

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3162**

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  
4 “presence of certain”.

5 In line 9, delete “with exposure to”.

6 On page 2, line 1, after “cleansing,” insert “moisturizing,”.

7 After line 36, insert:

8 “(4) ‘Intentionally added chemical’ means a chemical that was added  
9 during the manufacture of a product or product component to provide a  
10 specific characteristic, appearance or quality or to perform a specific func-  
11 tion.”.

12 In line 37, delete “(4)” and insert “(5)”.

13 After line 42, insert:

14 “(6)(a) ‘Mouthable’ means a children’s product, or any part of a children’s  
15 product, that may be brought to the mouth and kept in the mouth by a child  
16 so that the product or part can be sucked and chewed.

17 “(b) ‘Mouthable’ does not mean a children’s product or part of a children’s  
18 product that may only be licked, but not placed in the mouth. If a children’s  
19 product or part of a children’s product in one dimension is smaller than five  
20 centimeters, the product or part can be placed in the mouth.”.

21 In line 43, delete “(5)” and insert “(7)”.

22 On page 3, delete lines 21 through 25 and insert:

1       “(2) In completing the revisions under subsection (1) of this section, the  
2 authority shall consider and take into account the addition or removal of a  
3 chemical that has been added to or removed from both the Department of  
4 Environmental Quality’s Toxics Focus List and the Washington State De-  
5 partment of Ecology’s Reporting List of Chemicals of High Concern to  
6 Children after the effective date of this 2013 Act.

7       Delete lines 39 through 43 and insert:

8       “(A) A children’s product contains an intentionally added chemical that  
9 is included in the list of high priority chemicals of concern for children’s  
10 health used in children’s products established under section 2 of this 2013  
11 Act; or

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

16       On page 4, line 2, after “if” insert a colon and delete the rest of the line.

17       Delete lines 3 and 4 and insert:

18       “(A) A children’s product contains an intentionally added chemical that  
19 is added to the list of high priority chemicals of concern for children’s health  
20 used in children’s products established under section 2 of this 2013 Act; or

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

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

26       “**SECTION 11. (1) Except as provided in subsection (5) of this sec-**  
27 **tion, the Oregon Health Authority may impose a civil penalty on a**  
28 **person for a violation of any provision of sections 1 to 15 of this 2013**  
29 **Act.**

30       “(2) **For purposes of assessing civil penalties under this section, a**

1 violation consists of a single course of conduct with regard to an en-  
2 tire children’s product line that is sold or offered for sale in this state.

3 “(3) The authority shall adopt by rule a schedule of civil penalties  
4 for violations of sections 1 to 15 of this 2013 Act. A civil penalty may  
5 not exceed \$5,000 for the first violation. A civil penalty may not exceed  
6 \$10,000 for the second and each subsequent violation.

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

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

12 “(b) Any prior violations of statutes, rules, orders or permits per-  
13 taining to high priority chemicals of concern for children’s health used  
14 in children’s products.

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

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

17 “(e) Whether the violation was as a result of an unavoidable acci-  
18 dent, negligence or an intentional act.

19 “(f) The violator’s cooperativeness and efforts to correct the vio-  
20 lation.

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

23 “(5)(a) If a person violates the notice requirements under section 7  
24 of this 2013 Act, the authority shall provide the person with written  
25 notice informing the person of the violation and stating that the per-  
26 son may avoid a civil penalty for the violation by providing the proper  
27 notice required under section 7 of this 2013 Act within 90 days.

28 “(b) If the person fails to cure the violation within 90 days, the  
29 authority may impose a civil penalty not to exceed \$2,500. For a con-  
30 tinuing violation, each 90-day period that the violation continues after

1 the preceding imposition of a civil penalty is a separate offense subject  
2 to a separate civil penalty not to exceed \$5,000. The authority is not  
3 required to provide the person with an opportunity to cure the con-  
4 tinuing violation before imposing a civil penalty for the continuing  
5 violation.

