

LEGISLATIVE RESEARCH COMMISSION

REPORT
TO THE
1979
GENERAL ASSEMBLY OF NORTH CAROLINA



CONSUMER PRODUCT SAFETY

RALEIGH, NORTH CAROLINA



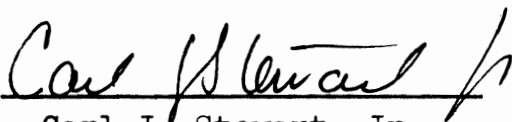
STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

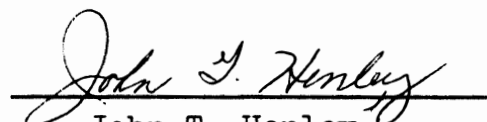


TO THE MEMBERS OF THE 1979 GENERAL ASSEMBLY:

Transmitted herewith is the report prepared by the Consumer Products Safety Study Committee of the Legislative Research Commission. The study was conducted pursuant to Chapter 1036 of the 1977 Session Laws (S.B. 833). This report is submitted to the members of the General Assembly for their consideration.

Respectfully submitted,


Carl J. Stewart, Jr.


John T. Henley

Co-Chairmen

LEGISLATIVE RESEARCH COMMISSION

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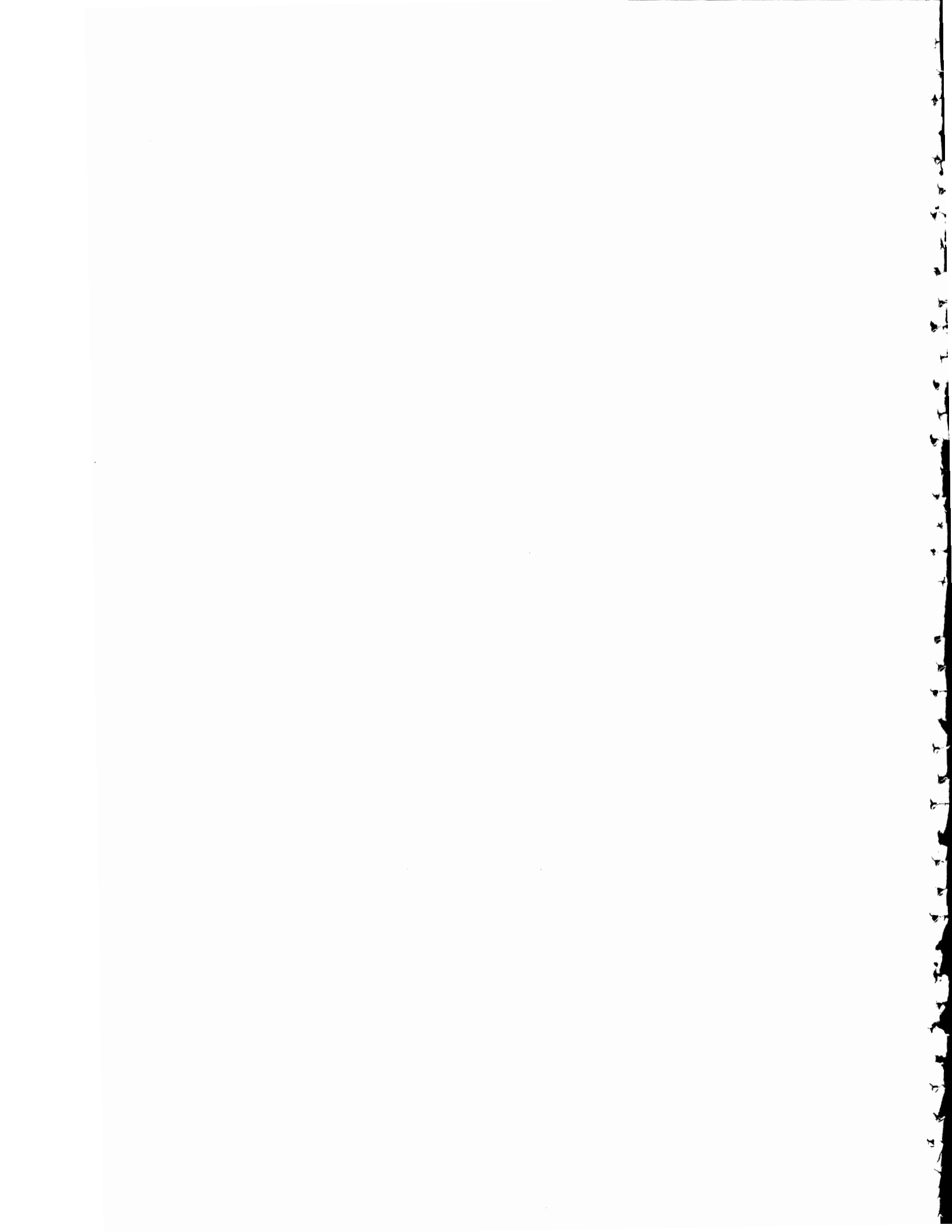
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PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1977 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of studies. The Co-chairmen of the Legislative Research Commission, under the authority of General Statutes 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and of the public to conduct the studies. Co-chairmen, one from each house of the General Assembly, were designated for each committee.

The Study of Consumer Products Safety was directed by Chapter 1036 of the 1977 Session Laws (S.B. 833). The charge to the Legislative Research Commission found in Section 1 of that act reads: "The Legislative Research Commission shall study the hazardous conditions that exist in North Carolina as a result of consumer products that are not presently regulated within the State. The Commission shall consider the dangers that exist to the people of this State as a result of those products' being in commerce. The Commission shall report to the 1979 General Assembly." (A copy of Chapter 1036 of the 1977 Session Laws is found in Appendix A of this report.)



