

HOUSE AMENDMENTS TO HOUSE BILL 3162

By COMMITTEE ON HEALTH CARE

April 18

- 1 On page 1 of the printed bill, line 4, after “that” insert “may”.
- 2 In line 6, before “chemicals” insert “harmful”.
- 3 In line 8, after the second “the” delete the rest of the line and insert “presence of certain”.
- 4 In line 9, delete “with exposure to”.
- 5 On page 2, line 1, after “cleansing,” insert “moisturizing,”.
- 6 After line 36, insert:
- 7 “(4) ‘Intentionally added chemical’ means a chemical that was added during the manufacture of
- 8 a product or product component to provide a specific characteristic, appearance or quality or to
- 9 perform a specific function.”.
- 10 In line 37, delete “(4)” and insert “(5)”.
- 11 After line 42, insert:
- 12 “(6)(a) ‘Mouthable’ means a children’s product, or any part of a children’s product, that may be
- 13 brought to the mouth and kept in the mouth by a child so that the product or part can be sucked
- 14 and chewed.
- 15 “(b) ‘Mouthable’ does not mean a children’s product or part of a children’s product that may
- 16 only be licked, but not placed in the mouth. If a children’s product or part of a children’s product
- 17 in one dimension is smaller than five centimeters, the product or part can be placed in the
- 18 mouth.”.
- 19 In line 43, delete “(5)” and insert “(7)”.
- 20 On page 3, delete lines 21 through 25 and insert:
- 21 “(2) In completing the revisions under subsection (1) of this section, the authority shall consider
- 22 and take into account the addition or removal of a chemical that has been added to or removed from
- 23 both the Department of Environmental Quality’s Toxics Focus List and the Washington State De-
- 24 partment of Ecology’s Reporting List of Chemicals of High Concern to Children after the effective
- 25 date of this 2013 Act.”.
- 26 Delete lines 39 through 43 and insert:
- 27 “(A) A children’s product contains an intentionally added chemical that is included in the list
- 28 of high priority chemicals of concern for children’s health used in children’s products established
- 29 under section 2 of this 2013 Act; or
- 30 “(B) A children’s product contains a chemical at levels above 100 parts per million that is not
- 31 an intentionally added chemical but that is a chemical included in the list of high priority chemicals
- 32 of concern for children’s health used in children’s products.”.
- 33 On page 4, line 2, after “if” insert a colon and delete the rest of the line.
- 34 Delete lines 3 and 4 and insert:
- 35 “(A) A children’s product contains an intentionally added chemical that is added to the list of

1 high priority chemicals of concern for children’s health used in children’s products established under
2 section 2 of this 2013 Act; or

3 “(B) A children’s product contains a chemical at levels above 100 parts per million that is not
4 an intentionally added chemical but that is a chemical added to the list of high priority chemicals
5 of concern for children’s health used in children’s products.”.

6 On page 5, delete lines 21 through 30 and insert:

7 **“SECTION 11. (1) Except as provided in subsection (5) of this section, the Oregon Health
8 Authority may impose a civil penalty on a person for a violation of any provision of sections
9 1 to 15 of this 2013 Act.**

10 **“(2) For purposes of assessing civil penalties under this section, a violation consists of a
11 single course of conduct with regard to an entire children’s product line that is sold or of-
12 fered for sale in this state.**

13 **“(3) The authority shall adopt by rule a schedule of civil penalties for violations of
14 sections 1 to 15 of this 2013 Act. A civil penalty may not exceed \$5,000 for the first violation.
15 A civil penalty may not exceed \$10,000 for the second and each subsequent violation.**

16 **“(4) In imposing a penalty under subsection (1) or (5) of this section, the authority shall
17 consider the following factors:**

18 **“(a) The past history of the person incurring a penalty in taking all feasible steps or
19 procedures necessary or appropriate to correct any violation.**

20 **“(b) Any prior violations of statutes, rules, orders or permits pertaining to high priority
21 chemicals of concern for children’s health used in children’s products.**

22 **“(c) The gravity and magnitude of the violation.**

23 **“(d) Whether the violation was a sole event, repeated or continuous.**

24 **“(e) Whether the violation was as a result of an unavoidable accident, negligence or an
25 intentional act.**

