

Senate Bill 596

Sponsored by Senator HASS; Senators ATKINSON, BATES, DEVLIN, MONNES ANDERSON, Representatives BAILEY, BRUUN, GARRETT, GREENLICK, HOLVEY, READ, TOMEI

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 **as introduced**.

Modifies definition of "hazardous substance" to include decabrominated diphenyl ether. Prohibits introduction or delivery for introduction into commerce any product containing more than one-tenth of one percent by mass of decabrominated diphenyl ether.

A BILL FOR AN ACT

1
2 Relating to decabrominated diphenyl ether; amending ORS 453.005 and 453.085.

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

4 **SECTION 1.** ORS 453.005 is amended to read:

5 453.005. As used in ORS 453.005 to 453.135 unless the context requires otherwise:

6 (1) "Combustible" means any substance that has a flash point above 80 degrees Fahrenheit to
7 and including 140 degrees, as determined by the Tagliabue Open Cup Tester.

8 (2) "Commerce" means any and all commerce within the State of Oregon and subject to the ju-
9 risdiction thereof and includes the operation of any business or service establishment.

10 (3) "Corrosive" means any substance that in contact with living tissue will cause destruction
11 of tissue by chemical action, but does not refer to action on inanimate surfaces.

12 (4) "Electrical hazard" means an article that because of its design or manufacture may cause
13 personal injury or illness by electric shock when in normal use or when subjected to reasonably
14 foreseeable damage or abuse.

15 (5) "Extremely flammable" means any substance that has a flash point at or below 20 degrees
16 Fahrenheit as determined by the Tagliabue Open Cup Tester.

17 (6) "Flammable" means any substance that has a flash point of above 20 degrees to and includ-
18 ing 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester.

19 (7) "Hazardous substance" means:

20 (a) Any substance that is toxic, corrosive, an irritant, a strong sensitizer, flammable,
21 combustible, or generates pressure through decomposition, heat or other means, if such substance
22 or mixture of substances may cause substantial personal injury or substantial illness during or as
23 a proximate result of any customary or reasonably foreseeable handling or use, including reasonably
24 foreseeable ingestion by children, or any substance that the Director of Human Services finds, pur-
25 suant to the provisions of ORS 453.005 to 453.135, comes within the definition of this paragraph.

26 (b) Any radioactive substance, if, with respect to such substance as used in a particular class
27 of article or as packaged, the director determines that the substance is sufficiently hazardous to
28 require labeling in accordance with ORS 453.005 to 453.135 in order to protect the public health.
29 However, "hazardous substance" does not include any source material, special nuclear material, or
30 by-product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued

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 pursuant thereto by the Atomic Energy Commission.

2 (c) Any toy or other article intended for use by children that the director determines in ac-
3 cordance with ORS 453.055 presents an electrical, thermal or mechanical hazard.

4 (d) Any article that is not pesticide within the meaning of the Federal Insecticide, Fungicide,
5 and Rodenticide Act or regulated under ORS 616.335 to 616.385, but that is a hazardous substance
6 within the meaning of paragraph (a) of this subsection by reason of bearing or containing pesticide.

7 (e) The following brominated flame retardant chemicals:

8 (A) Pentabrominated diphenyl ether; [and]

9 (B) Octabrominated diphenyl ether[.]; and

10 (C) **Decabrominated diphenyl ether.**

11 (8) "Highly toxic" means any substance that falls within any of the following categories:

12 (a) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white
13 rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram
14 of body weight, when orally administered;

15 (b) Produces death within 14 days in one-half or more of a group of 10 or more laboratory white
16 rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour
17 or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor
18 or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely
19 to be encountered by humans when the substance is used in any reasonably foreseeable manner; or

20 (c) Produces death within 14 days in one-half or more of a group of 10 or more rabbits tested
21 in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous
22 contact with the bare skin for 24 hours or less.

23 (9) "Immediate container" does not include package liners.

24 (10) "Irritant" means any substance not corrosive within the meaning of subsection (3) of this
25 section, but that on immediate, prolonged, or repeated contact with normal living tissue will induce
26 a local inflammatory reaction.

27 (11) "Label" means a display of written, printed, or graphic matter upon the immediate container
28 of any substance, or in the case of an article that is unpackaged or is not packaged in an immediate
29 container intended or suitable for delivery to the ultimate consumer, a display of such matter di-
30 rectly on the article involved or on a tag or other suitable material affixed thereto, and a require-
31 ment made by or under authority of ORS 453.005 to 453.135 that any word, statement, or other
32 information appearing on the label shall not be considered to be complied with unless such word,
33 statement, or other information also appears on the outside container or wrapper, if any, unless it
34 is easily legible through the outside container or wrapper and on all accompanying literature where
35 there are directions for use, written or otherwise.