COMMITTEE PROCEEDINGS

Senator James D. Speed and Representative Ned R. Smith, Co-Chairmen of the Consumer Products Safety Study Committee, called seven meetings to "... study the hazardous conditions that exist in North Carolina as a result of consumer products that are not presently regulated within the State. (Chapter 1036 of the 1977 Session Laws, Senate Bill 833). The Consumer Products Safety Study Committee, hereinafter referred to as the Committee, was ably assisted by Senator Vernon E. White, Legislative Research Commission member responsible for the study, during its deliberations.

The initial meetings of the Committee were devoted to a study of the depth and breadth of the consumer product safety problems in North Carolina. Officials from the Department of Agriculture provided the Committee detailed statistical information regarding product-related deaths and injuries in North Carolina and an estimated number of annual injuries occurring in the State. Such data was supplemented by several concrete examples of common products that pose a potential danger to consumers in North Carolina, such as improperly manufactured and labeled drain cleaners, children's toys, certain pottery glazes, and improperly supervised canning facilities. Mr. Jim Graham, North Carolina Commissioner of Agriculture, reported to the Committee at its February 13, 1978 meeting that he felt that State governmental controls over consumer products should be very carefully considered and should be adopted only to regulate products that pose serious risks. Commissioner Graham told the Committee that should he be given a legislative mandate to implement a product safety law that his Department would "accept the challenge and do a good job".

The Committee solicited ideas from other State agencies and groups interested in products safety across the State. The individuals who testified formally before the committee included Dr. Martin P. Hines, Chief of the Epidemiology Section of the Division of Health Services, Ms. Ardath A. Goldstein, Community Affairs Networks Coordinator in the Governor's Office of Citizens' Affairs, Dr. Shirley Osterhaut from the Duke University Poison Control Center, and Dr. Patricia Z. Barry from the School of

Public Health at the University of North Carolina. All of these officials endorsed the need for consumer product safety study and offered suggestions ranging from accident investigation to public awareness campaigns concerning product safety.

The Committee then turned its study on April 4, 1978 to hearing from officials working with product safety programs in other states. The States of South Carolina, Tennessee, and Kentucky were selected for investigation because those states have programs in consumer product safety that range from public education to regulatory-type product safety acts. South Carolina, for example, takes an educational approach in attempting to solve consumer product safety issues and there are no statutes nor administrative rules which the South Carolina program enforces. The educational program is carried out in part by the provision of audio-visual equipment to state school groups, churches, and private organizations that are interested in the subject. Additionally, poison and pesticide brochures are provided for schools, doctors' offices, and health clinics throughout the State.

Tennessee has a Hazardous Substances Act which is a specialized law which prohibits the introduction or sale of any misbranded or banned hazardous substance in the State and prescribes authority for the enforcement, establishment of definitions and standards for hazardous substances, and provides penalties for violation of the act. The regulation of hazardous substances represents a specialized approach to product safety in that it covers a specified area of consumer products that are dangerous to human health rather than attempting to cover the entire spectrum of consumer products. The State of Kentucky, on the other hand, has developed and passed legislation that is complementary to the Consumer Product Safety Act passed by Congress in 1972. One of the four purposes stated by Congress in this federal law is "to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations". The Kentucky representative pointed out, for example, that the value of their State's legislation lies in both its supplementary and complementary nature in relation to the federal product safety legislation. One of the ways that this works in Kentucky is that the product safety legislation is

consistent with the federal legislation and complements federal authority by providing "coverage" of areas not already addressed by the federal agency, namely the Consumer Product Safety Commission. The net result of the cooperation between the State of Kentucky and the federal authorities is an expansion of the total resources allocated to product safety through limited federal grants and the protection of public health through the implementation of appropriate action against violative and unsafe consumer products. Kentucky has also designed, developed, and implemented for two years the only state-maintained personal-injury data system.

The Committee also heard from the Director of the Atlanta Area Office of the Federal Consumer Product Safety Study Commission. The Committee was informed of the structure and activities of the Federal Consumer Product Safety Study Commission on a nationwide level and how the federal agency is cooperating with the states in attempting to solve the consumer product safety problem. It was pointed out that presently Georgia, South Carolina, and Mississippi are holding information and education contracts with the Consumer Product Safety Commission and that a limited amount of federal grant money is available to the states for those purposes.

The Committee at its October 31, 1978 meeting determined that the best direction to take would be the adoption of a North Carolina Hazardous Substances Act. As noted earlier, Tennessee takes this approach and the regulation of hazardous substances represents a specialized approach to product safety in that it covers a limited area of consumer products that are dangerous to human health rather than attempting to cover the entire spectrum of consumer products. The Committee reached this conclusion after hearing testimony that appeared to indicate that hazardous substances as a special category of consumer products present a major threat to the health and welfare of the people of the State of North Carolina. Additionally, the Committee felt that the coverage of the Hazardous Substances Act should be limited to protecting the citizens of North Carolina from dangers created by hazardous substances found in and around households. (emphasis added) Hazardous substances were defined by

the Committee to be substances which are:

1. Toxic
2. Corrosive
3. Explosive
4. Flammable
5. Combustible
6. Irritants or strong sensitizers
7. Dangerous children's toys

Item 7 listed above was seen by the Committee as a special category of hazardous substances.