26 **“(f) The violator’s cooperativeness and efforts to correct the violation.**

27 **“(g) The economic and financial conditions of the person incurring a penalty.**

28 **“(5)(a) If a person violates the notice requirements under section 7 of this 2013 Act, the
29 authority shall provide the person with written notice informing the person of the violation
30 and stating that the person may avoid a civil penalty for the violation by providing the proper
31 notice required under section 7 of this 2013 Act within 90 days.**

32 **“(b) If the person fails to cure the violation within 90 days, the authority may impose a
33 civil penalty not to exceed \$2,500. For a continuing violation, each 90-day period that the vi-
34 olation continues after the preceding imposition of a civil penalty is a separate offense sub-
35 ject to a separate civil penalty not to exceed \$5,000. The authority is not required to provide
36 the person with an opportunity to cure the continuing violation before imposing a civil pen-
37 alty for the continuing violation.**

38 **“(6) If the authority has reason to believe that a children’s product that contains a high
39 priority chemical of concern for children’s health used in children’s products is being sold
40 or offered for sale in this state in violation of sections 1 to 15 of this 2013 Act, the authority
41 may request that the manufacturer provide a statement of compliance on a form provided
42 by the authority. The manufacturer must submit the statement of compliance within ten
43 days of receipt of a request. To prove compliance with sections 1 to 15 of this 2013 Act, the
44 manufacturer must:**

45 **“(a) Show that the children’s product does not contain the high priority chemical of**

1 concern for children's health used in children's products;

2 "(b) Show that the manufacturer has previously provided the authority with notice as
3 required by section 7 of this 2013 Act;

4 "(c) Provide the authority with notice as required by section 7 of this 2013 Act; or

5 "(d) Provide the authority with documentation that the manufacturer has previously
6 complied with section 14 or 14a of this 2013 Act.

7 "(7) Civil penalties described in this section shall be imposed in the manner provided in
8 ORS 183.745.

9 "(8) All civil penalties recovered under this section shall be paid into the High Priority
10 Chemicals of Concern for Children's Health Fund established under section 13 of this 2013
11 Act."

12 In line 45, delete "14" and insert "14a".

13 On page 6, delete lines 5 through 45.

14 On page 7, delete lines 1 and 2 and insert:

15 "SECTION 14. (1) Within five years after the date that a high priority chemical of con-
16 cern for children's health used in children's products is included on the list maintained pur-
17 suant to sections 2 and 5 of this 2013 Act, a manufacturer of children's products sold or
18 offered for sale in this state must remove or substitute the chemical, or seek a waiver under
19 section 14a of this 2013 Act, if the chemical is present in a children's product that is:

20 "(a) Mouthable;

21 "(b) A children's cosmetic; or

22 "(c) A children's product made for, marketed for use by or marketed to children under
23 three years of age.

24 "(2)(a) When a manufacturer of children's products sold or offered for sale in this state
25 removes a high priority chemical of concern for children's health used in children's products
26 from a children's product described in subsection (1) of this section by substituting another
27 chemical, the manufacturer must submit a hazard assessment to the Oregon Health Au-
28 thority that explains how the children's product, and any substitute chemical the children's
29 product contains, is inherently less hazardous with the substitute chemical.

30 "(b) If the manufacturer has removed a high priority chemical of concern for children's
31 health used in children's products from a children's product described in subsection (1) of
32 this section and has not replaced the chemical with a substitute chemical, the manufacturer
33 must submit notice to the authority that the manufacturer is no longer using the chemical
34 and that the manufacturer has not replaced the chemical with a substitute chemical.

35 "(3) The authority shall establish by rule the methodology that a manufacturer must use
36 and the standards that a children's product must meet in order to comply with the hazard
37 assessment requirements under subsection (2)(a) of this section.

38 "(4) The authority shall approve or disapprove a hazard assessment within 180 days of its
39 submittal. If the authority fails to act within 180 days, the hazard assessment is deemed
40 approved, and the manufacturer may continue to sell or offer for sale in this state the
41 children's product described in subsection (1) of this section for which the manufacturer
42 submitted a hazard assessment. If the authority disapproves a hazard assessment, the man-
43 ufacturer may submit a revised hazard assessment for consideration within 180 days of the
44 authority's disapproval.

