
MEMORANDUM

Legislative Fiscal Office
900 Court St. NE, Room H-178
Salem, Oregon 97301
Phone 503-986-1828
FAX 503-373-7807

To: Human Services Subcommittee of the Joint Committee on Ways and Means

From: Kim To, Legislative Fiscal Office, 503-986-1830

Date: Thursday, June 18, 2015

Subject: SB 478 Relating to high priority chemicals of concern for children's health
Work Session Recommendation

Senate Bill 478 establishes the "Toxic-Free Kids Act" requiring the Oregon Health Authority (OHA) to establish and maintain on its website a list of designated high priority chemicals of concern for children's health used in children's products and to periodically review and revise the list.

The measure previously had hearings in the Senate Committee on Environment and Natural Resources on 3/2/2015 and 4/15/2015.

The – A20 amendment, the original staff measure summary, and the fiscal impact statements are attached to this memo, and available on the Oregon Legislative Information System (OLIS).

Fiscal impact

Passage of this bill is anticipated to have a fiscal impact of \$87,673 General Fund and 0.38 FTE for the Public Health Division of OHA for the 2015-17 biennium; and \$409,335 General Fund and 1.25 FTE for the 2017-19 biennium. Implementation of this measure would mean establishing an entirely new program within the Oregon Health Authority (OHA). The expenditure estimates for 2015-17 include salary and related costs for a Program Analyst 2 position to coordinate this program including establishing and building relationships with manufacturers. For the 2017-19 biennium, OHA anticipates phasing in three additional positions:

- One part-time Research Analyst 1 position to work with the agency's Office of Information Services (OIS) to develop and maintain a new searchable database and website as well as to produce data analysis reports.
- One part-time Toxicologist to establish quantitative limits for priority chemicals, provide expert advice on rule writing and review waiver requests.
- One part-time Information systems Specialist 7 position to support the online database.

This pricing also includes \$10,000 in Attorney General fees for the 2015-17 biennium, and \$20,000 for 2017-19 biennium. These are conservative estimates for Department of Justice expenses; OHA

may need to return to the legislature for additional funding if the agency experience more than anticipated legal challenges in maintaining this program.

This fiscal analysis assumes the fund source for these expenditures to be General Fund because although the bill permits OHA to assess a fee to manufacturers of children's products, based on the experience of other states which have passed similar legislation, there is significant concern regarding the ability to collect enough revenue to support the cost of this work. The manufacturers of children's products include those out of state and out of the country, making revenue collection difficult.

Passage of this bill is anticipated to have minimal fiscal impact on the Department of Environmental Quality (DEQ), the Department of Justice (DOJ), and the Oregon Judicial Department (OJD).

The -A20 amendment

The -A20 amendment:

- Modifies certain terms related to the definition of “children’s products.”
- Modifies the definition of “contaminant” and “intentionally added chemical.”
- Directs OHA to grant an exemption to a manufacturer of children’s products under certain circumstances.
- Appropriates \$87,673 General Fund to the Oregon Health Authority to carry out the provisions of this bill.

Recommendation

LFO recommends moving the – A20 amendment into the bill.

Motion

Motion: Senator/Representative _____:

I move the dash A20 amendment into SB 478.

Motion

Motion: Senator/Representative _____:

I move SB 478 to the Full Committee with a “do pass” recommendation as amended.

Assignment of Carriers

Full: _____

Senate: _____

House: _____

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 478**

1 On page 2 of the printed A-engrossed bill, line 6, delete “or feeding” and
2 insert “, feeding or drinking”.

3 Delete line 32 and insert:

4 “(O) Sporting equipment and accessories, including but not limited to
5 bats, balls, gloves, sticks, pucks, pads, helmets and other protective equip-
6 ment, weight training and exercise aids, protective eyewear, backpacks and
7 tents, raingear, sport bags and luggage, and golf equipment.”.

8 Delete line 35 and insert:

9 “(Q) Food and beverages and food and beverage packaging regulated by
10 the”.

11 Delete lines 38 through 40 and insert:

12 “(4) ‘Contaminant’ means trace amounts of chemicals that are incidental
13 to manufacturing and that serve no intended function in the product com-
14 ponent, including but not limited to:

15 “(a) Unintended by-products of chemical reactions during the manufacture
16 of the product component;

17 “(b) Trace impurities in feedstock;

18 “(c) Incompletely reacted chemical mixtures; and

19 “(d) Degradation products.”.

20 On page 3, line 1, after “component” insert a period and delete the rest
21 of the line and delete lines 2 and 3.

22 On page 4, after line 44, insert:

1 “(5)(a) The authority shall grant an exemption to a manufacturer of
2 children’s products that applies for an exemption from the notice require-
3 ments of this section if the application demonstrates that:

4 “(A) The high priority chemical of concern for children’s health used in
5 children’s products is present in the children’s product otherwise subject to
6 the notice requirements of this section only as a contaminant;

7 “(B) The manufacturer conducts a manufacturing control program for the
8 contaminant; and

9 “(C) The manufacturing control program meets minimum standards for a
10 manufacturing control program as set forth by the authority by rule.

