

# D R A F T

## SUMMARY

Modifies definition of “hazardous substance.” Requires Director of Oregon Health Authority to adopt standards for labeling of articles that contain hazardous substances. Clarifies exemption for food and drugs. Clarifies provisions related to misbranded hazardous substances.

## A BILL FOR AN ACT

1  
2 Relating to hazardous substances; creating new provisions; and amending  
3 ORS 453.005, 453.015, 453.035 and 453.055.

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

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

6 453.005. As used in ORS 453.005 to 453.135 unless the context requires  
7 otherwise:

8 (1) “Combustible” means any substance that has a flash point above 80  
9 degrees Fahrenheit to and including 140 degrees, as determined by the  
10 Tagliabue Open Cup Tester.

11 (2) “Commerce” means any and all commerce within the State of Oregon  
12 and subject to the jurisdiction thereof and includes the operation of any  
13 business or service establishment.

14 (3) “Corrosive” means any substance that in contact with living tissue  
15 will cause destruction of tissue by chemical action, but does not refer to  
16 action on inanimate surfaces.

17 (4) “Electrical hazard” means an article that because of its design or  
18 manufacture may cause personal injury or illness by electric shock when in  
19 normal use or when subjected to reasonably foreseeable damage or abuse.

20 (5) “Extremely flammable” means any substance that has a flash point at

1 or below 20 degrees Fahrenheit as determined by the Tagliabue Open Cup  
2 Tester.

3 (6) “Flammable” means any substance that has a flash point of above 20  
4 degrees to and including 80 degrees Fahrenheit, as determined by the  
5 Tagliabue Open Cup Tester.

6 (7) “Hazardous substance” means:

7 (a) Any substance that is toxic, corrosive, an irritant, a strong sensitizer,  
8 flammable[,] **or** combustible, or **that** generates pressure through decomposi-  
9 tion, heat or other means, if such substance or mixture of substances may  
10 cause substantial personal injury, [or] substantial illness, **irreversible harm**  
11 **or a chronic adverse health effect** during or as a proximate result of any  
12 customary or reasonably foreseeable handling or use, **or through prolonged**  
13 **use or exposure**, including reasonably foreseeable ingestion by children, or  
14 any substance that the Director of the Oregon Health Authority finds, pur-  
15 suant to the provisions of ORS 453.005 to 453.135, comes within the definition  
16 of this paragraph.

17 (b) Any radioactive substance, if, with respect to such substance as used  
18 in a particular class of article or as packaged, the director determines that  
19 the substance is sufficiently hazardous to require labeling in accordance with  
20 ORS 453.005 to 453.135 in order to protect the public health. However, “haz-  
21 ardous substance” does not include any source material, special nuclear ma-  
22 terial, or by-product material as defined in the Atomic Energy Act of 1954,  
23 as amended, and regulations issued pursuant thereto by the Atomic Energy  
24 Commission.

25 (c) Any toy or other article intended for use by children that the director  
26 determines in accordance with ORS 453.055 presents an electrical, thermal  
27 or mechanical hazard.

28 (d) Any article that is not pesticide within the meaning of the Federal  
29 Insecticide, Fungicide, and Rodenticide Act or regulated under ORS 616.335  
30 to 616.385, but that is a hazardous substance within the meaning of para-  
31 graph (a) of this subsection by reason of bearing or containing pesticide.

1 (e) The following brominated flame retardant chemicals:

2 (A) Pentabrominated diphenyl ether;

3 (B) Octabrominated diphenyl ether; and

4 (C) Decabrominated diphenyl ether.

5 (8) "Highly toxic" means any substance that falls within any of the fol-  
6 lowing categories:

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

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

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

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

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

26 (11) "Label" means a display of written, printed, or graphic matter upon  
27 the immediate container of any substance, or in the case of an article that  
28 is unpackaged or is not packaged in an immediate container intended or  
29 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  
31 thereto, and a requirement made by or under authority of ORS 453.005 to

1 453.135 that any word, statement, or other information appearing on the label  
2 shall not be considered to be complied with unless such word, statement, or  
3 other information also appears on the outside container or wrapper, if any,  
4 unless it is easily legible through the outside container or wrapper and on  
5 all accompanying literature where there are directions for use, written or  
6 otherwise.

7 (12) "Mechanical hazard" means an article that in normal use or when  
8 subjected to reasonably foreseeable damage or abuse presents an unreason-  
9 able risk of personal injury or illness, by its design or manufacture:

- 10 (a) From fracture, fragmentation, or disassembly of the article;
- 11 (b) From propulsion of the article or any part or accessory thereof;
- 12 (c) From points or other protrusions, surfaces, edges, openings, or clo-  
13 sures;
- 14 (d) From moving parts;
- 15 (e) From lack or insufficiency of controls to reduce or stop motion;
- 16 (f) As a result of self-adhering characteristics of the article;
- 17 (g) Because the article or any part or accessory thereof may be aspirated  
18 or ingested;
- 19 (h) Because of instability; or
- 20 (i) Because of any other aspect of the article's design or manufacture.

