

House Bill 4123

Sponsored by Representatives KENY-GUYER, THOMPSON, Senators BATES, BOQUIST; Representatives BAILEY, BUCKLEY, DEMBROW, DOHERTY, FREDERICK, GELSER, HARKER, HOLVEY, KOTEK, TOMEI, Senators DINGFELDER, HASS, MONNES ANDERSON, ROSENBAUM, SHIELDS, STEINER HAYWARD (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Oregon Health Authority to maintain list of designated high priority chemicals of concern for children's health used in children's products. Requires authority to post list, and information regarding health impacts associated with exposure to each chemical, on authority's website. Requires authority to periodically review and revise list.

Requires manufacturers of certain children's products to provide notice to authority regarding chemicals on list.

Allows authority to enter into certain data-sharing agreements with other states. Allows authority to participate in Interstate Chemicals Clearinghouse. Allows authority to accept certain funding.

Makes manufacturer's failure to disclose information about chemicals on list unlawful trade practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to high priority chemicals of concern for children's health used in children's products;
3 creating new provisions; amending ORS 646.608; and declaring an emergency.

4 Whereas many children's products contain chemicals that pose a risk to the health of children;
5 and

6 Whereas reducing the exposure of children to chemicals in children's products contributes to the
7 health of children and the long-term well-being of children; and

8 Whereas providing the public with information regarding the known health impacts associated
9 with exposure to chemicals in children's products helps to ensure this state's commitment to the
10 health of present and future generations; now, therefore,

11 **Be It Enacted by the People of the State of Oregon:**

DEFINITIONS

SECTION 1. As used in sections 1 to 9 of this 2012 Act:

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14
15 (1) **"Chemical" means:**

16 (a) **A substance with a distinct molecular composition.**

17 (b) **A group of structurally related substances and the breakdown products of the sub-**
18 **stance or substances that form through decomposition, degradation or metabolism.**

19 (2)(a) **"Children's cosmetics" means products that are made for, marketed for use by or**
20 **marketed to children under the age of 12 and are intended to be rubbed, poured, sprinkled**
21 **or sprayed on, introduced into or otherwise applied to the human body or any part thereof**
22 **for cleansing, beautifying, promoting attractiveness or altering the appearance.**

23 (b) **"Children's cosmetics" does not mean soap, dietary supplements or food and drugs**
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NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 approved by the United States Food and Drug Administration.

2 (3)(a) "Children's product" means:

3 (A) A product designed or intended by the manufacturer to help a child with sucking or
4 teething to facilitate sleep, relaxation or feeding of a child or to be worn as clothing by a
5 child.

6 (B) Car seats for children.

7 (C) Children's cosmetics.

8 (D) Children's jewelry made for, marketed for use by or marketed to children under the
9 age of 12.

10 (E) Toys designed, or intended by the manufacturer, to be used by a child at play.

11 (F) Any component part of a product specified in subparagraphs (A) to (E) of this para-
12 graph.

13 (b) "Children's product" does not mean:

14 (A) Athletic shoes with cleats or spikes.

15 (B) Batteries.

16 (C) BB guns, pellet guns and air rifles.

17 (D) Bicycles and tricycles.

18 (E) Chemistry sets.

19 (F) Consumer electronic products, including personal computers, audio and video equip-
20 ment, calculators, wireless telephones and game consoles and handheld devices incorporating
21 a video screen and used to access interactive software and the associated peripherals.

22 (G) Interactive software intended for leisure and entertainment, such as computer
23 games, and their storage media, such as compact discs.

24 (H) Model rockets.

25 (I) Pocketknives and multitools.

26 (J) Roller skates.

27 (K) Scooters.

28 (L) Sets of darts with metallic points.

29 (M) Slings and catapults.

30 (N) Snow sporting equipment, including skis, poles, boots, snowboards, sleds and
31 bindings.

32 (O) Sporting equipment, including bats, balls, gloves, sticks, pucks and pads.

33 (P) Video toys that can be connected to a video screen and are operated at a nominal
34 voltage exceeding 24 volts.

35 (4) "Manufacturer" means:

36 (a) Any person that manufactures a final consumer product sold at retail or whose brand
37 name is affixed to the consumer product.

38 (b) The importer or domestic distributor of a consumer product imported into the United
39 States if the person that manufactured or assembled the consumer product or whose brand
40 name is affixed to the consumer product does not have a presence in the United States.

41 (5) "Trade association" means a membership organization of persons engaging in a simi-
42 lar or related line of commerce, organized to promote and improve business conditions in
43 that line of commerce and not to engage in a regular business of a kind ordinarily carried
44 on for profit.