36 (12) "Mechanical hazard" means an article that in normal use or when subjected to reasonably
37 foreseeable damage or abuse presents an unreasonable risk of personal injury or illness, by its de-
38 sign or manufacture:

39 (a) From fracture, fragmentation, or disassembly of the article;

40 (b) From propulsion of the article or any part or accessory thereof;

41 (c) From points or other protrusions, surfaces, edges, openings, or closures;

42 (d) From moving parts;

43 (e) From lack or insufficiency of controls to reduce or stop motion;

44 (f) As a result of self-adhering characteristics of the article;

45 (g) Because the article or any part or accessory thereof may be aspirated or ingested;

- 1 (h) Because of instability; or
- 2 (i) Because of any other aspect of the article’s design or manufacture.
- 3 (13) “Misbranded hazardous substance” means a hazardous substance that does not meet the
- 4 labeling requirements of ORS 453.035.
- 5 (14) “Poison” means:
- 6 (a) Arsenic and its preparations;
- 7 (b) Corrosive sublimate;
- 8 (c) Cyanides and preparations, including hydrocyanic acid;
- 9 (d) Hydrochloric acid and any preparation containing free or chemically unneutralized
- 10 hydrochloric acid (HCl) in a concentration of 10 percent or more;
- 11 (e) Nitric acid or any preparation containing free or chemically unneutralized nitric acid
- 12 (HNO₃) in a concentration of five percent or more;
- 13 (f) Strychnine;
- 14 (g) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid
- 15 (H₂SO₄) in a concentration of 10 percent or more;
- 16 (h) Solution of ammonia, U.S.P. 28 percent; or
- 17 (i) Carboic acid.
- 18 (15) “Radioactive substance” means a substance that emits ionizing radiation.
- 19 (16) “Strong sensitizer” means a substance that will cause on normal living tissue, through an
- 20 allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of the
- 21 same substances and that is designated as such by the Director of Human Services.
- 22 (17) “Thermal hazard” means an article that, in normal use or when subjected to reasonably
- 23 foreseeable damage or abuse, because of its design or manufacture presents an unreasonable risk
- 24 of personal injury or illness because of heat as from heated parts, substances or surfaces.
- 25 (18) “Toxic substance” means any substance, other than radioactive substance, that has the ca-
- 26 pacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption
- 27 through any body surface.
- 28 **SECTION 2.** ORS 453.085 is amended to read:
- 29 453.085. A person may not perform any of the following acts:
- 30 (1) The introduction or delivery for introduction into commerce of any misbranded hazardous
- 31 substance or banned hazardous substance.
- 32 (2) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of
- 33 the label of a hazardous substance.
- 34 (3) The performance of any act with respect to a hazardous substance while the substance is in
- 35 commerce, or while the substance is held for sale or resale after shipment in commerce, that results
- 36 in the hazardous substance being a misbranded hazardous substance or a banned hazardous sub-
- 37 stance.
- 38 (4) The receipt of or delivery into commerce of any misbranded hazardous substance or banned
- 39 hazardous substance for pay or otherwise.
- 40 (5) The giving of a guarantee or undertaking that is false, except as a person who relied upon
- 41 a guarantee or undertaking to the same effect signed by, and containing the name and address of,
- 42 a person residing in the United States from whom the person received in good faith the hazardous
- 43 substance.
- 44 (6) The failure to permit entry or inspection as authorized by ORS 453.005 to 453.135 or to per-
- 45 mit access to and copying of any record as authorized by ORS 453.005 to 453.135.

1 (7) The introduction or delivery for introduction into commerce, or the receipt in commerce and
2 subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused
3 food, drug or cosmetic container or in a container that, though not a reused container, is identifiable
4 as a food, drug or cosmetic container by its labeling or by other identification.

5 (8) The use by any person to the advantage of the person, or the revealing other than to the
6 Director of Human Services or the authorized representative of the director or to a court of any
7 information acquired under authority of ORS 453.005 to 453.135 concerning any method or process
8 that is a trade secret entitled to protection.

9 (9) The sale or delivery of any poison to a minor under 18 years of age without the written order
10 of a person 21 years of age or over, which written order shall be retained in the records of the seller
11 and the poison register of the seller shall show by the name of the purchaser the fact that the sale
12 or delivery was to a minor on order of an adult and show the adult's name and address.

13 (10) The sale or delivery of completely denatured alcohol, methyl alcohol (methanol), canned
14 heat or other solidified forms of denatured alcohol, or any preparation containing those substances,
15 to be used for beverage purposes.

16 (11) The sale or delivery of any poison without making or causing to be made an entry in a
17 poison register of the seller in the manner required by law.

18 (12) The sale or delivery to any person of any poison without having learned by due inquiry that
19 such person is aware of the poisonous character thereof and that it is desired for a lawful purpose.

20 (13) The giving of a fictitious name or making any false representations to the seller or dealer
21 when buying any of the poisons.

22 (14) The sale or delivery to any person by anyone other than a pharmacist of a poison.

23 (15) The removal or disposal of any detained or embargoed article without permission of the
24 Director of Human Services or a designated representative.

25 (16) The introduction or delivery for introduction into commerce of any product containing more
26 than one-tenth of one percent by mass of pentabrominated diphenyl ether, [*or*] octabrominated
27 diphenyl ether **or decabrominated diphenyl ether**. This subsection does not apply to:

28 (a) Used products; or

29 (b) Replacement parts for products introduced into commerce before January 1, 2006.

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