

Senate Bill 438

Sponsored by Senator STEINER HAYWARD, Representative KENY-GUYER; Senator DINGFELDER (Presession filed.)

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**.

Requires manufacturer of product that is alternative to product containing hazardous substance banned in this state to submit, before introducing alternative product into state commerce, assessment of alternative to hazardous substance to Oregon Health Authority. Punishes violation of Act by civil penalty of up to \$100,000 for first offense or \$200,000 for second or subsequent offense.

Increases penalty for failure to remove from commerce hazardous substance that Director of Oregon Health Authority bans and requires to be removed from commerce.

Becomes operative on January 1, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to hazardous substances; creating new provisions; amending ORS 453.990 and 453.995; and
3 declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 453.005 to**
6 **453.135.**

7 **SECTION 2. (1) As used in this section:**

8 (a) **“Alternative process” means a process that replaces a process used to manufacture**
9 **a hazardous substance that the Director of the Oregon Health Authority has banned and**
10 **removed from commerce under ORS 453.055.**

11 (b) **“Alternative product” means a product that a manufacturer substitutes for a product**
12 **containing a hazardous substance that the director has banned and removed from commerce**
13 **under ORS 453.055 for the purpose of reintroducing the product into commerce.**

14 (c) **“Alternative substance” means a substance in which a chemical or chemical com-**
15 **ound found in a hazardous substance that the director has banned and removed from com-**
16 **merce under ORS 453.055 has been substituted with another chemical or chemical compound.**

17 (2) **If the director bans a hazardous substance under ORS 453.055 and requires the re-**
18 **moval of the hazardous substance from commerce, a manufacturer of a product that con-**
19 **tains the hazardous substance may not introduce an alternative product into commerce**
20 **without first submitting to the Oregon Health Authority an assessment of each alternative**
21 **process used to manufacture the alternative product, each alternative substance used in the**
22 **manufacturing of the alternative product and all other alternative processes and alternative**
23 **substances that reasonably may be used to manufacture the alternative product.**

24 (3) **An assessment submitted under this section must identify each alternative process**
25 **and each alternative substance used to manufacture an alternative product and assess**
26 **whether those alternatives mitigate or eliminate the findings of the director under ORS**
27 **453.055. The authority shall adopt by rule the form and manner of submitting an assessment**

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 under this section.

2 (4) A manufacturer may include in an assessment submitted under this section any in-
3 formation that the manufacturer deems relevant to the assessment, such as the availability
4 of different alternative processes or alternative substances, the difference in purchase price
5 created by different alternative processes or alternative substances, the technical feasibility
6 in manufacturing an alternative product, the conditions of using an alternative product or
7 the management of chemicals in an alternative substance.

8 (5) To assist a manufacturer that is submitting an assessment under this section, the
9 authority shall provide to the manufacturer, upon request, copies of previously submitted
10 assessments.

11 **SECTION 3.** ORS 453.990 is amended to read:

12 453.990. (1) [Any] A violation of ORS 453.175 or 453.185 or [any rules] a rule of the State Board
13 of Pharmacy [thereunder] adopted under ORS 453.175 or 453.185 is a Class C misdemeanor.

14 (2)(a) Except as provided in paragraph (b) of this subsection, violation of [any of the pro-
15 visions] a provision of ORS 453.005 to 453.135 is a Class B misdemeanor. A second and subsequent
16 violation of [any of the provisions] a provision of ORS 453.005 to 453.135 is a Class A misdemeanor.

17 (b) Violation of section 2 of this 2013 Act is not a criminal offense.

18 (3) Violation of [any] a provision of ORS 453.605 to 453.800 is a Class A misdemeanor.

19 (4) In addition to the provisions of ORS 453.882 regarding enjoinder and abatement, a person
20 who knowingly uses property that has been determined to be not fit for use pursuant to ORS 105.555,
21 431.175 and 453.855 to 453.912 as if it were fit for use commits a Class B misdemeanor.

22 (5) Violation of ORS 453.885 (2) is a Class B misdemeanor.

23 **SECTION 4.** ORS 453.995 is amended to read:

24 453.995. (1) In addition to any other liability or penalty provided by law, the Oregon Health
25 Authority may impose a civil penalty on a person for violation of:

26 (a) ORS 453.885; or

27 (b) ORS 453.005 to 453.135 or rules adopted under ORS 453.005 to 453.135 by the authority.

28 (2)(a) Except as provided in paragraph (b) of this subsection, a civil penalty imposed under
29 this section may not exceed \$2,000.

30 (b) A civil penalty imposed for violation of ORS 453.055 or section 2 of this 2013 Act may
31 not exceed \$100,000 for a first offense or \$200,000 for a second or subsequent offense.

32 (3) ORS 183.745 applies to civil penalties imposed under this section.

33 **SECTION 5.** (1) Sections 1 and 2 of this 2013 Act and the amendments to ORS 453.990 and
34 453.995 by sections 3 and 4 of this 2013 Act become operative on January 1, 2014.

35 (2) The Oregon Health Authority may take any action before the operative date specified
36 in subsection (1) of this section to enable the authority to exercise, on and after the opera-
37 tive date specified in subsection (1) of this section, all the duties, functions and powers con-
38 ferred on the authority by sections 1 and 2 of this 2013 Act and the amendments to ORS
39 453.990 and 453.995 by sections 3 and 4 of this 2013 Act.

40 **SECTION 6.** This 2013 Act being necessary for the immediate preservation of the public
41 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
42 on its passage.