

# House Bill 2792

Sponsored by COMMITTEE ON CONSUMER PROTECTION

## 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 manufacturers of children's products that contain priority chemicals to disclose information to Department of Human Services on their use if department designates chemical as priority chemical based on potential exposure of child or fetus to chemical. Authorizes department to require replacement of priority chemical with safer alternative if department determines that safer alternative is available for specified use. Authorizes imposition of civil penalties for certain violations. Exempts certain uses of priority chemicals. Authorizes department to participate in interstate clearinghouse to share information and cooperate with other states to promote safer chemicals in consumer products.

Establishes Environmental Public Health Protection Fund. Continuously appropriates moneys in fund to department for purposes of Act.

## A BILL FOR AN ACT

1  
2 Relating to chemicals in children's products; and appropriating money.

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

4 **SECTION 1. Sections 2 to 14 of this 2009 Act are added to and made a part of ORS 453.005**  
5 **to 453.135.**

6 **SECTION 2. The Legislative Assembly finds that exposure to chemicals and chemical**  
7 **compounds, particularly those that persist in the environment, accumulate in biological tis-**  
8 **sue or are inherently toxic substances, poses a significant health risk to children and devel-**  
9 **oping fetuses.**

10 **SECTION 3. As used in ORS 453.005 to 453.135, unless the context requires otherwise:**

11 (1) **"Alternative" means a substitute process, product, material, chemical or strategy,**  
12 **alone or in combination, that serves a functionally equivalent purpose to a chemical in a**  
13 **children's product.**

14 (2) **"Chemical" means a substance with a distinct molecular composition or a group of**  
15 **structurally related substances. "Chemical" includes the breakdown products of the sub-**  
16 **stance or substances that form through decomposition, degradation or metabolism.**

17 (3) **"Chemical of high concern" means a chemical identified by an authoritative govern-**  
18 **mental entity on the basis of credible scientific evidence as being known to:**

19 (a) **Harm the normal development of a fetus or child or cause other developmental**  
20 **toxicity;**

21 (b) **Cause cancer, genetic damage or reproductive harm;**

22 (c) **Disrupt the endocrine or hormone system;**

23 (d) **Damage the nervous system, immune system or organs or cause other systemic**  
24 **toxicity; or**

25 (e) **Be persistent, bioaccumulative or toxic.**

26 (4) **"Chemical of low concern" means a chemical for which adequate toxicity and envi-**  
27 **ronmental data are available to determine that it is not a chemical of high concern, a**

**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 **chemical of moderate concern or a chemical of unknown concern.**

2 (5) **“Chemical of moderate concern” means a chemical identified by an authoritative**  
 3 **governmental entity on the basis of credible scientific evidence as being suspected of causing**  
 4 **an adverse health or environmental effect listed in subsection (3) of this section.**

5 (6) **“Chemical of unknown concern” means a chemical for which insufficient data are**  
 6 **available to classify the chemical as a chemical of high concern, a chemical of moderate**  
 7 **concern or a chemical of low concern.**

8 (7) **“Children’s product” means a consumer product intended for use by children, includ-**  
 9 **ing, but not limited to, baby products, toys, car seats, personal care products, clothing and**  
 10 **any consumer product containing a chemical of high concern that when used or disposed of**  
 11 **may result in a child or a fetus being exposed to that chemical.**

12 (8) **“Consumer product” means any item sold for residential or commercial use, includ-**  
 13 **ing, but not limited to, any component parts and packaging. “Consumer product” does not**  
 14 **include a drug or biologic regulated by the United States Food and Drug Administration, a**  
 15 **food or beverage or an additive to a food or beverage, a tobacco product or a pesticide reg-**  
 16 **ulated by the United States Environmental Protection Agency, except that “consumer prod-**  
 17 **uct” may include a container or packaging in which such an item is sold.**

18 (9) **“Distributor” means a person who sells consumer products to retail establishments**  
 19 **on a wholesale basis.**

20 (10) **“Manufacturer” means any person that manufactures a final consumer product or**  
 21 **whose brand name is affixed to the product. In the case of a consumer product imported into**  
 22 **the United States, “manufacturer” includes the importer or domestic distributor of the**  
 23 **product if the person who manufactured or assembled the product or whose brand name is**  
 24 **affixed to the product does not have a presence in the United States.**

25 (11) **“Priority chemical” means a chemical or chemical compound identified as such by**  
 26 **the Department of Human Services pursuant to section 4 of this 2009 Act.**

27 (12) **“Safer alternative” means an alternative that, when compared to a priority chemical**  
 28 **that the safer alternative could replace, would reduce the potential for harm to human**  
 29 **health or the environment or that has not been shown to pose the same or greater potential**  
 30 **for harm to human health or the environment as the priority chemical the safer alternative**  
 31 **could replace.**

32 **SECTION 4. (1) The Department of Human Services may identify priority chemicals that**  
 33 **pose a significant risk to the health of children or developing fetuses.**

34 (2) **When identifying priority chemicals under this section, the department shall consider**  
 35 **those chemicals or chemical compounds that:**