11 “(b) The authority shall approve or disapprove an exemption application
12 within 180 days after its submittal. If the authority fails to act within 180
13 days, the exemption application is deemed approved. If the authority disap-
14 proves an exemption application, the manufacturer may submit a revised
15 exemption application for consideration within 180 days after the authority’s
16 disapproval.”.

17 In line 45, delete “(5)” and insert “(6)”.

18 On page 5, line 2, delete “(6)” and insert “(7)”.

19 On page 8, line 1, delete “reasonable”.

20 In line 2, after “contaminant” insert “that meets or exceeds the minimum
21 requirements for a manufacturing control program adopted by rule by the
22 authority under section 4 (5) of this 2015 Act”.

23 On page 10, delete lines 14 through 18 and insert:

24 **“SECTION 17. In addition to and not in lieu of any other appropri-
25 ation, there is appropriated to the Oregon Health Authority, for the
26 biennium beginning July 1, 2015, out of the General Fund, the amount
27 of \$87,673 for the purposes of carrying out the duties of the authority
28 under sections 1 to 13 of this 2015 Act.”.**

29

FISCAL IMPACT OF PROPOSED LEGISLATION**Measure: SB 478 - A20**Seventy-Eighth Oregon Legislative Assembly – 2015 Regular Session
Legislative Fiscal Office**Only Impacts on Original or Engrossed
Versions are Considered Official**Prepared by: Kim To
Reviewed by: Linda Ames, Paul Siebert, Steve Bender, John Borden
Date: 6/16/2015**Measure Description:**

Requires Oregon Health Authority to establish and maintain list of designated high priority chemicals of concern for children's health used in children's products and to periodically review and revise list.

Government Unit(s) Affected:

Oregon Health Authority (OHA), Department of Environmental Quality (DEQ), Department of Justice, Judicial Department

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

Senate Bill 478 with the – A20 amendment establishes the “Toxic-Free Kids Act” requiring the Oregon Health Authority to establish and maintain on its website a list of designated high priority chemicals of concern for children’s health used in children’s products and to periodically review and revise the list. The – A20 amendment modifies the definitions of “contaminant” and “intentionally added chemical,” as well as certain terms related to the definition of “children’s products.” The amendment also directs OHA to grant an exemption to a manufacturer of children’s products under certain circumstances. In addition, the bill appropriates \$87,673 General Fund to the Oregon Health Authority for the 2015-17 biennium to carry out the provisions of this bill.

Oregon Health Authority (OHA)

Summary of Expenditures		
	2015-17 Biennium	2017-19 Biennium
Personal Services	57,718	171,523
Services & Supplies	29,955	79,854
Special Payments		157,958
Total General Fund	\$87,673	\$409,335
Positions	1	4
FTE	0.38	1.25

Passage of this bill is anticipated to have a fiscal impact of \$87,673 General Fund and 0.38 FTE for the Public Health Division of OHA for the 2015-17 biennium; and \$409,335 General Fund and 1.25 FTE for the 2017-19 biennium. Implementation of this measure would mean establishing an entirely new program within the Oregon Health Authority (OHA). The expenditure estimates for 2015-17 include salary and related costs for a Program Analyst 2 position to coordinate this program including establishing and building relationships with manufacturers. For the 2017-19 biennium, OHA anticipates phasing in three additional positions:

1. One part-time Research Analyst 1 position to work with the agency’s Office of Information Services (OIS) to develop and maintain a new searchable database and website as well as to produce data analysis reports.

2. One part-time Toxicologist to establish quantitative limits for priority chemicals, provide expert advice on rule writing and review waiver requests.
3. One part-time Information systems Specialist 7 position to support the online database.

This pricing also includes \$10,000 in Attorney General fees for the 2015-17 biennium, and \$20,000 for 2017-19 biennium. These are conservative estimates for Department of Justice expenses; OHA may need to return to the legislature for additional funding if the agency experience more than anticipated legal challenges in maintaining this program.

This fiscal analysis assumes the fund source for these expenditures to be General Fund because although the bill permits OHA to assess a fee to manufacturers of children's products, based on the experience of other states which have passed similar legislation, there is significant concern regarding the ability to collect enough revenue to support the cost of this work. The manufacturers of children's products include those out of state and out of the country, making revenue collection difficult.

Passage of this bill is anticipated to have minimal fiscal impact on the Department of Environmental Quality (DEQ), the Department of Justice (DOJ), and the Oregon Judicial Department (OJD).

