

# House Bill 2141

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

## 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**.

Expands definition of "hazardous substance" to include substances that pose risk to public health and safety because of irreversible harm or chronic adverse health effects. Requires Director of Human Services to adopt standards for labeling products that contain hazardous substances. Clarifies provisions related to misbranded hazardous substances.

## A BILL FOR AN ACT

1  
2 Relating to hazardous substances; amending ORS 453.005, 453.035 and 453.055.

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

4 **SECTION 1.** ORS 453.005 is amended to read:

5 453.005. As used in ORS 453.005 to 453.135 unless the context requires otherwise:

6 (1) "Combustible" means any substance that has a flash point above 80 degrees Fahrenheit to  
7 and including 140 degrees, as determined by the Tagliabue Open Cup Tester.

8 (2) "Commerce" means any and all commerce within the State of Oregon and subject to the ju-  
9 risdiction thereof and includes the operation of any business or service establishment.

10 (3) "Corrosive" means any substance that in contact with living tissue will cause destruction  
11 of tissue by chemical action, but does not refer to action on inanimate surfaces.

12 (4) "Electrical hazard" means an article that because of its design or manufacture may cause  
13 personal injury or illness by electric shock when in normal use or when subjected to reasonably  
14 foreseeable damage or abuse.

15 (5) "Extremely flammable" means any substance that has a flash point at or below 20 degrees  
16 Fahrenheit as determined by the Tagliabue Open Cup Tester.

17 (6) "Flammable" means any substance that has a flash point of above 20 degrees to and includ-  
18 ing 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester.

19 (7) "Hazardous substance" means:

20 (a) Any substance that is toxic, corrosive, an irritant, a strong sensitizer, flammable,  
21 combustible, or generates pressure through decomposition, heat or other means, if such substance  
22 or mixture of substances may cause substantial personal injury or substantial illness during or as  
23 a proximate result of any customary or reasonably foreseeable handling or use, including reasonably  
24 foreseeable ingestion by children, or any substance that the Director of Human Services finds, pur-  
25 suant to the provisions of ORS 453.005 to 453.135, comes within the definition of this paragraph.

26 (b) Any radioactive substance, if, with respect to such substance as used in a particular class  
27 of article or as packaged, the director determines that the substance is sufficiently hazardous to  
28 require labeling in accordance with ORS 453.005 to 453.135 in order to protect the public health.  
29 However, "hazardous substance" does not include any source material, special nuclear material, or  
30 by-product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued

**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 pursuant thereto by the Atomic Energy Commission.

2 (c) Any toy or other article intended for use by children that the director determines in ac-  
3 cordance with ORS 453.055 presents an electrical, thermal or mechanical hazard.

4 (d) Any article that is not pesticide within the meaning of the Federal Insecticide, Fungicide,  
5 and Rodenticide Act or regulated under ORS 616.335 to 616.385, but that is a hazardous substance  
6 within the meaning of paragraph (a) of this subsection by reason of bearing or containing pesticide.

7 (e) The following brominated flame retardant chemicals:

8 (A) Pentabrominated diphenyl ether; and

9 (B) Octabrominated diphenyl ether.

10 (f) **Any substance that poses a risk to public health and safety as a result of irreversible**  
11 **harm or chronic adverse health effects in individuals exposed to the substance.**

12 (8) "Highly toxic" means any substance that falls within any of the following categories:

13 (a) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white  
14 rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram  
15 of body weight, when orally administered;

16 (b) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white  
17 rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour  
18 or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor  
19 or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely  
20 to be encountered by humans when the substance is used in any reasonably foreseeable manner; or

21 (c) Produces death within 14 days in one-half or more of a group of 10 or more rabbits tested  
22 in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous  
23 contact with the bare skin for 24 hours or less.

24 (9) "Immediate container" does not include package liners.

25 (10) "Irritant" means any substance not corrosive within the meaning of subsection (3) of this  
26 section, but that on immediate, prolonged, or repeated contact with normal living tissue will induce  
27 a local inflammatory reaction.