45 "(5) A manufacturer with 25 or fewer employees may apply for a two-year extension of

1 the time period specified in subsection (1) of this section to meet the requirements of this
2 section.

3 “(6) Manufacturers are exempt from meeting the requirements of this section for
4 children’s products described in subsection (1) of this section that contain high priority
5 chemicals of concern for children’s health used in children’s products at levels that are at
6 or below allowable levels for children’s products as established by the Consumer Product
7 Safety Improvement Act of 2008, P.L. 110-314, 122 Stat. 3016, as in effect on the effective date
8 of this 2013 Act.

9 “(7)(a) The authority shall adopt rules providing for additional exemptions from the re-
10 quirements of this section.

11 “(b) For purposes of this subsection, any consumer product safety standard adopted un-
12 der federal law that establishes allowable levels for children’s products of a high priority
13 chemical of concern for children’s health used in children’s products is presumed to establish
14 the maximum allowable level of the chemical that may be used in children’s products that
15 are sold or offered for sale in this state. The authority may not require a manufacturer in
16 compliance with the federal standard to also comply with the provisions of this section un-
17 less the authority establishes in the rulemaking process that a lower maximum allowable
18 level for children’s products of a high priority chemical of concern for children’s health used
19 in children’s products than the allowable level set by the federal standard is necessary to
20 protect human health and welfare.

21
22 “WAIVERS
23

24 “SECTION 14a. (1) If a manufacturer of children’s products sold or offered for sale in this
25 state that is subject to section 14 of this 2013 Act fails to remove a high priority chemical
26 of concern for children’s health used in children’s products from a children’s product de-
27 scribed in section 14 (1) of this 2013 Act within the period specified in section 14 (1) of this
28 2013 Act, the manufacturer must apply to the Oregon Health Authority for a waiver. The
29 authority shall grant a waiver if the application:

30 “(a) Includes an alternatives assessment demonstrating that removal of the high priority
31 chemical of concern for children’s health used in children’s products is not financially or
32 technically feasible; or

33 “(b) Includes a quantitative exposure assessment demonstrating that the high priority
34 chemical of concern for children’s health used in children’s products is not reasonably an-
35 ticipated to result in exposure based upon an analysis of leachability and bioavailability of the
36 high priority chemical of concern for children’s health used in children’s products.

37 “(2) To meet the requirements of subsection (1)(a) of this section, an alternatives as-
38 sessment must:

39 “(a) Identify and compare potential chemical and nonchemical alternatives that may be
40 used as substitutes to replace the high priority chemical of concern for children’s health
41 used in children’s products; and

42 “(b) Include elements that are consistent with guidance and frameworks established by
43 the United States Environmental Protection Agency and by other states and nongovern-
44 mental organizations with the applicable expertise, as those guidances and frameworks are
45 in effect on the effective date of this 2013 Act.

1 **“(3) To meet the requirements of subsection (1)(b) of this section, a quantitative exposure**
2 **assessment must:**

3 **“(a) Evaluate the exposure potential of the high priority chemical of concern for**
4 **children’s health used in children products; and**

5 **“(b) Include elements that are consistent with guidance and frameworks established by**
6 **the United States Environmental Protection Agency and by other states and nongovern-**
7 **mental organizations with the applicable expertise, as those guidances and frameworks are**
8 **in effect on the effective date of this 2013 Act.**

9 **“(4) If the authority determines that an alternatives assessment or a quantitative expo-**
10 **sure assessment as described in this section is incomplete, the authority may obtain the**
11 **assessment from another party. The manufacturer that submitted the assessment that was**
12 **determined to be incomplete must pay for the assessment performed by the other party.**

13 **“(5) The authority shall approve or disapprove a waiver application within 180 days of its**
14 **submittal. If the authority fails to act within 180 days, the waiver application is deemed ap-**
15 **proved, and the manufacturer may continue to sell or offer for sale in this state the**
16 **children’s product described in section 14 (1) of this 2013 Act for which the manufacturer**
17 **submitted a waiver application. If the authority disapproves a waiver application, the man-**
18 **ufacturer may submit a revised waiver application for consideration within 180 days of the**
19 **authority’s disapproval.”.**

20 In line 25, delete “section 14” and insert “sections 14 and 14a”.

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