STAFF MEASURE SUMMARY

Senate Committee On Environment and Natural Resources

Fiscal: Fiscal impact issued**Revenue:** No Revenue Impact**Action Date:** 04/15/15**Action:** Do Pass With Amendments. (Printed A-Eng.) Request Referral To Ways And Means .**Meeting Dates:** 03/02, 04/15**Vote:**

Yeas: 3 - Dembrow, Edwards, Prozanski

Nays: 2 - Olsen, Thomsen

Prepared By: Beth Reiley, Committee Administrator**WHAT THE MEASURE DOES:**

Requires Oregon Health Authority (OHA) to establish and maintain list of high priority chemicals of concern for children's health when used in children's products. Instructs OHA to include on list any chemical currently listed on Washington State Department of Ecology's Reporting List of Chemicals of High Concern to Children. Requires OHA to post list and information on health impacts associated with exposure on its website. Requires OHA to review and revise list every three years but stipulates that no more than five chemicals can be added to list during each three-year revision period. Requires manufacturers of children's products sold in state containing chemical included on list in amount over or above specified minimum level to provide biennial notice including name, registry number, amount and function of chemical used in the children's product. Requires manufacturer to remove, make substitution or seek waiver for chemical present in children's product on or before date on which manufacturer submits third biennial notice if chemical is mouthable, cosmetic, or made for or marketed to children under three years of age. Authorizes manufacturers with 25 or fewer employees to apply for two year extension on requirement to remove or substitute chemical in children's product. Requires manufacturer to submit hazard assessment to OHA upon removing listed chemical. Requires OHA to grant waiver to manufacturer if removal of chemical of concern is not technically or financially feasible, or includes quantitative exposure assessment demonstrating health risk is not reasonably anticipated to occur. Exempts manufacturers with annual worldwide gross sales of less than \$5 million. Authorizes OHA to participate in Interstate Chemicals Clearinghouse, conduct tests of children's products, establish fees for manufacturers based on administration of program and deposit fees in High Priority Chemicals of Concern for Children's Health Fund. Authorizes OHA to impose civil penalty for violation of disclosure or removal or provisions of Act not exceeding \$5,000 or \$10,000 for continuing violation. Authorizes OHA to impose civil penalties not to exceed \$2,500 or \$5,000 for each subsequent violation if manufacturer violates disclosure of certain notice requirements and fails to cure violation within 90 days of receiving notice from OHA. Requires OHA to report to public health, environment and natural resource committees of Legislature no later than September 15 of each odd-numbered year and include certain information related to the program.

ISSUES DISCUSSED:

- Eligibility for waivers
- Public health risks
- Effect of certain chemicals on developing children
- Federal process for regulating chemicals

EFFECT OF COMMITTEE AMENDMENT:

Removes kitchen merchandise from definition of children's product. Clarifies children's product is not beverages and disposable packaging for food and beverages regulated by United States Department of Agriculture. Defines "manufacturer" and "mouthable." Stipulates Oregon Health Authority may not add more than five chemicals to list of high priority chemicals during each three-year revision period. Authorizes assessment or quantitative exposure assessment to be conducted in manner consistent with California's program for reducing toxic chemicals in consumer products. Stipulates first biennial notice for chemicals contained in children's products included on list adopted on January 1, 2016 must be submitted no later than January 1, 2018.

BACKGROUND:

Senate Bill 478A would establish a list of high priority chemicals for children's health used in children's products, require manufacturers to provide notice including the name, registry number, amount and function of the chemicals on the list used in the children's product, and require manufacturers to remove or substitute for the chemical under certain circumstances. Similar legislation has been passed in other states, notably Maine's Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products and Washington's Children's Safe Products Act.

A-Engrossed
Senate Bill 478

Ordered by the Senate April 27
Including Senate Amendments dated April 27

Sponsored by Senator EDWARDS, Representatives KENY-GUYER, GOMBERG; Senators GELSER, STEINER HAYWARD, Representative JOHNSON (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.

Requires Oregon Health Authority to establish and maintain list of designated high priority chemicals of concern for children's health used in children's products and to periodically review and revise list. Requires authority to post certain information on authority's website.

Requires manufacturers of certain children's products to provide notice to authority regarding chemicals on list. Requires certain manufacturers to take additional actions after certain dates to comply with notice requirement.

Allows authority to enter into certain data sharing agreements with other states. Allows authority to participate in Interstate Chemicals Clearinghouse.

Allows authority to establish certain fees by rule. Allows authority to impose civil penalties. Allows authority to accept certain funding.

Establishes High Priority Chemicals of Concern for Children's Health Fund. Continuously appropriates moneys in fund to authority. Specifies uses of moneys.

Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by authority.

Becomes operative January 1, 2016. **Requires first biennial notice to be submitted by manufacturers to authority no later than January 1, 2018.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to high priority chemicals of concern for children's health; and declaring an emergency.