36 (a) **Biomonitoring studies have demonstrated are present in human umbilical cord blood,**  
 37 **human breast milk, human urine or other human organs, tissues or fluids;**

38 (b) **The department or other agencies of this state have previously identified as persistent**  
 39 **bioaccumulative toxins;**

40 (c) **Other states have identified as chemicals of concern or have banned or restricted**  
 41 **because of health or other concerns;**

42 (d) **Peer-reviewed scientific literature has identified as persistent bioaccumulative toxins;**  
 43 **or**

44 (e) **Are otherwise of particular concern to the health of children or developing fetuses.**

45 (3) **The department may maintain and publish on a department website, or otherwise**

1 make available to the public, a list of the priority chemicals identified pursuant to this sec-  
 2 tion. Information posted for each priority chemical identified may include, but need not be  
 3 limited to:

- 4 (a) Manufactured products and packaging containing the priority chemical;
- 5 (b) The concentration of the priority chemical in the product or packaging; and
- 6 (c) Information about the possible health effects on children and developing fetuses from  
 7 exposure to the priority chemical.

8 **SECTION 5.** (1)(a) Not later than 180 days after a priority chemical is identified pursuant  
 9 to section 4 of this 2009 Act, a manufacturer or distributor of a children’s product offered  
 10 for sale in this state that contains a priority chemical shall notify the Department of Human  
 11 Services in writing, unless notification is waived by the Director of Human Services pursuant  
 12 to subsection (2) of this section or the manufacturer or distributor is exempt pursuant to  
 13 section 7 of this 2009 Act.

14 (b) Written notification required under this section must contain the information speci-  
 15 fied by the department by rule.

16 (2) The director may waive the notification required under this section for one or more  
 17 specified uses of a priority chemical if the director determines that substantially equivalent  
 18 information is already publicly available or that the specified use or uses are minor in volume  
 19 or are not likely to result in exposure of a child or fetus to the priority chemical.

20 (3) The department may assess a fee payable by the manufacturer or distributor upon  
 21 receipt of the written notification required under this section in an amount sufficient to  
 22 cover the department’s reasonable costs in managing the information collected.

23 (4) The department may extend the deadline for submission of the required information  
 24 for one or more specified uses of a priority chemical in a children’s product if the depart-  
 25 ment determines that the manufacturer or distributor needs additional time to comply or if  
 26 the information is not needed until a later time, in accordance with an exemption granted  
 27 pursuant to section 7 of this 2009 Act.

28 **SECTION 6.** (1) The Department of Human Services may establish by rule a process for  
 29 identifying and determining the availability of safer alternatives for priority chemicals used  
 30 in children’s products sold or distributed in this state.

31 (2)(a) The department may require a manufacturer or distributor to replace a priority  
 32 chemical in a children’s product offered for sale or distributed in this state with a safer al-  
 33 ternative if the department determines that a safer alternative is available for the specified  
 34 use of the priority chemical in that product. Upon making such a determination, the de-  
 35 partment shall specify a date, not to exceed three years after the date of the determination,  
 36 by which the priority chemical in the children’s product offered for sale or distributed in this  
 37 state must be replaced with a safer alternative.

38 (b) An alternative to a priority chemical is presumed to be a safer alternative if the al-  
 39 ternative is not a chemical of high concern.

40 (3) Not later than 180 days prior to the date specified by the department to replace a  
 41 priority chemical with a safer alternative, the manufacturer or distributor of a children’s  
 42 product containing that chemical shall submit a compliance plan for replacing the priority  
 43 chemical with a safer alternative that is acceptable to the department. The compliance plan  
 44 must identify the means of compliance, the safer alternative that will replace the priority  
 45 chemical and a means to educate and assist retailers to ensure timely compliance.

1 (4) A manufacturer or distributor of a children’s product containing a priority chemical  
 2 shall notify all persons that sell the product of the requirements of this section.

3 (5)(a) The department may require that a safer alternative identified under this section  
 4 to replace a priority chemical in a children’s product must be a chemical that is the least  
 5 toxic to human health or the least harmful to the environment of several available safer al-  
 6 ternatives.

7 (b) The department may require a manufacturer or distributor of a children’s product  
 8 containing a priority chemical to prepare and submit a report, in a form acceptable to the  
 9 department, that assesses the availability of safer alternatives to that chemical within a pe-  
 10 riod of time specified by the department by rule. If the report is not submitted within the  
 11 time specified, the department may assess a fee payable by the manufacturer or distributor  
 12 in an amount sufficient to cover the costs of an independent report on the availability of  
 13 safer alternatives by a contractor of the department’s choice.

14 (6) A person may submit a written request to the department for a determination as to  
 15 whether a safer alternative is available for a specified use of a priority chemical in a chil-  
 16 dren’s product. The department may make a determination within 180 days after the de-  
 17 partment concludes that the person has submitted enough information to establish a  
 18 reasonable basis for the department to make a determination under this subsection. The  
 19 person bears the burden of proof in establishing the availability of a safer alternative.

