

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2647

Chapter 288, Laws of 2008

(partial veto)

60th Legislature
2008 Regular Session

CHILDREN'S SAFE PRODUCTS ACT

EFFECTIVE DATE: 06/12/08

Passed by the House March 10, 2008
Yeas 92 Nays 2

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 7, 2008
Yeas 40 Nays 9

BRAD OWEN

President of the Senate

Approved April 1, 2008, 2:24 p.m., with
the exception of sections 1 and 8 which
are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of
the House of Representatives of
the State of Washington, do hereby
certify that the attached is
**ENGROSSED SECOND SUBSTITUTE HOUSE
BILL 2647** as passed by the House
of Representatives and the Senate
on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 2, 2008

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2647

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By House Appropriations (originally sponsored by Representatives Dickerson, Hudgins, Hunt, Morrell, Pedersen, Williams, Cody, Green, Campbell, VanDeWege, Hasegawa, Roberts, Loomis, Upthegrove, Lias, Hunter, Chase, Smith, McIntire, Barlow, Conway, Priest, Schual-Berke, Simpson, Kenney, Goodman, Sells, Rolfes, Darneille, and Lantz)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to the children's safe products act; amending RCW
2 43.70.660; adding a new chapter to Title 70 RCW; creating a new
3 section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 ***NEW SECTION.** *Sec. 1. Research shows that many toys and other*
6 *children's products contain toxic chemicals, such as lead, cadmium, and*
7 *phthalates that have been shown to cause harm to children's health and*
8 *the environment. These chemicals have been linked to long-term health*
9 *impacts, such as birth defects, reproductive harm, impaired learning,*
10 *liver toxicity, and cancer. Because children's bodies are growing and*
11 *developing, they are especially vulnerable to the effects of toxic*
12 *chemicals. Regulation of toxic chemicals in children's toys and other*
13 *products is woefully inadequate. To protect children's health, it is*
14 *important to phase out the use of lead, cadmium, and phthalates in*
15 *children's toys and other products and to begin collecting information*
16 *on other chemicals that are present in toys and other products to*
17 *determine whether further action is required.*

**Sec. 1 was vetoed. See message at end of chapter.*

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Children's cosmetics" means cosmetics that are made for,
4 marketed for use by, or marketed to children under the age of twelve.
5 "Children's cosmetics" includes cosmetics that meet any of the
6 following conditions:

7 (a) Represented in its packaging, display, or advertising as
8 appropriate for use by children;

9 (b) Sold in conjunction with, attached to, or packaged together
10 with other products that are packaged, displayed, or advertised as
11 appropriate for use by children; or

12 (c) Sold in any of the following:

13 (i) Retail store, catalogue, or online web site, in which a person
14 exclusively offers for sale products that are packaged, displayed, or
15 advertised as appropriate for use by children; or

16 (ii) A discrete portion of a retail store, catalogue, or online web
17 site, in which a person offers for sale products that are packaged,
18 displayed, or advertised as appropriate for use by children.

19 (2) "Children's jewelry" means jewelry that is made for, marketed
20 for use by, or marketed to children under the age of twelve.
21 "Children's jewelry" includes jewelry that meets any of the following
22 conditions:

23 (a) Represented in its packaging, display, or advertising as
24 appropriate for use by children under the age of twelve;

25 (b) Sold in conjunction with, attached to, or packaged together
26 with other products that are packaged, displayed, or advertised as
27 appropriate for use by children;

28 (c) Sized for children and not intended for use by adults; or

29 (d) Sold in any of the following:

30 (i) A vending machine;

31 (ii) Retail store, catalogue, or online web site, in which a person
32 exclusively offers for sale products that are packaged, displayed, or
33 advertised as appropriate for use by children; or

34 (iii) A discrete portion of a retail store, catalogue, or online
35 web site, in which a person offers for sale products that are packaged,
36 displayed, or advertised as appropriate for use by children.

37 (3)(a) "Children's product" includes any of the following:

38 (i) Toys;