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

4
5 **SHORT TITLE**

6
7 **SECTION 1. Sections 2 to 13 of this 2015 Act shall be known and may be cited as the**
8 **Toxic-Free Kids Act.**

9 **SECTION 2. As used in sections 2 to 13 of this 2015 Act:**

10 **(1) "Chemical" means:**

11 **(a) A substance with a distinct molecular composition and the breakdown products of the**
12 **substance that form through decomposition, degradation or metabolism.**

13 **(b) A group of structurally related substances and the breakdown products of the sub-**
14 **stances that form through decomposition, degradation or metabolism.**

15 **(2)(a) "Children's cosmetics" means products that are intended to be rubbed, poured,**
16 **sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part**
17 **thereof for cleansing, moisturizing, beautifying, promoting attractiveness or altering the**
18 **appearance.**

19 **(b) "Children's cosmetics" does not mean soap, dietary supplements or food and drugs**

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 approved by the United States Food and Drug Administration.

2 (3)(a) "Children's product" means:

3 (A) Any of the following products that are made for, marketed for use by or marketed
4 to children under 12 years of age:

5 (i) A product designed or intended by the manufacturer to facilitate sucking, teething,
6 sleep, relaxation or feeding.

7 (ii) Children's clothing and footwear.

8 (iii) Car seats.

9 (iv) Children's cosmetics.

10 (v) Children's jewelry.

11 (vi) Toys.

12 (B) Any component part of a product specified in subparagraph (A) of this paragraph.

13 (b) "Children's product" does not mean:

14 (A) Athletic shoes with cleats or spikes.

15 (B) Batteries.

16 (C) BB guns, pellet guns and air rifles.

17 (D) Bicycles and tricycles.

18 (E) Chemistry sets.

19 (F) Consumer electronic products, including personal computers, audio and video equip-
20 ment, calculators, wireless telephones and game consoles, handheld devices that incorporate
21 a video screen and are used to access interactive software, and the associated peripherals.

22 (G) Interactive software intended for leisure and entertainment, such as computer
23 games, and their storage media, such as compact discs.

24 (H) Model rockets.

25 (I) Pocketknives and multitools.

26 (J) Roller skates.

27 (K) Scooters.

28 (L) Sets of darts with metallic points.

29 (M) Slings and catapults.

30 (N) Snow sporting equipment, including skis, poles, boots, snowboards, sleds and
31 bindings.

32 (O) Sporting equipment, including bats, balls, gloves, sticks, pucks and pads.

33 (P) Video toys that can be connected to a video screen and are operated at a nominal
34 voltage exceeding 24 volts.

35 (Q) Food and beverages and disposable packaging for food and beverages regulated by the
36 United States Food and Drug Administration or the United States Department of Agricul-
37 ture.

38 (4) "Contaminant" means trace impurities in feedstock, or chemicals that are
39 unavoidably present in products because of the chemicals' ubiquitous presence in the envi-
40 ronment.

41 (5) "De minimis level" means:

42 (a) For a chemical that is an intentionally added chemical, the practical quantification
43 limit; or

44 (b) For a chemical that is a contaminant, a concentration of 100 parts per million.

45 (6) "Intentionally added chemical" means a chemical in a product that serves an intended

1 function in the product component or manufacturing process, or is the unintended by-
2 product of chemical reactions that occur during the manufacture of the product component,
3 incompletely reacted chemical mixtures, and degradation products.

4 (7) "Manufacturer" means any person that produces a children's product or an importer
5 or domestic distributor of a children's product. For the purposes of this subsection,
6 "importer" means the owner of the children's product.

7 (8) "Mouthable" means, in describing a children's product or any part of a children's
8 product, that an intended use of the product or any part of the product includes being placed
9 in the mouth for any purpose.

10 (9) "Practical quantification limit" means the lowest concentration of a chemical that can
11 be reliably measured within specified limits of precision, accuracy, representativeness, com-
12 pleteness and comparability during routine laboratory operating conditions.

13 (10) "Trade association" means a membership organization of persons engaging in the
14 same or a similar or related line of commerce, organized to promote and improve business
15 conditions in that line of commerce and not to engage in regular business activities that
16 ordinarily are carried on for profit.

17
18 **HIGH PRIORITY CHEMICALS OF CONCERN FOR CHILDREN'S**
19 **HEALTH USED IN CHILDREN'S PRODUCTS**

20
21 **SECTION 3.** (1) The Oregon Health Authority shall establish and maintain a list of high
22 priority chemicals of concern for children's health when used in children's products. The
23 authority shall include on the list chemicals that are listed on the Washington State De-
24 partment of Ecology's Reporting List of Chemicals of High Concern to Children on the ef-
25 fective date of this 2015 Act.

26 (2) In establishing by rule the practical quantification limits for chemicals on the list, the
27 authority shall consider guidance developed by the State of Washington and other federal,
28 state and nongovernmental organizations with the applicable expertise.

