) of  
22 this paragraph, it is supported by substantial evidence. If  
23 the court finds the determination is not so supported, the  
24 court may set it aside. With respect to any determination  
25 reviewed under this paragraph, the court may grant

1 appropriate relief pending conclusion of the review  
2 proceedings.

3 Section 4. The following acts and the causing thereof  
4 are prohibited: (1) The introduction or delivery for  
5 introduction into commerce of any misbranded hazardous  
6 substance or banned hazardous substance.

7 (2) The alteration, mutilation, destruction,  
8 obliteration, or removal of the whole or any part of the  
9 label of, or the doing of any other act with respect to a  
10 hazardous substance if such act is done while the substance  
11 is in commerce, or while the substance is held for sale  
12 (whether or not the first sale) after shipment in commerce,  
13 and results in the hazardous substance being a misbranded  
14 hazardous substance or a banned hazardous substance.

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

18 (4) The giving of a guarantee or undertaking referred  
19 to in section 5(2)(a) which guarantee or undertaking is  
20 false, except by a person who relied upon a guarantee or  
21 undertaking to the same effect signed by, and containing the  
22 name and address of, the person residing in the United  
23 States from whom he received in good faith the hazardous  
24 substance.

25 (5) The failure to permit entry or inspection as

1 authorized by section 10(1) or to permit access to any  
2 copying of any record as authorized by section 11.

3 (6) The introduction or delivery for introduction into  
4 commerce, or the receipt in commerce and subsequent delivery  
5 or proffered delivery for pay or otherwise, of a hazardous  
6 substance in a reused food, drug, or cosmetic container or  
7 in a container which, though not a reused container, is  
8 identifiable as a food, drug, or cosmetic container by its  
9 labeling or by other identification. The reuse of a food,  
10 drug, or cosmetic container as a container for a hazardous  
11 substance shall be deemed to be an act which results in the  
12 hazardous substance being a misbranded hazardous substance.  
13 As used in this paragraph, the terms "food", "drug", and  
14 "cosmetic" shall have the same meanings as in the Montana  
15 Food, Drug and Cosmetic Act.

16 (7) The use by any person to his own advantage, or  
17 revealing other than to the department or officers or  
18 employees of the agency, or to the courts when relevant in  
19 any judicial proceeding under this act, of any information  
20 acquired under authority of section 10 concerning any method  
21 of process which as a trade secret is entitled to  
22 protection.

23 Section 5. (1) Any person who violates any of the  
24 provisions of section 4 is guilty of a misdemeanor and shall  
25 be fined not more than five hundred dollars (\$500) or

1 imprisoned for not more than ninety (90) days, or both. For  
 2 offenses committed with intent to defraud or mislead, or for  
 3 second and subsequent offenses, the penalty shall be  
 4 imprisonment for not more than one (1) year, or a fine of  
 5 not more than three thousand dollars (\$3,000), or both  
 6 imprisonment and fine.

7 (2) No person is subject to the penalties of  
 8 subsection (1) of this section:

9 (a) for having violated section 4(3), if the receipt,  
 10 delivery, or proffered delivery of the hazardous substance  
 11 was made in good faith, unless he refuses to furnish on  
 12 request of an officer or employee duly designated by the  
 13 department, the name and address of the person from whom he  
 14 purchased or received such hazardous substance, and copies  
 15 of all documents, if any there be, pertaining to the  
 16 delivery of the hazardous substance to him; or

17 (b) for having violated section 4(1), if he  
 18 establishes a guarantee or undertaking signed by, and  
 19 containing the name and address of, the person residing in  
 20 the United States from whom he received in good faith the  
 21 hazardous substance, to the effect that the hazardous  
 22 substance is not a misbranded hazardous or a banned  
 23 hazardous substance within the meaning of those terms in the  
 24 act.