1 (ii) Children's cosmetics;
2 (iii) Children's jewelry;
3 (iv) A product designed or intended by the manufacturer to help a
4 child with sucking or teething, to facilitate sleep, relaxation, or the
5 feeding of a child, or to be worn as clothing by children; or
6 (v) Child car seats.
7 (b) "Children's product" does not include the following:
8 (i) Batteries;
9 (ii) Slings and catapults;
10 (iii) Sets of darts with metallic points;
11 (iv) Toy steam engines;
12 (v) Bicycles and tricycles;
13 (vi) Video toys that can be connected to a video screen and are
14 operated at a nominal voltage exceeding twenty-four volts;
15 (vii) Chemistry sets;
16 (viii) Consumer electronic products, including but not limited to
17 personal computers, audio and video equipment, calculators, wireless
18 phones, game consoles, and handheld devices incorporating a video
19 screen, used to access interactive software and their associated
20 peripherals;
21 (ix) Interactive software, intended for leisure and entertainment,
22 such as computer games, and their storage media, such as compact disks;
23 (x) BB guns, pellet guns, and air rifles;
24 (xi) Snow sporting equipment, including skis, poles, boots, snow
25 boards, sleds, and bindings;
26 (xii) Sporting equipment, including, but not limited to bats,
27 balls, gloves, sticks, pucks, and pads;
28 (xiii) Roller skates;
29 (xiv) Scooters;
30 (xv) Model rockets;
31 (xvi) Athletic shoes with cleats or spikes; and
32 (xvii) Pocket knives and multitools.
33 (4) "Cosmetics" includes articles intended to be rubbed, poured,
34 sprinkled, or sprayed on, introduced into, or otherwise applied to the
35 human body or any part thereof for cleansing, beautifying, promoting
36 attractiveness, or altering the appearance, and articles intended for
37 use as a component of such an article. "Cosmetics" does not include

1 soap, dietary supplements, or food and drugs approved by the United
2 States food and drug administration.

3 (5) "Department" means the department of ecology.

4 (6) "High priority chemical" means a chemical identified by a state
5 agency, federal agency, or accredited research university, or other
6 scientific evidence deemed authoritative by the department on the basis
7 of credible scientific evidence as known to do one or more of the
8 following:

9 (a) Harm the normal development of a fetus or child or cause other
10 developmental toxicity;

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

12 (c) Disrupt the endocrine system;

13 (d) Damage the nervous system, immune system, or organs or cause
14 other systemic toxicity;

15 (e) Be persistent, bioaccumulative, and toxic; or

16 (f) Be very persistent and very bioaccumulative.

17 (7) "Manufacturer" includes any person, firm, association,
18 partnership, corporation, governmental entity, organization, or joint
19 venture that produces a children's product or an importer or domestic
20 distributor of a children's product. For the purposes of this
21 subsection, "importer" means the owner of the children's product.

22 (8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl
23 phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl phthalate
24 (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

25 (9) "Toy" means a product designed or intended by the manufacturer
26 to be used by a child at play.

27 (10) "Trade association" means a membership organization of persons
28 engaging in a similar or related line of commerce, organized to promote
29 and improve business conditions in that line of commerce and not to
30 engage in a regular business of a kind ordinarily carried on for
31 profit.

32 (11) "Very bioaccumulative" means having a bioconcentration factor
33 or bioaccumulation factor greater than or equal to five thousand, or if
34 neither are available, having a log Kow greater than 5.0.

35 (12) "Very persistent" means having a half-life greater than or
36 equal to one of the following:

37 (a) A half-life in soil or sediment of greater than one hundred
38 eighty days;

1 (b) A half-life greater than or equal to sixty days in water or
2 evidence of long-range transport.

3 NEW SECTION. **Sec. 3.** (1) Beginning July 1, 2009, no manufacturer,
4 wholesaler, or retailer may manufacture, knowingly sell, offer for
5 sale, distribute for sale, or distribute for use in this state a
6 children's product or product component containing the following:

7 (a) Except as provided in subsection (2) of this section, lead at
8 more than .009 percent by weight (ninety parts per million);

9 (b) Cadmium at more than .004 percent by weight (forty parts per
10 million); or

11 (c) Phthalates, individually or in combination, at more than 0.10
12 percent by weight (one thousand parts per million).

13 (2) If determined feasible for manufacturers to achieve and
14 necessary to protect children's health, the department, in consultation
15 with the department of health, may by rule require that no
16 manufacturer, wholesaler, or retailer may manufacture, knowingly sell,
17 offer for sale, distribute for sale, or distribute for use in this
18 state a children's product or product component containing lead at more
19 than .004 percent by weight (forty parts per million).

20 NEW SECTION. **Sec. 4.** (1) By January 1, 2009, the department, in
21 consultation with the department of health, shall identify high
22 priority chemicals that are of high concern for children after
23 considering a child's or developing fetus's potential for exposure to
24 each chemical. In identifying the chemicals, the department shall
25 include chemicals that meet one or more of the following criteria:

26 (a) The chemical has been found through biomonitoring studies that
27 demonstrate the presence of the chemical in human umbilical cord blood,
28 human breast milk, human urine, or other bodily tissues or fluids;

29 (b) The chemical has been found through sampling and analysis to be
30 present in household dust, indoor air, drinking water, or elsewhere in
31 the home environment; or

32 (c) The chemical has been added to or is present in a consumer
33 product used or present in the home.

