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1 A bill to be entitled
2 An act relating to toxic substances in children's
3 products; providing definitions; prohibiting a person from
4 using or applying a toxic substance in or on any toy or
5 child care article in this state; prohibiting a person
6 from manufacturing, selling, offering for sale, or
7 distributing a toy or child care article that contains a
8 toxic substance; providing an exception; providing civil
9 fines for manufacturing, selling, offering for sale, or
10 distributing a toy or child care article that contains a
11 toxic substance; requiring that certain civil fines be
12 waived under specified circumstances; providing that a
13 knowing and intentional violation of the act is a felony
14 of the third degree; providing criminal penalties;
15 providing an effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Toxic substances in children's products;
20 limitations on use of toxic substance; exceptions; civil fines;
21 criminal penalties.--

22 (1) As used in this section, the term:

23 (a) "Child" means an individual who is 7 years of age or
24 younger.

25 (b) "Child care article" means a product designed or
26 intended by the manufacturer to facilitate the sleep, relaxation,
27 or feeding of a child or to help a child with sucking or
28 teething.

29 (c) "Consumer" means an individual; a child, by and through

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30 its parent or legal guardian; or a business, firm, association,
31 joint venture, partnership, estate, trust, business trust,
32 syndicate, fiduciary, corporation, any commercial entity, however
33 denominated, or any other group or combination.

34 (d) "Person" has the same meaning as provided in s. 1.01,
35 Florida Statutes.

36 (e) "Toxic substance" means a substance that contains lead,
37 or a coating on an item that contains lead, so that the lead
38 content is more than 0.06 percent of the total weight. The term
39 does not include glass or crystal decorative components,
40 electrical components, or any component that is not accessible
41 through normal and reasonably foreseeable use and abuse of a toy
42 or article of child care. For purposes of this section, a
43 component is "not accessible" if it cannot be touched with an
44 articulated probe meant to simulate a child's finger both before
45 and after use and abuse testing, such as drop, torque, tension,
46 compression, and other applicable testing performed in a manner
47 described in 16 C.F.R. part 1500.

48 (f) "Toy" means an article designed and made for the
49 amusement of a child or for the child's use in play.

50 (2) (a) A person may not use or apply a toxic substance in
51 or on any toy or child care article in this state.

52 (b) A person may not manufacture, sell, offer for sale, or
53 distribute a toy or child care article in this state which
54 contains a toxic substance.

55 (c) This section does not apply to the sale of a
56 collectible toy that is not marketed to or intended to be used by
57 a minor.

58 (3) Except as otherwise provided in subsection (4), if a

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59 person who is not an individual consumer violates subsection (2),
60 that person is liable for a civil fine of not more than:

61 (a) One hundred dollars per item, not to exceed \$5,000, for
62 the first violation.

63 (b) Five hundred dollars per item, not to exceed \$25,000,
64 for a second violation.

65 (c) One thousand dollars per item, not to exceed \$50,000,
66 for a third or subsequent violation.

67 (4) A civil fine imposed under subsection (3) must be
68 waived if the person acted in good faith to comply with this
69 section, pursued compliance with due diligence, and promptly
70 corrected any noncompliance after discovering the violation.

71 (5) If a person who is not an individual consumer knowingly
72 and intentionally violates subsection (2), that person:

73 (a) Commits a felony of the third degree, punishable as
74 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
75 Statutes; and

76 (b) Is liable for a civil fine of not more than \$3,000 per
77 item, not to exceed \$150,000 for the intentional violation.

78 Section 2. This act shall take effect July 1, 2008.