45

1 **HIGH PRIORITY CHEMICALS OF CONCERN FOR CHILDREN'S**
2 **HEALTH USED IN CHILDREN'S PRODUCTS**

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4 **SECTION 2.** The Oregon Health Authority shall maintain a list of high priority chemicals
5 of concern for children's health used in children's products. The authority shall include on
6 the list chemicals that are listed on both:

7 (1) The Department of Environmental Quality's Toxics Focus List on the effective date
8 of this 2012 Act; and

9 (2) The Washington State Department of Ecology's Reporting List of Chemicals of High
10 Concern to Children on the effective date of this 2012 Act.

11 **SECTION 3.** The Oregon Health Authority shall post the list of high priority chemicals
12 of concern for children's health used in children's products established under section 2 of
13 this 2012 Act on its website. For each chemical on the list, the authority shall post infor-
14 mation regarding the known health impacts associated with exposure to the chemical.

15 **SECTION 4.** Section 3 of this 2012 Act becomes operative on January 1, 2013.

16 **SECTION 5.** (1) The Oregon Health Authority shall review and revise the list of high
17 priority chemicals of high concern for children's health used in children's products estab-
18 lished by section 2 of this 2012 Act every two years.

19 (2) The authority by rule may add chemicals to the list that are listed on both:

20 (a) The Department of Environmental Quality's Toxics Focus List after the effective date
21 of this 2012 Act; and

22 (b) The Washington State Department of Ecology's Reporting List of Chemicals of High
23 Concern to Children after the effective date of this 2012 Act.

24 (3) The authority by rule may add a chemical to the list that is listed on either list
25 specified in subsection (2) of this section and that meets at least one of the following criteria:

26 (a) The chemical has been found through government or academically sponsored
27 biomonitoring to be present in human blood, including umbilical cord blood, or in breast milk,
28 urine or other bodily tissues or fluids; or

29 (b) The chemical has been found through government or academically sponsored sampl-
30 ing and analysis research to be present in household dust, indoor air or drinking water.

31 (4) The authority by rule may remove a chemical from the list if the authority deter-
32 mines that the chemical is no longer being used in children's products.

33 (5) The authority shall update the list on its website within three months of the date on
34 which a chemical is added to, or a chemical is removed from, the list under this section.

35 **SECTION 6.** Section 5 of this 2012 Act becomes operative on January 1, 2015.

36
37 **MANUFACTURER DISCLOSURE OF HIGH PRIORITY CHEMICALS**
38 **OF CONCERN FOR CHILDREN'S HEALTH USED IN CHILDREN'S PRODUCTS**

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40 **SECTION 7.** (1) A manufacturer of children's products sold or offered for sale in this
41 state shall provide the notice described in subsection (2) of this section every two years to
42 the Oregon Health Authority if a children's product contains a chemical listed as a high
43 priority chemical of concern for children's health used in children's products at levels above
44 100 parts per million.

45 (2) The notice required by subsection (1) of this section must contain:

1 (a) The name of the chemical contained in the children's product and the Chemical Ab-
2 stracts Service number;

3 (b) A brief description of the children's product that contains the chemical;

4 (c) A description of the function of the chemical in the children's product;

5 (d) The amount of the chemical used in each unit of the children's product reported in
6 ranges rather than exact amounts;

7 (e) The name and address of the manufacturer, and the name, address and phone number
8 of a contact person for the manufacturer; and

9 (f) Any other information that is relevant to the appropriate use of the children's prod-
10 uct.

11 (3)(a) In order for the authority to obtain the information required in the notice de-
12 scribed in subsection (2) of this section, the authority may enter into reciprocal data-sharing
13 agreements with other states in which a manufacturer of children's products is also required
14 to disclose information related to high priority chemicals of concern for children's health
15 used in children's products. If the authority has entered into a data-sharing agreement with
16 another state, and a manufacturer has reported the information required in the notice de-
17 scribed in subsection (2) of this section to that state, the manufacturer may request that the
18 other state provide the authority with the information in lieu of the manufacturer directly
19 reporting the information to the authority.

20 (b) A manufacturer fulfills the notice requirement of subsection (1) of this section when
21 the authority receives the information from the other state and the authority determines
22 that the information received meets the description specified in subsection (2) of this section.

23 (4) In lieu of the manufacturer's providing notice to the authority under subsection (1)
24 or (3) of this section, the authority may require that the notice described in subsection (2)
25 of this section be given to the Interstate Chemicals Clearinghouse. The authority by rule
26 shall specify procedures for the provisions of such notice by manufacturers to the Interstate
27 Chemicals Clearinghouse.

28 (5) Manufacturers of children's products with annual worldwide gross sales of less than
29 \$5 million, as reported on the most recent tax returns filed before the notice required by this
30 section, are exempt from the requirements of this section.

31 (6) A trade organization may provide notice on behalf of its member manufacturers under
32 the provisions of this section.

33 **SECTION 8.** The Oregon Health Authority may not disclose any information obtained by
34 the authority from a manufacturer under the provisions of section 7 of this 2012 Act that
35 would:

36 (1) Allow the identification of a manufacturer; or

37 (2) Disclose confidential business information of a manufacturer.