34 (2) By January 1, 2009, the department shall identify children's
35 products or product categories that may contain chemicals identified
36 under subsection (1) of this section.

1 (3) By January 1, 2009, the department shall submit a report on the
2 chemicals of high concern to children and the children's products or
3 product categories they identify to the appropriate standing committees
4 of the legislature. The report shall include policy options for
5 addressing children's products that contain chemicals of high concern
6 for children, including recommendations for additional ways to inform
7 consumers about toxic chemicals in products, such as labeling.

8 NEW SECTION. **Sec. 5.** Beginning six months after the department
9 has adopted rules under section 8(5) of this act, a manufacturer of a
10 children's product, or a trade organization on behalf of its member
11 manufacturers, shall provide notice to the department that the
12 manufacturer's product contains a high priority chemical. The notice
13 must be filed annually with the department and must include the
14 following information:

15 (1) The name of the chemical used or produced and its chemical
16 abstracts service registry number;

17 (2) A brief description of the product or product component
18 containing the substance;

19 (3) A description of the function of the chemical in the product;

20 (4) The amount of the chemical used in each unit of the product or
21 product component. The amount may be reported in ranges, rather than
22 the exact amount;

23 (5) The name and address of the manufacturer and the name, address,
24 and phone number of a contact person for the manufacturer; and

25 (6) Any other information the manufacturer deems relevant to the
26 appropriate use of the product.

27 **Sec. 6.** RCW 43.70.660 and 2001 c 257 s 2 are each amended to read
28 as follows:

29 (1) The legislature authorizes the secretary to establish and
30 maintain a product safety education campaign to promote greater
31 awareness of products designed to be used by infants and children(~~(~~
32 ~~excluding toys~~~~)~~) that:

33 (a) Are recalled by the United States consumer products safety
34 commission;

35 (b) Do not meet federal safety regulations and voluntary safety
36 standards; (~~or~~)

1 (c) Are unsafe or illegal to place into the stream of commerce
2 under the infant crib safety act, chapter 70.111 RCW; or

3 (d) Contain chemicals of high concern for children as identified
4 under section 4 of this act.

5 (2) The department shall make reasonable efforts to ensure that
6 this infant and children product safety education campaign reaches the
7 target population. The target population for this campaign includes,
8 but is not limited to, parents, foster parents and other caregivers,
9 child care providers, consignment and resale stores selling infant and
10 child products, and charitable and governmental entities serving
11 infants, children, and families.

12 (3) The secretary may utilize a combination of methods to achieve
13 this outreach and education goal, including but not limited to print
14 and electronic media. The secretary may operate the campaign or may
15 contract with a vendor.

16 (4) The department shall coordinate this infant and children
17 product safety education campaign with child-serving entities
18 including, but not limited to, hospitals, birthing centers, midwives,
19 pediatricians, obstetricians, family practice physicians, governmental
20 and private entities serving infants, children, and families, and
21 relevant manufacturers.

22 (5) The department shall coordinate with other agencies and
23 entities to eliminate duplication of effort in disseminating infant and
24 children consumer product safety information.

25 (6) The department may receive funding for this infant and children
26 product safety education effort from federal, state, and local
27 governmental entities, child-serving foundations, or other private
28 sources.

29 NEW SECTION. Sec. 7. (1) A manufacturer of products that are
30 restricted under this chapter must notify persons that sell the
31 manufacturer's products in this state about the provisions of this
32 chapter no less than ninety days prior to the effective date of the
33 restrictions.

34 (2) A manufacturer that produces, sells, or distributes a product
35 prohibited from manufacture, sale, or distribution in this state under
36 this chapter shall recall the product and reimburse the retailer or any
37 other purchaser for the product.

1 (3) A manufacturer of children's products in violation of this
2 chapter is subject to a civil penalty not to exceed five thousand
3 dollars for each violation in the case of a first offense.
4 Manufacturers who are repeat violators are subject to a civil penalty
5 not to exceed ten thousand dollars for each repeat offense. Penalties
6 collected under this section must be deposited in the state toxics
7 control account created in RCW 70.105D.070.

8 (4) Retailers who unknowingly sell products that are restricted
9 from sale under this chapter are not liable under this chapter.

10 ***NEW SECTION. Sec. 8. (1) Before the prohibitions under section 3**
11 **of this act take effect, the department shall prepare and distribute**
12 **information to in-state and out-of-state manufacturers, to the maximum**
13 **extent practicable, to assist them in identifying products prohibited**
14 **for manufacture, sale, or distribution under this chapter.**

15 (2) The department must assist in-state retailers in identifying
16 products restricted under this chapter.