The Committee directed its staff to draft a bill setting up the control of hazardous substances in North Carolina. At its November 30, 1978 meeting, the Committee reviewed the first draft of a North Carolina Hazardous Substances Act. A number of changes and clarifying amendments were offered by the Committee members to the first draft. The Committee at its next meeting on December 19, 1978 reviewed the amended draft bill. The amended draft of the North Carolina Hazardous Substances Act was unanimously approved and adopted by the Committee. Additionally, the Committee reviewed and approved a "Hazardous Substances Program Proposed Budget" (see Appendix D) and directed the staff attorney to draft an appropriations bill to fund the implementation of the Hazardous Substances Act. That bill provides \$66,846 in fiscal year 1979-1980 and \$102,812 in fiscal year 1980-1981 to the Department of Agriculture to implement the Act. (See page 25 for a copy of the appropriations bill).

The Committee closed its deliberations by re-affirming its belief that hazardous household substances present an unreasonable risk of injury to the citizens of North Carolina and that the proposed North Carolina Hazardous Substances Act will provide a good mechanism to help reduce those risks.

FINDINGS AND RECOMMENDATIONS

The Legislative Research Commission Consumer Products Safety Study Committee, after a review of the data it has collected and the testimony it has heard, and for the reasons set forth below, makes the following findings and recommendations:

I. Findings

The Committee finds that --

- (1) An unacceptable number of hazardous substances which present unreasonable risks of injury are distributed in commerce in North Carolina; and
- (2) Complexities of hazardous substances and the diverse nature and abilities of consumers using them frequently result in inability of users to anticipate risks and safeguard themselves adequately; and
- (3) Existing State authority to protect consumers from exposure to hazardous substances presenting unreasonable risks of injuries is non-existent; and
- (4) The people of North Carolina should be protected against unreasonable risks of injuries associated with hazardous substances.

II. Recommendations

The General Assembly of North Carolina should enact the proposed "North Carolina Hazardous Substances Act" contained in this Report. This proposed Hazardous Substances Act would serve to reduce unreasonable risk of injury to the people of North Carolina which are associated with the use of household hazardous substances by:

- (1) Allowing the promulgation and enforcement of hazardous substances standards, rules, and regulations; and
- (2) Causing investigations into the causes and preventions of related deaths, illnesses, and injuries; and
- (3) Creating and implementing education and information programs.

OUTLINE OF PROPOSED LEGISLATION

- I. Direction: This legislation is directed towards protecting the citizens of North Carolina from dangers created by hazardous substances found in and around households. (emphasis added)
- II. Coverage: Hazardous substances (as opposed to the general spectrum of consumer products) which are
 1. Toxic
 2. Corrosive
 3. Explosive
 4. Flammable
 5. Combustible
 6. Irritants or strong sensitizers
 7. Dangerous children's toys
- III. Typical examples of substances encompassed: Lighter fluid, drain cleaners, household ammonia, automotive antifreeze, dangerous children's toys, paint thinners, paint, lacquer, household cleaning agents, etc.
- IV. Hazardous substance labels: Provision is made for proper label warnings and directions for proper use of the household hazardous substance.
- V. Packaging of poisons: This legislation provides for the setting of standards for package closures to restrict the ease with which children under the age of five years are able to open packages of poisonous materials which they might consume.
- VI. Exceptions: The following substances are excepted from the provisions of this legislation:
 1. Tobacco or tobacco products
 2. Pesticides
 3. Foods
 4. Drugs
 5. Cosmetics
 6. Clothing (flammable fabrics)
- VII. Administrative provisions: Authority given the North Carolina Board of Agriculture and the North Carolina Commissioner of Agriculture.
 - A. The following authority to administer this legislation is given to the North Carolina Board of Agriculture:
 1. Promulgation of hazardous substance safety rules, standards, and regulations.
 2. Discretionary authority to adopt Federal consumer product safety rules, standards, and regulations by reference.

3. Authority to require manufacturers, private labelers, or distributors of a hazardous substance to maintain certain records, make reports, and provide other necessary information for the implementation of the hazardous substance laws.
4. Prescription of the form and content of hazardous substance labels.
5. Hold public hearings before the promulgation of any hazardous substance safety rules, standards, or regulations.
6. Regulation of inherently hazardous substances.

B. The following authority is given to the North Carolina Commissioner of Agriculture:

1. Authority to formulate, promote, establish, and execute policies, plans and programs relating to hazardous substance safety.
2. Inspect at reasonable times any factory, warehouse, or establishment at which hazardous substances are manufactured or held. (Inspection would not include financial data, sales data other than shipment data, personnel data, pricing data, etc.)
3. Obtain samples of hazardous substances for testing.
4. Recall a hazardous substance which has been declared a banned hazardous product under Federal Acts or by regulation of the State.
5. Contract and administer grants, gifts, or contributions of the Federal Government or other sources for injury data collection, investigation, and research and information programs.
6. Advise, consult, and cooperate with the other agencies of the State and political subdivisions in regard to safety evaluations, recalls, or condemnations.
7. May, in his discretion, maintain an injury information clearing house to investigate, collect, and analyze injury data regarding the use of hazardous substances.
8. Embargo hazardous substances suspected of being in violation of the rules or regulations of the Board.
9. Apply for court injunctions to prevent the manufacture, sale, or distribution of hazardous substances in violation of the Board's rules or regulations.
10. Publicize information regarding hazardous substances.