29 (3) The authority shall post the list of high priority chemicals on its website. For each
30 high priority chemical on the list, the authority shall post:

31 (a) Information regarding the known health impacts associated with exposure to the
32 chemical; and

33 (b) Data collected under section 4 of this 2015 Act in a format that is searchable and
34 accessible to the public.

35 (4) The authority shall review and revise the list of high priority chemicals every three
36 years. In completing the revisions under this subsection, the authority:

37 (a) May not add more than five chemicals to the list of high priority chemicals during
38 each three-year revision period under this subsection;

39 (b) Shall consider adding or removing a chemical from the list of high priority chemicals
40 if, after the effective date of this 2015 Act, the chemical is added to or removed from the
41 Washington State Department of Ecology's Reporting List of Chemicals of High Concern to
42 Children or a list maintained by another state agency, another state or a federal agency that
43 the authority has identified by rule as a list intended to identify high priority chemicals; and

44 (c) May remove a chemical from the list of high priority chemicals if the authority de-
45 termines that the chemical is no longer being used in children's products.

1 (5) The authority shall update the list of high priority chemicals on its website within one
2 year after the date on which a chemical is added to or removed from the list.

3
4 **MANUFACTURER DISCLOSURE OF HIGH PRIORITY**
5 **CHEMICALS OF CONCERN FOR CHILDREN'S HEALTH**
6 **USED IN CHILDREN'S PRODUCTS**
7

8 **SECTION 4. (1)(a)** A manufacturer of a children's product sold or offered for sale in this
9 state that contains a chemical included on the list established and maintained under section
10 3 of this 2015 Act in an amount at or above a de minimis level shall provide a biennial notice
11 as described in subsection (2) of this section to the Oregon Health Authority by January 1
12 of each applicable notice year.

13 (b) The first biennial notice required under this section shall be submitted to the au-
14 thority by January 1 of the year following the year that the chemical contained in the
15 children's product sold or offered for sale in this state is added to the list.

16 (2) The notice required by subsection (1) of this section must contain:

17 (a) The name and Chemical Abstracts Service Registry Number of the chemical contained
18 in the children's product;

19 (b) The product category of the children's product that contains the chemical;

20 (c) A description of the function of the chemical in the children's product;

21 (d) The amount of the chemical used in each unit of the children's product reported as
22 a range rather than an exact amount;

23 (e) The name and address of the manufacturer, and the name, address and telephone
24 number of a contact person for the manufacturer; and

25 (f) Any other information that the manufacturer deems relevant to the appropriate use
26 of the children's product.

27 (3)(a) The authority may enter into reciprocal data sharing agreements with other states
28 in which manufacturers of children's products are required to disclose information related
29 to high priority chemicals of concern for children's health used in children's products. The
30 authority must use the GS1 Global Product Classification system to identify and specify
31 product categories subject to the data sharing agreements. If the authority has entered into
32 a data sharing agreement with another state, and a manufacturer has reported the infor-
33 mation required in the notice described in subsection (2) of this section to that state, the
34 manufacturer may request that the other state provide the authority with the information
35 in lieu of the manufacturer's direct reporting of the information to the authority.

36 (b) A manufacturer fulfills the notice requirement of subsection (1) of this section when
37 the authority receives the information from the other state and the authority determines
38 that the information received satisfies the requirements for the notice specified in subsection
39 (2) of this section.

40 (4) In lieu of the manufacturer's providing notice to the authority under subsection (1)
41 or (3) of this section, the authority may require that the notice described in subsection (2)
42 of this section be submitted to the Interstate Chemicals Clearinghouse. The authority by rule
43 shall specify procedures for the provision of such notice by manufacturers to the Interstate
44 Chemicals Clearinghouse.

45 (5) A trade association may provide required notices on behalf of its member manufac-

1 **turers under the provisions of this section.**

2 **(6) When a manufacturer provides notice to the authority under the provisions of this**
3 **section, the manufacturer may submit recommendations to the authority regarding techni-**
4 **cal, financial or logistical support deemed necessary for innovation and green chemistry**
5 **solutions related to high priority chemicals of concern for children’s health used in children’s**
6 **products.**

7
8 **REMOVAL OR SUBSTITUTION OF**
9 **CHEMICALS, WAIVERS, EXEMPTIONS**

10
11 **SECTION 5. (1) On or before the date on which a manufacturer of a children’s product**
12 **submits the third biennial notice required under section 4 of this 2015 Act for a chemical that**
13 **is present in a children’s product, the manufacturer must remove or make a substitution for**
14 **the chemical pursuant to section 6 of this 2015 Act, or seek a waiver under section 7 of this**
15 **2015 Act, if the chemical is present in a children’s product that is:**

- 16 **(a) Mouthable;**
17 **(b) A children’s cosmetic; or**
18 **(c) Made for, marketed for use by or marketed to children under three years of age.**