21 (13) "Misbranded hazardous substance" means a hazardous substance that  
22 does not meet the labeling requirements of ORS 453.035.

23 (14) "Poison" means:

- 24 (a) Arsenic and its preparations;
- 25 (b) Corrosive sublimate;
- 26 (c) Cyanides and preparations, including hydrocyanic acid;
- 27 (d) Hydrochloric acid and any preparation containing free or chemically  
28 unneutralized hydrochloric acid (HCl) in a concentration of 10 percent or  
29 more;
- 30 (e) Nitric acid or any preparation containing free or chemically unneu-  
31 tralized nitric acid (HNO<sub>3</sub>) in a concentration of five percent or more;

1 (f) Strychnine;

2 (g) Sulfuric acid and any preparation containing free or chemically un-  
3 neutralized sulfuric acid ( $H_2SO_4$ ) in a concentration of 10 percent or more;

4 (h) Solution of ammonia, U.S.P. 28 percent; or

5 (i) Carbolic acid.

6 (15) "Radioactive substance" means a substance that emits ionizing radi-  
7 ation.

8 (16) "Strong sensitizer" means a substance that will cause on normal liv-  
9 ing tissue, through an allergic or photodynamic process, a hypersensitivity  
10 that becomes evident on reapplication of the same substances and that is  
11 designated as such by the director.

12 (17) "Thermal hazard" means an article that, in normal use or when sub-  
13 jected to reasonably foreseeable damage or abuse, because of its design or  
14 manufacture presents an unreasonable risk of personal injury or illness be-  
15 cause of heat as from heated parts, substances or surfaces.

16 (18) "Toxic substance" means any substance, other than radioactive sub-  
17 stance, that has the capacity to produce personal injury or illness to humans  
18 through ingestion, inhalation, or absorption through any body surface.

19 **SECTION 2.** ORS 453.015 is amended to read:

20 453.015. ORS 453.005 to 453.135 and 453.990 (2) do not apply to:

21 (1) Articles such as chemical sets which by reason of functional purpose  
22 require the inclusion of the hazardous substance involved or necessarily  
23 present an electrical, mechanical or thermal hazard, and which bear labeling  
24 giving adequate directions and warnings for safe use, and are intended for  
25 use by children who have attained sufficient maturity and may reasonably  
26 be expected to read and heed these directions and warnings.

27 (2) Common fireworks regulated under ORS 480.110 to 480.165.

28 (3) Pesticides subject to the Federal Insecticide, Fungicide and  
29 Rodenticide Act or regulated by ORS 616.335 to 616.385.

30 (4) Substances intended for use as fuels when stored in containers and  
31 used in the heating, cooking or refrigeration system of a house.

1 (5) Foods or drugs [*otherwise regulated by this state*]. **However, ORS**  
2 **453.005 to 453.135 and 453.990 (2) do apply to substances that come into**  
3 **contact with foods and that could contaminate the foods, including but**  
4 **not limited to food packaging.**

5 (6) Poisons sold to the ultimate consumer for agricultural or industrial  
6 uses in amounts of 10 pounds or more.

7 (7) Any substance for use in a scientific laboratory.

8 **SECTION 3.** ORS 453.035 is amended to read:

9 453.035. (1) The Director of the Oregon Health Authority shall adopt  
10 standards for the labeling of hazardous substances **and for the labeling of**  
11 **articles that contain hazardous substances.** The director may permit or  
12 require the use of a recognized generic name or may require the common or  
13 usual name or the chemical name, if there is no common or usual name, of  
14 the hazardous substance or of each component [*which*] **that** the director  
15 finds contributes substantially to its hazard.

16 (2) The director shall require:

17 (a) The word “Danger” on substances [*which*], **or on articles containing**  
18 **substances, that** are extremely flammable, corrosive or highly toxic;

19 (b) The word “Warning” or “Caution” on other hazardous substances **or**  
20 **on other articles containing hazardous substances;**

21 (c) An affirmative statement of the principal hazard or hazards, such as  
22 “Flammable,” “Combustible,” “Vapor Harmful,” “Causes Burns,” “Absorbed  
23 Through Skin,” or similar wording descriptive of the hazard;

24 (d) Precautionary measures describing the action to be followed or  
25 avoided, except when modified by rule of the director pursuant to subsection  
26 (4) of this section;

27 (e) Instruction, when necessary or appropriate, for first-aid treatment;

28 (f) The word “Poison” for any hazardous substance [*which*], **or for arti-**  
29 **cles containing any hazardous substance, that** is defined as “highly  
30 toxic” in ORS 453.005;

31 (g) Instructions for handling and storage of packages [*which*] **that** require

1 special care in handling or storage;

2 (h) Adequate directions for the protection of children from the hazard if  
3 the article is intended for use by children and is not a banned hazardous  
4 substance, or the statement “Keep out of the reach of children,” or its  
5 practical equivalent, if the article is not intended for use by children; and

6 (i) The name and place of business of the manufacturer, packer, distribu-  
7 tor or seller.