VIII. Penalties: Violation of the rules or regulations promulgated by the Board of Agriculture is punishable as a misdemeanor.

IX. Injunctions: The Commissioner may apply for injunctions restraining violation of the rules and regulations in a court of law.

- X. Commissioner's discretion in minor violations: The Commissioner may, in his discretion, forego the institution of proceedings under this legislation when he believes that the public interest would be adequately served by a suitable written notice or warning to a manufacturer or distributor of a hazardous substance.
- XI. Effect on other standards: The rules, regulations, and standards adopted by the Board of Agriculture preempt other such rules, regulations, and standards of any political subdivision of the State.

PROPOSED LEGISLATION
of the
CONSUMER PRODUCTS SAFETY
STUDY COMMITTEE
of the
LEGISLATIVE RESEARCH COMMISSION

A BILL TO BE ENTITLED

AN ACT TO REDUCE UNREASONABLE RISKS OF INJURY TO THE CITIZENS OF
NORTH CAROLINA WHICH ARE ASSOCIATED WITH THE USE OF HAZARDOUS
HOUSEHOLD SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are hereby amended by
inserting therein immediately following Article 12 of Chapter 106
of the General Statutes a new Article 12A entitled "Hazardous
Substances Act" to read as follows:

"ARTICLE 12A.

"Hazardous Substances Act.

"§ 106-145.1. Short title.--This Article may be cited as the
North Carolina Hazardous Substances Act.

"§ 106-145.2. Purpose.--The purpose of this Article is to
reduce unreasonable risks of injury to the public which are
associated with the use of hazardous substances by:

(1) promulgating and enforcing hazardous substances standards,
rules, and regulations, and

(2) conducting investigations into the causes and prevention of
related deaths, illnesses, and injuries, and

(3) implementing education and information programs.

"§ 106-145.3. Definitions.--For the purpose of this Article:

(1) "Agency" means the Department of Agriculture of the State of North Carolina.

(2) "Commerce" means trade, traffic, commerce, or transportation within the State of North Carolina.

(3) "Commissioner" means the North Carolina Commissioner of Agriculture.

(4) "Board" means the North Carolina Board of Agriculture.

(5) "Hazardous substance" means:

(a) any substance or mixture of substances which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(i) toxic

(ii) corrosive

(iii) an irritant

(iv) a strong sensitizer

(v) a flammable or combustible substance

(vi) a generator of pressure through decomposition, heat, or other means

if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children, or

(b) any toy or article intended for use by children which the Board by rule or regulation determines is an electrical,

mechanical, or thermal hazard.

(c) Any substance which the Board by regulation finds meets the requirements of G.S. 106-145.3(5) (a) in this definition.

(d) The definition of "hazardous substance" shall not include tobacco or tobacco products, pesticides, foods, drugs, cosmetics, or clothing.

(6) "Inherently hazardous substance" means any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or any hazardous substance intended, or packaged in a form suitable for use in the household, which notwithstanding such cautionary labeling as is or may be required under this Article for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of State commerce.

(7) "Department" shall mean the North Carolina Department of Agriculture.

(8) "Misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable

for use in the household or by children, if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to the Federal Acts or fails to bear a label which states conspicuously such safety information deemed necessary by the Board.

(9) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto; and a requirement made by or under authority of this Article that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (a) on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper and (b) on all accompanying literature where there are directions for use, written or otherwise.

(10) "Distributor" means a person to whom a hazardous substance is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such substance.

(11) "Federal Acts" means the Federal Hazardous Substances Act (15 USC [26] et. seq.) and The Poison Prevention Packaging Act of 1970 (15 USC [47] et. seq.); and all amendments thereto.

(12) "Manufacture" means to make, produce, or assemble.

(13) "Manufacturer" means any person who manufactures or imports a hazardous substance.

(14) (a) "Private labeler" means an owner of a brand or trademark on the label of a hazardous substance which bears a private label. A hazardous substance bears a private label if the substance, or its container, is labeled with the brand or trademark of a person other than a manufacturer of the substance, has been produced with the consent of the private label distributor and does not bear the trademark or name of the original manufacturer.

(15) "Retailer" means a person to whom a hazardous substance is delivered or sold for purposes of sale or distribution by such person to a consumer.

(16) "Risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(17) "Distribution in commerce" and "To distribute in commerce" means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce within the State of North Carolina.

(18) "Claimant" of the embargoed hazardous substance means the owner or authorized agent of the owner.

"§ 106-145.4. Hazardous substance safety rules, standards, and regulations.--(a) The authority to promulgate hazardous substance safety standards, rules, and regulations for the efficient enforcement of this Article is hereby vested in the Board. The Board shall make such hazardous substance safety

standards, rules, and regulations conform insofar as practicable to those standards, rules, and regulations promulgated under the Federal Acts. Notwithstanding the substance exemptions under definition of the term "hazardous substance" as specified in G.S. 106-145.3(5)(d) of this Article, the Board may adopt standards, rules, and regulations to provide for special packaging to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting household hazardous substances, which shall include: (1) a hazardous substance, as that term is defined in G.S. 106-145.3(5)(a), G.S. 106-145.3(5)(b), and G.S. 106-145.3(5)(c) of this Article; (2) a pesticide, as that term is defined in the North Carolina Pesticide Law of 1971 (Article 52, Chapter 143 of the General Statutes of North Carolina); (3) a food, drug or cosmetic, as these terms are defined in Sections 106-121(4), (6) and (8) of the North Carolina Food, Drug and Cosmetic Act (Article 12, Chapter 106 of the General Statutes of North Carolina); or (4) a substance intended for fuel when stored in a portable container and used in the heating, cooking or refrigeration system of a house.