19 **(2) A manufacturer with 25 or fewer employees may apply for a two-year extension of the**
20 **date specified in subsection (1) of this section to meet the requirements of this section.**

21 **(3) Manufacturers are exempt from meeting the requirements of this section for**
22 **children’s products described in subsection (1) of this section that contain high priority**
23 **chemicals of concern for children’s health used in children’s products at levels that are at**
24 **or below allowable levels for children’s products as established by the Consumer Product**
25 **Safety Improvement Act of 2008, P.L. 110-314, 122 Stat. 3016, as in effect on the effective date**
26 **of this 2015 Act.**

27 **(4)(a) The Oregon Health Authority shall adopt rules providing for additional exemptions**
28 **from the requirements of this section.**

29 **(b) For purposes of this subsection, any consumer product safety standard adopted under**
30 **federal law that establishes allowable levels for children’s products of a high priority chemi-**
31 **cal of concern for children’s health used in children’s products is presumed to establish the**
32 **maximum allowable level of the chemical that may be used in children’s products that are**
33 **sold or offered for sale in this state. The authority may not require a manufacturer in**
34 **compliance with the federal standard to also comply with the provisions of this section un-**
35 **less the authority establishes in the rulemaking process that a lower maximum allowable**
36 **level for children’s products of a high priority chemical of concern for children’s health used**
37 **in children’s products than the allowable level set by the federal standard is necessary to**
38 **protect human health and welfare.**

39 **SECTION 6. (1)(a) When a manufacturer of children’s products sold or offered for sale**
40 **in this state removes a high priority chemical of concern for children’s health used in**
41 **children’s products from a children’s product sold or offered for sale in this state that is**
42 **subject to section 4 of this 2015 Act and substitutes another chemical, the manufacturer**
43 **must submit a hazard assessment to the Oregon Health Authority that explains how the**
44 **children’s product, and any substitute chemical the children’s product contains, is inherently**
45 **less hazardous than before the substitution was made.**

1 (b) When a manufacturer of children's products sold or offered for sale in this state re-
2 moves a high priority chemical of concern for children's health used in children's products
3 from a children's product as described in subsection (1) of this section and does not substi-
4 tute another chemical, the manufacturer must submit notice to the authority that the
5 manufacturer is no longer using the chemical or a substitute chemical.

6 (2) The authority shall establish by rule the methodology that a manufacturer must use
7 and the standards that a children's product must meet in order to comply with the hazard
8 assessment requirements described in subsection (1)(a) of this section.

9 (3) The authority shall approve or disapprove a hazard assessment within 180 days after
10 its submittal. If the authority fails to act within 180 days, the hazard assessment is deemed
11 approved, and the manufacturer may continue to sell or offer for sale in this state the
12 children's product for which the manufacturer submitted a hazard assessment. If the au-
13 thority disapproves a hazard assessment, the manufacturer may submit a revised hazard
14 assessment for consideration within 180 days after the authority's disapproval.

15 **SECTION 7.** (1) The Oregon Health Authority shall grant a waiver to a manufacturer of
16 children's products that applies for a waiver in order to comply with section 5 of this 2015
17 Act if the application:

18 (a) Includes an alternatives assessment demonstrating that removal of the high priority
19 chemical of concern for children's health used in children's products is not financially or
20 technically feasible; or

21 (b) Includes a quantitative exposure assessment demonstrating that the high priority
22 chemical of concern for children's health used in children's products is not reasonably an-
23 ticipated to result in exposure based upon an analysis of leachability and bioavailability of the
24 high priority chemical of concern for children's health used in children's products.

25 (2) An alternatives assessment or quantitative exposure assessment submitted under
26 subsection (1) of this section must be conducted in a manner consistent with the guidance
27 and frameworks for such assessments in effect on the effective date of this 2015 Act and as
28 established by the United States Environmental Protection Agency, the Interstate Chemicals
29 Clearinghouse, the State of California, as part of that state's program for reducing toxic
30 chemicals in consumer products, or other states or nongovernmental organizations with the
31 applicable expertise, or as developed by the authority by rule. The authority may recommend
32 or require that a manufacturer follow particular guidance or frameworks in order to meet
33 the requirements of this section.

34 (3) If the authority determines that an alternatives assessment or a quantitative expo-
35 sure assessment as described in this section is incomplete, the authority may obtain the
36 assessment from another party. The manufacturer that submitted the assessment that was
37 determined to be incomplete must pay for the assessment performed by the other party.

38 (4) The authority shall approve or disapprove a waiver application within 180 days after
39 its submittal. If the authority fails to act within 180 days, the waiver application is deemed
40 approved, and the manufacturer may continue to sell or offer for sale in this state the
41 children's product for which the manufacturer submitted a waiver application. If the au-
42 thority disapproves a waiver application, the manufacturer may submit a revised waiver ap-
43 plication for consideration within 180 days after the authority's disapproval.

