



February 27, 2015

The Honorable Chris Edwards, Chairman
 Oregon Senate Committee on Environment and Natural Resources
 900 Court St NE, S-411
 Salem, OR 97301

RE: SB 478 – OPPOSE

Dear Senator Edwards:

The above listed organizations are writing to respectfully oppose your SB 478 as drafted. Without question, our organizations and member companies share a common commitment to advancing the safe and secure use of chemicals and consumer products. Unfortunately, we have identified several issues and concerns, including:

- The false presumption that the presence of an identified chemical in a children’s product means the product is somehow harmful;
- The bill’s underlying premise that children’s products currently contain chemicals that pose a risk to the health of Oregon’s children; and
- Many provisions that would result in substantial compliance challenges for product manufacturers.

Based on these and other issues, the bill would trigger new reporting and product reformulation requirements for manufacturers that are not supported by sound scientific principles. Furthermore, these proposed new Oregon specific rules also fail to consider the array of consumer product safety regulations that are in place at the federal level.

Presence Does Not Equate to Risk

Modern analytical techniques allow for the detection of chemicals in the parts per billion and parts per trillion levels range. As drafted, SB 478 would trigger new reporting and mandatory product reformulation for certain products based on the mere presence of an identified chemical, not through any determination that the product is harmful. For example, products which only contain a listed chemical in an "inaccessible component" that a child could never access could still be banned.

A children's product that contains an identified chemical does not necessarily mean that the product is harmful to human health or the environment or that there is any violation of existing safety standards or laws. Risks associated with a chemical in a product are dependent upon the potency of the chemical and the magnitude, duration and frequency of exposure to the chemical.

Expanded Authority to State Bureaucracy

SB 478 requires manufacturers to complete an "alternatives assessments" on identified chemicals of concern yet provides little guidance or clarity as to what would constitute an acceptable alternatives assessment. Moreover, the bill allows OHA to determine that an alternatives assessment is "incomplete," yet provides no direction as to how that determination would be made. For example, SB 478 does not require that an alternatives assessment consider key issues such as cost, performance and availability.

Because the bill focuses on the substitution of alternatives solely on the basis of the availability of an "inherently safer" alternative or on reduced amounts of the priority chemical, there is no effective standard for alternatives assessments. Compounding the situation is that "inherently safer" is not defined, which further adds to an already uncertain regulatory framework. Because the bill does not focus on risk, it could force an alternatives assessment even if the identified chemical of concern is not a significant or meaningful source of exposure to that substance.

As drafted, OHA could become the sole arbiter of what children's products may be manufactured for use in Oregon. We question whether OHA has the expertise or the resources to determine how products, product components, or packaging should be made.

Regulatory Duplication

It appears the bill presumes there is little regulatory oversight governing chemicals and consumer products. There are more than a dozen federal laws that regulate the safety of chemicals and products in commerce, including the Consumer Product Safety Improvement Act (CPSIA) and the Federal Hazardous Substances Act (FHSA). Attached is chart that summarizes these regulations.

Compliance Challenges

SB 478 contains definitions and compliance requirements that differ significantly from other state requirements, including a chemical ingredient disclosure program in Washington State. These inconsistencies pose challenges for companies that distribute products nationally. Some of the identified issues include:

- Due to differences in definitions the scope for reporting of chemicals and products is far greater than Washington State.
- Companies will incur additional costs and expend additional resources to test and report on the same chemicals in the same products for both programs.

- The data sharing provisions contained in the bill may not be possible due to the inconsistencies on information that must be reported.
- The bill does not contain a “phase-in” schedule for reporting as was done in Washington State which means companies have to report on all product lines at the same time.
- SB 478 requires alternative assessments even though there is no universally accepted framework or guidance at this time.
- It is unclear if any information submitted to OHA by a manufacturer is eligible for protection as confidential business information (CBI). Some CBI information may be relevant to a listing decision (e.g., information demonstrating that an identified chemical is present as an unintentional by-product of a proprietary manufacturing process).
- The bill permits OHA to establish by rule fees to support the cost of the program yet provides not cap on the amount that could be raised. OHA is also authorized to obtain an alternatives assessment from a third party and charge the assessment to the manufacturer, which raises due process concerns.

We appreciate the opportunity to share these issues and concerns.

Sincerely,



Tim Shestek
American Chemistry Council

On behalf of the following organizations:

American Cleaning Institute
American Forest & Paper Association
Art & Creative Materials Institute
Associated Oregon Industries
Association of Home Appliance Manufacturers
Consumer Specialty Products Association
Grocery Manufacturers Association
Northwest Food Processors Association
Northwest Grocery Association
Northwest Pulp & Paper Association
Oregon Metals Industry Council
Toy Industry Association