

Republic of the Philippines
Congress of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 5899



Introduced by: Representative Manuel Jose M. Dalipe

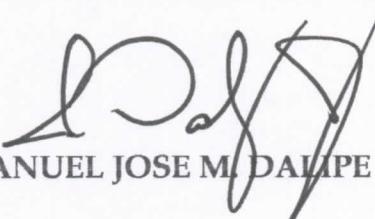
Explanatory Note

Play is vital to a healthy brain development of a child. It allows children to use their creativity while developing their imagination, skills, and physical, cognitive, and emotional strength. It is through play that children learn to engage and interact in the world around them.

While play needs to be fun and interactive, it must also be free from toxic toys. However, many of the toys and other children's products available in the market contain synthetic substances that are known to be hazardous to children's health. A report published by IPEN, a global network of NGOs focused on chemicals, found that a number of children's toys, hair accessories and other plastic children's products contain Polybrominated diphenyl ethers (PBDE), a chemical which may impact children's brain development, and may cause hormone disruption and reduced fertility, among others¹. Similarly, in 2018, the EcoWaste Coalition issued a warning after it discovered that some children's toys contain phthalates, a chemical which may cause damage to the endocrine and reproductive systems, after testing the toys they bought from *Divisoria*².

Evidently, these chemicals have adverse effects on child development – a fact that cannot be undervalued. Thus, the proliferation of chemically laden children's products in the market should be regulated and penal sanctions should be imposed on the violators.

In view of the foregoing, approval of this measure is earnestly sought.



MANUEL JOSE M. DALIPE

¹ Cernansky, R. (2019). Why are harmful flame-retardant chemicals still showing up in children's toys. Retrieved from: <https://ensia.com/features/why-are-harmful-flame-retardant-chemicals-still-showing-up-in-childrens-toys/>

² De Vera, A. (2018). EcoWaste Coalition warns of hazardous chemicals in children's toys. Retrieved from: <https://news.mb.com.ph/2018/10/10/ecowaste-coalition-warns-of-hazardous-chemicals-in-childrens-toys/>

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AN ACT
REGULATING THE IMPORTATION, MANUFACTURE, DISTRIBUTION AND SALE OF
CHILDREN'S PRODUCTS CONTAINING HAZARDOUS CHEMICALS, AND PROVIDING
PENALTIES FOR VIOLATION THEREOF

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as the “Safe and Non-Hazardous Children’s Products Act”.

SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State to protect and promote children’s rights to health. The State is committed to ensure the right to health of our children as enshrined in the Presidential Decree No. 603 otherwise as known as *The Child and Youth Welfare Code, Convention on the Rights of the Child* and other conventions on hazardous substances to which the Philippines is a signatory. Towards this end, the State shall regulate the importation, manufacture, distribution and sale of children’s products containing hazardous chemicals.

SEC. 3. Definition of Terms. – As used in this Act:

- a. *Children* refer to persons under eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of physical or mental disability or condition;
- b. *Children's products* refer to any product or material, whether or not likely to be put by children inside their mouths. These include children’s toys, educational kits, school supplies and childcare articles defined under Republic Act. No. 9711 or the *Food and Drug Administration Act of 2009*; non-conventional toys such as electronic gadgets, mobile phones, tablets and pocket game consoles; mechanized or electronic toys such as the hover board; furnishings and fixtures like cribs, tables, chairs, shelves, walkers or strollers, decorative items for children’s use; indoor and out door playground equipment; children’s books, reference materials and children’s accessories.
- c. *Distribution or Sale* refers to an act made by a manufacturer or seller, or the respective representative or agent to make available consumer products, services or credit to consumers under a consumer sale transaction. It shall not include sampling or any other form of distribution which are not for sale;