25 Section 6. In addition to the remedies hereinafter

1 provided, the department is authorized to apply to court  
 2 for, and such court shall have jurisdiction upon hearing and  
 3 for cause shown, to grant a temporary or permanent  
 4 injunction restraining any person from violating any  
 5 provision of section 4, irrespective of whether or not there  
 6 exists an adequate remedy at law.

7 Section 7. (1) Whenever a duly authorized agent of  
 8 the department finds or has probable cause to believe that  
 9 any hazardous substance is a misbranded, or is a banned  
 10 hazardous substance, within the meaning of this act, he  
 11 shall affix to such article a tag or other appropriate  
 12 marking, giving notice that such article is, or is suspected  
 13 of being, misbranded or is a banned hazardous substance and  
 14 has been detained or embargoed, and warning all persons not  
 15 to remove or dispose of such article by sale or otherwise  
 16 until permission for removal or disposal is given by such  
 17 agent or the court. It shall be unlawful for any person to  
 18 remove or dispose of such detained or embargoed article by  
 19 sale or otherwise without such permission.

20 (2) When an article detained or embargoed under  
 21 subsection (1) has been found by such agent to be misbranded  
 22 or a banned hazardous substance, he shall petition the judge  
 23 or the police, county, or circuit court in whose  
 24 jurisdiction the article is detained or embargoed for a  
 25 libel of condemnation of such article. When such agent has

1 found that an article so detained or embargoed is not  
 2 misbranded or a banned hazardous substance, he shall remove  
 3 the tag or other marking.

4 (3) If the court finds that a detained or embargoed  
 5 article is misbranded or a banned hazardous substance, such  
 6 article shall, after entry of the decree, be destroyed at  
 7 the expense of the claimant thereof, under supervision of  
 8 such agent, and all court costs and fees and storage and  
 9 other proper expenses, shall be taxed against the claimant  
 10 of such article or his agent; provided, that when the  
 11 misbranding can be corrected by proper labeling of the  
 12 article, the court, after entry of the decree and after such  
 13 costs, fees, and expenses have been paid and a good and  
 14 sufficient bond, conditioned that such article shall be so  
 15 labeled, has been executed, may by order direct that such  
 16 article be delivered to the claimant thereof for such  
 17 labeling under the supervision of an agent of the  
 18 department. The expense of such supervision shall be paid  
 19 by the claimant. The article shall be returned to the  
 20 claimant on the representation to the court by the  
 21 department that the article is no longer in violation of  
 22 this act, and that the expenses of such supervision have  
 23 been paid.

24 Section 8. It is the duty of ~~each--state--attorney--or~~  
 25 THE DEPARTMENT OR THE county attorney to whom the department

1 reports any violation of this act, to cause appropriate  
 2 proceedings to be instituted in the proper courts without  
 3 delay and to be prosecuted in the manner required by law.  
 4 Before any violation of this act is reported to any such  
 5 attorney for the institution of a criminal proceeding, the  
 6 person against whom such proceeding is contemplated shall be  
 7 given appropriate notice and an opportunity to present his  
 8 view before the department, either orally or in writing, or  
 9 by attorney, with regard to such contemplated proceeding.

10 Section 9. (1) The authority to adopt rules for the  
 11 efficient enforcement of this act is vested in the  
 12 department.

13 (2) The department has the authority to adopt by  
 14 reference without public hearing rules adopted under the  
 15 Federal Hazardous Substances Act as amended.

16 Section 10. (1) For enforcement of this act, officers  
 17 or employees duly designated by the department, upon  
 18 presenting appropriate credentials to the owner, operator,  
 19 or agent in charge, are authorized:

20 (a) to enter, at reasonable time, any factory,  
 21 warehouse, or establishment in which hazardous substances  
 22 are manufactured, processed, packed or held for introduction  
 23 into commerce or are held after such introduction, or to  
 24 enter any vehicle being used to transport or hold such  
 25 hazardous substances in commerce;

1 (b) to inspect, at reasonable times, and within  
 2 reasonable limits and in a reasonable manner, such factory,  
 3 warehouse, establishment or vehicle, and all pertinent  
 4 equipment, finished and unfinished materials, and labeling  
 5 therein; and

6 (c) to obtain samples of such materials or packages  
 7 thereof, or of such labeling.