(b) The Board may by rule or regulation ban the manufacture, distribution or sale of inherently hazardous substances within the State of North Carolina.

(c) The Board may adopt federal hazardous substance safety rules, standards and regulations and amendments thereto by reference pursuant to G.S. 150A-14 and the other provisions of Chapter 150A of the General Statutes.

(d) The Board may by regulation require that any person who is a manufacturer, private labeler, or distributor of a hazardous substance establish and maintain such records, make such reports and provide such information as the Board may reasonably require for the purpose of implementing this Article, or to determine compliance with regulations promulgated pursuant to this Article.

(e) The Board may by standard, rule, or regulation require the use, and prescribe the placement, form and content of labels which contain, in addition to prescribed safety information, the following information (or that portion of it specified in the rule):

- (1) The date and place of manufacture of any hazardous substance;
- (2) A suitable identification of the manufacturer of the hazardous substance, unless the substance bears a private label, in which case it shall identify the private labeler and shall also contain a code mark which will permit the seller of such substance to identify the manufacturer thereof to the purchaser upon his request.

(f) Before promulgation of any hazardous substance safety standard, rule, or regulation, the Commissioner shall give notice of the proposal and of a time and place for a hearing pursuant to G.S. 150A-12(a). Interested parties shall be given the opportunity to present their views orally or in writing at this hearing. Any standard, rule, or regulation promulgated from such hearing shall become effective on an appropriate date fixed by

the Board not to exceed 90 days after promulgation. Such standard, rule, or regulation may be amended or repealed in the same manner as provided for adoption of same.

(g) Compliance with federal standards, rules, and regulations prescribing hazardous substance safety rules and with other regulations affecting hazardous substances issued pursuant to the Federal Acts shall be deemed to be compliance with this Article, unless additional requirements have been imposed by the Board.

"§ 106-145.5. Authorities of Commissioner for enforcement of Article.-- (a) The Commissioner shall formulate, promote, establish, and execute policies, plans and programs relating to hazardous substance safety.

(b) For purposes of enforcement of this Article, the Commissioner or any of his designated agents, are authorized upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge:

- (1) to enter at reasonable times any factory, warehouse or establishment in which hazardous substances are manufactured or held in connection with distribution in commerce, or to enter any conveyance being used to transport or hold hazardous substances in connection with distribution in commerce; and
- (2) to inspect at reasonable times and in a reasonable manner such factory, warehouse, establishment or conveyance for compliance with this Article, and to obtain samples necessary to the enforcement of this

Article. The inspection shall extend to all things therein (including records, files, papers, processes, controls and facilities) bearing on whether any hazardous substance is in compliance with this Article. No inspection authorized by the preceding sentence shall extend to financial data, sales data other than shipment data, personnel data, or pricing data. Such inspection shall be commenced and completed with reasonable promptness.

(c) The Commissioner may under this Article institute in State, county, or circuit court an action against an inherently hazardous substance for injunctive relief or seizure of such substance, or against any person who is a manufacturer, a distributor, a retailer of such substance or against both. Such an action may be filed notwithstanding the existence of a hazardous substance safety standard, rule, or regulation applicable to such substance or the pendency of any administrative or judicial proceedings under any other provision of this Article.

(d) The Commissioner shall have the authority to order a recall of a hazardous substance which has been declared a banned hazardous substance under the Federal Acts or by rule or regulation under this Article.

(e) The Commissioner may contract and administer grants, gifts, or contributions from the Federal government or other sources on behalf of the State of North Carolina in matters of injury data collection, investigation, research and information

programs authorized under this Article.

(f) The Commissioner may advise, consult and cooperate with other agencies of this State and its political subdivisions, other states, and the Federal government in hazardous substance safety evaluations, recalls or condemnations, and with affected groups and industries in accomplishment of the purposes set forth in this Article.

(g) The Commissioner may also:

(1) maintain an injury information clearinghouse to collect, investigate, analyze and disseminate injury data and information relating to the causes and prevention of death, injury, and illness associated with hazardous substances; and

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments and economic losses resulting from accidents involving hazardous substances, as he deems necessary, and to test, investigate, and evaluate the safety of hazardous substances.

"§ 106-145.6. Prohibited Acts.--It shall be unlawful to:

(1) Manufacture for sale, offer for sale, or distribute in commerce, any hazardous substance which is not in conformity with an applicable standard, rule, or regulation under this Article;

(2) Manufacture for sale, offer for sale, distribute in commerce, or bring into or send into this State, any hazardous substance which is misbranded or has been declared a banned hazardous substance under the Federal Acts or by a rule or

regulation under this Article;

(3) Fail or refuse to permit access to or copying of records, or to make reports or provide information, or to permit entry or inspection, or permit the obtaining of samples for evaluation of a substance as required under this Article or rules or regulations thereunder;

(4) Fail to comply with any standards, rules, or regulations adopted by the Board relating to hazardous substance safety;

(5) Fail to comply with any embargo or recall issued by the Commissioner relating to a hazardous substance;

(6) Give a guarantee, undertaking, or certification which guarantee, undertaking, or certification is false, except by a person who relied in good faith on a guarantee, undertaking, or hazardous substance certification signed by, and containing the name and address of the person residing in this State or otherwise from whom he received in good faith the hazardous substance;