- d. *Distributor* refers to any entity to which the children's product is delivered or sold for purposes of distribution in commerce or any entity which repackages children's products under a different trade name or trademark with permission from the original legal distributor: *Provided, That* such term does not include a manufacturer or retailer of such product;
- e. *Hazardous chemical* refers to any substance or mixture of substances which is a physical or health hazard such as a toxic agent, corrosive substance, an irritant, a strong sensitizer, flammable or combustible substances, any substance or chemical that can generate pressure through decomposition, heat or other means; or agents which act on the hematopoietic system, or which damage the lungs, skin, eyes or mucous membranes, or cause any substantial injury or illness during or as a proximate result of any customary or reasonably foreseeable ingestion by children. It also includes substances which have been determined to be in one or more of the following categories of the United Nations Globally Harmonized System (GHS) for classification and labeling of chemicals:
 - (1) flammable liquids and solids: Category 1
 - (2) explosives: Category 1.1
 - (3) acute toxicity (oral, dermal, inhalation): Category 1
 - (4) eye irritation/corrosivity: Category 1
 - (5) dermal irritation/corrosivity: Category 1
 - (6) mutagenicity: Category 1A
 - (7) carcinogenicity: Category 1A
 - (8) reproductive toxicity: Category 1A
 - (9) acute/chronic aquatic toxicity: Category 1A
- f. *Importation* refers to the entry of a children's product into the Philippines, through seaports or airports of entry, whether already properly cleared through or still remaining under customs control, which is intended for direct consumption, merchandising, warehousing or for further processing;
- g. *Label* refers to the display of printed or graphic matter on any consumer product, its immediate container, tag, literature or other suitable material affixed thereto for the purpose of giving information as to the identity, components, ingredients, attributes, directions for use, specifications and such other information as may be necessary to protect the health and safety of the consumers;
- h. *License to Operate (LTO)* refers to the license issued by the Food and Drug Administration (FDA) to importers, manufacturers and distributors whose children's products conform to the health and safety requirements of the Department of Health (DOH) and the relevant Philippine National Standards and their future amendments;
- i. *Manufacturer* refers to any establishment that assembles or processes children's products: *Provided, That* if such products are manufactured, assembled or processed for another establishment that attaches its own brand name to the products, the latter shall be deemed the manufacturer. In case of imported products under this Act, the manufacturer, manufacturer's designated representative or, in the absence of one of these parties, the importer shall be deemed the manufacturer; and
- j. *Philippine National Standards (PNS)* refer to the national standards promulgated by the Bureau of Products Standard of the Department of Trade and Industry (BPS-DTI).

SEC. 4. Scope. – This Act shall apply to the importation, manufacture, distribution or sale of children's products containing hazardous chemicals as defined in Sec. 3 (b) hereof that are imported, manufactured, distributed or sold in the Philippines.

SEC. 5. List of Hazardous Chemicals. – Within three (3) months from the effectivity of this Act, the FDA, in coordination of the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), shall prepare a list of hazardous chemicals which are banned or prohibited from being used in the manufacture, production, and preparation of children's products. Maximum levels and limits and reference values for certain chemicals used for this purpose shall also be specifically and clearly identified.

Hazardous chemicals deemed most harmful to children and commonly used in the manufacture and production of children's products shall include the following:

a. Toxic Metals:

1. Antimony
2. Arsenic
3. Cadmium
4. Chromium
5. Cobalt
6. Lead
7. Mercury
8. Nickel

b. Phthalates – when used in the manufacture and production of products covered under this Act, include:

1. Di (2-Ethlyhexyl) Phthalate (DEHP)
2. Dibutyl Phthalate (DBP)
3. Benzyl Butyl Phthalate (BBP)
4. Diisononyl Phthalate (DINP)
5. Diisodecyl Phthalate (DiDP)
6. Di-N-Octyl Phthalate (DNOP)

c. Bisphenol-A (BPA)

The list of additional hazardous chemicals shall be reviewed and updated at least every two (2) years, or as soon as new chemicals or substances are uncovered to be injurious, dangerous or unsafe to children's health.

