

108TH CONGRESS  
1ST SESSION

# H. R. 3629

To amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Solid Waste Disposal Act to establish prohibitions and requirements relating to arsenic-treated wood, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

Ms. SCHAKOWSKY (for herself, Ms. SOLIS, Ms. CARSON of Indiana, Mr. NADLER, Ms. NORTON, Mrs. JONES of Ohio, Ms. DELAURO, and Mr. HINCHHEY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Solid Waste Disposal Act to establish prohibitions and requirements relating to arsenic-treated wood, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Arsenic-Treated Wood  
5 Prohibition Act”.

1 **SEC. 2. PROHIBITION OF CERTAIN USES OF ARSENIC-**  
2 **TREATED WOOD; AMENDMENT TO FEDERAL**  
3 **INSECTICIDE, FUNGICIDE, AND RODENTICIDE**  
4 **ACT.**

5 (a) IN GENERAL.—The Federal Insecticide, Fun-  
6 gicide, and Rodenticide Act (7 U.S.C. 136a et seq.) is  
7 amended—

8 (1) by redesignating sections 33 and 34 as sec-  
9 tions 34 and 35, respectively; and

10 (2) by inserting after section 32 the following:

11 **“SEC. 33. PROHIBITION AGAINST USE OF ARSENIC-TREAT-**  
12 **ED WOOD TO MANUFACTURE CERTAIN PROD-**  
13 **UCTS OR STRUCTURES.**

14 “(a) IN GENERAL.—Notwithstanding any other pro-  
15 vision of law, not later than 90 days after the date of the  
16 enactment of this section, the Administrator shall promul-  
17 gate regulations that prohibit—

18 “(1) the use of arsenic-treated wood to manu-  
19 facture any product or structure that may be used  
20 for or by children, including—

21 “(A) playground equipment, play houses,  
22 or other structures designed for frequent use  
23 specifically by children;

24 “(B) fences;

25 “(C) walkways;

26 “(D) decks;

1 “(E) docks and boat houses; and

2 “(F) structures or products used in resi-  
3 dential landscaping;

4 “(2) the use of arsenic-treated wood to manu-  
5 facture mulch, compost, or soil-amendment products;

6 “(3) the use of arsenic-treated wood to manu-  
7 facture railroad ties, marine pilings, or utility poles,  
8 except that this subsection does not apply to such a  
9 product or structure to the extent that the Adminis-  
10 trator determines that the use of arsenic-treated  
11 wood in the product or structure is safe; and

12 “(4) such additional uses of arsenic-treated  
13 wood to manufacture products or structures as the  
14 Administrator determines to be appropriate, whether  
15 such products or structures are intended for residen-  
16 tial use or commercial use.

17 “(b) DEFINITIONS.—For purposes of this section:

18 “(1) ARSENIC-TREATED WOOD.—The term ‘ar-  
19 senic-treated wood’ means wood that is treated with  
20 a pesticide that is a chromated copper arsenical or  
21 is treated with any other arsenical pesticide.

22 “(2) MANUFACTURE.—The term ‘manufacture’,  
23 with respect to the use of arsenic-treated wood in  
24 products and structures described in subsection (a),  
25 includes—

1           “(A) the creation of a product designed to  
2           be assembled by a consumer; and

3           “(B) the building of a product on behalf of  
4           a consumer in accordance with specifications  
5           given by the consumer.”.

6       (b) RISK ASSESSMENT.—

7           (1) IN GENERAL.—Not later than March 15,  
8           2004, the Administrator, in consultation with the  
9           Consumer Products Safety Commission, shall pub-  
10          lish in the Federal Register an assessment of the  
11          risks posed by the production, cutting, milling, sand-  
12          ing, mulching, and use of CCA-treated wood.

13          (2) METHODOLOGY.—In conducting the risk as-  
14          sessment, the Administrator shall follow the method-  
15          ology recommended by the Scientific Advisory Panels  
16          that were organized by the Environmental Protec-  
17          tion Agency and that met in October 2001.

18          (3) DEFINITIONS.—For purposes of this sub-  
19          section:

20                 (A) The term “Administrator” means the  
21                 Administrator of the Environmental Protection  
22                 Agency.

23                 (B) The term “CCA-treated wood” means  
24                 wood that is treated with a pesticide that is a  
25                 chromated copper arsenical.

1 (c) CONFORMING AMENDMENT.—The table of con-  
 2 tents in section 1(b) of the Federal Insecticide, Fungicide,  
 3 and Rodenticide Act (7 U.S.C. prec. 121) is amended by  
 4 striking the items relating to sections 30 and 31 and in-  
 5 serting the following:

“Sec. 30. Minimum requirements for training of maintenance applicators and  
 service technicians.

“Sec. 31. Environmental Protection Agency minor use program.

“Sec. 32. Department of Agriculture minor use program.

“(a) In general.

“(b)(1) Minor use pesticide data.

“(2) Minor Use Pesticide Data Revolving Fund.

“Sec. 33. Prohibition of certain uses of arsenic-treated lumber.

“(a) In general.

“(b) Definitions.

“(1) Arsenic-treated wood.

“(2) Manufacture.