(7) Alter, mutilate, destroy, obliterate, or remove the whole or any part of the labeling of, or the doing of any other act with respect to a hazardous substance, if such act is done while such substance is being distributed in commerce and places such substance in violation of this Article;

(8) Use by any person to his own advantage, or to reveal, other than to the Commissioner or authorized officers of the Department, or to officers or employees of the U. S. Consumer Product Safety Commission, or to the courts when relevant in any judicial proceeding under this Article, any information acquired

under authority of G.S. 106-145.5(b) concerning any method or process which as a trade secret is entitled to protection;

"§ 106-145.7. Detention of suspect hazardous substance (embargo).-- (a) Whenever an authorized agent of the Commissioner finds, or has probable cause to believe, that any hazardous substance is not in compliance with the provisions of this Article, or standards, rules, or regulations promulgated by the Board, he shall affix to such substance a tag or other appropriate marking, giving notice that such substance is, or is suspected of being, in violation of this Article or the rules and regulations adopted hereunder, and has been placed under embargo, and warning all persons not to remove or dispose of such substance by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such embargoed article by sale or otherwise without such permission.

(b) When a hazardous substance embargoed under Subsection (a) of this Section has been found by such agent to be in violation of this Article, he shall petition a judge of the superior court in whose jurisdiction the substance is embargoed for an order of condemnation of such substance. When such agent has found that a substance so embargoed is not in violation of this Article or the standards, rules, or regulations promulgated by the Board, he shall remove the tag or other marking.

(c) If the court finds that an embargoed substance is in violation of this Article or standards, rules or regulations promulgated by the Board, such substance shall, after entry of

the order, be destroyed at the expense of the claimant thereof, under the supervision of the Department. All court costs and fees, and storage and other proper expenses, shall be assessed against the claimant of such substance or his agent; provided that when the violation can be corrected by proper labeling, processing, or modifying the substance, the court, after entry of the order and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such substance shall be so labeled, processed or modified has been executed, may by order direct that such substance be delivered to the claimant thereof for such labeling, processing or modifying under the supervision of an agent of the Department. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the substance on representation to the court by the Department that the substance is no longer in violation, and that the expenses of such supervision have been paid.

(d) Nothing in this Section shall require the Department to proceed in court if destruction or reconditioning of a hazardous substance in violation of this Article, or rules or regulations promulgated thereunder, is accomplished by written agreement between the Department and the owner or claimant of the hazardous substance.

"§ 106-145.8. Penalties.--(a) Any person, firm or corporation violating any provision of this Article, or any standard, rule, or regulation of the Board adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be

fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner or his duly designated agent, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the penalties herein.

(b) No person shall be subject to the penalties of Subsection (a) of this Section for having violated Subsections (1), (2), or (4) of G.S. 106-145.6, if the receipt, delivery or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish, on request of a duly-designated agent of the Commissioner, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any, relating to such purchase or receipt.

"§ 106-145.9. Injunction restraining violations.--In addition to the remedies hereinafter provided, the Commissioner of Agriculture is hereby authorized to apply to any superior court for an injunction restraining violations of this Article and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of G.S. 106-145.6, irrespective of whether there exists an adequate remedy at law.

"§ 106-145.10. Prosecution of violations.--It shall be the duty of the district attorneys of this State to promptly

prosecute all violations of this Article reported to them by the Commissioner or his duly designated agent.

"§ 106-145.11. Report of minor violations in discretion of Commissioner.--Nothing in this Article shall be construed as requiring the Commissioner to report for the institution of proceedings under this Article, minor violations of this Article whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

"§ 106-145.12. Publication of information.--(a) The Commissioner of Agriculture may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Article including the nature of the charge and the disposition thereof.

(b) The Commissioner of Agriculture may also cause to be disseminated such information regarding hazardous substances as he deems necessary in the interest of public safety. Nothing in this Section shall be construed to prohibit the Commissioner of Agriculture from collecting, reporting, and illustrating the results of the investigations of the Department.

"§ 106-145.13. Effect on other standards.--It is expressly declared that it is the intent of the North Carolina General Assembly to supersede any and all laws, regulations, and ordinances of any political subdivision of this State insofar as they now or hereafter provide for standards or regulations for the promulgation of hazardous substance safety rules and other regulations subject to the provisions of this Article. Any law,

regulation, or ordinance of such political subdivision which purports to establish such standard or regulation shall be null and void; provided, however, that the control of the manufacture, sale and use of pyrotechnics, G.S. 14-410 et. seq. (Article 54 of Chapter 14 of the General Statutes of North Carolina) shall not be affected by this Section."

Sec. 2. If any provision of this Article is declared unconstitutional or the applicability thereof to any person or circumstance is declared invalid, the constitutionality of the remainder of the Article and applicability to other persons and circumstances shall not be affected thereby.

Sec. 3. This act is effective upon ratification.

SESSION 1979

INTRODUCED BY:

Short Title: Appropriations: Hazardous Substances Act

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF AGRICULTURE
3 FOR THE PURPOSE OF IMPLEMENTING THE NEW NORTH CAROLINA
4 HAZARDOUS SUBSTANCES ACT.

5 The General Assembly of North Carolina enacts:

6 Section 1. There is hereby appropriated from the General
7 Fund the sum of sixty-six thousand eight hundred and forty-six
8 dollars (\$66,846) in fiscal year 1979-1980 and one hundred two
9 thousand eight hundred and twelve dollars (\$102,812) in fiscal
10 year 1980-1981 to the Department of Agriculture for the purpose
11 of implementing the new North Carolina Hazardous Substances Act
12 proposed by the Legislative Research Commission Consumer
13 Products Safety Study Committee to the 1979 Session of the
14 General Assembly.