17 (3) The department may require manufacturers to electronically file
18 the notice required under section 5 of this act to the department that
19 the manufacturer's product contains a high priority chemical.

20 (4) The department shall develop and publish a web site that
21 provides consumers with information on the chemicals used in children's
22 products, the reason the chemical has been identified as a high
23 priority chemical, and any safer alternatives to the chemical.

24 (5) The department shall adopt rules to finalize the list of high
25 priority chemicals that are of high concern for children identified in
26 section 4(1) of this act by January 1, 2010.

*Sec. 8 was vetoed. See message at end of chapter.

27 **NEW SECTION. Sec. 9.** The department may adopt rules as necessary
28 for the purpose of implementing, administering, and enforcing this
29 chapter.

30 **NEW SECTION. Sec. 10.** Sections 1 through 5 and 7 through 9 of
31 this act constitute a new chapter in Title 70 RCW.

32 **NEW SECTION. Sec. 11.** If specific funding for the purposes of
33 this act, referencing this act by bill or chapter number, is not

1 provided by June 30, 2008, in the omnibus appropriations act, this act
2 is null and void.

Passed by the House March 10, 2008.

Passed by the Senate March 7, 2008.

Approved by the Governor April 1, 2008, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 2, 2008.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 1 and Section 8,
Engrossed Second Substitute House Bill 2647 entitled:

"AN ACT Relating to the children's safe products act."

Section 1 is an intent section that affirms the importance of
regulating toxic chemicals in children's products. However, this
section could be read to create obligations that are beyond what
state government can deliver.

Section 8 requires the Department of Ecology to adopt a rule that
identifies chemicals of high concern for children by January 1, 2010.
This section is premature and preempts the process identified in
Section 4. Section 4 directs the Department of Ecology to identify
these chemicals and report to the Legislature on policy options for
addressing the chemicals by January 1, 2009. The Legislature should
have the benefit of this report before the state proceeds to
rulemaking to impose additional reporting and testing requirements.

For these reasons, I have vetoed Section 1 and Section 8 of Engrossed
Second Substitute House Bill 2647.

Without careful implementation, this bill could adversely affect the
availability of safe toys in our state, including important
educational toys. To address this concern, I will establish an
advisory group to work with the Departments of Ecology and Health to
make sure we implement the bill with common sense, and to work on
needed legislative fixes for next session. I will ask both large and
small toymakers and children's products retailers, children's health
experts, and public interest representatives to work together on
these tasks, and I will invite state legislators to participate.

Section 2 applies the new standards in this bill to all components
found in children's car seats, beginning in July 2009. Limited
testing to date shows that children's car seats will meet the
standards in the bill, and most seats are made with few metal
components. Nonetheless, we must be absolutely certain this bill
will not reduce the safety of car seats. I will ask the advisory
group to take a close look at this issue and recommend rules and
changes in law as needed.

I will ask the group to look at standards for both the outer surface
of toys and the inside of toys, and to consider the timelines needed
for the industry to implement these new standards. I will ask them
to develop recommendations for legislation to ensure safe products in
a manner that is practical and achievable for the industry.

Section 3 of the bill could be misinterpreted to prohibit toys with
internal electronic components. I believe the bill does not prohibit
these internal components, and was not intended to do so. Therefore,
I direct the Department of Ecology, working with the advisory group,
to conduct expedited rulemaking this year to clarify the effect of
the bill accordingly.

Section 4 directs Ecology to develop a list of chemicals with potential adverse effects on children. The language in this section could result in a long list of chemicals, and future reporting requirements beyond those needed to ensure the safety of children's products. The department's fiscal analysis of the bill assumed no more than fifty chemicals would be identified, and the Legislature has funded their work accordingly. I ask the Department to focus on the highest priority chemicals, considering good science on the effects of chemicals on the health of children, and those chemicals likely to be found in children's products. The Department should rely on safety testing conducted in the European Union and California, to the extent they provide a reasonable assurance of safety, in order to help establish a degree of consistency for the industry.

Section 5 requires manufacturers to report on the chemicals found in their children's products. I have retained this portion of the bill, as a future tool for ensuring the safety of our children, as needed. By my veto of Section 8, as described above, I have removed the bill's 2010 deadline to begin mandatory reporting. This will give us time to review the extent of reporting, consider duplication with other testing currently done by the industry, and determine how to most efficiently implement these new requirements. It will also allow us to determine whether or not proprietary information should be reported and, if so, how we can ensure that protected trade secrets are not disclosed.

With the exception of Section 1 and Section 8, Engrossed Second Substitute House Bill 2647 is approved."