6 “(6) If the authority has reason to believe that a children’s product  
7 that contains a high priority chemical of concern for children’s health  
8 used in children’s products is being sold or offered for sale in this state  
9 in violation of sections 1 to 15 of this 2013 Act, the authority may re-  
10 quest that the manufacturer provide a statement of compliance on a  
11 form provided by the authority. The manufacturer must submit the  
12 statement of compliance within ten days of receipt of a request. To  
13 prove compliance with sections 1 to 15 of this 2013 Act, the manufac-  
14 turer must:

15 “(a) Show that the children’s product does not contain the high  
16 priority chemical of concern for children’s health used in children’s  
17 products;

18 “(b) Show that the manufacturer has previously provided the au-  
19 thority with notice as required by section 7 of this 2013 Act;

20 “(c) Provide the authority with notice as required by section 7 of  
21 this 2013 Act; or

22 “(d) Provide the authority with documentation that the manufac-  
23 turer has previously complied with section 14 or 14a of this 2013 Act.

24 “(7) Civil penalties described in this section shall be imposed in the  
25 manner provided in ORS 183.745.

26 “(8) All civil penalties recovered under this section shall be paid  
27 into the High Priority Chemicals of Concern for Children’s Health  
28 Fund established under section 13 of this 2013 Act.”.

29 In line 45, delete “14” and insert “14a”.

30 On page 6, delete lines 5 through 45.

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

2 **“SECTION 14. (1) Within five years after the date that a high pri-**  
3 **ority chemical of concern for children’s health used in children’s pro-**  
4 **ducts is included on the list maintained pursuant to sections 2 and 5**  
5 **of this 2013 Act, a manufacturer of children’s products sold or offered**  
6 **for sale in this state must remove or substitute the chemical, or seek**  
7 **a waiver under section 14a of this 2013 Act, if the chemical is present**  
8 **in a children’s product that is:**

9 **“(a) Mouthable;**

10 **“(b) A children’s cosmetic; or**

11 **“(c) A children’s product made for, marketed for use by or mar-**  
12 **keted to children under three years of age.**

13 **“(2)(a) When a manufacturer of children’s products sold or offered**  
14 **for sale in this state removes a high priority chemical of concern for**  
15 **children’s health used in children’s products from a children’s product**  
16 **described in subsection (1) of this section by substituting another**  
17 **chemical, the manufacturer must submit a hazard assessment to the**  
18 **Oregon Health Authority that explains how the children’s product, and**  
19 **any substitute chemical the children’s product contains, is inherently**  
20 **less hazardous with the substitute chemical.**

21 **“(b) If the manufacturer has removed a high priority chemical of**  
22 **concern for children’s health used in children’s products from a**  
23 **children’s product described in subsection (1) of this section and has**  
24 **not replaced the chemical with a substitute chemical, the manufac-**  
25 **turer must submit notice to the authority that the manufacturer is**  
26 **no longer using the chemical and that the manufacturer has not re-**  
27 **placed the chemical with a substitute chemical.**

28 **“(3) The authority shall establish by rule the methodology that a**  
29 **manufacturer must use and the standards that a children’s product**  
30 **must meet in order to comply with the hazard assessment require-**

1 **ments under subsection (2)(a) of this section.**

2 **“(4) The authority shall approve or disapprove a hazard assessment**  
3 **within 180 days of its submittal. If the authority fails to act within 180**  
4 **days, the hazard assessment is deemed approved, and the manufac-**  
5 **turer may continue to sell or offer for sale in this state the children’s**  
6 **product described in subsection (1) of this section for which the man-**  
7 **ufacturer submitted a hazard assessment. If the authority disapproves**  
8 **a hazard assessment, the manufacturer may submit a revised hazard**  
9 **assessment for consideration within 180 days of the authority’s disap-**  
10 **proval.**

11 **“(5) A manufacturer with 25 or fewer employees may apply for a**  
12 **two-year extension of the time period specified in subsection (1) of this**  
13 **section to meet the requirements of this section.**