8 (3) Any statement required by this section must be in the English lan-  
9 guage, located prominently and in conspicuous and legible type in contrast  
10 by typography, layout or color with other printed matter on the label.

11 (4) If the director finds that, because of the size of the package involved  
12 or because of the minor hazard presented by the substance contained  
13 [*therein*] **in the package**, or for other good and sufficient reasons, full  
14 compliance with the labeling requirements otherwise applicable under ORS  
15 453.005 to 453.135 and 453.990 (2) is impracticable or is not necessary for the  
16 adequate protection of the public health and safety, the director may au-  
17 thorize the exemption of such substance, **or article containing such sub-**  
18 **stance**, from the requirements, to an extent consistent with adequate  
19 protection of the public health and safety.

20 **SECTION 4.** ORS 453.055 is amended to read:

21 453.055. (1) The Director of the Oregon Health Authority shall declare to  
22 be a hazardous substance any substance or mixture of substances [*which*]  
23 **that** the director finds to be within the definition of “hazardous substance”  
24 in ORS 453.005.

25 (2) If the director finds that any hazardous substance is a misbranded  
26 hazardous substance **or that any article contains a misbranded hazard-**  
27 **ous substance**, the director shall require such reasonable variations or la-  
28 beling requirements in addition to those required by ORS 453.035 as the  
29 director finds necessary for the protection of the public health and safety.  
30 However, if the director finds that any hazardous substance **or article**  
31 **containing a hazardous substance** cannot be labeled adequately to protect

1 the public health and safety, or [*the*] **that the substance or** article presents  
2 an imminent danger to the public health and safety, the director may declare  
3 the **substance or** article to be a banned hazardous substance and require its  
4 removal from commerce.

5 (3) If the director finds that a toy or other article intended for use by  
6 children is a hazardous substance, bears or contains a hazardous substance  
7 in a manner as to be susceptible of access by a child to whom the toy or  
8 other article is entrusted or presents an electrical, mechanical or thermal  
9 hazard, the director shall declare a toy or other article to be a banned haz-  
10 ardous substance and require its removal from commerce.

11 (4) If the director finds that any hazardous substance, **or article con-**  
12 **taining any hazardous substance**, intended, or packaged in a form suit-  
13 able, for **personal use or** use in a household, notwithstanding cautionary  
14 labeling as required under ORS 453.005 to 453.135 and 453.990 (2), involves  
15 a degree or nature of the hazard by its presence or use [*in households*] **such**  
16 that the protection of the public health and safety can be adequately served  
17 only by keeping the substance **or article** out of the channels of commerce,  
18 the director shall declare the hazardous substance to be a banned hazardous  
19 substance, **or shall declare the article containing the hazardous sub-**  
20 **stance to be a banned article**, and require its removal from commerce.

21 (5) Any hazardous substance, **or article containing any hazardous**  
22 **substance**, intended, or packaged in a form suitable for use in the household  
23 or by children, [*which*] **that** fails to bear a label in accordance with ORS  
24 453.035 and the standards of the director shall be deemed to be a misbranded  
25 hazardous substance **or an article that contains a misbranded hazardous**  
26 **substance**.

27 (6) Any hazardous substance contained in a reused food, drug or cosmetic  
28 container is a misbranded hazardous substance.

29 (7) **In adopting rules under this section pursuant to ORS 453.095, the**  
30 **director shall review scientific data, which may include laboratory**  
31 **findings, epidemiologic studies and public surveillance, and shall con-**

1 **sider whether the weight of the scientific evidence supports a finding**  
2 **that a substance is a hazardous substance.**

3 **SECTION 5. (1) For purposes of ORS 30.492 (1), the amendments to**  
4 **ORS 453.005 by section 1 of this 2013 Act apply only to causes of action**  
5 **that arise on or after the effective date of this 2013 Act.**

6 **(2) For purposes of ORS 31.610 (6)(a), the amendments to ORS**  
7 **453.005 by section 1 of this 2013 Act apply to violations related to the**  
8 **spill, release or disposal of a hazardous substance occurring on or after**  
9 **the effective date of this 2013 Act.**

10 **(3) For purposes of ORS 646A.350, the amendments to ORS 453.005**  
11 **by section 1 of this 2013 Act apply to conduct occurring on or after the**  
12 **effective date of this 2013 Act.**

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