SEC. 6. Compliance with Philippine National Standards (PNS). – Importers, manufacturers, distributors and sellers of children's products shall comply with the standards, rules and processes of the BPS- DTI which shall collaborate with other relevant government agencies to harmonize and upgrade existing standards, where applicable.

SEC. 7. Role Delineation of Implementing Agencies. – The provisions of this Act and its implementing rules and regulations (IRR) shall be enforced by the following agencies:

- a. The DOH, through the FDA, shall formulate policies, rules and regulations on food, drugs, cosmetics, devices and substances; the FDA shall conduct regular testing of toxicity levels of chemical elements and substances content of children's products covered by this Act

and accreditation of product importers. It shall strive to upgrade its capacity for laboratory testing using new methods and modern equipment;

- b. The DENR shall regulate, control, restrict or prohibit the importation, manufacture, processing, distribution, sale, handling, use, transport and disposal of chemical substances or mixtures listed under *Republic Act No. 6969*, otherwise known as the “*Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990*”. It shall monitor, review, and evaluate hazardous chemicals used as industrial raw material to produce the children’s products in terms of their compliance to environmental laws;
- c. The Department of Finance (DOF), through the Bureau of Customs (BOC), shall monitor, hold and deny the entry or release of all imported shipment of children’s products at the different ports of entry in the Philippines, pursuant to the provisions of Republic Act No. 10863 otherwise known as the *Customs Modernization and Tariff Act (CMTA)*. It shall review and conduct an examination of documentary requirements of imported children’s products pursuant to the guidelines of the DOF. It shall develop or use high technology devices to detect hazardous chemicals from imported children’s products;
- d. The Department of Trade and Industry (DTI) shall ensure that children’s products comply with Philippine National Standards on the Safety of Toys. It shall likewise monitor safety of children’s products through the conduct of market inspections.

SEC. 8. *Creation of the Children’s Product Safety Council.* – There is hereby created a Children’s Product Safety Council (CPSC) which shall be attached to the Department of Health (DOH). It shall be composed of the following:

- a. Secretary of the DOH – Chairperson;
- b. Secretary of the DTI – Vice Chairperson;
- c. Secretary of the DENR – Member;
- d. Secretary of the Department of Interior and Local Government (DILG) – Member;
- e. Secretary of the Department of Education (DepEd) – Member;
- f. Secretary of DOF – Member;
- g. Director General of the FDA – Member;
- h. A member of the National Consumer Affairs Council (NCAC) – Member;
- i. Executive Director of the Council for the Welfare of Children (CWC) – Member
- j. Executive Director of the Early Childhood Care and Development Council (ECCDC) – Member
- k. One (1) representative from a Non-Government Organization (NGO) engaged in consumer safety and environment protection – Member; and
- l. One (1) representative from the health groups – Member

The heads of the abovestated departments may be represented by their duly designated representatives whose rank shall not be lower than Director.

The Chairperson of the CPSC shall nominate to the President of the Philippines the representatives from the non-government organization sector.

The FDA shall serve as the Secretariat of the CPSC.

Other government agencies and private sector representatives may be invited to participate in the meetings of the CPSC as exigencies and circumstances may require.

SEC 9. Powers and Functions of the CPSC. – The CPSC shall have the following powers and functions:

- a. To serve as primary link and coordinator for its member institutions such as the Business Processing and Licensing Office (BPLO) of Local Government Units (LGUs), the private sector and other stakeholders;
- b. To engage in studies and researches on hazardous chemicals and provide the necessary information materials on the same;
- c. To conduct and facilitate consultations and dialogues within and among all concerned stakeholders in the industry;
- d. To conduct information and education campaigns on the adverse health effects of hazardous chemicals on children;
- e. To propose amendments to laws, rules and regulations pursuant to its mandate and the objectives of this Act;
- f. To provide periodic and regular reports to the Secretary of Health on the compliance of importers and manufacturers on the provisions of this Act;
- g. To create a Technical Advisory Committee composed of experts from both government and private sectors that would assist the CPSC in providing technical and scientific recommendations necessary to effectively carry out its mandate; and
- h. To perform such other functions as may be directed by the DOH.