“Sec. 34. Severability.

“Sec. 35. Authorization for appropriations.”.

6 **SEC. 3. DISPOSAL OF ARSENIC-TREATED WOOD; AMEND-**  
 7 **MENT TO SOLID WASTE DISPOSAL ACT.**

8 Section 3001(e) of the Solid Waste Disposal Act (42  
 9 U.S.C. 6921(e)) is amended by adding at the end the fol-  
 10 lowing:

11 “(3)(A) Discarded arsenic-treated wood and sawdust  
 12 from such wood shall be deemed, for purposes of this Act,  
 13 to be a listed hazardous waste under subsection (b)(1) and  
 14 shall be disposed of in a lined landfill with a leachate col-  
 15 lection system and groundwater monitoring system (or  
 16 such other system as the Administrator determines is ap-  
 17 propriate to capture arsenic and prevent arsenic from con-  
 18 taminating groundwater).

19 “(B) As used in subparagraph (A):

1           “(i) The term ‘arsenic-treated wood’ means  
2           wood that is treated with a pesticide that is a  
3           chromated copper arsenical or is treated with any  
4           other arsenical pesticide.

5           “(ii) The term ‘pesticide’ has the meaning given  
6           such term in section 2 of the Federal Insecticide,  
7           Fungicide, and Rodenticide Act (7 U.S.C. 136).”.

8   **SEC. 4. ASSISTANCE TO CONSUMERS, STATE AND LOCAL**  
9                           **GOVERNMENTS, AND SCHOOL SYSTEMS.**

10          (a) EDUCATIONAL PROGRAM.—Not later than 180  
11          days after the date of the enactment of this Act, the Ad-  
12          ministrators, in consultation with the Consumer Product  
13          Safety Commission, shall develop and conduct an edu-  
14          cational program to assist consumers, State and local gov-  
15          ernments, school systems, and other institutions in—

16                (1) testing arsenic levels in arsenic-treated  
17                wood and soil surrounding arsenic-treated wood;

18                (2) making decisions relating to the contain-  
19                ment and removal of arsenic-treated wood from  
20                homes, playgrounds, schools, and other facilities de-  
21                signed primarily for use by children; and

22                (3) providing guidance regarding the decon-  
23                tamination of soils, mulches, and other media under  
24                structures made of arsenic-treated wood where chil-  
25                dren or pets may be exposed to arsenic.

1 (b) ASSISTANCE FOR SCHOOLS.—

2 (1) IN GENERAL.—Not later than 180 days  
3 after the date of enactment of this Act, the Adminis-  
4 trator shall establish a pilot program to provide  
5 grants and technical assistance to school systems to  
6 assist the school systems in—

7 (A) removing playground and other equip-  
8 ment containing arsenic-treated wood from  
9 grounds of the school systems;

10 (B) applying sealant to arsenic-treated  
11 wood structures; and

12 (C) conducting any necessary remediation  
13 relating to use of arsenic-treated wood.

14 (2) CERTAIN USES OF GRANT.—The Adminis-  
15 trator may authorize a grant under paragraph (1) to  
16 be used for the purpose of replacing playground  
17 equipment and related items that are removed be-  
18 cause the equipment or items contain arsenic-treated  
19 wood. With respect to any portion of a grant under  
20 such paragraph that is authorized to be used for  
21 such purpose, the Administrator may require that  
22 the applicant involved make non-Federal contribu-  
23 tions toward the cost of replacing the equipment or  
24 items.

25 (c) DEFINITIONS.—In this section:

1           (1) The term “Administrator” means the Ad-  
 2           ministrator of the Environmental Protection Agency.

3           (2) The term “arsenic-treated wood” means  
 4           wood that is treated with a pesticide that is a  
 5           chromated copper arsenical or is treated with any  
 6           other arsenical pesticide.

7           (3) The term “pesticide” has the meaning given  
 8           such term in section 2 of the Federal Insecticide,  
 9           Fungicide, and Rodenticide Act (7 U.S.C. 136).

10          (d) AUTHORIZATION OF APPROPRIATIONS.—For the  
 11         purpose of carrying out this section, there are authorized  
 12         to be appropriated such sums as may be necessary for fis-  
 13         cal year 2004 and each subsequent fiscal year.

14         **SEC. 5. CONSUMER PRODUCT SAFETY COMMISSION; RE-**  
 15                         **PORT ON MITIGATION MEASURES REGARD-**  
 16                         **ING CHILDREN AND ARSENIC-TREATED**  
 17                         **WOOD.**

18         Not later than August 1, 2004, the Consumer Prod-  
 19         uct Safety Commission shall submit to the Congress a re-  
 20         port on the status of the efforts of the Commission to  
 21         identify stains, sealants, or other measures for reducing  
 22         the exposure of children to arsenic from products or struc-  
 23         tures that—

24                 (1) are constructed in whole or part with ar-  
 25         senic-treated wood, as defined in section 33 of the



1 Federal Insecticide, Fungicide, and Rodenticide Act,  
2 as added by section 2 of this Act;

3 (2) may be used for or by children; and

4 (3) will remain in use after the effective date of  
5 the prohibition established in regulations under such  
6 section 33.

