April 3, 2013

To: The Honorable Mitch Greenlick, Chairman
Members, House Health Care Committee

From: Tim Shestek
Senior Director, State Affairs

Re: HB 2928 – Oppose

The American Chemistry Council (ACC) considers the practice of making health, safety and environmental protection an integral part of the development, manufacture, handling and use of chemicals. Safety is a top priority our member companies. We believe that consumers deserve to have confidence that the products they buy are safe for their intended uses. ACC members invest significant resources in product and environmental stewardship and share a common commitment to advancing the safe and secure management of chemical products and processes.

However, as drafted the bill raises several questions and concerns including:

- Scope: no clear definition of impacted products/chemicals;
- Potential conflict with the Federal Hazardous Substances Act (FHSA);
- Inconsistent with Global Regulatory Standards; and
- Presumption that the presence of a hazardous substance in a product automatically requires regulation.

SCOPE OF REGULATED PRODUCTS/ARTICLES IS GREATLY EXPANDED FROM CURRENT LAW AND CREATES SIGNIFICANT UNCERTAINTY

This bill would greatly expand the authority of current Oregon Statute 453's focus on labeling of toys and certain "articles" used by children, to include the labeling of any "articles" that contain hazardous substances. The bill also greatly expands the definition of hazardous substances beyond substances that have acute effects/exposures to substances that also have "chronic" health effects through prolonged use or exposure. The bill would also expand the labeling requirements of current Oregon law beyond just substances in household use to include "personal use".

The bill as drafted does not appear to define the universe of potentially regulated "articles" (products) or substances. This lack of clarity provides little to no certainty to the regulated community, including those companies that may produce products for distribution on a national or global scale. This uncertainty raises the real possibility that products shipped globally could be required to meet an Oregon specific labeling requirement. This in turn could be very disruptive to interstate commerce of these products.

POTENTIAL CONFLICT WITH FEDERAL HAZARDOUS SUBSTANCES ACT AND CONSUMER PRODUCT SAFETY IMPROVEMENT ACT

The Federal Hazardous Substances Act (FHSA) governs the labeling of hazardous household products to alert consumers to the potential hazards and proper handling of those products. This law authorizes the US Consumer Products Safety Commission (CPSC) to issue regulations regarding labeling requirements for substances that, as a result of customary or reasonably foreseeable handling or use, could cause substantial personal injury or illness. The FHSA generally preempts any state mandated hazardous substance warning labels that are not identical to the warning labels required by the FHSA. The FHSA preemption provisions allow states, however, to petition the CPSC to exempt potentially preempted state laws from the FHSA's preemption clauses. There is no mention of this process in the bill, however.

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In addition, the FHSA is coordinated with the Consumer Product Safety Act, which was amended in 2008 to address products containing lead, phthalates, etc. According to the CPSC, the Consumer Product Safety Improvement Act (CPSIA) of 2008 specifically preempts state law limitations on these two compounds. The bill makes no reference to the limitations placed on these materials via the CPSIA and the relationship between this bill and the CPSIA. Furthermore, other defined "hazardous substances" are covered by other federal laws, such as the Federal Insecticide, Fungicide, and Rodenticide Act, and the Federal Food, Drug, and Cosmetic Act.

It is not completely understood what specific issue this bill seeks to address. As noted above, it is not clear which "hazardous substances" and which "articles containing hazardous substances" the Oregon Health Agency might find require labeling. Establishing potentially conflicting requirements, in light of the current requirements under the FHSA and other federal programs governing hazardous substances, however, raises serious implementation concerns for the regulated community

INCONSISTENT WITH GLOBAL REGULATORY STANDARDS

Though the bill specifies that the Oregon Health Authority (OHA) must use "scientific data" to support a finding that a substance is a hazardous substance, the bill is not clear in identifying the thresholds at which a hazardous substance must be in an article to be potentially regulated. For example, the federal Occupational Safety and Health Administration (OSHA), the Globally Harmonized System for Classification and Labeling (GHS), and the European Union's REACH standard apply a de minimis threshold of 1% for hazardous chemicals, and 0.1% for other substances such as carcinogens, mutagens, and reproductive toxins. The legislation's imposition of labeling requirements on any "articles" containing "hazardous substances", without any de minimis threshold of the substances in the articles, is not risk based.

Further, as drafted, there is no distinction drawn between "intentionally added" substances and "contaminants." This is inconsistent with generally accepted numerical thresholds used by federal and international agencies.

PRESENCE OF A SUBSTANCE IN A PRODUCT DOES NOT AUTOMATICALLY EQUATE TO RISK

The bill undercuts an integrated approach to hazard and exposure by presuming that the mere presence of a substance in an "article" indicates the need for regulation. Presence of a substance in a product cannot be a surrogate for "exposure" without any notion of whether or to what extent there may be an actual exposure to a level sufficient to cause harm. As drafted, the bill does not require OHA to make any determination about any risks that could be posed by these products/substances to justify regulation (e.g. labeling, bans, etc). The bill merely assumes there is risk requiring regulation. This broad approach to regulation of "hazardous substances" present in "articles" is both inefficient and impractical. It runs counter to the case by case approach used by the US EPA to regulate chemicals in articles.

EPA's approach ensures the Agency focuses on substances that pose a true risk under their conditions of use. EPA's approach also recognizes that there are many technical and practical difficulties with compliance and enforcement of broad regulation of chemicals in articles. Such practical implementation issues have potential for costly consequences – not just to the regulated community but to the State of Oregon.

For the above listed reasons, we respectfully urge a NO vote on HB 2928. If you have any questions, please contact:

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