28 (11) "Label" means a display of written, printed, or graphic matter upon the immediate container  
29 of any substance, or in the case of an article that is unpackaged or is not packaged in an immediate  
30 container intended or suitable for delivery to the ultimate consumer, a display of such matter di-  
31 rectly on the article involved or on a tag or other suitable material affixed thereto, and a require-  
32 ment made by or under authority of ORS 453.005 to 453.135 that any word, statement, or other  
33 information appearing on the label shall not be considered to be complied with unless such word,  
34 statement, or other information also appears on the outside container or wrapper, if any, unless it  
35 is easily legible through the outside container or wrapper and on all accompanying literature where  
36 there are directions for use, written or otherwise.

37 (12) "Mechanical hazard" means an article that in normal use or when subjected to reasonably  
38 foreseeable damage or abuse presents an unreasonable risk of personal injury or illness, by its de-  
39 sign or manufacture:

40 (a) From fracture, fragmentation, or disassembly of the article;

41 (b) From propulsion of the article or any part or accessory thereof;

42 (c) From points or other protrusions, surfaces, edges, openings, or closures;

43 (d) From moving parts;

44 (e) From lack or insufficiency of controls to reduce or stop motion;

45 (f) As a result of self-adhering characteristics of the article;

- 1 (g) Because the article or any part or accessory thereof may be aspirated or ingested;
- 2 (h) Because of instability; or
- 3 (i) Because of any other aspect of the article's design or manufacture.

4 (13) "Misbranded hazardous substance" means a hazardous substance that does not meet the  
5 labeling requirements of ORS 453.035.

6 (14) "Poison" means:

- 7 (a) Arsenic and its preparations;
- 8 (b) Corrosive sublimate;
- 9 (c) Cyanides and preparations, including hydrocyanic acid;
- 10 (d) Hydrochloric acid and any preparation containing free or chemically unneutralized
- 11 hydrochloric acid (HCl) in a concentration of 10 percent or more;
- 12 (e) Nitric acid or any preparation containing free or chemically unneutralized nitric acid
- 13 (HNO<sub>3</sub>) in a concentration of five percent or more;
- 14 (f) Strychnine;
- 15 (g) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid
- 16 (H<sub>2</sub>SO<sub>4</sub>) in a concentration of 10 percent or more;
- 17 (h) Solution of ammonia, U.S.P. 28 percent; or
- 18 (i) Carbollic acid.

19 (15) "Radioactive substance" means a substance that emits ionizing radiation.

20 (16) "Strong sensitizer" means a substance that will cause on normal living tissue, through an  
21 allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of the  
22 same substances and that is designated as such by the Director of Human Services.

23 (17) "Thermal hazard" means an article that, in normal use or when subjected to reasonably  
24 foreseeable damage or abuse, because of its design or manufacture presents an unreasonable risk  
25 of personal injury or illness because of heat as from heated parts, substances or surfaces.

26 (18) "Toxic substance" means any substance, other than radioactive substance, that has the ca-  
27 pacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption  
28 through any body surface.

29 **SECTION 2.** ORS 453.035 is amended to read:

30 453.035. (1) The Director of Human Services shall adopt standards for the labeling of hazardous  
31 substances **and for the labeling of products that contain hazardous substances.** The director  
32 may permit or require the use of a recognized generic name or may require the common or usual  
33 name or the chemical name, if there is no common or usual name, of the hazardous substance or  
34 of each component [*which*] **that** the director finds contributes substantially to its hazard.