15 Sec. 2. This act is effective July 1, 1979.

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Appendix A

Chapter 1036 of the 1977 Session Laws (S.B. 833)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1977
RATIFIED BILL

CHAPTER 1036

SENATE BILL 833

AN ACT DIRECTING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY
CONSUMER PRODUCTS SAFETY.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission shall study the hazardous conditions that exist in North Carolina as a result of consumer products that are not presently regulated within the State. The commission shall consider the dangers that exist to the people of this State as a result of those products being in commerce. The commission shall report to the 1979 General Assembly.

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.

JAMES C. GREEN, SR.

James C. Green
President of the Senate

CARL J. STEWART, JR.

Carl J. Stewart, Jr.
Speaker of the House of Representatives

Appendix B

Legislative Research Commission Membership List

House Speaker Carl J. Stewart, Jr.
Chairman

Senate President Pro Tempore
John T. Henley, Chairman

Rep. Chris S. Barker, Jr.

Senator Dallas L. Alford, Jr.

Rep. A. Hartwell Campbell

Senator Cecil J. Hill

Rep. John R. Gamble, Jr.

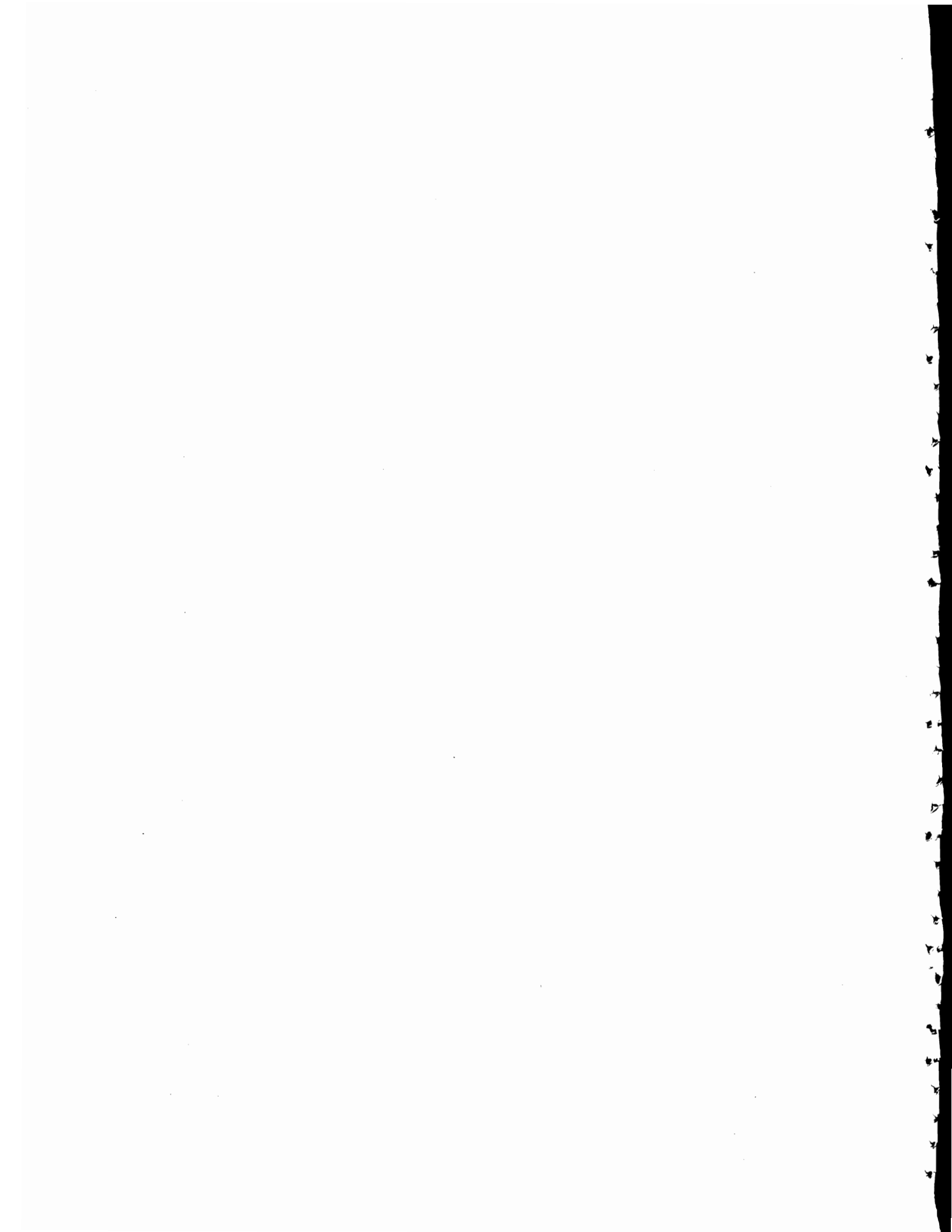
Senator Robert B. Jordan III

Rep. H. Parks Helms

Senator Russell Walker

Rep. Lura S. Tally

Senator Vernon E. White



Appendix C

CONSUMER PRODUCTS SAFETY STUDY COMMITTEE MEMBERS

Sen. James D. Speed
Co-Chairman

Rep. Ned R. Smith
Co-Chairman

Sen. J. J. Harrington

Rep. John T. Church

Sen. Roger D. Sharpe

Rep. Albert J. Martin

Sen. Robert V. Somers

Rep. J. T. Pugh, Jr.