SEC. 10. Injurious, Dangerous and Unsafe Products. – Whenever the DOH finds, by its own initiative or by petition of a consumer, that a children's product is injurious, unsafe, or dangerous, it shall, after due notice and hearing, make the appropriate order for its recall, prohibition, or seizure from public distribution or sale. It may declare a children's product to be imminently injurious, unsafe or dangerous, and order its immediate recall, ban or seize from public distribution or sale, in which case, the distributor, producer or seller thereof shall be afforded a hearing within forty-eight (48) hours from such order.

There shall be immediate information dissemination, through the mass media, of the children's products which are found to be injurious, dangerous and unsafe.

SEC. 11. Product Confiscation. – Imported children's products shall be allowed entry into the country when accompanied by Certificates of Testing or Analysis of its composition. The BOC shall require pertinent clearance or certification from the FDA prior to entry. The entire shipment or batch of children's products found to be in violation of the provisions of this Act shall be seized. The confiscated children's products shall be properly disposed of in accordance with the prescribed procedure to be issued by the DOH in coordination with the DENR.

SEC. 12. Information Dissemination in all Media. – The DOH, together with the other members of the CPSC, is mandated to conduct information campaigns on children's products and hazardous chemicals utilizing any form of mass media and other electronic means deemed effective to ensure the proper guidance of consumers, industries, businesses and other concerned sectors.

The DOH shall regularly publish the updated list of hazardous chemicals and the list of children's products that may be on the market that have been determined to be non-compliant. An information campaign on the dangers of hazardous substances exposure, the corresponding proper first aid or remedy when exposed to a hazardous product, and proper disposal of a product containing hazardous chemical or substance shall be disseminated in all media. An information campaign against buying hazardous children's may also be launched.

Information dissemination of advisories or warnings in all media shall be done in a manner easily understood by parents, guardians and children. These advisories shall be printed or dubbed in any language or dialect determined by the DOH to be culturally and linguistically appropriate for a particular audience.

SEC. 13. Prohibited Acts. – The following acts are hereby prohibited:

- a. Importation, manufacture, distribution and sale of children's products containing more than the allowable level of substances listed in Sec. 5 of this Act;
- b. Intentional misrepresentation or concealment of significant data or information about the children's product sought for certification;
- c. Importation, manufacture, distribution, sale, labeling or operation without license or registration;
- d. Non-compliance with the standards and requirements of the DOH on the importation, manufacture, distribution or sale of children's products; and
- e. Refusal to allow required inspections as determined by the DOH.

SEC. 14. Administrative Sanctions. – Where there is a finding of a violation against the provisions of Section 13 of this Act and a determination of the persons liable thereto, after notice and hearing, the following administrative penalties shall be imposed by the DOH-FDA:

- a. Suspension of License to Operate (LTO) of a producer or manufacturer, distributor, seller or importer of a children's product ;
- b. Revocation of LTO of a producer or manufacturer, distributor, seller or importer of a children's product; and
- c. Seizure of the unregistered, non-compliant or falsely represented children's product.

SEC. 15. Penalties. – Any person who shall commit any of the prohibited acts under Section 13 hereof shall, upon conviction, suffer the penalty of imprisonment ranging from one (1) year but not more than ten (10) years or a fine of not less than Fifty thousand pesos (P50,000.00) but not more than Five hundred thousand pesos (P500,000.00) or both, at the discretion of the court and in accordance with Section 11 of the "Food and Drug Administration (FDA) Act of 2009". *Provided, That* if the offender is a manufacturer, importer or distributor of any product covered under this Act, the penalty of at least five (5) years imprisonment but not more than ten (10) years and a fine of at least Five hundred thousand pesos (P500,000.00) but not more than Five million pesos (P5,000,000.00) shall be imposed. *Provided further, That* an additional fine of one percent (1%) of the economic value/cost of the violative product or violation, or One thousand pesos (P1,000.00), whichever is higher, shall be imposed for each day of continuing violation after reasonable notice of such violation: *Provided finally, That* children's products found in violation of the provisions of this