20 (7) A manufacturer or distributor that is subject to the requirements of this section and  
 21 that fails to comply may not offer for sale or distribute in this state the children’s product  
 22 containing the priority chemical.

23 **SECTION 7.** A manufacturer or distributor may apply in writing to the Department of  
 24 Human Services for an exemption for one or more specific uses of a priority chemical that  
 25 is subject to a requirement for a safer alternative under section 6 of this 2009 Act. The  
 26 written application for exemption must identify the specific use or uses for which the ex-  
 27 emption is sought. The application must document the alternatives evaluated and the basis  
 28 for concluding that a safer alternative is not feasible. The department may grant an ex-  
 29 emption for a period of time, not to exceed five years, upon finding that there is no feasible  
 30 alternative to the use or uses of a priority chemical.

31 **SECTION 8.** The Department of Human Services is authorized to participate in an  
 32 interstate clearinghouse to:

33 (1) Promote safer chemicals in consumer products in cooperation with other states and  
 34 governmental entities.

35 (2) Classify existing chemicals in commerce into either chemicals of high concern,  
 36 chemicals of moderate concern, chemicals of low concern or chemicals of unknown concern.

37 (3) Organize and manage available data on chemicals, including information on uses,  
 38 hazards and environmental concerns.

39 (4) Produce and inventory information on safer alternatives to specific uses of chemicals  
 40 of concern and on model policies and programs.

41 (5) Provide technical assistance to businesses and consumers related to safer chemicals.

42 (6) Undertake other activities in support of state programs to promote safer chemicals.

43 **SECTION 9.** The Department of Human Services may develop a program to educate and  
 44 assist consumers and retailers in identifying children’s products that contain priority chem-  
 45 icals.

1       **SECTION 10.** (1) The Director of Human Services or the Attorney General may bring an  
 2 action against a manufacturer or distributor that violates a provision of section 5 or 6 of this  
 3 2009 Act.

4       (2) If it appears to the Attorney General that a person has possession, custody or control  
 5 of any information, document or other material that is relevant to an investigation of a vi-  
 6 olation of section 5 or 6 of this 2009 Act or that could lead to the discovery of relevant in-  
 7 formation in an investigation of a violation of section 5 or 6 of this 2009 Act, the Attorney  
 8 General may cause an investigative demand to be served on the manufacturer or distributor.  
 9 The investigative demand may require the manufacturer or distributor:

10       (a) To appear and testify under oath at the time and place stated in the investigative  
 11 demand;

12       (b) To answer written interrogatories; or

13       (c) To produce relevant documentary material or physical evidence for examination at  
 14 the time and place stated in the investigative demand.

15       (3) An investigative demand under this section shall be served in the manner provided  
 16 by ORS 646.622 and may be enforced in the manner provided by ORS 646.626.

17       (4) If the director determines that there are grounds to suspect that a consumer product  
 18 is being offered for sale or distributed in this state in violation of section 5 or 6 of this 2009  
 19 Act, the director may request that the manufacturer or distributor provide a statement of  
 20 compliance. Within 10 days of receipt of the request, the manufacturer or distributor shall:

21       (a) Provide to the director a statement attesting that the consumer product complies  
 22 with the requirements of sections 5 and 6 of this 2009 Act; or

23       (b)(A) Notify all persons that offer for sale or distribute the consumer product in this  
 24 state that sale or distribution of the product is prohibited; and

25       (B) Provide to the director a list of the names and addresses of the persons described in  
 26 subparagraph (A) of this paragraph.

27       **SECTION 11.** (1) The Environmental Public Health Protection Fund is established in the  
 28 State Treasury, separate and distinct from the General Fund. Interest earned by the Envi-  
 29 ronmental Public Health Protection Fund shall be credited to the fund.

30       (2) Moneys in the fund are continuously appropriated to the Department of Human Ser-  
 31 vices for the purposes of sections 2 to 14 of this 2009 Act.

32       (3) All moneys received by the department pursuant to sections 5, 6 and 13 of this 2009  
 33 Act shall be deposited in the Environmental Public Health Protection Fund.

34       **SECTION 12.** The Department of Human Services may adopt rules necessary for the im-  
 35 plementation and administration of sections 2 to 14 of this 2009 Act.

36       **SECTION 13.** (1) In addition to any other liability or penalty provided by law, the Director  
 37 of Human Services may impose a civil penalty on a manufacturer or distributor for:

38       (a) A violation of section 5 or 6 of this 2009 Act; or

39       (b) Violation of a rule adopted under section 12 of this 2009 Act.

40       (2) Civil penalties authorized under this section must be imposed in the manner provided  
 41 by ORS 183.745.

42       **SECTION 14.** (1) The Director of Human Services shall adopt a schedule establishing the  
 43 amounts of civil penalties that may be imposed under section 13 of this 2009 Act. The amount  
 44 of any civil penalty may not exceed \$10,000 for a first violation and \$20,000 for each subse-  
 45 quent violation.

