

# C-Engrossed House Bill 3162

Ordered by the Senate July 3  
Including House Amendments dated April 18 and June 14 and Senate  
Amendments dated July 3

Sponsored by Representatives KENY-GUYER, CONGER, Senator STEINER HAYWARD; Representatives GOMBERG, HOLVEY, VEGA PEDERSON, Senator MONNES ANDERSON

## 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.

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.

*[Provides that, five years after chemical is placed on list, manufacturer must seek waiver if manufacturer continues to sell certain children's products containing chemical. Establishes criteria for granting waivers.]*

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

Allows authority to establish certain fees by rule. Allows authority to impose civil penalties. Allows authority to accept certain funding.

*[Requires manufacturers to submit certain hazard assessments to authority. Allows authority to establish methodology and standards for hazard assessments by rule.]*

Establishes High Priority Chemicals of Concern for Children's Health Fund. Continuously appropriates moneys in fund to authority. Specifies uses of moneys.

Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by authority.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to high priority chemicals of concern for children's health; appropriating money; limiting  
3 expenditures; and declaring an emergency.

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

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

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

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

## DEFINITIONS

### **SECTION 1. As used in sections 1 to 15 of this 2013 Act:**

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13  
14  
15 (1) "Chemical" means:  
16

**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       **(a) A substance with a distinct molecular composition.**
- 2       **(b) A group of structurally related substances and the breakdown products of the sub-**  
3 **stance or substances that form through decomposition, degradation or metabolism.**
- 4       **(2)(a) “Children’s cosmetics” means products that are made for, marketed for use by or**  
5 **marketed to children under 12 years of age and are intended to be rubbed, poured, sprinkled**  
6 **or sprayed on, introduced into or otherwise applied to the human body or any part thereof**  
7 **for cleansing, moisturizing, beautifying, promoting attractiveness or altering the appearance.**
- 8       **(b) “Children’s cosmetics” does not mean soap, dietary supplements or food and drugs**  
9 **approved by the United States Food and Drug Administration.**
- 10       **(3)(a) “Children’s product” means:**
- 11       **(A) A product designed or intended by the manufacturer to help a child with sucking or**  
12 **teething to facilitate sleep, relaxation or feeding of a child or to be worn as clothing by a**  
13 **child.**
- 14       **(B) Car seats for children.**
- 15       **(C) Children’s cosmetics.**
- 16       **(D) Children’s jewelry made for, marketed for use by or marketed to children under 12**  
17 **years of age.**
- 18       **(E) Toys designed, or intended by the manufacturer, to be used by a child at play.**
- 19       **(F) Items designed or intended by the manufacturer to facilitate the feeding of a child**  
20 **under three years of age, including dishes, cups, food utensils, reusable food storage con-**  
21 **tainers and other feeding accessories.**
- 22       **(G) Any component part of a product specified in subparagraphs (A) to (F) of this para-**  
23 **graph.**
- 24       **(b) “Children’s product” does not mean:**
- 25       **(A) Athletic shoes with cleats or spikes.**
- 26       **(B) Batteries.**
- 27       **(C) BB guns, pellet guns and air rifles.**
- 28       **(D) Bicycles and tricycles.**
- 29       **(E) Chemistry sets.**
- 30       **(F) Consumer electronic products, including personal computers, audio and video equip-**  
31 **ment, calculators, wireless telephones and game consoles and handheld devices incorporating**  
32 **a video screen and used to access interactive software and the associated peripherals.**
- 33       **(G) Interactive software intended for leisure and entertainment, such as computer**  
34 **games, and their storage media, such as compact discs.**
- 35       **(H) Model rockets.**
- 36       **(I) Pocketknives and multitools.**
- 37       **(J) Roller skates.**
- 38       **(K) Scooters.**
- 39       **(L) Sets of darts with metallic points.**
- 40       **(M) Slings and catapults.**
- 41       **(N) Snow sporting equipment, including skis, poles, boots, snowboards, sleds and**  
42 **bindings.**
- 43       **(O) Sporting equipment, including bats, balls, gloves, sticks, pucks and pads.**
- 44       **(P) Video toys that can be connected to a video screen and are operated at a nominal**  
45 **voltage exceeding 24 volts.**

1 (Q) Food and food packaging regulated by the United States Food and Drug Adminis-  
2 tration.

3 (4) "Intentionally added chemical" means a chemical that was added during the manu-  
4 facture of a product or product component to provide a specific characteristic, appearance  
5 or quality or to perform a specific function.

6 (5) "Manufacturer" means:

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

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

12 (6) "Trade association" means a membership organization of persons engaging in a simi-  
13 lar or related line of commerce, organized to promote and improve business conditions in  
14 that line of commerce and not to engage in a regular business of a kind ordinarily carried  
15 on for profit.

16  
17 **HIGH PRIORITY CHEMICALS OF CONCERN FOR CHILDREN'S**  
18 **HEALTH USED IN CHILDREN'S PRODUCTS**  
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20 **SECTION 2.** The Oregon Health Authority shall maintain a list of high priority chemicals  
21 of concern for children's health used in children's products. The authority shall include on  
22 the list chemicals that are listed on both:

23 (1) The Department of Environmental Quality's Toxics Focus List on the effective date  
24 of this 2013 Act; and

25 (2) The Washington State Department of Ecology's Reporting List of Chemicals of High  
26 Concern to Children on the effective date of this 2013 Act.