35 (2) The director shall require:

36 (a) The word "Danger" on substances, **or on products containing substances, that** [*which*]  
37 are extremely flammable, corrosive or highly toxic;

38 (b) The word "Warning" or "Caution" on other hazardous substances **or other products con-**  
39 **taining hazardous substances;**

40 (c) An affirmative statement of the principal hazard or hazards, such as "Flammable,"  
41 "Combustible," "Vapor Harmful," "Causes Burns," "Absorbed Through Skin," or similar wording  
42 descriptive of the hazard;

43 (d) Precautionary measures describing the action to be followed or avoided, except when modi-  
44 fied by rule of the director pursuant to subsection (4) of this section;

45 (e) Instruction, when necessary or appropriate, for first-aid treatment;

1 (f) The word “Poison” for any hazardous substance, **or for any product containing any haz-**  
 2 **ardous substance, that** [which] is defined as “highly toxic” in ORS 453.005;

3 (g) Instructions for handling and storage of packages [which] **that** require special care in han-  
 4 dling or storage;

5 (h) Adequate directions for the protection of children from the hazard if the article is intended  
 6 for use by children and is not a banned hazardous substance, or the statement “Keep out of the  
 7 reach of children,” or its practical equivalent, if the article is not intended for use by children; and

8 (i) The name and place of business of the manufacturer, packer, distributor or seller.

9 (3) Any statement required by this section must be in the English language, located prominently  
 10 and in conspicuous and legible type in contrast by typography, layout or color with other printed  
 11 matter on the label.

12 (4) If the director finds that, because of the size of the package involved or because of the minor  
 13 hazard presented by the substance contained [therein] **in the package**, or for other good and suffi-  
 14 cient reasons, full compliance with the labeling requirements otherwise applicable under ORS  
 15 453.005 to 453.135 and 453.990 (2) is impracticable or is not necessary for the adequate protection  
 16 of the public health and safety, the director may authorize the exemption of such substance **or**  
 17 **product containing such substance** from the requirements, to an extent consistent with adequate  
 18 protection of the public health and safety.

19 **SECTION 3.** ORS 453.055 is amended to read:

20 453.055. (1) The Director of Human Services shall declare to be a hazardous substance any  
 21 substance or mixture of substances [which] **that** the director finds to be within the definition of  
 22 “hazardous substance” in ORS 453.005.

23 (2) If the director finds that any hazardous substance is a misbranded hazardous substance **or**  
 24 **that any product contains a misbranded hazardous substance**, the director shall require such  
 25 reasonable variations or labeling requirements in addition to those required by ORS 453.035 as the  
 26 director finds necessary for the protection of the public health and safety. However, if the director  
 27 finds that any hazardous substance **or product containing a hazardous substance** cannot be la-  
 28 beled adequately to protect the public health and safety, or the article presents an imminent danger  
 29 to the public health and safety, the director may declare the article to be a banned hazardous sub-  
 30 stance and require its removal from commerce.

31 (3) If the director finds that a toy or other article intended for use by children is a hazardous  
 32 substance, bears or contains a hazardous substance in a manner as to be susceptible of access by  
 33 a child to whom the toy or other article is entrusted or presents an electrical, mechanical or ther-  
 34 mal hazard, the director shall declare a toy or other article to be a banned hazardous substance and  
 35 require its removal from commerce.

36 (4) If the director finds that any hazardous substance, **or product containing a hazardous**  
 37 **substance**, intended, or packaged in a form suitable, for **personal use or** use in a household,  
 38 notwithstanding cautionary labeling as required under ORS 453.005 to 453.135 and 453.990 (2), in-  
 39 volves a degree or nature of the hazard by its presence or use [in households] **such** that the pro-  
 40 tection of the public health and safety can be adequately served only by keeping the substance **or**  
 41 **product** out of the channels of commerce, the director shall declare the hazardous substance to be  
 42 a banned hazardous substance, **or shall declare the product containing the hazardous substance**  
 43 **to be a banned product**, and require its removal from commerce.

44 (5) Any hazardous substance, **or product containing a hazardous substance**, intended, or  
 45 packaged in a form suitable for use in the household or by children, [which] **that** fails to bear a label

1 in accordance with ORS 453.035 and the standards of the director shall be deemed to be a mis-  
2 branded hazardous substance **or a product that contains a misbranded hazardous substance.**

3 (6) Any hazardous substance contained in a reused food, drug or cosmetic container is a mis-  
4 branded hazardous substance.

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