14 **“(6) Manufacturers are exempt from meeting the requirements of**  
15 **this section for children’s products described in subsection (1) of this**  
16 **section that contain high priority chemicals of concern for children’s**  
17 **health used in children’s products at levels that are at or below al-**  
18 **lowable levels for children’s products as established by the Consumer**  
19 **Product Safety Improvement Act of 2008, P.L. 110-314, 122 Stat. 3016,**  
20 **as in effect on the effective date of this 2013 Act.**

21 **“(7)(a) The authority shall adopt rules providing for additional ex-**  
22 **emptions from the requirements of this section.**

23 **“(b) For purposes of this subsection, any consumer product safety**  
24 **standard adopted under federal law that establishes allowable levels**  
25 **for children’s products of a high priority chemical of concern for**  
26 **children’s health used in children’s products is presumed to establish**  
27 **the maximum allowable level of the chemical that may be used in**  
28 **children’s products that are sold or offered for sale in this state. The**  
29 **authority may not require a manufacturer in compliance with the**  
30 **federal standard to also comply with the provisions of this section**

1 unless the authority establishes in the rulemaking process that a  
2 lower maximum allowable level for children’s products of a high pri-  
3 ority chemical of concern for children’s health used in children’s pro-  
4 ducts than the allowable level set by the federal standard is necessary  
5 to protect human health and welfare.”.

6 Before line 4, insert:

7

8

**“WAIVERS**

9

10 **“SECTION 14a. (1) If a manufacturer of children’s products sold or**  
11 **offered for sale in this state that is subject to section 14 of this 2013**  
12 **Act fails to remove a high priority chemical of concern for children’s**  
13 **health used in children’s products from a children’s product described**  
14 **in section 14 (1) of this 2013 Act within the period specified in section**  
15 **14 (1) of this 2013 Act, the manufacturer must apply to the Oregon**  
16 **Health Authority for a waiver. The authority shall grant a waiver if**  
17 **the application:**

18 **“(a) Includes an alternatives assessment demonstrating that re-**  
19 **moval of the high priority chemical of concern for children’s health**  
20 **used in children’s products is not financially or technically feasible;**  
21 **or**

22 **“(b) Includes a quantitative exposure assessment demonstrating**  
23 **that the high priority chemical of concern for children’s health used**  
24 **in children’s products is not reasonably anticipated to result in expo-**  
25 **sure based upon an analysis of leachability and bioavailability of the**  
26 **high priority chemical of concern for children’s health used in**  
27 **children’s products.**

28 **“(2) To meet the requirements of subsection (1)(a) of this section,**  
29 **an alternatives assessment must:**

30 **“(a) Identify and compare potential chemical and nonchemical al-**

1 **ternatives that may be used as substitutes to replace the high priority**  
2 **chemical of concern for children’s health used in children’s products;**  
3 **and**

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

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

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

13 **“(b) Include elements that are consistent with guidance and**  
14 **frameworks established by the United States Environmental Pro-**  
15 **tection Agency and by other states and nongovernmental organiza-**  
16 **tions with the applicable expertise, as those guidances and frameworks**  
17 **are in effect on the effective date of this 2013 Act.**

18 **“(4) If the authority determines that an alternatives assessment or**  
19 **a quantitative exposure assessment as described in this section is in-**  
20 **complete, the authority may obtain the assessment from another**  
21 **party. The manufacturer that submitted the assessment that was de-**  
22 **termined to be incomplete must pay for the assessment performed by**  
23 **the other party.**

24 **“(5) The authority shall approve or disapprove a waiver application**  
25 **within 180 days of its submittal. If the authority fails to act within 180**  
26 **days, the waiver application is deemed approved, and the manufac-**  
27 **turer may continue to sell or offer for sale in this state the children’s**  
28 **product described in section 14 (1) of this 2013 Act for which the**  
29 **manufacturer submitted a waiver application. If the authority disap-**  
30 **proves a waiver application, the manufacturer may submit a revised**

1 **waiver application for consideration within 180 days of the authority's**  
2 **disapproval."**

3 In line 25, delete "section 14" and insert "sections 14 and 14a".

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