44 **SECTION 8.** Manufacturers of children's products with annual worldwide gross sales of
45 less than \$5 million, as reported on the most recent tax return filed by the manufacturer

1 before the notice required under section 4 of this 2015 Act, are exempt from the require-
2 ments of sections 4, 5, 6 and 7 of this 2015 Act.

3
4 **OREGON HEALTH AUTHORITY**

5
6 **SECTION 9.** (1) The Oregon Health Authority may conduct testing of children's products
7 sold or offered for sale in this state in order to determine compliance with sections 4, 5 and
8 6 of this 2015 Act.

9 (2) The authority may establish by rule a schedule of fees for manufacturers of children's
10 products that are based on the costs to the authority for administering sections 2 to 13 of
11 this 2015 Act. Fees collected by the authority under this subsection shall be deposited in the
12 High Priority Chemicals of Concern for Children's Health Fund established under section 12
13 of this 2015 Act.

14
15 **INTERSTATE CHEMICALS CLEARINGHOUSE**

16
17 **SECTION 10.** The Oregon Health Authority is authorized to participate in the Interstate
18 Chemicals Clearinghouse in cooperation with other states and government entities to assist
19 the authority in carrying out sections 2 to 13 of this 2015 Act.

20
21 **CIVIL PENALTIES**

22
23 **SECTION 11.** (1) Except as provided in subsection (5) of this section, the Oregon Health
24 Authority may impose a civil penalty on a manufacturer of children's products for a violation
25 of any provision of section 4, 5 or 6 of this 2015 Act.

26 (2) For purposes of assessing civil penalties under this section, a violation consists of a
27 single course of conduct with regard to an entire children's product line that is sold or of-
28 fered for sale in this state.

29 (3) The authority shall adopt by rule a schedule of civil penalties for violations of sections
30 4, 5 and 6 of this 2015 Act. A civil penalty may not exceed \$5,000 for the first violation. A
31 civil penalty may not exceed \$10,000 for the second and each subsequent violation.

32 (4) In imposing a penalty under subsection (1) or (5) of this section, the authority shall
33 consider the following factors:

34 (a) The past history of the manufacturer incurring a penalty in taking all feasible steps
35 or following all feasible procedures necessary or appropriate to correct any violation.

36 (b) Any prior violations of statutes, rules, orders or permits pertaining to high priority
37 chemicals of concern for children's health used in children's products.

38 (c) The gravity and magnitude of the violation.

39 (d) Whether the violation was a sole event, repeated or continuous.

40 (e) Whether the violation was a result of an unavoidable accident, negligence or an in-
41 tentional act.

42 (f) The violator's cooperativeness and efforts to correct the violation.

43 (g) The economic and financial conditions of the manufacturer incurring a penalty.

44 (h) If a manufacturer asserts that a high priority chemical of concern for children's
45 health used in children's products is present in a children's product only as a contaminant,

1 evidence that the manufacturer conducted a reasonable manufacturing control program for
2 the contaminant and exercised due diligence.

3 (5)(a) If a manufacturer violates the notice requirement described in section 4 or 6 of this
4 2015 Act, the authority shall provide the manufacturer with written notice informing the
5 manufacturer of the violation and stating that the manufacturer may avoid a civil penalty
6 for the violation by providing the proper notice required under section 4 or 6 of this 2015 Act
7 within 90 days.

8 (b) If the manufacturer fails to cure the violation within 90 days, the authority may im-
9 pose a civil penalty not to exceed \$2,500. For a continuing violation, each 90-day period that
10 the violation continues after the preceding imposition of a civil penalty is a separate offense
11 subject to a separate civil penalty not to exceed \$5,000. The authority is not required to
12 provide the manufacturer with an opportunity to cure the continuing violation before im-
13 posing a civil penalty for the continuing violation.

14 (6) If the authority has reason to believe that a children's product that contains a high
15 priority chemical of concern for children's health used in children's products is being sold
16 or offered for sale in this state in violation of section 4, 5 or 6 of this 2015 Act, the authority
17 may request that the manufacturer provide a statement of compliance on a form provided
18 by the authority. The manufacturer must submit the statement of compliance within 10 days
19 after receipt of a request. To prove compliance with sections 4, 5 and 6 of this 2015 Act, the
20 manufacturer must:

21 (a) Show that the children's product does not contain the high priority chemical of con-
22 cern for children's health used in children's products;

23 (b) Show that the manufacturer has previously provided the authority with notice as re-
24 quired by section 4 of this 2015 Act;

25 (c) Provide the authority with notice as required by section 4 of this 2015 Act; or

26 (d) Provide the authority with documentation that the manufacturer has previously
27 complied with section 6 of this 2015 Act.