Act and other relevant laws, rules and regulations may be seized and held in custody pending proceedings, without hearing or court order, when the FDA Director-General has reasonable cause to believe from facts found by an authorized officer or employee of the FDA that the children's products may cause injury or prejudice to children.

Should the offense be committed by a juridical person, the Chairperson of the Board of Directors, the president, general manager or the partners, and/or the persons directly responsible therefore shall be penalized.

Should the offense be committed by a foreign national, the person shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

SEC 16. *Citizen Suit.* – For purposes of enforcing the provisions of this Act, any citizen may file an appropriate civil, criminal or administrative action in the proper courts/bodies against:

- a. any person who violates or fails to comply with the provisions of this Act; or
- b. any official or employee of the DOH and other implementing agencies with respect to orders, rules and regulations issued inconsistent with this Act; and
- c. any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act; or abuses authority in the performance of duty; or, in any manner improperly performs the duties under this Act: *Provided however, That no suit can be filed until after a thirty-day (30) notice has been given to the public officer and the alleged violator concerned, and no appropriate action has been taken thereon.*

The court shall exempt such action from the payment of filing fees and shall likewise, upon *prima facie* showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

In the event that the citizen suit should prosper, the court may award reasonable attorney's fees, moral damages and litigation costs.

SEC 17. *Suits and Strategic Legal Action Against Public Participation (SLAPP) and the Enforcement of this Act.* – Where a suit is brought against a person who filed an action as provided in Section 16 of this Act, or against any person, institution or government agency that implements this Act or any other consumer related laws, rules, and regulations, it shall be the duty of the investigating prosecutor or the court, as the case may be, to immediately make a determination within a period not exceeding thirty (30) days whether the legal action has been filed to harass, vex, exert undue pressure or stifle such legal recourses of the person complaining or enforcing the provisions of this Act. Upon determination of the evidence, the court may dismiss the case and award attorney's fees and damages.

This provision shall also apply to and benefit public officers who are sued for acts committed in their official capacity, there being no grave abuse of authority, and done in the course of enforcing this Act, its rules, regulations and guidelines.

SEC. 18. *Burden of Proof of Product Safety.* – The burden of proof to prove the exercise of due diligence, compliance with this Act and other laws, rules and regulations relating to consumer products, and appropriate precaution, and to prove the absence of fault or negligence shall lie with the manufacturer, producer, assembler, importer or seller of the children's product involved or concerned.

SEC. 19. *Appropriations.* – The amount as may be necessary to implement the provisions of this Act shall be included in the annual appropriations of the DOH and FDA under the General Appropriations Act.

SEC. 20. *Implementing Rules and Regulations.* – Within sixty (60) days after the effectivity of this Act, the DOH, in coordination with the DTI, DENR and the DOF through the BOC, shall issue the IRR of this Act.

SEC. 21. *Congressional Oversight Committee.* - The Joint Congressional Oversight Committee created under R.A. No. 9711 shall function as the oversight committee to monitor and evaluate the implementation of this Act.

SEC. 22. *Supplementary Applications* – Pertinent provisions of Republic Act. No. 9711, Republic Act No. 7394 otherwise known as the “*Consumer Act of the Philippines*” and Republic Act No. 10620 otherwise known as “*Toy And Game Safety Labelling Act of 2013*” shall have supplementary effect in the implementation of this Act.

SEC. 23. *Separability Clause.* – If, for any reason, a provision or part hereof is declared invalid, the other provisions not affected thereby shall remain in full force and effect.

SEC. 24. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 25. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,