27 **SECTION 3.** The Oregon Health Authority shall post the list of high priority chemicals  
28 of concern for children's health used in children's products established under section 2 of  
29 this 2013 Act on its website. For each chemical on the list, the authority shall post infor-  
30 mation regarding the known health impacts associated with exposure to the chemical.

31 **SECTION 4.** Section 3 of this 2013 Act becomes operative on January 1, 2014.

32 **SECTION 5.** (1) The Oregon Health Authority shall review and revise the list of high  
33 priority chemicals of concern for children's health used in children's products established  
34 under section 2 of this 2013 Act every three years.

35 (2) In completing the revisions under subsection (1) of this section, the authority shall  
36 consider and take into account the addition or removal of a chemical that has been added  
37 to or removed from both the Department of Environmental Quality's Toxics Focus List and  
38 the Washington State Department of Ecology's Reporting List of Chemicals of High Concern  
39 to Children after the effective date of this 2013 Act.

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

42 (4) The authority shall update the list on its website within one year of the date on which  
43 a chemical is added to, or a chemical is removed from, the list under this section.

44 **SECTION 6.** Section 5 of this 2013 Act becomes operative on January 1, 2016.  
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1                   **MANUFACTURER DISCLOSURE OF HIGH PRIORITY CHEMICALS**  
2                   **OF CONCERN FOR CHILDREN'S HEALTH USED IN**  
3                   **CHILDREN'S PRODUCTS**

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5           **SECTION 7. (1)(a) A manufacturer of children's products sold or offered for sale in this**  
6 **state shall provide the notice described in subsection (2) of this section every two years to**  
7 **the Oregon Health Authority if:**

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

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

14           **(b) In addition to the notice required by paragraph (a) of this subsection, within one year**  
15 **of the date the authority adds a chemical to the list under section 5 of this 2013 Act, a**  
16 **manufacturer of children's products sold or offered for sale in this state shall provide the**  
17 **notice described in subsection (2) of this section if:**

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

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

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

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

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

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

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

31           **(e) The name and address of the manufacturer, and the name, address and telephone**  
32 **number of a contact person for the manufacturer; and**

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

35           **(3)(a) In order for the authority to obtain the information required in the notice de-**  
36 **scribed in subsection (2) of this section, the authority may enter into reciprocal data-sharing**  
37 **agreements with other states in which a manufacturer of children's products is also required**  
38 **to disclose information related to high priority chemicals of concern for children's health**  
39 **used in children's products. If the authority has entered into a data-sharing agreement with**  
40 **another state, and a manufacturer has reported the information required in the notice de-**  
41 **scribed in subsection (2) of this section to that state, the manufacturer may request that the**  
42 **other state provide the authority with the information in lieu of the manufacturer directly**  
43 **reporting the information to the authority.**

44           **(b) A manufacturer fulfills the notice requirement of subsection (1) of this section when**  
45 **the authority receives the information from the other state and the authority determines**

1 that the information received meets the description specified in subsection (2) of this section.

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

7 (5) Manufacturers of children's products with annual worldwide gross sales of less than  
8 \$5 million, as reported on the most recent tax returns filed before the notice required by this  
9 section, are exempt from the requirements of this section.

10 (6) A trade association may provide notice on behalf of its member manufacturers under  
11 the provisions of this section.

12 (7) When a manufacturer provides notice to the authority under the provisions of this  
13 section, the manufacturer may submit recommendations to the authority regarding techni-  
14 cal, financial or logistical support deemed necessary for innovation and green chemistry  
15 solutions related to high priority chemicals of concern for children's health used in children's  
16 products.

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18 **OREGON HEALTH AUTHORITY**

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20 **SECTION 8.** (1) The Oregon Health Authority may conduct testing of children's products  
21 sold or offered for sale in this state in order to determine compliance with section 7 of this  
22 2013 Act.

23 (2) The authority may establish by rule a schedule of fees for manufacturers that are  
24 based on the costs of the authority for administering sections 1 to 15 of this 2013 Act. Fees  
25 collected by the authority under this subsection shall be deposited in the High Priority  
26 Chemicals of Concern for Children's Health Fund established under section 13 of this 2013  
27 Act.

28 **SECTION 9.** (1) Sections 7 and 8 of this 2013 Act become operative on January 1, 2015.

29 (2) The first notice under section 7 of this 2013 Act must be provided to the Oregon  
30 Health Authority not later than July 1, 2015.

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32 **INTERSTATE CHEMICALS CLEARINGHOUSE**

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34 **SECTION 10.** The Oregon Health Authority is authorized to participate in the Interstate  
35 Chemicals Clearinghouse in cooperation with other states and government entities to assist  
36 the authority in carrying out sections 1 to 15 of this 2013 Act.