28 (7) Civil penalties described in this section shall be imposed in the manner provided in
29 ORS 183.745.

30 (8) All civil penalties recovered under this section shall be paid into the High Priority
31 Chemicals of Concern for Children's Health Fund established under section 12 of this 2015
32 Act.

33
34 **HIGH PRIORITY CHEMICALS OF CONCERN FOR**
35 **CHILDREN'S HEALTH FUND**
36

37 **SECTION 12.** (1) The High Priority Chemicals of Concern for Children's Health Fund is
38 established in the State Treasury, separate and distinct from the General Fund. Interest
39 earned by the High Priority Chemicals of Concern for Children's Health Fund shall be cred-
40 ited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health
41 Authority to administer sections 2 to 13 of this 2015 Act.

42 (2) The authority may accept gifts, grants or contributions from any public or private
43 source for the purpose of carrying out sections 2 to 13 of this 2015 Act.

44 (3) The High Priority Chemicals of Concern for Children's Health Fund shall consist of:

45 (a) Moneys accepted by the authority pursuant to subsection (2) of this section.

1 (b) Payments and fees collected under sections 7 and 9 of this 2015 Act.

2 (c) Civil penalties imposed under section 11 of this 2015 Act.

3
4 **REPORTS TO LEGISLATIVE ASSEMBLY**

5
6 **SECTION 13.** The Oregon Health Authority shall report to the interim committees of the
7 Legislative Assembly related to environment and natural resources and public health no later
8 than September 15 of each odd-numbered year. The report shall include the following infor-
9 mation:

10 (1) Any revisions made under section 3 of this 2015 Act to the list of high priority
11 chemicals of concern for children's health used in children's products.

12 (2) The number of manufacturers of children's products in compliance with section 4 of
13 this 2015 Act and an analysis of the information collected pursuant to section 4 of this 2015
14 Act specifying:

15 (a) The number and types of children's products sold or offered for sale in this state that
16 contain high priority chemicals of concern for children's health used in children's products.

17 (b) The range of amounts of high priority chemicals of concern for children's health used
18 in children's products, by product category, and the total number of and most frequently
19 disclosed high priority chemicals of concern for children's health used in children's products.

20 (c) The potential for exposure to high priority chemicals of concern for children's health
21 used in children's products based on the number of children's products sold or offered for
22 sale in this state that contain chemicals on the list established under section 3 of this 2015
23 Act, likely exposure routes and the typical use patterns for the children's products that
24 contain chemicals on the list established under section 3 of this 2015 Act.

25 (d) Recommendations to limit, reduce or prevent exposure to high priority chemicals of
26 concern for children's health used in children's products based on an analysis of the infor-
27 mation collected.

28 (3)(a) Details about the implementation of sections 6 and 7 of this 2015 Act regarding
29 hazard assessments and waivers. In cases where the authority grants waivers for the con-
30 tinued use of high priority chemicals of concern for children's health used in children's pro-
31 ducts and the waiver application includes an alternatives assessment, the authority may
32 develop recommendations on opportunities to provide technical assistance, provide grants
33 and promote public-private partnerships and other actions to encourage manufacturers to
34 produce children's products through green chemistry and that do not contain high priority
35 chemicals of concern for children's health used in children's products.

36 (b) In developing the recommendations described in paragraph (a) of this subsection, the
37 authority may consult with the Department of Environmental Quality, the Oregon Business
38 Development Department and other state agencies.

39 (4) A summary of compliance testing results obtained under section 9 of this 2015 Act.

40 (5) Any recommendations submitted to the authority by manufacturers under section 4
41 (6) of this 2015 Act.

42
43 **OPERATIVE DATE AND DUE DATE FOR FIRST BIENNIAL NOTICES**

44
45 **SECTION 14.** Sections 1 to 13 of this 2015 Act become operative on January 1, 2016.

SECTION 15. The Oregon Health Authority may take any action before the operative date specified in section 14 of this 2015 Act that is necessary for the authority to exercise, on and after the operative date specified in section 14 of this 2015 Act, all of the duties, functions and powers conferred on the authority by sections 1 to 13 of this 2015 Act. Actions taken subject to the section shall include actions necessary to establish the list required by section 3 of this 2015 Act by January 1, 2016.

SECTION 16. Notwithstanding section 4 (1)(b) of this 2015 Act, the first biennial notices required to be submitted to the Oregon Health Authority under section 4 of this 2015 Act for chemicals contained in children’s products that are included on the list adopted on January 1, 2016, shall be submitted to the authority no later than January 1, 2018.

MISCELLANEOUS

SECTION 17. Notwithstanding any other law limiting expenditures, the amount of \$_____ is established for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Health Authority for carrying out the duties of the authority under sections 1 to 13 of this 2015 Act.

SECTION 18. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

EMERGENCY CLAUSE

SECTION 19. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.