38 **SECTION 9.** Sections 7 and 8 of this 2012 Act become operative on January 1, 2014.

39
40 **INTERSTATE CHEMICALS CLEARINGHOUSE**

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42 **SECTION 10.** The Oregon Health Authority is authorized to participate in the Interstate
43 Chemicals Clearinghouse in cooperation with other states and government entities to assist
44 the authority in carrying out sections 1 to 9 of this 2012 Act.

FUNDING

SECTION 11. The Oregon Health Authority may accept gifts, grants or contributions from any public or private source for the purpose of carrying out sections 1 to 9 of this 2012 Act. All moneys received by the authority under this section shall be paid into the State Treasury and deposited to the credit of the Oregon Health Authority Fund established by ORS 413.101. Such moneys shall be used by the authority for the purposes of sections 1 to 9 of this 2012 Act.

UNLAWFUL TRADE PRACTICE

SECTION 12. ORS 646.608 is amended to read:

646.608. (1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following:

(a) Passes off real estate, goods or services as those of another.

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

(d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

(f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

(g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

(i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

(j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

(L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

(m) Performs service on or dismantles any goods or real estate when not authorized by the owner or apparent owner thereof.

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give

1 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
 2 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
 3 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 4 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
 5 tomer enters into the transaction.

6 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
 7 cize a product, business or service.

8 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
 9 not to deliver them as promised.

10 (r) Organizes or induces or attempts to induce membership in a pyramid club.

11 (s) Makes false or misleading representations of fact concerning the offering price of, or the
 12 person's cost for real estate, goods or services.

13 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
 14 known material defect or material nonconformity.

15 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

16 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
 17 ORS 698.640, whether in a commercial or noncommercial situation.

18 (w) Manufactures mercury fever thermometers.

19 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 20 law, or is:

21 (A) Prescribed by a person licensed under ORS chapter 677; and

22 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 23 on the proper cleanup of mercury should breakage occur.

24 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 25 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 26 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 27 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 28 graph, "thermostat" means a device commonly used to sense and, through electrical communication
 29 with heating, cooling or ventilation equipment, control room temperature.

30 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 31 mercury light switches.

32 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

33 (bb) Violates ORS 646A.070 (1).

34 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

35 (dd) Violates the provisions of ORS 128.801 to 128.898.

36 (ee) Violates ORS 646.883 or 646.885.

37 (ff) Violates ORS 646.569.

38 (gg) Violates the provisions of ORS 646A.142.

39 (hh) Violates ORS 646A.360.

40 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

41 (jj) Violates ORS 646.563.

42 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

43 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 44 thereto.

45 (mm) Violates ORS 646A.210 or 646A.214.

- 1 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 2 (oo) Violates ORS 646A.095.
- 3 (pp) Violates ORS 822.046.
- 4 (qq) Violates ORS 128.001.
- 5 (rr) Violates ORS 646.649 (2) to (4).
- 6 (ss) Violates ORS 646A.090 (2) to (4).
- 7 (tt) Violates ORS 87.686.
- 8 (uu) Violates ORS 646.651.
- 9 (vv) Violates ORS 646A.362.
- 10 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 11 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 12 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 13 (zz) Violates ORS 87.007 (2) or (3).
- 14 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 15 (bbb) Engages in an unlawful practice under ORS 646.648.
- 16 (ccc) Violates ORS 646A.365.
- 17 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 18 (eee) Sells a gift card in violation of ORS 646A.276.
- 19 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 20 (ggg) Violates ORS 646A.430 to 646A.450.
- 21 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 22 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 23 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
24 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
25 subject of the violation.
- 26 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 27 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
28 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 29 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 30 (nnn) Violates ORS 646A.082.
- 31 (ooo) Violates ORS 646.647.
- 32 (ppp) Violates ORS 646A.115.
- 33 (qqq) Violates a provision of ORS 646A.405.
- 34 (rrr) Violates ORS 646A.092.
- 35 (sss) Violates a provision of ORS 646.644.
- 36 (ttt) Violates a provision of ORS 646A.295.
- 37 **(uuu) Violates a provision of section 7 of this 2012 Act.**
- 38 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
39 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 40 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
41 need not prove competition between the parties or actual confusion or misunderstanding.
- 42 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
43 torney General has first established a rule in accordance with the provisions of ORS chapter 183
44 declaring the conduct to be unfair or deceptive in trade or commerce.
- 45 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought

1 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
2 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

3
4 **MISCELLANEOUS**

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6 **SECTION 13. The unit captions used in this 2012 Act are provided only for the conven-**
7 **ience of the reader and do not become part of the statutory law of this state or express any**
8 **legislative intent in the enactment of this 2012 Act.**

9
10 **EMERGENCY CLAUSE**

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12 **SECTION 14. This 2012 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
14 **on its passage.**

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