Sen. Vernon E. White*

*Legislative Research Commission Member
responsible for study

Appendix D

HAZARDOUS SUBSTANCE PROGRAM
PROPOSED BUDGET AND JUSTIFICATION STATEMENT

| | <u>FY 79-80</u> | <u>FY 80-81</u> |
|--|-----------------|-----------------|
| 1211 Salaries and Wages | | |
| Hazardous Substance Administrator, Grade 74 | \$16,848 | \$16,848 |
| Field Inspector, Grade 65 | | 11,232 |
| Clerk-Stenographer III, Grade 56 | 3,804 | 7,608 |
| 1811 Social Security | 1,250 | 2,160 |
| 1821 Retirement Contribution | 1,884 | 3,255 |
| 1831 Hospitalization | 460 | 909 |
| 2320 Laboratory Supplies | 2,500 | 5,000 |
| 2500 Motor Vehicle Operation | 500 | 1,250 |
| 2600 Office Supplies and Materials | 500 | 1,000 |
| 2990 Other Materials and Supplies | 500 | 500 |
| 3100 Travel | 1,750 | 3,500 |
| 3210 Telephone Service | 500 | 500 |
| 3250 Postage | 1,000 | 1,000 |
| 3400 Printing and Binding | 3,000 | 3,000 |
| 3520 Repairs to Equipment | -- | 350 |
| 3600 Freight, Express, Delivery | 250 | 500 |
| 4130 Rental of Offices | | 2,400 |
| 4500 Insurance and Bonding | | 150 |
| 4901 Subscriptions and Dues | 250 | 250 |
| 4903 General Expense | 250 | 250 |
| 4905 Purchases for Analysis | 500 | 1,000 |
| 5100 Office Furniture and Equipment | 2,500 | 800 |
| 5303 Laboratory Equipment | 28,350 | 29,600 |
| 5400 Purchase of Vehicles | -- | 5,500 |
| 5600 Books | 250 | 250 |
| 6999 Other Grants, Subsidies, State Aid and Allocations | -- | 4,000 |
| TOTAL | \$66,846 | \$102,812 |

EQUIPMENT LIST -
HAZARDOUS SUBSTANCE PROGRAM

| | <u>FY 79-80</u> | <u>FY 80-81</u> |
|----------------------------------|-----------------|-----------------|
| Gas-Liquid Chromatograph | \$20,000 | |
| Top-Loading Balance | 2,500 | |
| Electrobalance | 2,200 | |
| pH Meter | 1,000 | |
| Tagliabue Flash Point Tester | 650 | |
| Laboratory Glassware | 2,000 | |
| Liquid Chromatograph | | \$11,000 |
| Environmental Chamber | | 12,000 |
| High Voltage Breakdown Tester | | 1,000 |
| Leakage Current Detector | | 500 |
| Volt-Ohmmeter | | 300 |
| Force Gauge | | 300 |
| Pressure Transducers and Readout | | 2,500 |
| Thermocouples and Readout | | <u>2,000</u> |
| | <hr/> | |
| TOTALS | \$28,350 | \$29,600 |

JUSTIFICATION FOR HAZARDOUS SUBSTANCE PROGRAM PROPOSED BUDGET

Salaries and Wages

Three positions are requested: A Hazardous Substance Administrator, one Field Inspector and one Clerk-Stenographer III. No laboratory support personnel are requested. It is anticipated that the personnel acquired under the aflatoxin service program can be utilized, together with the fertilizer personnel in off-season, to handle initial needs.

The Hazardous Substance Administrator is requested full-time for FY 79-80, with the Clerk-Stenographer III at six months during this FY. All personnel will be full-time as of FY 80-81.

Laboratory Supplies

While no new laboratory personnel are requested for this program, laboratory supplies are requested at a one man-year level to cover costs of product analyses.

Motor Vehicle Operation

It is estimated that the Administrator will have a substantial travel schedule using a Motor Pool vehicle during FY 79-80 for field services, and contact with local service agencies. During FY 80-81, expenses for both the Administrator and the Field Inspector are included.

Travel

During FY 79-80, the Administrator will likely be on training assignment at the Federal Consumer Product Safety Agency for a term of approximately 30 days, along with briefer visits to the states of Tennessee and Kentucky. He will additionally be attending certain product safety-related meetings.

Printing and Binding

A substantial amount of printed safety literature will be generated by the program to be used in workshops, for distribution to the public in general, and for training aids associated with grants given to local service clubs, etc.

Rental of Offices

It is estimated that the field inspector will be located outside the Raleigh area. Previous experience indicates the necessity for an office environment other than the home, particularly as it applies to maintenance of files, storage of inspector supplies, and storage of samples.

Insurance and Bonding

This is to cover liability insurance for motor vehicles.

Office Furniture and Equipment

During FY 79-80 office furniture and equipment will be purchased for the Raleigh office; during FY 80-81 the rental space for the field office will be equipped.

Laboratory Equipment

Certain specific pieces of equipment will be necessitated for performing the hazardous substance laboratory analyses. These are one time costs.

Purchase of Vehicles

During the second year of the biennium, a vehicle would be purchased for the field inspector.

Other Grants, Subsidies, State Aid and Allocations

The request is made for the second portion of the biennium to assist the Department in an amplification of activities at the community level. These funds will be used as seed money to be given to local community groups who will be provided additionally with printed material and training so as to further sponsor hazardous substance safety workshops for their local area.