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

12 (3) The department will conduct investigations of  
 13 reported accidental injuries, illnesses and deaths resulting  
 14 from the use or misuse of all hazardous substances intended  
 15 or suitable for use by the general public as defined under  
 16 section 2(4)(a)(i). Investigations will evaluate the  
 17 causative hazardous substance and circumstances of the  
 18 accident for enforcement of this act. Where the offending  
 19 hazardous substance is a pesticide regulated by another  
 20 agency as the Federal Environmental Pesticide Control Act or  
 21 the Montana Pesticide Act, the investigation will yield  
 22 recommendations to the appropriate regulating agency for  
 23 appropriate action.

24 Section 11. For the purpose of enforcing the  
 25 provisions of this act, carriers engaged in commerce, and

1 persons receiving hazardous substances in commerce or  
 2 holding such hazardous substances so received shall, upon  
 3 the request of an officer or employee duly designated by the  
 4 department, permit such officer or employee at reasonable  
 5 times, to have access to and to copy all records showing the  
 6 movement in commerce of any such hazardous substances, or  
 7 the holding thereof during or after such movement, and the  
 8 quantity, shipper, and consignee thereof; and it is unlawful  
 9 for any such carrier or person to fail to permit such access  
 10 to and copying of any record so requested when such request  
 11 is accompanied by a statement in writing specifying the  
 12 nature or kind of such hazardous substance to which such  
 13 request relates; provided, that evidence obtained under this  
 14 section is not used in a criminal prosecution of the person  
 15 from whom obtained; provided further, that carriers are not  
 16 subject to the other provisions of this act by reason of  
 17 their receipt, carriage, holding, or delivery of hazardous  
 18 substances in the usual course of business as carriers.

19 Section 12. The department in cooperation with other  
 20 state and federal agencies shall develop and conduct  
 21 appropriate accident prevention and health oriented  
 22 educational programs. The educational programs shall inform  
 23 the public of the hazards, proper handling and use,  
 24 disposal, storage and transportation of hazardous substances  
 25 and the proper medical and first aid procedures for

1 accidents resulting from hazardous substances.

2 Section 13. (1) The department may cause to be  
3 published from time to time reports summarizing any  
4 judgments, research findings, decrees, or court orders which  
5 have been rendered under this act, including the nature of  
6 the charge and the disposition thereof.

7 (2) The department may also cause to be disseminated  
8 information regarding hazardous substances in situations  
9 involving imminent danger to health. Nothing in this  
10 section shall be construed to prohibit the department from  
11 collecting, reporting and illustrating the results of the  
12 investigations of the department.

13 Section 14. If any provision of this act is declared  
14 unconstitutional, or the applicability thereof to any person  
15 or circumstance is held invalid, the constitutionality of  
16 the remainder of the act and the applicability thereof to  
17 other persons and circumstances shall not be affected  
18 thereby.

19 Section 15. This act shall take effect upon its  
20 passage and approval, but no penalty or condemnation shall  
21 be enforced for any violation of this act which occurs:  
22 (1) prior to the expiration of the sixth calendar month  
23 after the month in which this act is enacted, or

24 (2) prior to the expiration of such additional period  
25 or periods, ending not more than eighteen (18) months after

1 the month of enactment of this act, as the department may  
2 prescribe on the basis of a finding that conditions exist  
3 which necessitate the prescribing of such additional period  
4 or periods; provided, that the department may limit the  
5 application of such additional period or periods to  
6 violations related to specified provisions of this act, or  
7 to specified kinds of hazardous substances or packages  
8 thereof.

-End-