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38 **CIVIL PENALTIES**

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40 **SECTION 11.** (1) Except as provided in subsection (5) of this section, the Oregon Health  
41 Authority may impose a civil penalty on a person for a violation of any provision of sections  
42 1 to 15 of this 2013 Act.

43 (2) For purposes of assessing civil penalties under this section, a violation consists of a  
44 single course of conduct with regard to an entire children's product line that is sold or of-  
45 fered for sale in this state.

1       **(3) The authority shall adopt by rule a schedule of civil penalties for violations of sections**  
2 **1 to 15 of this 2013 Act. A civil penalty may not exceed \$5,000 for the first violation. A civil**  
3 **penalty may not exceed \$10,000 for the second and each subsequent violation.**

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

6       **(a) The past history of the person incurring a penalty in taking all feasible steps or pro-**  
7 **cedures necessary or appropriate to correct any violation.**

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

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

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

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

14       **(f) The violator's cooperativeness and efforts to correct the violation.**

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

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

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

26       **(6) If the authority has reason to believe that a children's product that contains a high**  
27 **priority chemical of concern for children's health used in children's products is being sold**  
28 **or offered for sale in this state in violation of sections 1 to 15 of this 2013 Act, the authority**  
29 **may request that the manufacturer provide a statement of compliance on a form provided**  
30 **by the authority. The manufacturer must submit the statement of compliance within ten**  
31 **days of receipt of a request. To prove compliance with sections 1 to 15 of this 2013 Act, the**  
32 **manufacturer must:**

33       **(a) Show that the children's product does not contain the high priority chemical of con-**  
34 **cern for children's health used in children's products;**

35       **(b) Show that the manufacturer has previously provided the authority with notice as re-**  
36 **quired by section 7 of this 2013 Act; or**

37       **(c) Provide the authority with notice as required by section 7 of this 2013 Act.**

38       **(7) Civil penalties described in this section shall be imposed in the manner provided in**  
39 **ORS 183.745.**

40       **(8) All civil penalties recovered under this section shall be paid into the High Priority**  
41 **Chemicals of Concern for Children's Health Fund established under section 13 of this 2013**  
42 **Act.**

43       **SECTION 12.** **Section 11 of this 2013 Act becomes operative on January 1, 2015.**

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45                   **HIGH PRIORITY CHEMICALS OF CONCERN FOR**

CHILDREN'S HEALTH FUND

**SECTION 13.** (1) The High Priority Chemicals of Concern for Children's Health Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the High Priority Chemicals of Concern for Children's Health Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health Authority to administer sections 1 to 15 of this 2013 Act.

(2) The authority may accept gifts, grants or contributions from any public or private source for the purpose of carrying out sections 1 to 15 of this 2013 Act.

(3) The High Priority Chemicals of Concern for Children's Health Fund shall consist of:

(a) Moneys accepted by the authority pursuant to subsection (2) of this section.

(b) Fees and charges collected under section 8 of this 2013 Act.

(c) Civil penalties imposed under section 11 of this 2013 Act.

RULES

**SECTION 14.** The Oregon Health Authority may adopt rules necessary to implement the provisions of sections 1 to 15 of this 2013 Act.

REPORTS TO LEGISLATIVE ASSEMBLY

**SECTION 15.** The Oregon Health Authority shall provide a report to the Legislative Assembly once every two years regarding the implementation of sections 1 to 15 of this 2013 Act, including:

(1) Any updates made under section 5 of this 2013 Act to the list of high priority chemicals of concern for children's health used in children's products.

(2) The number of manufacturers in compliance with section 7 of this 2013 Act and an analysis of the information collected pursuant to section 7 of this 2013 Act specifying:

(a) The number and types of children's products sold or offered for sale in this state that contain high priority chemicals of concern for children's health used in children's products.

(b) The range of amounts of high priority chemicals of concern for children's health used in children's products, and an analysis of the levels of the high priority chemicals of concern for children's health used in children's products for various categories of children's products.

(c) The potential for exposure to high priority chemicals of concern for children's health used in children's products based on the number of children's products sold or offered for sale in this state, likely exposure routes and the typical use patterns for the children's products.

(d) Recommendations to limit, reduce or prevent exposure to high priority chemicals of concern for children's health used in children's products based on an analysis of the information collected.

(3) Any recommendations submitted to the authority by manufacturers under section 7 (7) of this 2013 Act.

**SECTION 16.** Section 15 of this 2013 Act becomes operative on January 1, 2015.

MISCELLANEOUS

1       **SECTION 17.** Notwithstanding any other law limiting expenditures, the amount of \$57,046  
2 is established for the biennium beginning July 1, 2013, as the maximum limit for payment of  
3 expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but ex-  
4 cluding lottery funds and federal funds, collected or received by the Oregon Health Authority  
5 for carrying out the duties of the authority under sections 1 to 15 of this 2013 Act.

6       **SECTION 18.** The unit captions used in this 2013 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 2013 Act.

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10                                       **EMERGENCY CLAUSE**

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12       **SECTION 19.** This 2013 Act being necessary for the immediate preservation of the public  
13 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
14 on its passage.

15                                       \_\_\_\_\_